

UNIVERSITY OF KWAZULU-NATAL

**TRANSFORMATIONAL LEADERSHIP AS A TOOL TO EFFECTIVELY
IMPLEMENT THE LEGISLATION GOVERNING DISABILITY IN THE
WORKPLACE: THE CASE OF ETHEKWINI METROPOLITAN MUNICIPALITY**

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DECLARATION

I, Lindani Nxumalo, declare that:

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- (ii) This dissertation has not been submitted for any degree or examination at any other university.
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ABSTRACT

The South African government has enacted various labour laws intended to transform the country to empower previously underprivileged South Africans to enjoy equal access and fair treatment in the workplace. This legislation includes provisions aimed at promoting respect for the human rights for persons with disabilities and to guarantee their protection afforded by the Constitution. The challenge, however, lies with implementation of the legislation and disability policies. While there has been a principled undertaking, confirmed at least on paper in government policy and legislation, to include persons with disabilities in mainstream society as autonomous and full members with dignity and opportunities, such opportunities remain restricted, and human ability and dignity are stifled thereby compromised. In terms of the Disability Code and labour legislation, the duty to manage execution of the Code and disability related legislation is the responsibility of workplace leaders, ie the senior management of the organisation. It follows that failure to implement disability related laws by senior management means that persons with disabilities will remain excluded in the workplace.

This study explored the role of transformational leadership in the implementation of disability law in the workplace particularly in the public sector. It further examined the role of transformational leadership on disability inclusion and equality in the Ethekwini Municipality (the Municipality), Durban, South Africa. Additionally, the study investigated obstacles hindering effective implementation of disability law in the Municipality. The study is multidisciplinary in that it incorporates leadership (management studies) and the law. In this context, the study is empirical in nature based on qualitative interviews with employees with disabilities and senior management (leaders) of the Municipality responsible for developing strategies and implementation of disability related legislation, to ascertain their perspective on transformational leadership and its impact on disability inclusion in the workplace. The assertion is that it is the role of the workplace leaders to guarantee effective implementation of disability laws in the workplace. Consequently, the study explored obstacles faced by Municipal leaders towards effective implementation of disability laws.

Furthermore, the study utilised doctrinal (legal) research by examining international and domestic instruments on disability. The study applied a socio-legal approach to analyse the law and to understand the social impact through the interviews conducted with leaders and

employees with disabilities. Thus, the socio-legal approach complements both the doctrinal and the empirical research methodologies.

Among the findings of the study is that there is a lack of leadership commitment and political will to include persons with disabilities in the Municipality. Additionally, conflicting understandings of the concept of disability and the lack of disability policies and strategies were found to be among the hindrances to disability inclusion and equality in the Municipality. There is a stigma attached to persons with disabilities and the working environment is not conducive for them. Disability is not a priority issue, it is merely considered for compliance with relevant laws and targets and not to ensure their full inclusion in the Municipality. Notably, this study found that transformational leadership is an important leadership approach to adopt to include and promote full participation of persons with disabilities in the workplace and to ensure an inclusive workplace culture.

The study recommends transformational leadership models that can be utilised by the Municipality to change the status quo and to transform an exclusionary workplace environment to the one that promotes inclusion of and full participation by persons with disabilities in all occupational levels in the Municipality.

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights (ACHPR)
ACRWC	African Charter on the Rights and Welfare of the Child
AG	Auditor-General
BCEA	Basic Conditions of Employment Act 75 of 1997
CEE	Commission on Employment Equity
CGE	Commission for Gender Equality
CPPRCRLC	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
CRPD	United Nations Convention on the Rights of Persons with Disabilities
DPA	Disabled Persons Act 22 of 2001
DPO	Disabled Persons Organisations
EC	Electoral Commission
EEA	Employment Equity Act 55 of 1998
EMA	Ethekwini Municipal Academy
HR	Human Resources
IDP	Integrated Development Plan
ILO	International Labour Organisation
INDS	Integrated National Disability Strategy
ICESCR	International Covenant on Economic, Social and Cultural Rights
LRA	Labour Relations Act 66 of 1995
NDCA	National Disability Council Act 26 of 2004
ODCM	Organisational Development and Change Management
OSDP	Office on the Status of Disabled Persons

PSC	Public Service Commission
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALGA	South African Local Government Association
TAG	Technical Assistance Guidelines on Employment of Persons with Disabilities
UDHR	Universal Declaration of Human Rights
UNCES	United Nations Committee on Economic, Social and Cultural Right

CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1 Introduction

This thesis explores the role of transformational leadership in disability inclusion and the implementation of disability law in the Ethekwini Metropolitan Municipality (the Municipality). The study is multidisciplinary in that it incorporates leadership (management studies) and the law. The contention is that it is the role of workplace leaders to guarantee effective implementation of disability law and disability inclusion in the workplace. It is on this basis that this study explores transformational leadership and disability law.

Persons with disabilities have suffered and continue to suffer inequalities in the workplace. Van Niekerk and Van der Merwe state that persons with disabilities are amongst underprivileged groups in society with limited prospects of being employed.¹ This is supported by Du Plessis who maintains that persons with disabilities grapple to retain employment in South Africa.² Furthermore, Holness clarifies that persons with disabilities confront fallacies and “attitudes that people within the workplace have about disabilities-including ignorance, pity, denial and fear.”³ It has been said that in the workplace, certain persons with disabilities are not judged on their individual performance and capability, but rather on the stereotypical ideologies held by their employers.⁴ The consequence of this attitude is that even when they are employed, they are not reasonably accommodated as required by the law. In addition, persons with disabilities are not included in the workplace, they are merely integrated for the sake of legal compliance which results in their human rights to equality and dignity being flouted. Consequently, it is clear that workplaces strive for integration and not for their inclusion, while it is contended that inclusion is crucial for the attainment of disability equity in the workplace.

Holness describes inclusivity as “a workplace that incorporates human rights values such as fairness, respect, equality, dignity and autonomy as promotional goals in an organisation”.⁵

¹ Z van Niekerk & J van der Merwe ‘Participation opportunities for persons with disabilities in training interventions in the DTI and CIPRO’ (2013) 11 (1) *Journal of Human Resource Management* 1.

² M du Plessis *Access to Work for Disabled Persons in South Africa: A Rights Critique* (Pretoria University Law Press 2017) 1.

³ W Holness ‘The invisible employee: Reasonable accommodation of psychosocial disability in the South African workplace’ (2016) 32 (3) *South African Journal on Human Rights* 520.

⁴ P Nelissen, U Hulshager, G van Ruitenbeek & F Zijlsta ‘How and when stereotypes relate to inclusive behavior toward people with disabilities’ (2016) 27 (14) *International Journal of Human Resource Management* 1613.

⁵ Holness note 3 (above) 519.

Holness further illustrates that inclusivity fundamentally refers to representation of diversity with the reassurance to members of specific groups of their development in the workplace “and identification and dismantling” of impediments encountered by them.⁶ An inclusive work culture according to Hall is about protecting, accommodating, collaborating and inspiring community and ensuring that every person is valued.⁷ To achieve the aforementioned inclusion, workplace leaders must develop necessary strategies to drive effective implementation of disability laws. In addition, they must develop disability inclusion programmes that will encourage inclusion in the workplace. In this context Sabharwal asserts that workplace leaders must not depend merely on diversity management policies and structural modifications, instead they should encourage an inclusive approach to addressing workplace inequalities.⁸ Put differently, workplace inclusion goes beyond policy consideration and concentrates more on a practical inclusive approach to disability.

Persons with disabilities are capable of performing workplace duties provided that they are reasonably accommodated, where needed. Accommodating persons with disabilities is not an act of sympathy, instead it is done because they are humans deserving the protection of the law. In this context, Njelesani et al argue that “moving away from linking inclusion as a sympathetic act drives the attitude to be driven by the advancement of human rights that benefits the entire population of a country and offers a robust affirmation of a government commitment to all citizens and to the principle of good governance”.⁹

It can therefore be said that workplaces are not welcoming and inclusive of individuals with disabilities. Many employees without disabilities do not understand the imperative for inclusion and diversity. As a result, they do not know what true equality means – substantive, not formal equality. The deduction that can be made is that workplaces are not transformed in relation to promoting equality for persons with disabilities.

Transformation implies fundamental change and can be accomplished if workplace leaders are transformed and acknowledge their constitutional duty to guarantee that all individuals are able to exercise their capabilities, regardless of their status. The public sector transformation relating

⁶ Holness note 3 (above) 519.

⁷ R Hall ‘Implementing inclusive educational practices through partnerships’ (2002) 15 (3) *South African Journal of Higher Education* 35.

⁸ M Sabharwal ‘Is diversity management sufficient? Organizational inclusion to further performance’ (2014) 43 (2) *Public Personnel Management Journal* 199.

⁹ J Njelesani, S Cleaver, M Tataryn & S Nixon ‘Using a human rights based approach to disability in disaster management initiatives’ in S Cheval (ed) *Natural Disasters* (IntechOpen 2012) 23-4.

to persons with disabilities has been highlighted by the South African democratic government.¹⁰ The principal goal of transformative strategies is to develop an accurate depiction of the public sector to encompass diversity.¹¹ This, according to Christianson, is in line with “transformative constitutionalism” which is committed to the adoption of positive measures to redress both historical injustices and methods of subordination that have denied human worth, parity and liberty to a specific group in our society.¹² Consequently, displaying an inclusive culture by employers will promote the successful adaptation of the work environment for persons with disabilities. Having introduced the study, I now explore the background pertinent to the research topic.

1.2 Background of the Study

Over the last century, there has been some transformation in the global community with regard to disability. Marsay explains that until the 1950s, persons with disabilities were considered to be dysfunctional and were frequently institutionalised.¹³ Subsequently, two major disability models have been deliberated -- the medical and social models.¹⁴ The endorsement in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of the social model is considered as radical for disability privileges, bringing a paradigm change in equal rights recognition of persons with disabilities.¹⁵ Marsay contends that the CRPD accelerated the execution of programmes and strategies regarding privileges designed for persons with disabilities in South Africa.¹⁶ Mannan et al submit that the CRPD calls for a legitimate, diverse and ethical transformational strategy.¹⁷ On that note, while the medical and social models have been deliberated, the human rights approach to disability has not been extensively explored, which this study seeks to address.

¹⁰ D Sing ‘Promoting the employability and employment of people with disabilities in the South African public service’ (2012) 41 (1) *Public Personnel Management* 161.

¹¹ J S Wessels ‘Transforming the public service to serve a diverse society: Can representativeness be the most decisive criterion?’ (2008) 27 (3) *Politeia* 22.

¹² M Christianson ‘People with disabilities inside (and outside) the South African workplace: The current status of the constitutional and statutory promises’ (2012) 1 *Acta Juridica* 292.

¹³ G Marsay ‘Success in the workplace: From the voice of (dis)abled to the voice of enabled’ (2014) 3 (1) *African Journal of Disability* 1.

¹⁴ Marsay note 13 (above) 1.

¹⁵ G M Greco & E Di Giovanni ‘Disability and human rights: Towards a cultural foundation’ (2017) 11 (3) *Journal of Literary & Cultural Disability Studies* 243. UN General Assembly, *Convention on the Rights of Persons with Disabilities resolution adopted by the General Assembly, 24 January 2007, A/RES/61/106*.

¹⁶ Marsay note 13 (above) 1.

¹⁷ H Mannan, M MacLachlan & J McVeigh ‘Core concepts of human rights and inclusion of vulnerable groups in the United Nations Convention on the rights of persons with disabilities’ (2012) 6 *European Journal of Disability Research* 161.

The responsibility of states parties to the CRPD in relation to awareness raising is to --

“adopt immediate, effective and appropriate measures to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; and to promote awareness of the capabilities and contributions of persons with disabilities”.¹⁸

In South Africa, the Constitution of the Republic of South Africa, 1996 (the Constitution) along with employment laws emerge as the instruments that drive inclusivity and transformation. Various employment laws require state and private entities to transform workplaces for persons with disabilities.¹⁹ However, implementation of the legislation is crucial and requires a particular kind of workplace leadership, such as transformational leadership, to be effectively implemented. Transformational leadership has been explored in literature in other management contexts to promote diversity, however it appears that it has not been explored within the disability context, which this study seeks to explore. Kotze encapsulates the role of the public sector in legislative compliance, disability parity and transformation as follows:

“It seems that, despite various legislation and other documents relating to equity and the employment of people with disabilities, there is still a high level of unemployment and under-representation of people with disabilities in the South African work place. The public sector is a particular attractive area of employment for people with disabilities, since it provides relatively stable employment, better than average starting pay, and public sector specific employment benefits. The role of work is particularly important to people with physical disabilities, since this offers them the opportunity to prove their worth as well as to be financially independent. Yet, people with disabilities are known to occupy a disadvantaged position on the open labour market, often by internal organisational practices, policies, and attitudes. Various researchers have reported the difficulties suffered by people with disabilities, where the latter feel that they experience work-related discrimination or unfair treatment.”²⁰

The *White Paper on Local Government 1998* provides that Municipalities “must adopt inclusive approaches to fostering community participation, including strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalised groups in the local community”.²¹ It further states that “transformation is not a choice -- it is an obligation placed on each Municipality to fulfil its constitutional mandate and play a role in the

¹⁸ article 8(1)(a), (b) and (c) of the CRPD.

¹⁹ For example section 2(a) and (b) of the Employment Equity Act 55 of 1998 (EEA) states that the purpose of the EEA is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workplace.

²⁰ M Kotze ‘The quality of worklife of people with physical disabilities in the public sector’ (2007) 42 (2) *Journal of Public Administration* 87-8.

²¹ item 1.3 of section B of the *White Paper on Local Government 1998*.

development of the nation”.²² Most importantly, the *White Paper* concludes by emphasising that “successful transformation ultimately rests in the hands of each municipality”.²³ It follows that there is a public service obligation on the state, and local government in particular, to safeguard disability inclusion. In this regard, Bosire argues that while national governments sign and endorse global human rights treaties, the fundamental duty to execute specific essential privileges rests on Municipalities.²⁴ Bosire further holds that “by their very nature and typical functions, local governments are the most appropriate level where the implementation of certain fundamental rights may be enjoyed”.²⁵ It is for these reasons that this study is conducted in the local government sector, in particular the Ethekewini Metropolitan Municipality.

The Constitution provides that “within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.”²⁶ The Constitution further obligates public administration to be development oriented and to ensure that people’s needs are responded to.²⁷ Ngwena explains that the Integrated National Disability Strategy formulated by government advocated for a societal disability paradigm that views disability as a developing issue taking into consideration individual privileges.²⁸ Ngwena further argues that the intention of the state should be to achieve inclusiveness in all societal segments and to foster mindfulness particularly when it comes to disability.²⁹ Accordingly, public service administration must ensure the preservation of egalitarianism and self-worth in places of employment.

The Public Service Commission (PSC) has raised parity concerns particularly with regard to disability.³⁰ It reported that “whilst progress has been made in achieving equity in terms of race and gender in the public service, many government departments have not met the 2% equity

²² note 21 (above) item 3 of section H.

²³ note 21 (above) item 3 of section H.

²⁴ C Bosire ‘Local government and human rights: Building institutional links for the effective protection and realisation of human rights in Africa’ (2011) 11 *African Human Rights Law Journal* 151.

²⁵ Bosire note 24 (above) 151.

²⁶ section 197(1) of the Constitution.

²⁷ See section 195(1)(c) and (e) of the Constitution.

²⁸ C Ngwena ‘Equality for people with disabilities in the workplace: An overview of the emergence of disability as a human rights issue’ (2004) 29 (2) *Journal for Juridical Science* 187.

²⁹ Ngwena note 28 (above) 187.

³⁰ The Constitution in section 196 establishes the Public Service Commission which, in terms of section 196(4)(f)(iii), is tasked, among others, to monitor and investigate adherence to applicable procedures in the public service.

target set by the cabinet for persons with disabilities”.³¹ The PSC further reported that “as at October 2007, the Public Service had only achieved a 0.02% increase in its representivity of persons with disabilities from April 2005”.³² “As at October 2007 persons with disabilities only constituted 0.2% of the total workforce.”³³ According to the Commission for Employment Equity *Report 2013-2014*,³⁴ “only 0.9% of the country’s economically active people are persons with disabilities.”³⁵ It has been reported that by March 2015 the representation of persons with disabilities across all levels was 0.66%, showing a shortfall of 1.34% on the equity target.³⁶ The *Annual Report on Employment Equity in the Public Service 2015-2016* concluded that the representation of persons with disabilities continued to be a struggle and that the pace was so slow that it was likely to take the public service 16 more years to meet the 2% target.³⁷

Recently, the Commission for Employment Equity (CEE) presented its *Annual Report 2017-2018*.³⁸ The report noted that “representation of persons with disabilities at top management level had dropped from 1.7% in 2015 to 1.3% in 2017.” “The representation of persons with disabilities in the total workforce remained flat at about 1% and their representation remained low in all occupational levels.”³⁹ During his opening remarks at the presidential working group on disability, the President of South Africa expressed his disappointment about the percentage of persons with disabilities in the public service, which was 0.9% as of December 2017.⁴⁰

The CEE *Annual Report 2016-2017* stated that “there is resistance to change from management in most sectors of the economy, which is characterised by the fixation on the legal compliance on employment equity and a failure to move beyond what is required by law”.⁴¹ The report further noted that “employment equity is not integrated into the overall business strategy, but relegated to human resources”.⁴² Although the public service has an obligation to ensure

³¹ Foreword to report of the Public Service Commission *Assessment on Disability Equity in the Public Service* (2008).

³² note 31 (above) item 3.

³³ note 31 (above).

³⁴ The Commission for Employment Equity (CEE) was established in terms of section 28 of the EEA to conduct research and report to the Minister of Labour on any matter relating to the application of the Employment Equity Act.

³⁵ item 1.3.6 of the *White Paper on the Rights of Persons with Disabilities 2015*.

³⁶ item 1 of the *Annual Report on Employment Equity in the Public Service 2015-2016*.

³⁷ note 36 (above) item 5.

³⁸ Commission for Employment Equity *Annual Report 2017-2018* <http://www.labour.gov.za> accessed on 19 March 2019.

³⁹ note 38 (above) 55.

⁴⁰ <http://www.thepresidency.gov.za/speeches/opening-remarks-president-cyril-ramaphosa-presidential-working-group-disability%2C-union> accessed on 20 March 2019.

⁴¹ Commission for Employment Equity *Annual Report 2016-2017* 3.

⁴² note 41 (above).

disability equity in the workplace, the above report undoubtedly signifies that public service administration is failing to meet its obligation, thereby infringing the constitutional rights of persons with disabilities.

The South African government has enacted various labour laws intended to transform the country to empower previously underprivileged South Africans to have equal access and fair treatment in the workplace.⁴³ This legislation includes provisions aimed at protecting persons with disabilities and guaranteeing them the protection afforded by the Constitution. Section 9(1) states that “everyone is equal before the law and has the right to equal protection and benefit of the law”, with unfair discrimination on the basis of disability being prohibited (section 9(3)). Section 10 of the Constitution states that “everyone has inherent dignity and the right to have their dignity respected and protected.” The Constitution further protects every employee in the workplace by affirming that “everyone has the right to fair labour practices.”⁴⁴ The South African government adopted a national strategy on disability rights, which outlined the framework for transformation of South African society and institutions to expedite the accomplishment of full equality of persons with disabilities.⁴⁵ The challenge, however, lies with execution of the legislation and disability policies.⁴⁶

Gathiram explains that failure to implement legislation impacts on the intended outcome of safeguarding persons with disabilities.⁴⁷ Bhabha maintains that while there has been a principled undertaking, confirmed at least on paper in government policy and legislation, to include persons with disabilities in mainstream society as autonomous and full members with dignity and opportunities, such opportunities remain restricted, human ability is stifled and dignity is thereby compromised.⁴⁸ As explained in the synopsis of legislation below, the duty to manage execution of the Disability Code lies with leadership, ie the senior management of every organisation.⁴⁹ Guerrero et al contend that leadership is an essential factor associated with execution of service advancements given that organisational leaders are generally

⁴³ L du Plessis ‘The status and role of legislation in South Africa as a constitutional democracy: Some exploratory observations’ (2011) 14 (4) *PER/PELJ* 95.

⁴⁴ section 23(1) of the Constitution.

⁴⁵ F Bhabha ‘Disability equality rights in South Africa: Concepts, interpretation and the transformation imperative’ (2009) 25 *South African Journal on Human Rights* 245.

⁴⁶ N Gathiram ‘A critical review of the developmental approach to disability in South Africa’ (2008) 17 *International Journal of Social Welfare* 151.

⁴⁷ Gathiram note 46 (above) 151.

⁴⁸ Bhabha note 45 (above) 245.

⁴⁹ item 18.1 of the Code of Good Practice on the Employment of People with Disabilities GG 39383 dated 11 November 2015.

accountable for overseeing the implementation process.⁵⁰ It follows that failure to implement disability related legislation by management means that persons with disabilities will continue to be excluded from workplace participation. Rankgale et al explain:

“The practical implications are that if the labour laws and policies are not correctly implemented and the courts too, do not intervene to provide clear guidelines on this topic of reasonable accommodation of people with disabilities, the South African labour market will continue to exclude people with disabilities, primarily because they enjoy no protection of the law.”⁵¹

To address the aforementioned problem this study will explore the concept of leadership, with transformational leadership being the core focus, and its role in the implementation of the legislation relating to disability in the Ethekwini Municipality. It will further scrutinise obstacles hindering the implementation of policies and legislation governing disability. Additionally, the study addresses the significant role that can be played by workplace leaders in eradicating the challenges currently faced by employees with disabilities.

Transformational leadership is introduced as a mechanism that can be utilised practically to drive the implementation of disability laws and inclusion in the Municipality. In this context, Sayyadi et al support the view that transformational leaders are leader who are receptive to employees’ needs.⁵² They further affirm that transformational leaders institute radical changes for organisations through changing the mindsets and beliefs of individuals and creating inclusivity within organisations.⁵³ Moreover, transformational leaders offer individualised consideration through modified support to employees.⁵⁴ Consequently, transformational leadership appears to be expedient for accomplishing equity and execution of the legislation that relates to the aspects of disability in workplace.

Transformational leadership is extensively explored in the Literature Review. In that section the choice of transformational leadership over other leadership styles is further substantiated. Transformation of South African society is needed because, essentially, it has originated from

⁵⁰ E Guerrero, K Fenwick & Y Kong ‘Advancing theory development: Exploring the leadership-climate relationship as a mechanism of implementation of cultural competence’ (2017) 12 (133) *Implementation Science* 2.

⁵¹ J Rankgale, M Olivier & O Miruka ‘Reasonable accommodation for people with disabilities in the labour market’ (2015) 5 *Mediterranean Journal of Social Sciences* 584.

⁵² M Sayyadi, G Claudine & S Reaiche ‘The emerging role of transformational leadership’ (2015) 49 (6) *The Journal of Developing Areas* 464.

⁵³ Sayyadi, Claudine & Reaiche note 52 (above) 464.

⁵⁴ M Z Carter, D R Self, D F Bandow, R L Wheatley, W F Thompson, D N Wright & J Li ‘Unit-focused and individual-focused transformational leadership: The role of middle leaders in the midst of incremental organizational change’ (2014) 15 (5) *Journal of Management Policy and Practice* 48.

a society characterised by racism and sexism and needs to move towards an egalitarian one. Bhabha asserts that transformation theory posits a conception of equality as a substantive societal condition rather than as an individual right.⁵⁵ Bhabha further maintains that transformation theory articulates a positive corrective approach to the problem of discrimination, and more generally to the exclusion and disempowerment of members of affected groups.⁵⁶

Albertyn and Goldblatt argue that “the challenge of achieving equality within the transformation project involves the eradication of dominant systems and physical disadvantage based on race, gender, class and other grounds of inequality”.⁵⁷ In addition, equality necessitates transformation with regard to prospects for individuals to achieve their capability within society.⁵⁸ Langa emphasises that drastic change is necessary to accomplish egalitarianism and individual ability.⁵⁹ Add to this is that the South African Constitution is a transformative instrument – it heralded democracy and embodies values such as equality, dignity and freedom in society. These values are also needed within workplace cultures to dismantle racism, sexism and ableism. Consequently, transformation is a legal imperative and must be achieved in South Africa. Against this background, what follows is the legislative framework pertinent to the study.

1.2.1 Legislative and constitutional framework pertinent to the study

This section briefly outlines the relevant constitutional provisions and the pertinent labour laws. The part thereafter will set out the local government obligations under legislation. This section, including the international perspective pertinent to the study, is extensively explored in chapter four.

The preamble to the Constitution sets out that the intention of having a constitution is “to improve the quality of life of all citizens and free the potential of each person”.⁶⁰ The Constitution was adopted, among others, to “[h]eal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights”. Moreover,

⁵⁵ Bhabha note 45 (above) 237.

⁵⁶ Bhabha note 45 (above) 237.

⁵⁷ C Albertyn & B Goldblatt ‘Facing the challenge of transformation: Difficulties in development of an indigenous jurisprudence of equality’ (1998) 14 *South African Journal on Human Rights* 249.

⁵⁸ Albertyn & Goldblatt note 57 (above) 249.

⁵⁹ P Langa ‘Transformative constitutionalism’ (2006) 3 *Stellenbosch Law Review* 352-3.

⁶⁰ Preamble of the Constitution. The preamble further sets out that the intention of having a constitution is “to improve the quality of life of all citizens and free the potential of each person.”

“[t]he Republic of South Africa is one, sovereign, democratic state founded on human dignity, the achievement of equality and advancement of human rights and freedoms”.⁶¹ Section 23(1) provides that “[e]veryone has the right to fair labour practices”. Consequently, employees with disabilities ought to be afforded the dignity that they deserve and should not be deprived of their human rights in the workplace. The concept of parity is extensively dealt with under the Literature Review in chapter three.

Three pieces of legislation and two sets of guidelines have been put in place to address, at a legal level, the obligations resting on the state as public employer (and private employers) to ensure that employees with disabilities are afforded equal treatment in the workplace. These include the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)⁶² which was enacted “to comply with the constitutional obligations in section 9(4)”. Its preamble postulates that “[a]lthough significant progress has been made in restructuring and transforming our society and its institutions, systematic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy”.

The Labour Relations Act (LRA)⁶³ was enacted “to advance economic development, social justice, labour peace and the democratisation of the workplace”.⁶⁴ Section 187 stipulates that “a dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for dismissal is ... that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including ... disability”.⁶⁵ The LRA therefore safeguards personnel from discriminatory practices on the basis of disability in the workplace.

The Employment Equity Act (EEA),⁶⁶ as amended, provides that its purpose “is to achieve equity in the workplace by ... promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and ... implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workplace”.⁶⁷ The Code of Good Practice on the Preparation, Implementation and Monitoring of Employment

⁶¹ section 1 of the Constitution.

⁶² Act 4 of 2000.

⁶³ Act 66 of 1995.

⁶⁴ section 1 of the LRA.

⁶⁵ section 187(1)(f) of the LRA.

⁶⁶ Act 55 of 1998.

⁶⁷ section 2 of the EEA.

Equity Plans (EE Code) states that the plan “represents the critical link between the current workforce profile and possible barriers in employment policies and procedures, and the implementation of remedial steps to ultimately result in employment equity in the workplace”.⁶⁸ “The plan reflects a designated employer’s employment equity implementation programme.”⁶⁹ It is therefore crucial for employers to prioritise disability equity in their employment equity plans. The Code of Good Practice on Employment of Persons with Disabilities (Disability Code) “is a guide for employers and employees on promoting equal opportunities and fair treatment for persons with disabilities as required by the Act”.⁷⁰ The *Technical Assistance Guidelines on the Employment of Persons with Disabilities* of 2003 (TAG) was designed to help employers to understand, among other things --

“[t]heir obligation to eliminate unfair discrimination and implement affirmative action measures in respect of Persons with Disabilities in the workplace ... [and] [p]ractical ways to move forward that are relevant to their business and that ensure the application of non-discrimination and affirmative action measures for potential and existing employees with disabilities.”⁷¹

Considering the synopsis of transformational leadership earlier, it is submitted that the introduction of transformational leadership may assist leaders to drive the implementation of disability related provisions thus safeguarding right entitlements of employees with disabilities. Dube explains that the lack of policy implementation is due to “limited conceptual understanding, poor championing, inadequate or inappropriate institutional arrangements and general lack of capacity”.⁷² Maja et al argue that South Africa enacted rules and laws to conquer workplace impediments confronted by persons with disabilities, however the pragmatic execution of these rules and laws remains an obstacle.⁷³ Transformational leadership may be utilised to execute disability plans in the workplace especially in the public sector. The following is an account of local government obligations towards parity in the workplace, especially for persons with disabilities.

⁶⁸ item 4.2 of the EE Code.

⁶⁹ item 4.1 of the EE Code.

⁷⁰ item 2.2 of the Disability Code.

⁷¹ item 2.3 of the TAG.

⁷² A Dube ‘The role and effectiveness of disability legislation in South Africa’ (2005) *Disability Knowledge and Research* 7 <https://assets.publishing.service.gov.uk> accessed on 26 March 2017.

⁷³ P A Maja, W M Mann, D Sing, A J Steyn & P Naidoo ‘Employing people with disabilities in South Africa’ (2011) 41 (1) *South African Journal of Occupational Health* 24.

1.2.2 Local government obligation for persons with disabilities

Section 195(1) of the Constitution mandates that “public administration must be governed by the democratic values and principles enshrined in the Constitution.” The Constitution states that the “public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, fairness and the need to redress the imbalances of the past to achieve broad representation.”⁷⁴ The aforesaid “principles apply to administration in every sphere of government.”⁷⁵ The Local Government: Municipal Systems Act (Systems Act)⁷⁶ states that “a municipality’s administration is governed by democratic values and principles embodied in section 195 (1) of the Constitution”, and must “be responsive to the needs of the local community” and “create a culture of public service and accountability amongst staff”.⁷⁷ Municipalities therefore have a duty and an obligation to incorporate employees’ necessities in their strategies as required by the Constitution and the Systems Act.

Under the Systems Act, a municipality must “within its administrative and financial capacity, establish and organise its administration in a manner that would enable the Municipality to ensure that its political structures, political office bearers and managers and other staff members align their roles and responsibilities with the priorities and objectives set out in the Municipality’s integrated development plan”, and “assign clear responsibilities for the management and co-ordination of ... administrative units and mechanisms” and “hold the municipal manager accountable for the overall performance of the administration”.⁷⁸ The most significant aspect is that an integrated development plan (IDP) must reflect, amongst its core components, “the municipal council’s vision for the long term development of the municipality with special emphasis on the municipality’s most critical development and internal transformation needs”.⁷⁹ Accordingly, the --

- “integrated development plan adopted by the council of a municipality –
- (a) is the principal strategic planning which guides and informs all planning and development, and all decisions with regards to planning, management and development, in the municipality;
 - (b) binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality’s integrated development plan and national or provincial legislation, in which case such legislation prevails; and

⁷⁴ section 195(1)(i) of the Constitution.

⁷⁵ section 195(2)(a) of the Constitution.

⁷⁶ Act 32 of 2000.

⁷⁷ section 6(1) and (2)(a)-(b) of the Systems Act.

⁷⁸ section 51(d), (h) and (i) of the Systems Act.

⁷⁹ section 26(a) of the Systems Act.

(c) binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law”.⁸⁰

Further to that “a municipality must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan”.⁸¹ A disability framework for local government for the years 2009 to 2014 was enacted to support and enable “local government role players to implement the Integrated National Disability Strategy (INDS) and other government policies on disability in line with local government’s core mandate”.⁸² The aforesaid framework states that “local government has a responsibility to ensure the mainstreaming of disability issues as it delivers on its mandate”.⁸³ The framework further states that local government is close to the people hence “it is appropriately positioned to contribute to the realisation of government priorities on service delivery and development”.⁸⁴

The framework places a responsibility on mayors to champion disability issues politically and to “oversee the promotion and advancement of the rights of people with disabilities”.⁸⁵ The role of the municipal manager’s office is, among others, “to prioritize disability issues and integrate them in IDPs”, “[i]mplement agreed performance management targets related to disability” and to “[c]oordinate and mainstream disability policies in strategies and structures”.⁸⁶ Consequently, responsibility for disability parity lies mainly with leadership. Having explored the obligation of both the public service and municipalities, the following section explores the circumstances of the Ethekewini Municipality with regard to equity and transformation especially for persons with disabilities.

1.2.3 Case of Ethekewini Municipality on disability equity and transformation

Ethekewini Municipality (the Municipality) “is a metropolitan Municipality that includes the city of Durban and surrounding towns”.⁸⁷ Its vision encapsulates that “by 2030 the Municipality will enjoy the reputation of being Africa’s most liveable city, where all citizens live in harmony. This vision will be achieved by growing its economy and meeting people’s needs so that all citizens enjoy a high quality of life with equal opportunities, in a city that they

⁸⁰ section 35(1)(a)-(c) of the Systems Act.

⁸¹ section 36 of the Systems Act.

⁸² *Disability Framework for Local Government 2009-2014* 5.

⁸³ note 82 (above) item 2.5.

⁸⁴ note 82 (above) item 2.5.

⁸⁵ note 82 (above) item 4.6.

⁸⁶ note 82 (above) item 4.7.

⁸⁷ www.durban.gov.za accessed on 1 March 2018.

are truly proud of”.⁸⁸ The Municipality’s Employment Equity Plan sets out the mission of the Municipality as follows:

“The mission of EtheKwini Municipality is to facilitate and ensure the provision of infrastructure, services and support for people of EtheKwini.⁸⁹ In this way, it creates an enabling environment for all citizens to realise their full potential and access opportunities, thus enabling them to contribute to a vibrant and sustainable economy with full employment, creating a better quality for life for all.”⁹⁰

It follows that the EtheKwini Municipality’s mission and vision take into consideration the significance of equality and the needs of every citizens including persons with disabilities. The Municipality’s IDP, adopted on 31 May 2017 by the Council of EtheKwini for a period of five years, provides that “the IDP serves as a tool for transforming local government towards facilitation and management of development within their areas of jurisdiction”.⁹¹ The Municipality has an eight-point implementation plan to address challenges experienced:

“To address the challenges that the municipality faces within the context of the strategic priorities, eTheKwini Municipality uses the Eight Point Plan as a formatting for the implementation of programs and projects. The municipality’s implementation plan is organised into eight separate but related plans. The Eight Point Plan is listed as:

1. Develop and Sustain our Spatial, Natural and Built Environment.
2. Developing a Prosperous, Diverse Economy and Employment Creation.
3. Creating a Quality Living Environment.
4. Fostering a Socially Equitable Environment.
5. Creating a Platform for Growth, Empowerment and Skills Development.
6. A Vibrant and Creative City -- The Foundation for Sustainability and Social Cohesion.
7. Good Governance and Responsive Local Government.
8. Financially Accountable and Sustainable City.”⁹²

It should be noted that the aforementioned eight-point plan does not explicitly record transformation in relation to persons with disabilities in the Municipality. It is not clear from the plan how the Municipality is to tackle the challenges affecting persons with disabilities nor how the Municipality is to address its legislative and policy obligation of accommodating persons with disabilities. Consequently, the constitutional values of addressing workplace inequities may be compromised.

⁸⁸ http://www.durban.gov.za/City_Government/City_Vision/Pages/default.aspx accessed on 12 December 2017.

⁸⁹ item 2.2 of the EtheKwini Municipality Employment Equity Plan (2014-2018) 8.

⁹⁰ note 89 (above).

⁹¹ EtheKwini Municipality Integrated Development Plan 2017-2018 14 <http://www.durban.gov.za> accessed on 5 September 2017.

⁹² note 91 (above) 226.

The Municipality was engaged by the Commission for Gender Equality (the CGE)⁹³ in KwaZulu-Natal on the issue of equity and transformation in the workplace.⁹⁴ The CGE noted that the Municipality was failing to meet its target of employing persons with disabilities.⁹⁵ The CGE emphasised the necessity for the Municipality to develop and implement appropriate plans to enhance engagement of persons with disabilities.⁹⁶ The CGE further emphasised the need for greater focus on workplace policies to support transformation, which needed to be reviewed regularly better to manage diversity.⁹⁷ The Municipality has reported that it is --

“[c]ommitted to effectively address the challenges facing people with disabilities while raising awareness around the issue. The City’s commitment was reiterated at the Disability Awareness Day held at Durban City Hall on the 7th December 2015. The Municipality is committed to creating a conducive, diverse and social cohesive working environment for people with disabilities. In keeping with this ethos, people with disabilities are encouraged to apply for Municipal jobs”.⁹⁸

During the aforesaid Disability Awareness Day, the Municipality underscored the impediments faced by persons with disabilities. It further referred to the awareness day as one of several interventions to accommodate and attract persons with disabilities to work for the Municipality.⁹⁹ The Municipality committed to the empowerment of persons with disabilities by creating employment opportunities.¹⁰⁰ The Municipality reported that it had adopted a transformation strategy in 2014 to address disability disparities. The aforesaid transformation strategy concentrated “on increasing the representation of women and persons with disabilities in the municipality’s workforce as well as to ensure alignment to provincial and national targets”.¹⁰¹ It also reinforced the Municipality’s commitment “to the employment equity principles which are to eliminate unfair discrimination and implementation of affirmative action to achieve equity. The aim of the strategy is to drive transformation and address the imbalances of the past”.¹⁰²

⁹³ Section 187 of the Constitution mandates the CGE to promote respect for gender equality and the protection, development and attainment of gender equity.

⁹⁴ <http://www.gov.za/commission-gender-equality-kzn-employment-equity-report-launch> accessed on 10 June 2017.

⁹⁵ note 94 (above).

⁹⁶ note 94 (above).

⁹⁷ note 94 (above).

⁹⁸ http://www.durban.gov.za/Resource_Centre/Press_Releases/Pages/EThekwini-Addresses-Issues-Affecting-People-With-Disabilities.aspx accessed on 10 June 2017.

⁹⁹ note 98 (above).

¹⁰⁰ note 98 (above).

¹⁰¹ http://www.durban.gov.za/Resource_Centre/new2/Pages/City-set-to-achieve-employment-equity-targets.aspx accessed on 10 June 2017.

¹⁰² note 101 (above).

The Municipality reported “that male staff occupy 66% of the Council employment which is 16% over the target, females occupy 34% which equates to 16% below target”.¹⁰³ “A goal was set for the 2015/16 financial year to increase this by 4%, however as at March 2016, it has only increased by 2%.”¹⁰⁴ “Persons with disabilities target is set at 2% and as of March 2016 the figure stands at 0.58%.”¹⁰⁵ This suggests that persons with disabilities are still underrepresented despite the commitment made by the Municipality in 2014. The Municipality adopted an Employment Equity Plan 2014-2018 (Employment Equity Plan) with the purpose of identifying and setting out measures for “elimination of unfair discrimination, dismantling any barriers to employment equity and the achievement of representivity of designated groups”.¹⁰⁶ In item 7 of the executive summary of the Employment Equity Plan, it was said that “the plan was adopted to reinforce the municipality’s commitment to the employment equity principles which is the elimination of unfair discrimination and implementation of affirmative action measures to achieve equitable representation across all occupational level”.

The executive summary also acknowledged that “the progress in respect of women and people with disabilities still remains a challenge and hence the plan was to focus on those groups”.¹⁰⁷ The Municipality conducted an analysis which confirmed that “women (particularly African women) and persons with disabilities remain significantly under-represented at most occupational levels”.¹⁰⁸ The Municipality committed to adopt strategies to ensure “protection of persons with disabilities by exploring and understanding the issue of reasonable accommodation in order to ensure appropriate changes, where possible, to the work environment and conditions of service in order to better accommodate persons with disabilities”.¹⁰⁹

The Employment Equity Plan states:

“Ethekewini Municipality views employment equity as an integral part of its overall transformation initiative, which is a strategic business priority. The Municipality is keenly aware that to reach its diverse communities it needs to address transformation in its own workplace. Service delivery requires an understanding of the communities it serves, and the

¹⁰³ note 101 (above).

¹⁰⁴ note 101 (above).

¹⁰⁵ note 101 (above).

¹⁰⁶ Ethekewini Municipality Employment Equity Plan (2014-2018) 7.

¹⁰⁷ note 106 (above) 5.

¹⁰⁸ note 106 (above) 5.

¹⁰⁹ note 106 (above) 5.

Municipality is committed to creating a workforce that is both representative and competent to serve its communities.”¹¹⁰

According to the Employment Equity Plan, “a significant challenge for the Municipality is its ability to create an accessible and accommodating environment for employees with disabilities”.¹¹¹ The plan underscores that among the priorities of the Municipality is to intensify recruitment of persons with disabilities. Pertinent to this study, the responsibility for inclusive execution of the EEA and the Employment Equity Plan and policy lies with City Manager and all leaders to realise attainment of employment equity goals. Consequently, the leadership of the Municipality has an enormous responsibility to ensure transformation by implementing legislation and policies governing disability in the Municipality.

The Municipality Employment Equity Policy (the policy) “seeks to achieve employment equity in the municipality by promoting equal opportunity and fair treatment through the elimination of unfair discrimination, and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups and to ensure their equitable [representation] in all occupational levels in the workforce”.¹¹² The policy further places the responsibility on the leadership of the Municipality to guarantee practical execution of the policy. It states that “the Municipal Manager is accountable for strategic direction, compliance and the overall implementation of Employment Equity Act and the Ethekwini Municipality’s employment equity plan”.¹¹³

The policy places the responsibility on the Municipal Manager to inculcate ethos that recognises employee’s differences.¹¹⁴ Deputy City Managers have responsibility to facilitate consultation and monitoring of the implementation of the policy and respective units’ employment equity plans.¹¹⁵ Furthermore, they are required to create a favourable environment towards the attainment of Employment Equity targets as detailed in the plan.¹¹⁶ Additionally, the heads of the Municipal departments shall develop and execute employment equity plans and eliminate blockades affecting employees particularly those from designated groups.¹¹⁷ Moreover, they shall accomplish fulfilment of employment equity laws as well as policy and

¹¹⁰ note 106 (above) 7.

¹¹¹ note 106 (above) 7.

¹¹² note 106 (above) item 3.1 and 3.2.

¹¹³ note 106 (above) item 8.2.2(a).

¹¹⁴ note 106 (above) item 8.2.2(b).

¹¹⁵ note 106 (above) item 8.3.1(a).

¹¹⁶ note 106 (above) item 8.3.1(d).

¹¹⁷ note 106 (above) item 8.4.1(a)-(b).

work towards the achievement of the aims and objectives of the equity plan.¹¹⁸ Designated groups are defined in the policy as “black people, women and people with disabilities.”¹¹⁹

The policy therefore echoes the sentiments expressed in the plan on the role of leadership in the implementation of legislation, strategies and policies governing disability. What remains a challenge is effective execution of the disability laws by the leadership of the Municipality. It is on this basis that this study advocates for transformational leadership as a mechanism that can effectively drive the implementation of disability laws and policies governing disability in the Municipality thus achieving transformation and equality. Kim and Yoon assert that executives in local government have an obligation to develop strategies that foster effective government culture and to provide solutions.¹²⁰

Consequently, the leadership of the Municipality has an obligation to accomplish the equity targets by developing appropriate practical strategies to address non-compliance with disability provisions and to guarantee fulfilment of its Employment Equity Policy and Plan. The Municipality can utilise its departments such as Human Resources (HR), Organisational Development and Change Management (ODCM), the Ethekewini Municipal Academy (EMA) as well as the City Integrity and Investigative Unit (CIU) to ensure disability inclusion and promote human rights for persons with disabilities. This study will explore how these departments can assist practically to implement legislation and achieve disability inclusion and disability equity in the Municipality.

It is submitted that transformational leadership emerges as the type of leadership that is best suited to address the aforementioned challenges faced by the Municipality. Implementing a transformation strategy and addressing the imbalances of the past requires leaders who are passionate about employees and who ascribe to the idea of radical change and transformation in the workplace. Ashikali and Groeneveld argue that the transformational leadership style is ideal for managing diversity in the workplace.¹²¹ According to Ashikali and Groeneveld, transformational leadership cultivates a comprehensive culture that recognises differences and

¹¹⁸ note 106 (above) item 8.4.1(e).

¹¹⁹ section 4 definition section of the policy.

¹²⁰ S Kim & G Yoon ‘An innovation-driven culture in local government: Do senior manager’s transformational leadership and the climate for creativity matter?’ (2015) 44 (2) *Public Personnel Management Journal* 148.

¹²¹ T Ashikali & S Groeneveld ‘Diversity management in public organizations and its effect on employees’ affective commitment: The role of transformational leadership and the inclusiveness of organizational culture’ (2015) 35 (2) *Review of Public Personnel Administration* 14.

individual worth.¹²² Transformation on equity and reasonable accommodation for persons with disabilities, it is submitted, may be accomplished through transformational leadership in the Municipality.

1.3 Problem Statement

Kim and Yoon affirm that transformational leadership is capable of executing a new direction in the workplace.¹²³ They further assert that transformational leadership is suitable for meeting the changing and multifaceted demands of the workplace through effective governance.¹²⁴ In a workplace that lacks transformational leadership, new ideas cannot be implemented expeditiously. Furthermore, in an organisation that does not lead through transformational leadership, employees' needs and complex demands cannot be met. In addition, laws and workplace policies cannot be effectively implemented. Thus, transformation cannot materialise without transformational leadership.

It appears that the literature in the field of disability has focused on the general concept of disability. However, there is little realistic direction on how such policies can be put into meaningful practice, particularly in the workplace. As a result, there is a lacuna between the theory and practical execution of laws relating to disability in the workplace. The study of transformational leadership may assist in linking theory and practical implementation of disability provisions in the workplace. There has been no investigation on how adequately to prepare existing employees emotionally and psychologically to include persons with disabilities in the workplace. Consequently, a gap exists between literature and psychological alignment for existing employees to include persons with disabilities. Organisational leadership has been found to have the skills and the capacity to transform the personality and behaviour of employees in an organisation.¹²⁵ Transformational leadership may contribute to changing the mindset of employees by developing strategies to include persons with disabilities.

Merely understanding the term 'disability' is, on its own, an enormous conundrum delaying transformation. The perception is that persons with disabilities cannot partake in economic advancement as they lack the ability to perform. In addition, disability is understood from a

¹²² Ashikali & Groeneveld note 121 (above) 14.

¹²³ Kim & Yoon note 120 (above) 148.

¹²⁴ Kim & Yoon note 120 (above) 148.

¹²⁵ I Boga & N Ensari 'The role of transformational leadership and organizational change on perceived organizational success' (2009) 12 *The Psychologist-Manager Journal* 236.

medical a medical perspective and not from a human or individual rights perspective. Jakovljevic and Buckley contend that “various ‘barriers’ to the employment and subsequent disability accommodation of persons with disabilities subsist, including misperception about the definitions, labelling and fallacies concerning work attitudes”.¹²⁶ The deficiency of understanding of transformation in respect of disability by leaders in the workplace is a challenge that hinders compliance with disability laws. It is contended that transformational leaders may be utilised as they are solution driven and provide guidance where there is confusion and lack of direction in an organisation.

Unfounded assumptions concerning the ability of persons with disabilities to contribute meaningfully to the labour market remain a challenge. In this regard, Draper argues that although there has been steady progress regarding attitudes towards persons with disabilities, stigma and discrimination remain dominant obstacles.¹²⁷ Draper further contends that once employers are aware of an employee’s disability, there may be purposeful or unintended prejudice against the employee.¹²⁸ According to Draper, such stigma results in non-compliance with legislation and is therefore a barrier to equal treatment.¹²⁹ The Disability Code supports this understanding by stating that “unfair discrimination against persons with disabilities is perpetuated in many ways, including ... [u]nfounded assumptions about the abilities and performance of job applicants and employees with disabilities”.¹³⁰

The Disability Code states further that “[w]hen opportunities and reasonable accommodation are provided, persons with disabilities can contribute valuable skills and abilities to every workplace, and contribute to the economy of our society”.¹³¹ Thus, the provision of reasonable accommodation may be a successful method of ensuring inclusion through transformational leadership as transformational leaders are skilled in considering individual circumstances. Moynihan et al assert that transformational leadership revolves around the premise that leaders can influence employees’ beliefs and their conduct by appealing to the importance of

¹²⁶ M Jakovljevic & S Buckley ‘Assistive technologies in a workplace environment: Barriers for the employment of persons with disabilities’ (2011) 22 (2) *Disability, CBR and Inclusive Development* 60 doi 10.5463/DCID.v22i2.32 accessed on 15 March 2018.

¹²⁷ W Draper ‘Workplace discrimination and the record of disability’ (2012) 36 *Journal of Vocational Rehabilitation* 199.

¹²⁸ Draper note 127 (above) 199.

¹²⁹ Draper note 127 (above) 199.

¹³⁰ item 1 of the Disability Code.

¹³¹ item 1 of the Disability Code.

organisational outcomes.¹³² It appears that the intervention of transformational leadership may be required in order to address baseless assumptions about persons with disabilities, and to warrant that employers and society at large understand the meaning of disability.

Accessibility of workplaces is another challenge faced by persons with disabilities. Accessibility within a disability context means “accessible environment, both physically and attitudinally”.¹³³ According to Marumoagae “some of these challenges relate to persons with disabilities’ lack of reasonable accommodation measures at work, accessible public transportation to get them to and from work, and ignorance about their potential at work”.¹³⁴ Moreover, Marumoagae emphasises that putting in place elevators is vital for advancing workplace accessibility.¹³⁵ The failure to provide for accessibility goes against the constitutional provision which requires “elimination of existing inequality and the implementation of plans designed to protect and improve conditions for those who were previously disadvantaged by discrimination”.¹³⁶ As transformational leaders ascribe to equality and justice, their intervention may be valuable to guarantee accessibility to the workplace.

Unjustifiable hardship – the employer’s defence against providing reasonable accommodation to an employee – can act as a barrier hindering transformation. The Disability Code defines unjustifiable hardship as “action that requires significant or considerable difficulty or expense”.¹³⁷ Thus, if accommodation presents an unwarranted adversity to the employer, it need not be executed. “The aim of the accommodation is to reduce the impact of the impairment of the person’s capacity to fulfil the essential functions of a job.”¹³⁸ It follows that there is a need to have organisational leaders who cannot simply hide behind the excuse of unjustifiable hardship to escape the obligation of accommodating persons with disabilities. Transformational leaders rely on moral judgment to make decisions. Consequently, transformational leadership may be indispensable to ensure inclusion of persons with disabilities.

¹³² D P Moynihan, S K Pandey & B E Wright ‘Setting the table: How transformational leadership fosters performance information use’ (2011) *Journal of Public Administration Research and Theory* 5.

¹³³ Holness note 3 (above) 520.

¹³⁴ M C Marumoagae ‘Disability discrimination and the right of disabled persons to access the labour market’ (2012) 15 (1) *PER/PELJ* 347.

¹³⁵ Marumoagae note 134 (above) 347.

¹³⁶ section 9(2) of the Constitution.

¹³⁷ item 6.12 of the Disability Code.

¹³⁸ item 6.1 of the Disability Code.

Introducing transformational leadership is imperative to change perceptions and attitudes to persons with disabilities and to introduce a practical method of addressing non-compliance with legislation and policy. Transformational leaders are leaders who understand transformation. As a result, they are best suited to drive transformational change in the workplace and to accommodate persons with disabilities thus ensuring their adequate protection. A transformational leader goes beyond the problem and is more concerned about justice and equality. It is on this basis, it is submitted, that this leadership style can play a meaningful role in achieving compliance with disability laws.

1.4 Focus of the Study

The study explores the transformational leadership role and its contribution to providing adequate protection of persons with disabilities in the Municipality. The study further aims to address the rationale behind non-compliance with disability related laws in the Municipality and to introduce transformational leadership as a tool effectively to implement legislation governing disability in the workplace. The introduction of transformational leadership will assist leaders in making objective and sound decisions that take cognisance of individual needs.

1.5 Research Question, Aims and Objectives of the Study

The research question is: What is the role and impact of transformational leadership on implementation of disability laws in the Ethekwini Municipality? The aim is to analyse the role that can be played by transformational leadership and its impact in ensuring effective practical implementation of disability related legislation in the workplace.

The objectives of the study are to:

- Assess senior leadership's level of awareness of the role they should play as transformational leaders towards accommodating persons with disabilities within the Ethekwini Municipality.
- Identify the critical factors affecting the implementation of disability related legislation within the Ethekwini Municipality.
- Assess the impact of transformational leadership on the implementation of the legislation relating to disability within the Ethekwini Municipality.
- Recommend a leadership transformational model/framework that accommodates persons with disabilities within the Ethekwini Municipality.

1.6 Research Methodology

The study employs qualitative research (which focuses on the leadership component) and doctrinal (legal) research methodologies to gather data successfully to answer the objectives of the study. Additionally, a socio-legal approach was utilised as a theoretical approach linking the doctrinal and empirical research methodologies. The goal of the research was to obtain in-depth knowledge of the factors that hinder the protection and implementation of legislation that was designed to safeguard the privileges of persons with disabilities. The study used interviews to ascertain why leaders in the Municipality have not taken a strong stance towards the implementation of the legislation relating to aspects of disability. Employees with disabilities were also interviewed to ascertain whether transformation has taken place within the Municipality.

1.6.1 Qualitative research method

The primary reason for using qualitative investigation is to capture the authenticity of the data gathered from the participants; therefore, there is a greater sense of credibility in the interpretation of data gathered from the participants. McCusker and Gunaydin assert that “qualitative research is unique owing to its purpose which connects to understanding the aspect of social life and its approaches which produce information rather than statistics as data for analysis”.¹³⁹ Qualitative interview methods, according to Roberts, persuade participants to converse without restrictions frequently about sensitive topics with a view to understanding people’s views and insights on a subject.¹⁴⁰ In addition, Roberts describes qualitative interviews as “a conversation with a purpose as they are able to probe in more depth around particular everyday issues than standardised quantitative interviews”.¹⁴¹ Consequently, it can be said that the qualitative research method assists by providing insights into a problem.

1.6.2 Purposive sampling

Robinson describes “purposive sampling strategies as non-random methods of assuring that specific categories of cases within a sampling universe are represented in the final sample of a project”.¹⁴² This approach is founded on a researcher’s conviction, founded on previous

¹³⁹ K McCusker & S Gunaydin ‘Research using qualitative, quantitative or mixed methods and choice based on the research’ (2015) 20 *Perfusion* 537.

¹⁴⁰ J M Roberts ‘Critical realism, dialectics, and qualitative research methods’ (2014) 44 *Journal for the Theory of Social Behaviour* 4.

¹⁴¹ Roberts note 140 (above) 4.

¹⁴² O C Robinson ‘Sampling in interview-based qualitative research: A theoretical and practical guide’ (2014) 11 *Qualitative Research in Psychology* 32.

hypothetical knowledge of the subject being investigated, that particular groups of individuals may have an exclusive or valuable viewpoint on the subject being explored and their participation in and contribution to the research must be guaranteed.¹⁴³ Meadows found that in order to gather data, purposive sampling and face-to-face semi-structured in-depth interviews must be employed to acquire meaningful evidence from the pertinent sample based on the participants' own individual experiences.¹⁴⁴ Therefore, purposive sampling assists in ensuring authenticity of the study.

1.6.3 Convenience sampling

Convenience sampling was used for employees with disabilities. Convenience sampling has been found to be more beneficial to a researcher since the partakers are chosen according to their convenience and eagerness to contribute in the interviews.¹⁴⁵ It has been said that convenience sampling should only be used in distinctive cases -- usually when a population has a lot in common.¹⁴⁶ Convenience sampling will assist in collecting data that will allow the researcher to gain knowledge on affairs of disability within the Municipality. The rationale behind involvement of employees with disabilities is for them to share their views on how the working environment has catered for persons with disabilities within the Municipality. Convenience sampling further assisted on the originality of the study as the participants have been conveniently selected based on their willingness to participate in the study.

1.7 Contribution/significance of the Study

This study is important as I seek to interrogate the role of transformational leadership in the attainment of disability parity and transformation in the workplace. It has been said that the main objective of transformational leaders is to transform the existing system and practices of an organisation and to encourage employees to embrace a new vision that has new chances for the individual and the organisation as a whole.¹⁴⁷ The study provides recommendations to the leadership of the Municipality to assist it to lead effectively through transformational leadership thus ensuring effective implementation of disability related legislation. Consequently, the study is significant to the Municipality, the public sector and other

¹⁴³ Robinson note 142 (above) 32.

¹⁴⁴ K A Meadows 'So you want to do research? An introduction to qualitative methods' (2003) 8 *British Journal of Community Nursing* 466.

¹⁴⁵ F W Struwing & G B Stead *Research: Planning, Designing and Reporting* (Pearson South Africa 2013) 2 ed 116.

¹⁴⁶ Struwing & Stead note 145 (above) 116.

¹⁴⁷ R J Givens 'Transformational leadership: The impact on organizational and personal outcomes' (2008) 1 *Emerging Leadership Journeys* 10.

metropolitan municipalities as it is clear that disability inclusion is a challenge facing not only the Municipality but also the entire public sector.

1.8 Structure of the Dissertation

Chapter One – Introduction and Overview of the Study

This chapter provides an introduction and outline of the study. It also presents a general idea of the research problem, background of the study as well as the context in which the research was conducted. The chapter outlines the purpose and the research question to be answered and the motivation of the study. The aim and objectives and the focus of the study are also explored.

Chapter Two – Research Methodology

This section contours the research methodology utilised to conduct the study. Since the study is multidisciplinary, this section begins by exploring doctrinal research methodology and socio-legal research. It then proceeds to describe, among others, research design and philosophy, sampling method, research strategy, data gathering methods and the instruments employed to collect data.

Chapter Three – Literature Review

This chapter is comprised of a review of literature which explores a human rights approach to disability, and endeavours to understand and elucidate the role of transformational leadership in ensuring effective implementation of disability related legislation in the workplace.

Chapter Four – Legislative and Policy Framework for Transformational Leadership

This chapter analyses the relevant legislation and policy, with reference to international and regional law obligations resting on a state to include persons with disabilities in the workplace.

Chapter Five – Data

This chapter is a narrative of the data obtained from the interviews.

Chapter Six - Results and Discussion

This chapter presents results/findings of the study, linking the results to the literature reviewed.

Chapter Seven – Recommendations and Conclusion

This chapter presents the key findings, suggestions as well as the conclusion of the study.

1.9 Conclusion

Transformational leadership has been identified as the cornerstone to achieve a transformed workplace that accommodates persons with disabilities as equal employees. The practicality of accommodating persons with disabilities within the working environment must be supported and driven by the leadership of the workplace. The successful implementation of the laws relating to disability may be obtained through transformational leadership. The essence of transforming workplaces to implement disability provisions successfully requires leaders who exercise utmost respect for the equality and full participation of persons with disabilities.

Transformed workplace strategy will allow the working environment to be cognisant of the rights of all employees regardless of their personal circumstances. It has been said that the core foundation of rights is the understanding that persons with disabilities deserve to be considered like everybody else (formally), but also substantively may require differentiated treatment where needed, such as reasonable accommodation.¹⁴⁸ This transformation can be achieved through training and development interventions at senior management level which include transformational change, executive coaching, leadership development and change management. Such change management will be explored later in this study. Since the study is multidisciplinary in nature, it is imperative to commence by exploring how it was conducted. In this regard, the next chapter explores the research methodology used to conduct the study.

¹⁴⁸ S Glicksman, C Goldberg, C Hamel, R Shore, A Wein, D Wood & J Zummo 'Rights-based and person-centered approaches to supporting people with intellectual disability: A dialectical model' (2017) 55 (3) *Intellectual and Developmental Disabilities* 182.

CHAPTER TWO

RESEARCH METHODOLOGY

2.1 Introduction

This chapter explores the research methodology used to conduct the study. Research methodology has been described as a strategic plan in which the researcher outlines the details or the process of finding solutions to complex issues.¹⁴⁹ It is an inclusive technique towards the exploration process from the hypothetical foundation to the compilation and data scrutiny.¹⁵⁰ Jamshed states that the strategic approach in research should be aligned to the desired outcome, however selecting the research approach is informed by the nature and characteristics of the particular “research problem”.¹⁵¹ This thesis is multidisciplinary in nature as it includes both leadership (management studies) and the law. As such, the research methodology used in this study (which is explored below) was chosen taking into consideration the nature and characteristics of the research objectives as well as the multidisciplinary nature of the study.

There has been a demand in the law discipline for the development of a multidisciplinary research approach to guarantee cohesive systematic initiatives.¹⁵² Such a demand is informed by the fact that each discipline is influenced, to some extent, by other disciplines.¹⁵³ In this context, the study seeks to analyse the role and impact of transformational leadership (which falls within the management discipline) on the implementation of disability laws (which falls within the law discipline) in the Ethekwini Municipality (the Municipality). It is therefore imperative to outline from the commencement of the thesis how the study was conducted taking into consideration the multidisciplinary nature of the study. Consequently, this chapter will explore two research methodologies, being doctrinal (legal) research and empirical research. It will further explore the socio-legal approach as a theoretical approach linking the doctrinal and empirical research methodologies.

¹⁴⁹ S Jamshed ‘Qualitative research method -- Interviewing and observation’ (2014) 5 (4) *Journal of Basic and Clinical Pharmacy* 87.

¹⁵⁰ L I Kometsi ‘Scientific nature of legal research and its contribution to scholarship’ (2017) 25 (1) *Lesotho Law Journal* 64.

¹⁵¹ Jamshed note 149 (above) 87.

¹⁵² I J Kroeze ‘Legal research methodology and the dream of interdisciplinarity’ (2013) 16 (3) *PER/PELJ* 36.

¹⁵³ D E Uwizemana & B C Basheka ‘The multidisciplinary, interdisciplinary and trans-disciplinary nature of public administration: A methodological challenge’ (2007) 9 (9) *African Journal of Public Affairs* 6.

The doctrinal research method focuses on the law and legal concepts of the study.¹⁵⁴ Doctrinal research methodology was used since the law is not an experiential or empirical discipline.¹⁵⁵ In this regard, the methodology explored and interpreted sources of law relevant to the study.¹⁵⁶ In so doing, the researcher gathered and interpreted information from statutes, case law, books and academic law journals. In particular, the researcher explored international, regional and domestic laws on disability as a framework for transformational leadership to comprehend the existing defence given to persons with disabilities in the workplace and the requirements for implementation thereof. Such instruments are broadly explored in chapter four below.

The socio-legal approach was used to complement both the doctrinal and empirical research methodologies. For doctrinal research, the social approach was used to analyse the law, while for empirical research (leadership component) it was used to understand the social impact through interviews conducted with leaders and employees with disabilities. It has been said that collaborating socio-legal and doctrinal research methodologies yields positive results.¹⁵⁷ There have been various views on the definition of socio-legal research but the general understanding is that it focuses on the law, social science and humanities.¹⁵⁸ It has further been said that the socio-legal research methodology explores both theoretical and empirical concepts.¹⁵⁹

The relevancy of the socio-legal approach in this study is that the study focuses on the human or social encounters confronted by persons with disabilities in the workplace. Persons with disabilities are not included and/or reasonably accommodated in the workplace. It is argued that failure to implement disability related provisions by workplace leaders contributes towards discrimination against persons with disabilities in the workplace. Ultimately, there is a relationship between law and society (as the law operates within society) and it is imperative to explore the socio-legal approach to cover the social aspect of persons with disabilities.

The empirical research method, which focuses on the experiential or practical evidence of the research, was used on the leadership component of the study. The empirical research method

¹⁵⁴ T Hutchinson & N Duncan 'Defining and describing what we do: Doctrinal legal research' (2012) 17 (1) *Deakin Law Review* 85 doi: 10.21153/dllr2012vol12no1art70 accessed on 20 November 2018.

¹⁵⁵ Kroeze note 152 (above) 48.

¹⁵⁶ Hutchinson & Duncan note 154 (above) 84.

¹⁵⁷ C McCrudden 'Legal research and the social sciences' (2006) 122 *Law Quarterly Review* 637.

¹⁵⁸ S Blandy 'Socio-legal approaches to property law research' (2014) 3 (3) *Property Law Review* 167 <http://eprints.whiterose.ac.uk/100288/> accessed on 24 November 2018.

¹⁵⁹ Blandy note 158 (above) 168.

is research using experimental or practical evidence.¹⁶⁰ It involves direct or indirect observations through either qualitative or quantitative research methods.¹⁶¹ For the leadership component of the study, the researcher used the qualitative research method to gather data successfully to answer the objectives of the study. The rationale behind choosing the qualitative research method is that it is relevant when the study investigates, inter alia, human conduct and functioning of the workplace.¹⁶² In this context, the researcher conducted interviews with municipal leaders responsible for implementation of disability policies and driving transformation in the Municipality. The researcher further interviewed employees with disabilities to link the information gathered from the leaders. In this regard, chapter five provides a narrative of the data collected from the participants.

Against this background, this chapter is arranged as follows: firstly, it explores doctrinal legal research methodology, its significance and value for the research project. The second section explores socio-legal research methodology, as a link between doctrinal and empirical research, to cover the relationship between the law and society with particular reference to persons with disabilities in the workplace. Lastly, the third section explores the empirical research methodology by examining, inter alia, research designs, philosophy, research strategies and sampling techniques. It further explores how data was gathered and scrutinised in the study as well as ethical considerations.

2.2 Doctrinal Legal Research Methodology

Doctrinal research methodology has been the main research technique in the field of law for decades.¹⁶³ It has been said that the doctrine “dates back to nineteenth century while legal professionals were developed as clerks, law began developing as case law and the court’s decisions went on updating the law in common legal system”.¹⁶⁴ Its purpose is to develop new ideologies, add knowledge and provide the foundation for the study of various other socio-

¹⁶⁰ S Whittaker ‘Qualitative research: What is it and how can it be applied to transfusion medicine research?’ (2002) 83 (1) *Vox Sanguinis* 251.

¹⁶¹ Whittaker note 160 (above) 251.

¹⁶² Whittaker note 160 (above) 251.

¹⁶³ A Kharel ‘Doctrinal legal research’ (2018) *SSRN Electronic Journal* 5 doi: 10.2139/ssrn.3130525 accessed on 25 November 2018.

¹⁶⁴ Kharel note 163 (above) 5. Kharel further says that: “Until the first decade of nineteenth century, law itself was not established as an academic discipline in the common law world. At the same time as law gradually developed into an academic field in nineteenth and twentieth century in Europe especially in United Kingdom, doctrinal research emerged as an academic instrument for legal research. Universities in the common legal system mostly adopted doctrinal method as mainstream legal research method till the last decade of the twentieth century.”

legal issues.¹⁶⁵ Doctrinal research methodology has been described as a research approach that seeks to understand and evaluate existing policies and rules pertinent to the study.¹⁶⁶ It is distinguishable from empirical research as it focuses on interpreting the fundamentals of existing rules and principles and not on the development of philosophy as empirical research does.¹⁶⁷ It further explores legal principles developed by the courts and the legislature.¹⁶⁸ In other words, doctrinal research methodology explores the legal concepts that have already developed to understand their fundamentals in relation to the topic being explored.¹⁶⁹ In addition, doctrinal research methodology focuses on how the law or legal rules have been practically implemented in society.¹⁷⁰ In essence, doctrinal research methodology requires the researcher to develop a thorough understanding of the law for purposes of a sound legal argument and reasoning.¹⁷¹

Thus, it has been said that doctrinal legal research methodology is normative in nature as it only focuses on a thorough understanding of the law and legal rules without any human engagement.¹⁷² Ali et al are of the view that doctrinal research methodology is a desk top research attempt to discover a single correct answer to a particular legal problem.¹⁷³ Consequently, they argue that the purpose of using doctrinal research methodology is to enquire and identify specific information.¹⁷⁴ Kharel asserts that the doctrinal legal research

¹⁶⁵ Kharel note 163 (above) 5.

¹⁶⁶ D Coetsee & P Buys 'A doctrinal research perspective of master's degree students in accounting' (2018) 32 (1) *South African Journal of Higher Education* 72.

¹⁶⁷ Coetsee & Buys note 166 (above) 72.

¹⁶⁸ Hutchinson & Duncan note 154 (above) 85. In addition, they say: "Many aspects of the law are contingent on context, and need to be interpreted and analysed for meaning. Synthesising the law and, where necessary, applying the law to the facts and context is a highly subjective process. Therefore the analytical, legal reasoning aspect of the process is necessarily a qualitative one. The outcome varies according to the expertise of the individual scholar and cannot be replicated exactly by another researcher. When a researcher undertakes doctrinal work, the outcome is totally dependent on the voice and experience of the individual. Doctrinal research requires a specific language, extensive knowledge and a specific set of skills involving precise judgment, detailed description, depth of thought and accuracy."

¹⁶⁹ V M Gawas 'Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development' (2017) 3 (5) *International Journal of Law* 129.

¹⁷⁰ Gawas note 169 (above) 128-9. Gawas further explores this concept at 129 as follows: "Doctrinal research involves analysis of case law, arranging, ordering and systematising legal propositions and study of legal institution through legal reasoning or rational deduction. It also provides the systematic exposition of the rules which are governing in a particular legal category. Perhaps, the doctrinal research also predicts future development and explains the areas of the difficulty. The doctrinal research, thus involves systematic analysis of statutory provision and of legal principle involved therein, or derived there from, and logical and rational ordering of the legal propositions and principles."

¹⁷¹ A Argyrou 'Making the case for case studies in empirical legal research' (2017) 13 (3) *Utrecht Law Review* 96-7 doi: 10.18352/ulr.409 accessed on 28 November 2018.

¹⁷² K Mohamed 'Combining methods in legal research' (2016) 11 (21) *Medwell Journals* 5193.

¹⁷³ S I Ali, Z M Yusoff & Z A Ayub 'Legal research of doctrinal and non-doctrinal' (2017) 4 (1) *International Journal of Trend in Research and Development* 493.

¹⁷⁴ Ali, Yusoff & Ayub note 173 (above) 493.

method explores comprehensively the development of legal doctrine and argues that it is a well-known research method in the law discipline.¹⁷⁵

As it will be seen in chapter four below, the researcher employed doctrinal research methodology to evaluate international legal instruments as well as various domestic laws on disability. The researcher interpreted the provisions of these instruments in order to understand the extent of the protection afforded to persons with disabilities as well as the obligation on the South African state and workplace leaders to implement such instruments. Further to that, doctrinal research methodology was employed to explore the policy framework for transformational leadership. Through the doctrinal research methodology, the researcher explored the binding nature of the international instruments on member states which, on its own, is a factor contributing to the inconsistent protection of persons with disabilities as most of them are not binding, especially in South Africa. Consequently, the researcher explored how international instruments are interpreted and implemented by member states and whether they are achieving the intended purpose of equality for all, especially persons with disabilities in the workplace.

It is therefore argued that doctrinal research methodology remains a relevant tool for interpreting and analysing existing policies and legislation. It serves as a foundation for further development of knowledge on a particular subject. In this study, doctrinal research methodology served as a basis for understanding the existing policies and laws designed to protect persons with disabilities in the workplace. Having said that, doctrinal research methodology has advantages and disadvantages, which are explored below.

2.2.1 Advantages of doctrinal research methodology

Doctrinal research methodology has been found to be vital in the advancement of research as well as in acquiring an operational perspective concerning various legal systems.¹⁷⁶ It has further been found to produce outstanding research.¹⁷⁷ Kharel argues that doctrinal research methodology investigates and verifies the validity and relevancy of the existing theory and knowledge on a legal subject.¹⁷⁸ Thus, it has been argued that the evolving nature of society based on individual needs, changes in technology as well as general economic transformation necessitate theory-testing research on the existing legal doctrine to determine whether it

¹⁷⁵ Kharel note 163 (above) 2.

¹⁷⁶ Gawas note 169 (above) 130.

¹⁷⁷ Gawas note 169 (above) 130.

¹⁷⁸ Kharel note 163 (above) 4.

remains relevant or not for the society.¹⁷⁹ It can therefore be said that through its theory testing, doctrinal research methodology develops knowledge in the legal fraternity which is reliable and valid.¹⁸⁰

Doctrinal research methodology was crucial in this thesis as it provided the foundation of the research by detailing the existing legislation on the protection of persons with disabilities in the workplace. It was further utilised to explore case law that dealt with persons with disabilities, in particular, their reasonable accommodation in the workplace. Consequently, through doctrinal research, the researcher was able to explore and understand the current situation on the implementation of disability laws in the workplace.

2.2.2 Disadvantages of doctrinal research methodology

Doctrinal research methodology has been criticised mainly for being a form of desk top research which focuses on a broader evaluation of the law as it applies to the community and for not using qualitative and quantitative legal research instruments to justify the validity and reliability of the data.¹⁸¹ It has further been said that doctrinal research methodology is more hypothetical and technical in nature.¹⁸²

Singhal and Malik assert that doctrinal legal research methodology is limiting and does not consider social realities at a time when there is a growing trend to draw the legal profession into a larger social context.¹⁸³ It has been said that the law operates within society.¹⁸⁴ Consequently, doctrinal research methodology may need to be supported by socio-legal research to guarantee the relevancy of the research to society.¹⁸⁵ Despite such criticism, it has been said that it still remains a relevant legal research instrument.¹⁸⁶ This is because, by its very nature, it is concerned with an accurate and coherent description of law rather than being experiential or scientific.¹⁸⁷ Thus, it can be said that doctrinal research methodology remains the main research tool used in the law discipline. The study of law necessitates exploring and evaluating existing laws in order to advance meaningful argument and to develop a new

¹⁷⁹ Kharel note 163 (above) 4.

¹⁸⁰ Kharel note 163 (above) 4.

¹⁸¹ Gawas note 169 (above) 129.

¹⁸² Ali, Yusoff & Ayub note 173 (above) 493-4.

¹⁸³ A K Singhal & I Malik 'Doctrinal and socio-legal methods of research: Merits and demerits' (2012) 2 (7) *Educational Research Journal* 253.

¹⁸⁴ Singhal & Malik note 183 (above) 253.

¹⁸⁵ Singhal & Malik note 183 (above) 253.

¹⁸⁶ Mohamed note 172 (above) 5193.

¹⁸⁷ Mohamed note 172 (above) 5193.

approach to the particular problem under investigation. The contention is that existing laws are not effectively implemented, hence the need to explore this theory through doctrinal research methodology.

Thus, it was crucial for the researcher to evaluate and explore the legislation, case law and academic writings in order to gain an understanding of the protection afforded to persons with disabilities. In this study, doctrinal research methodology provided a legal theoretical framework to support the research objectives. As indicated above, to test the theory in the doctrinal research method in practice and to ensure relevancy of the study to society, the researcher employed the empirical research method by conducting interviews with experienced leaders responsible for implementing disability laws, disability inclusion and promotion and protection of human rights in the Municipality, thereby creating a correlation between doctrinal and empirical research methodologies.

The leaders were thoroughly engaged on issues such as their understanding of the term persons with disabilities, transformational leadership, transformational change as well as any hindrance to the implementation of disability related legislation and policies in the workplace with particular reference to the Ethekewini Municipality as employer. They were further engaged on their role in implementing disability laws and policies including sensitisation to the human rights of persons with disabilities in the workplace. Since the study has both law and human or social aspects (being persons with disabilities), the researcher used a socio-legal approach to link the empirical research and doctrinal research methodologies. In this context, I now deal with the socio-legal approach used in the study.

2.2.3 Socio-legal approach

There has been a call for the legal profession to consider the social aspects of the law.¹⁸⁸ The socio-legal approach honours this call by considering the social background of the law.¹⁸⁹ It further examines the law within the particular circumstances and not only as it is set out in legal texts.¹⁹⁰ In other words, the socio-legal approach does not view law as a separate doctrine that needs to be explored exclusively but views law and society to be interlinked.¹⁹¹ This approach

¹⁸⁸ N Creutzfeldt, A Kubal & F Pirie 'Introduction: Exploring the comparative in socio-legal studies' (2016) 12 (4) *International Journal of Law in Context* 378.

¹⁸⁹ C Dent 'A law student-oriented taxonomy for research in law' (2017) 48 *Victoria University of Wellington Law Review* 378.

¹⁹⁰ S Qureshi 'Research methodology in law and its application to women's human rights law' (2015) 22 (2) *Journal of Political Studies* 632.

¹⁹¹ Dent note 189 (above) 378.

assists the researcher realistically to engage the law in question in a more suitable and effective way.¹⁹² It often entails study *about* law and not *of* law.

Consequently, it can be said that the socio-legal approach is primarily focusing on social considerations by exploring disparities between the legislative objectives and the communal realities, thus drawing a clearer image of how the law operates in society.¹⁹³ It further assists the researcher in the sense that the researcher has an opportunity to experience personally, through engaging with affected participants, what is happening in the real world in relation to the topic under investigation.¹⁹⁴

Socio-legal research methodology uses techniques from other disciplines to develop experiential or practical evidence to answer research questions.¹⁹⁵ Thus, it has been said that the socio-legal approach can adopt either a qualitative or a quantitative research methodology.¹⁹⁶ In this regard, it has been said that from a legal research perspective, the social science approach is predominantly utilised for data collection.¹⁹⁷ Consequently, it can be concluded that using the socio-legal approach to collect data leads to valid and reliable data which in turn produces accurate results.

In order to consider the social aspect of the law pertinent to the study and to understand the encounters confronted by employees with disabilities in the Municipality, the researcher personally interviewed employees with disabilities. Employees were engaged in order to understand whether their leaders were effectively implementing disability policies and laws at the Municipality. The researcher further questioned employees to record their views on their daily experiences as persons with disabilities working for the Municipality. They were further asked to share their experiences on whether the Municipality has transformed, as required by various legislative and international instruments, to include persons with disabilities. The researcher engaged employees to assess whether any initiatives had been undertaken by the

¹⁹² Mohamed note 172 (above) 5194.

¹⁹³ Qureshi note 190 (above) 632. Qureshi further explores the socio-legal approach as follows: “It stimulates awareness of the social aspects of the law and provides a unique understanding of the way law develops and works in different societies. It argues that black-letter approach is a deficient method of legal research for being indifferent to the social impact of specific legal measures. It criticizes black-letter approach’s claim of neutrality and rejects its self-proclaimed autonomy as myth. It maintains that law makers are inevitably influenced by their social background and ideologies, thus, law could not do away with its inherent subjectivity (Sisk, 2008). Further, no matter how authoritative judicial doctrines are, they cannot attain the status of any philosophical system, in that sense legal knowledge lacks intellectual content.”

¹⁹⁴ Argyrou note 171 (above) 93.

¹⁹⁵ Mohamed note 172 (above) 5192.

¹⁹⁶ Mohamed note 172 (above) 5192.

¹⁹⁷ Mohamed note 172 (above) 5194.

leadership of the Municipality to support persons with disabilities. Additionally, employees were interviewed on the effectiveness of municipal policies as they related to the accommodation of persons with disabilities and to share their observations on policy implementation.

Ultimately, through a social approach, the researcher was able to engage employees with disabilities in order to ensure that the study was inclusive and took into account the social realities of persons with disabilities in the Ethekwini Municipality. The data obtained from the interviews is fully narrated in chapter five below. Having explored the doctrinal research methodology and socio-legal approach, I now deal with the empirical research methodology which mainly focuses on the leadership component of the study.

2.3 Empirical Research Methodology

Empirical research entails an approach that necessitates the collection of data.¹⁹⁸ Thus, the researcher doing empirical research will want to test the effectiveness of the law by exploring its impact in society through data collection.¹⁹⁹ There are numerous methods by which data may be gathered, and such methods include “interviews, questionnaires and surveys” of the pertinent parties.²⁰⁰ In this regard, data for this study was gathered by interviews with municipal leaders and employees with disabilities. The researcher utilised the qualitative research technique to gather data successfully to answer the objectives of the study. Sinkovics and Alfodi describe “qualitative research as a set of interpretive activities that aim to explore the exact meaning behind the actions and behaviours of others”.²⁰¹ They further explain that interpretive activities rely on the researcher becoming an exclusive analyst of the information received from the participants in the study.²⁰² Since the study is exploratory in nature, it has been said that exploration relies more on qualitative methods.²⁰³

From a legal perspective, qualitative empirical legal research explores social and factual circumstances such as the public’s views and comprehension of law and fairness.²⁰⁴ Qualitative

¹⁹⁸ Dent note 189 (above) 383.

¹⁹⁹ Dent note 189 (above) 383.

²⁰⁰ Dent note 189 (above) 383.

²⁰¹ R R Sinkovics & E Alfodi ‘Progressive focusing and trustworthiness in qualitative research: The enabling role of computer-assisted qualitative data analysis software (CAQDAS)’ (2012) 52 (6) *Management International Review* 3.

²⁰² Sinkovics & Alfodi note 201 (above) 3.

²⁰³ D R Cooper, P S Schindler & J K Sharma *Business Research Methods* (McGraw Hill Education 2012) 11 ed 165.

²⁰⁴ Argyrou note 171 (above) 98.

research has been found to yield results that cannot be achieved through numerical techniques.²⁰⁵ It has further been said that qualitative research can be utilised to investigate, inter alia, human conduct and the functioning of a workplace.²⁰⁶ Levitt et al argue that researchers using qualitative research methods examine data by finding patterns linked to a particular occurrence and develop a view of the entire situation based on those patterns.²⁰⁷ Consequently, the qualitative research method allows the researcher to gather data that is accurate and dependable. This aspect is expanded on under Research Methods below.

As mentioned above, the objective of this research is to ascertain the role that can be played by transformational leadership and its impact in ensuring the practical implementation of disability related legislation in the workplace, particularly in the Ethekeeni Municipality. Thus, the researcher used in-depth interviews to ascertain senior leadership's level of awareness on the role they should play as transformational leaders in including and accommodating persons with disabilities within the Municipality. In this regard, what follows is a research design which explores the procedures used to conduct empirical research in order to achieve a valid outcome.

2.4 Research Design

This is a critical aspect of research as it sets out the procedure that the researcher intends to follow in responding to the research objectives thereby achieving the most valid outcome.²⁰⁸ It has been described as an essential feature for the attainment of valid and reliable research.²⁰⁹ It is the strategy or framework utilised by the researcher to gather and analyse empirical data.²¹⁰ Shoaib and Mujtaba describe research design as a strategy to “answer the research question”.²¹¹ At the heart of the research design is the nature of the study being organised, the nature of the intended consequences, as well as the proof needed sufficiently to tackle the research enquiries.

²⁰⁵ Whittaker note 160 (above) 251.

²⁰⁶ Whittaker note 160 (above) 251.

²⁰⁷ H M Levitt, J W Creswell, R Josselson, M Bamberg, D M Frost & C Suarez-Orozco ‘Journal article reporting standards for qualitative primary, qualitative meta-analytical, and mixed methods research in psychology: The APA Publications and Communications Board task force report’ (2018) 73 (1) *American Psychologist* 27 doi: 10.1037/amp0000151.

²⁰⁸ W Webb & C J Auriacombe ‘Research design in public administration: Critical considerations’ (2006) 41 (3.1) *Journal of Public Administration* 589.

²⁰⁹ G F Z Santos, G V Koerich & G D Alperstedt ‘The contribution of design research in solving complex problems in the field of public administration’ (2018) 52 (5) *Brazilian Journal of Public Administration* 958.

²¹⁰ K Wotela ‘Towards an outcomes-based approach to a “research strategy, design, procedure and methods chapter” for business and public administration research’ (2017) 52 (1.1) *Journal of Public Administration* 228.

²¹¹ S Shoaib & B G Mujtaba ‘Use it or lose it: Prudently using case study as a research and educational strategy’ (2016) 1 (2) *American Journal of Education and Learning* 84. They further describe research design as “a logical plan for getting from the initial set of questions to be answered and to a set of conclusions to those questions”.

Therefore, choosing the research design relevant to a study is informed by the research objectives and the envisioned use of the outcome of the research.²¹²

Further to this, the manner in which the research is planned must not be restrictive in nature and must allow the enquiry to unfold. As indicated above, this research used a qualitative research approach and the conduct of interviews as a strategy. This was done in order to answer ‘what’, ‘why’ and ‘how’ questions and to collect detailed knowledge of the experiences of the partakers. This aspect of the research is broadly explored below.

Wiid and Diggines identify “three main categories of research design being exploratory, descriptive and causal”:²¹³ Exploratory studies aim “to acquire insight and develop understanding rather than to collect accurate, replicable data”.²¹⁴ It has been said that exploratory studies usually involve conducting in-depth interviews, exploring various sources and analysing case studies.²¹⁵ It is research that seeks to evaluate “topics in a new light”.²¹⁶ Cooper et al argue that exploratory study may be necessary especially if the researcher wants to gain insight about the challenges facing leaders.²¹⁷ They further say that the rationale behind exploratory study is the advancement of a hypothesis and not testing.²¹⁸ Ordinarily, exploratory research collects a lot of information from a small sample.²¹⁹ It has been found to be a valuable tool to learn about what is happening and has been found to be flexible and adaptable to change based on new data and insights discovered by the researcher.²²⁰ Exploratory research has been found to be best suited with qualitative research methods such as semi-structured and unstructured interviews.²²¹

Descriptive research design is usually undertaken to determine and gather data that explores the features of relevant issues.²²² It provides accurate descriptions of individuals, occasions and circumstances.²²³ In contrast to exploratory research, which is flexible by its nature, descriptive

²¹² R Garg ‘Methodology for research I’ (2016) 60 (9) *Indian Journal of Anaesthesia* 641.

²¹³ J Wiid & C Diggines *Marketing Research* (Juta 2010) 55.

²¹⁴ Wiid & Diggines note 213 (above) 55. They further state that “it is used to explore a relatively unknown area”.

²¹⁵ Wiid & Diggines note 213 (above) 55.

²¹⁶ M Saunders & P Lewis *Doing Research in Business and Management: An Essential Guide to Planning Your Project* (Pearson 2018) 114.

²¹⁷ Cooper, Schindler & Sharma note 203 (above) 165.

²¹⁸ Cooper, Schindler & Sharma note 203 (above) 165.

²¹⁹ Struwing & Stead note 145 (above) 6.

²²⁰ M Saunders, P Lewis & A Thornhill *Research Methods for Business Students* (Pearson 2016) 7 ed 174.

²²¹ Saunders & Lewis note 216 (above) 115.

²²² U Sekaran & R Bougie *Research Methods for Business: A Skill Building Approach* (Wiley 2013) 6 ed 97.

²²³ Saunders & Lewis note 216 (above) 116.

research endeavours to provide a precise and comprehensive account of a situation.²²⁴ Quite often, descriptive research involves quantifiable data.²²⁵ As such, structured interviews, observations and questionnaires are often used as a data collection method.²²⁶ Case studies and statistics have also been associated with descriptive research.²²⁷

Causal studies are generally conducted with the intention to uncover the origin and the effect between dependent and independent variables.²²⁸ In other words, causal studies are scientific in nature as they test whether or not one variable changes another.²²⁹ The researcher's intention in a causal study is to describe factors causing a problem²³⁰ and to discover why particular results are obtained.²³¹

In summary, “exploratory research attaches meaning to variables; descriptive research often reveals possible links between particular variables; while causal research confirms and describes the relationship between variables or shows such relationship to be false”.²³² In this study, the exploratory research method was chosen taking into consideration that the intention was to discover fresh perspectives and acquire more knowledge on the inclusion of persons with disabilities in the workplace. It was also used as there is limited data on leadership and disability inclusion in the workplace. While the Municipality is currently attempting to accommodate persons with disabilities, as explained in chapter one, it was important to conduct an exploratory study that will provide new insight on the topic of human rights and disability inclusion, as well as reasonable accommodation, as the Municipality is failing to achieve the 2% target of persons with disabilities. It was therefore important to conduct an exploratory study to understand the challenges faced by municipal leaders in achieving transformation for persons with disabilities.

The aforesaid features of exploratory research are of value in attainment of the research purpose, which is to detect the critical issues affecting implementation of disability related laws within the Municipality and to evaluate the impact of transformational leadership on the execution of such laws in the Municipality. Consequently, through exploratory research design,

²²⁴ Struwing & Stead note 145 (above) 7.

²²⁵ Saunders & Lewis note 216 (above) 116.

²²⁶ Saunders & Lewis note 216 (above) 116.

²²⁷ Struwing & Stead note 145 (above) 7.

²²⁸ Sekaran & Bougie note 222 (above) 98.

²²⁹ Sekaran & Bougie note 222 (above) 98.

²³⁰ Sekaran & Bougie note 222 (above) 98.

²³¹ Cooper, Schindler & Sharma note 203 (above) 177

²³² Wiid & Diggins note 213 (above) 56.

the researcher will be able to assess senior leadership's level of awareness on the role they should play as transformational leaders in accommodating persons with disabilities and to recommend a leadership transformational model/framework that accommodates persons with disabilities within the Municipality.

2.5 Research Philosophy

Research philosophy has been described as assumptions and beliefs in relation to the development and the nature of the knowledge connected to the research.²³³ These assumptions generally fall into three categories: ontological, epistemological and axiological assumptions.²³⁴ These assumptions have a huge impact on researchers' understanding of research questions, methodology and interpretation of findings.²³⁵ Ontological assumption looks at the nature of reality.²³⁶ Thus, it has been described as the preliminary issue of all studies based on the fact that the researcher asks questions about the reality of the study in question.²³⁷ Ontological assumption plays a critical role as it looks at the situation and shapes the direction which the research project will take. For example, in this study the nature of reality is that there is no legislative compliance by leaders of the Municipality relating to inclusion of persons with disabilities. The focus of research based on ontological assumption is on how transformational leadership can influence the Ethekewini Municipal leaders effectively to implement legislation governing disability in the workplace.

Epistemological assumption focuses on the information, being valid and legitimate information, as it relates to the study.²³⁸ It has been said that epistemology concentrates on the required information to respond "to the research questions and objectives".²³⁹ Ultimately the purpose of conducting research is to make a contribution to knowledge and the creation of knowledge.²⁴⁰ Hence legitimate information ensures that the research is valid and reliable. In this study, through interviews with Ethekewini executive leaders (who are senior officials responsible for implementing disability laws) and employees with disabilities (who are affected

²³³ Saunders & Lewis note 216 (above) 106.

²³⁴ Saunders & Lewis note 216 (above) 106.

²³⁵ Saunders & Lewis note 216 (above) 124.

²³⁶ Saunders & Lewis note 216 (above) 106.

²³⁷ M M Sefotho 'A researcher's dilemma: Philosophy in crafting dissertations and theses' (2015) 42 *Journal of Social Science* 30. Sefotho continues to state that "ontology therefore can be said to study conceptions of being, reality or the phenomenon of the presenting research problem. Researchers then form their own conceptualisations of being, reality or phenomenon they are researching".

²³⁸ Saunders & Lewis note 216 (above) 106.

²³⁹ C Quinlan, B Babin, J Carr, M Griffin & W G Zikmund *Business Research Method* (Cengage Learning EMEA 2015) 58.

²⁴⁰ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 58.

by non-compliance with legislation), reliable and valid knowledge will be generated to respond to the research question, namely the impact of transformational leadership on implementation of disability laws in the Municipality. Such information will further respond to the aim of the research, which is to examine the role that can be played by transformational leadership and its impact in ensuring effective practical implementation of disability related legislation in the workplace.

Axiological assumption underscores the importance of values and ethics within the research process.²⁴¹ Ethics relates to the conduct or community customs of behaviour while conducting research.²⁴² It applies to both the researcher and participants.²⁴³ It begins with the researcher who is expected to conduct research in good faith.²⁴⁴ Ultimately, ethics permeates each step of the research process.²⁴⁵ For example, during the research design stage, the researcher is expected to plan to conduct research by conforming to ethical standards and ensuring that no harm is caused as a result of the study.²⁴⁶ Among the ethical considerations during the research design stage is access.²⁴⁷ Researcher should not pressurise intended participants to grant access.²⁴⁸ The issue of ethics is broadly explored below.

Having discussed assumptions, research philosophies that are more closely related to this study, that is phenomenological and positivism research philosophies, are now dealt with.

Phenomenological research “focuses on lived experience from the perspective of those living the experience”.²⁴⁹ It explores what is commonly experienced by the affected individuals.²⁵⁰ Quinlan et al assert that phenomenology is premised on the impression that “human experience itself is inherently subjective and determined by the context in which people live”.²⁵¹ Thus, it has been said that the researcher conducting phenomenological research affords the participants

²⁴¹ Saunders & Lewis note 216 (above) 107.

²⁴² Sekaran & Bougie note 222 (above) 12.

²⁴³ Sekaran & Bougie note 222 (above) 12.

²⁴⁴ Sekaran & Bougie note 222 (above) 12.

²⁴⁵ Sekaran & Bougie note 222 (above) 12.

²⁴⁶ Saunders, Lewis & Thornhill note 220 (above) 249.

²⁴⁷ Saunders, Lewis & Thornhill note 220 (above) 249.

²⁴⁸ Saunders, Lewis & Thornhill note 220 (above) 249.

²⁴⁹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 60.

²⁵⁰ J W Creswell *Qualitative Enquiry and Research Design -- Choosing among Five Approaches* (SAGE Publications 2007) 2 ed 57-8.

²⁵¹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 128. They further explain phenomenology as follows: “the phenomenological researcher focuses on how a persons’s behaviour is shaped by the relationship he or she has with the physical environment, objects, people and situations. It seeks to describe, reflect on and interpret experiences, lived experience as detailed and explained by the person living experience.”

the opportunity to share their experiences without imposing any preconceived thoughts the researcher might have regarding the participants' experiences.²⁵²

The researcher further engages participants in different ways in order to gather the various realities experienced by them.²⁵³ In other words, phenomenological study concentrates on the participants' views of the particular situation and attempts to respond to the question based on personal experiences.²⁵⁴ The aim of phenomenological research is to be as accurate as possible on the particular issue under investigation and to remain true to the facts.²⁵⁵ It has further been said that it focuses on social and psychological views of individuals involved in the subject matter.²⁵⁶

Williams asserts that the core of phenomenological study is to investigate the dominant fundamental understanding of the participants' experiences.²⁵⁷ In this context, it has been said that the qualitative researcher will identify a particular object being experienced, collect data from affected and relevant individuals and give a full narrative on the core of such experience.²⁵⁸ Phenomenological research involves smaller samples while engaging participants at a greater level of complexity.²⁵⁹ It has been found to have a strong philosophical foundation and usually involves conducting interviews²⁶⁰ and has been found to be especially useful for interview data analysis regarding experiences of health and illnesses.²⁶¹ Bertilsson et al argue that "the content and meaning of a real-life phenomenon can be explicated and conceptualized with a phenomenological approach, and then understood in a theoretical and comprehensible manner".²⁶² Phenomenological research "collects data that leads to identifying common themes in people's perceptions of their experiences".²⁶³ Consequently, it can be said that phenomenological research is useful when the research relates to human experiences and

²⁵² Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 60.

²⁵³ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 60.

²⁵⁴ C Williams 'Research methods' (2007) 5 (3) *Journal of Business & Economic Research* 69.

²⁵⁵ T Groenewald 'A phenomenological research design illustrated' (2004) 3 (1) *International Journal of Qualitative Methods* 44.

²⁵⁶ Groenewald note 255 (above) 44.

²⁵⁷ Williams note 254 (above) 69

²⁵⁸ Creswell note 250 (above) 58.

²⁵⁹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 60.

²⁶⁰ J W Creswell *Research Design* (SAGE Publications 2014) 4 ed 14.

²⁶¹ F Reynolds & S Prior 'A lifestyle coat-hanger: A phenomenological study of the meanings of artwork for women coping with chronic illness and disability' (2003) 25 (14) *Disability & Rehabilitation* 791.

²⁶² M Bertilsson, E Petersson, G Ostlund, M Waern & G Hensing 'Capacity to work while depressed and anxious -- A phenomenological study' (2013) *Disability & Rehabilitation -- An International Multidisciplinary Journal* 2 doi: 10.3109/09638288.2012.751135 accessed on 23 December 2018.

²⁶³ Williams note 254 (above) 69.

conduct as it assists the researcher fully to understand the phenomenon and thus produce valid and reliable data.

Positivism relates to the “philosophical position of the natural scientist”.²⁶⁴ In such research, the study explores noticeable social realities in order to generate “law-like generalisations”.²⁶⁵ Sefotho argues that positivism essentially provides that knowledge can be developed through “objectivity and quantification”.²⁶⁶ Sefotho explores these two concepts as follows: “objectivity implies that the researcher and the reality being researched are separate and objective reality exists beyond the human mind”.²⁶⁷ Saunders et al argue that positivism focuses on systematic experiments developed to produce pure data without human analysis.²⁶⁸ It has been said that positivist researchers are likely to conduct studies through questionnaires and often use “highly structured methodology”.²⁶⁹ Positivism concentrates on quantifiable observations that result in numerical exploration.²⁷⁰ Therefore, quantitative research is usually linked with positivism.²⁷¹

In this study, phenomenological research was found to be useful as the study is not numerical by its nature but rather focuses on human experiences and conduct. As indicated above, the qualitative research method was used and this method has been found to concern itself with approaches such as, inter alia, phenomenology.²⁷² Interviews were conducted with senior executives of the Municipality responsible for inclusion of persons with disabilities in order to ascertain their challenges on implementation of disability policies in the workplace. In addition, employees with disabilities, who were affected by non-compliance with disability policies, were engaged in order to establish their encounters as a result of such non-compliance.

While the researcher is employed by the Municipality, he allowed participants fully to share their experiences without influencing or imposing his thoughts on the subject. Participants were engaged at different times and different venues in order to learn of their personal experiences without influence from others. All participants were asked similar questions in order to ensure uniformity and to gain fundamental insight on the participants’ experiences. Ultimately, the

²⁶⁴ Saunders & Lewis note 216 (above) 107.

²⁶⁵ Saunders & Lewis note 216 (above) 107.

²⁶⁶ Sefotho note 237 (above) 26.

²⁶⁷ Sefotho note 237 (above) 26.

²⁶⁸ Saunders, Lewis & Thornhill note 220 (above) 136.

²⁶⁹ Saunders & Lewis note 216 (above) 108.

²⁷⁰ Saunders, Lewis & Thornhill note 220 (above) 138.

²⁷¹ Saunders, Lewis & Thornhill note 220 (above) 166.

²⁷² Struwing & Stead note 145 (above) 10.

phenomenological approach was employed successfully to answer the research question, and to achieve the aims and objectives of the study.

2.6 Research Methods

According to Williams, there are generally “three common approaches to conducting research: qualitative, quantitative and mixed methods”.²⁷³ The research approach chosen by a researcher is based on the required data to fully respond to the research question.²⁷⁴ For example, it has been said that the quantitative approach responds to questions that necessitate statistical data, the qualitative approach is mainly used for research questions that do not require numerical data, while the mixed methods approach requires both statistical and numerical data.²⁷⁵ The aforesaid research approaches are now explored, while justifying the approach chosen in this study.

2.6.1 Qualitative research method

The primary intention of using a qualitative study is to capture the legitimacy of the data gathered from the participants. In other words, qualitative research assists the researcher to make a trustworthy data elucidation gathered from the participants. McCusker and Gunaydin assert that qualitative research is unique because its purpose is to connect to the real life situation thereby producing information instead of numerical data for scrutiny.²⁷⁶ Thus, Leung asserts that the core of qualitative research is to examine, understand and identify patterns amongst words with a view of developing a broader picture while retaining its “richness and dimensionality”.²⁷⁷ Consequently, qualitative study is not numeric and its emphasis is not on developing and evaluating numerical information but on developing and analysing non-numeric data.²⁷⁸

Roberts argues that “qualitative interview techniques encourage respondents to talk freely often around emotionally loaded topics in order to gain an insight into how people feel and think about a research topic under investigation”.²⁷⁹ In other words, the rationale behind qualitative research is to acquire detailed knowledge of a particular condition that occurs naturally in a

²⁷³ Williams note 254 (above) 65.

²⁷⁴ Williams note 254 (above) 65.

²⁷⁵ Williams note 254 (above) 65.

²⁷⁶ McCusker & Gunaydin note 139 (above) 537.

²⁷⁷ L Leung ‘Validity, reliability and generalizability in qualitative research’ (2015) 4 (3) *Journal of Family Medicine and Primary Care* 324.

²⁷⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 124.

²⁷⁹ Roberts note 140 (above) 4.

society and it focuses on people's hidden understandings of a particular phenomenon.²⁸⁰ Thus, Williams contends that "qualitative research is a holistic approach that involves discovery".²⁸¹

Qualitative research is often used when the intention of the research is to discover how the subject under investigation happens in natural settings.²⁸² It is further utilised when a new perspective on the subject is needed.²⁸³ Qualitative research frequently involves a small sample.²⁸⁴ It has been said that while qualitative research involves smaller samples, the deeper engagement of the researcher in gathering and analysing data from the participants enhances the richness, depth as well as complexity of qualitative research.²⁸⁵ This method is fully explored below as it was found to be useful and therefore used in this study.

2.6.2 Quantitative research method

Quantitative research entails collecting data that can be measured and statistically analysed with a view to either supporting or disproving particular information or a particular claim.²⁸⁶ Unlike qualitative research which is more theoretical in its approach, quantitative data analysis is more scientific and statistical in nature.²⁸⁷ Struwing and Stead maintain that quantitative research can also be viewed as conclusive research which represents sizable samples and data collection techniques that are fairly structured.²⁸⁸ They further say that the role of quantitative research is to test a hypothesis in relation to two or more observable occurrences.²⁸⁹ Thus, it endeavours to generate accurate measurements of a particular object.²⁹⁰

Quantitative data is usually coded, categorised and recorded in numbers for statistical evaluation.²⁹¹ Quantitative research underscores scientific data and quantifiable variables.²⁹² It has been said that "data is collected under controlled conditions in order to rule out the possibility that variables other than the ones under study can account for the relationships identified".²⁹³ Thus, with quantitative methods, the researcher utilises recognised instruments

²⁸⁰ Cooper, Schindler & Sharma note 203 (above) 182.

²⁸¹ Williams note 254 (above) 67.

²⁸² Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 124.

²⁸³ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 124.

²⁸⁴ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 127.

²⁸⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 127.

²⁸⁶ Williams note 254 (above) 66.

²⁸⁷ Williams note 254 (above) 66.

²⁸⁸ Struwing & Stead note 145 (above) 3.

²⁸⁹ Struwing & Stead note 145 (above) 3-4.

²⁹⁰ Cooper, Schindler & Sharma note 203 (above) 185.

²⁹¹ Cooper, Schindler & Sharma note 203 (above) 185.

²⁹² J Park & M Park 'Qualitative versus quantitative research methods: Discovery or justification?' (2016) 3 (1) *Journal of Marketing Thought* 4.

²⁹³ Park & Park note 292 (above) 4.

to quantify participants' opinions, feelings and behaviours for statistical analysis purposes.²⁹⁴ Put differently, quantitative research categorises features in the research, quantifies those features and develops a statistical model in an effort to clarify what is observed.²⁹⁵

As indicated above, the quantitative research method involves bigger samples through questionnaires and surveys.²⁹⁶ It has been said that quantitative research is useful in conclusive research projects where data gathered from the samples is illustrative of the population.²⁹⁷ In this study, the qualitative research method was utilised since it has been found to be useful where there is a need to develop an understanding on a specific subject.²⁹⁸ As such, the study is not numerical in nature as it seeks to understand the influence of transformational leadership on the execution of legislation that relates to aspects of disability in the Municipality.

2.6.3 Mixed research method

The mixed research technique is a composite of qualitative and quantitative data in a study.²⁹⁹ It encompasses gathering, examining and elucidating qualitative and numerical data in particular research that investigates the same subject.³⁰⁰ Mixed method research has been found to be advantageous as it utilises both methods thereby allowing the researcher to tackle multifaceted social issues.³⁰¹ It has further been found to provide “more insight into research problems” as it explores subjects from different angles.³⁰²

Consequently, it can be said that the mixed method provides a comprehensive image of the topic under investigation which cannot be provided through a single research method.³⁰³ The mixed methods approach has been found to be appropriate when the researcher intends to utilise one method to collaborate, improve or explain the findings emanating from the other method.³⁰⁴ Wisdom et al further explain that the mixed method has been utilised “when

²⁹⁴ J D Christenson & D M Gutierrez ‘Using qualitative, quantitative and mixed methods research to promote family therapy with adolescents in residential settings’ (2016) 38 *Contemporary Family Therapy: An International Journal* 56 doi: 10.1007/s10591-016-9374-x.

²⁹⁵ McCusker & Gunaydin note 139 (above) 538.

²⁹⁶ Struwing & Stead note 145 (above) 18.

²⁹⁷ Struwing & Stead note 145 (above) 18.

²⁹⁸ Struwing & Stead note 145 (above) 18.

²⁹⁹ Creswell note 260 (above) 14.

³⁰⁰ N L Leech & A J Onwuegbuzie ‘A typology of mixed methods research designs’ (2009) 43 *International Journal of Methodology* 267 doi: 10.1007/s11135-007-9105-3 accessed on 8 January 2019.

³⁰¹ Christenson & Gutierrez note 294 (above) 58.

³⁰² Christenson & Gutierrez note 294 (above) 58.

³⁰³ J P Wisdom, M A Cavaleri, A J Onwuegbuzie & C A Green ‘Methodological reporting in qualitative, quantitative and mixed methods health services research article’ (2012) 47 (2) *Health Services Research* 723 doi: 10.1111/j.1475-6773.2011.01344.x.

³⁰⁴ Wisdom, Cavaleri, Onwuegbuzie & Green note 303 (above) 723.

researchers would like to use one method to discover paradoxes and contradictions in findings from another method that can suggest reframing research questions (initiation) and when researchers seek to expand the breadth and depth of the study by using different methods for different research components (expansion)”.³⁰⁵

Annansingh and Howell clarify that mixed method is valuable in a case where either the quantitative or qualitative method is insufficient to comprehend and interpret a research question.³⁰⁶ Consequently, it can be said that the mixed method approach decreases weaknesses which may be found when the researcher uses a single research approach.³⁰⁷ While the mixed research approach provides both statistical and non-statistical data, the nature of this study required the researcher to gather a comprehensive understanding of the life encounters of the partakers in connection with the subject. Therefore, qualitative research interviews were found to be the most appropriate way to gather information from the participants. In this regard, the following section provides the reason for utilising qualitative research in this study.

2.6.4 Reasons for using qualitative research method

The qualitative research method was found to be relevant and useful in this study. Qualitative interviews have been described as a form of dialogue with a determination due to its capability to extensively probe about a specific ordinary problems than consistent quantitative interviews.³⁰⁸ Meadows has classified the characteristics of qualitative research as “the researcher’s role in gaining a holistic overview of the context under study, to capture data on perceptions of local ‘actors’ (individuals) from the inside, that most analysis is done with words and that relatively little standardised instrumentation is used”.³⁰⁹ Therefore, qualitative research is normally concerned with individuals and their individuality rather than quantity and statistics.³¹⁰ It focuses on personal experiences, workplace functioning, conduct, feelings and social arrangements.³¹¹

³⁰⁵ Wisdom, Cavaleri, Onwuegbuzie & Green note 303 (above) 723.

³⁰⁶ F Annansingh & K Howell ‘Using phenomenological constructivism (PC) to discuss a mixed method approach in information systems research’ (2016) 14 (1) *The Electronic Journal of Business Research Methods* 42.

³⁰⁷ Annansingh & Howell note 306 (above) 44.

³⁰⁸ Roberts note 140 (above) 4.

³⁰⁹ Meadows note 144 (above) 464.

³¹⁰ N Beail & K Williams ‘Using qualitative methods in research with people who have intellectual disabilities’ (2014) 27 *Journal of Applied Research in Intellectual Disabilities* 86.

³¹¹ M S Rahman ‘The advantages and disadvantages of using qualitative and quantitative approaches and methods in language “testing and assessment” research: A literature review’ (2017) 6 (1) *Journal of Education and Learning* 103.

Qualitative research technique was crucial for this study in that it presented a platform for conversation with partakers to get clarity on the personal experiences of employees with disabilities in the Municipality. It further presented an opportunity for the researcher to converse with municipal leaders in order to understand their challenges with regard to transformation and disability inclusion in the Municipality. Additionally, it allowed the researcher to engage personally with leaders in order to ascertain their level of awareness when it came to understanding disability, transformation and disability inclusion.

Another important aspect is that the researcher was able to gauge whether municipal leaders understand their role in implementing disability laws and policies. The researcher further gauged, through the qualitative research method, whether leaders in the Municipality understand that, because they are in the public sector, there is an expectation that they should be transformational leaders guided by the Constitution, which is transformative in nature. Consequently, it can be said that the qualitative research method was indeed beneficial in this case where the research involved human behaviour.

The most important aspect of qualitative research is that the researcher has the opportunity to experience practically, through observing behaviours and by personal contact, the views and feelings of the participants on the subject. In this regard, Jervis and Drake contend that rather than relying on measuring devices, behaviours are observed by researchers and recorded through notes, audio or personal interaction.³¹² They maintain that qualitative data is vital for multifaceted motive responses which may not be understood in a quantitative study.³¹³ The nature of the research necessitated that the responsible leaders be directly engaged. The achievement of disability inclusion and equity in the Municipality requires a positive mindset and attitude by the leaders. Thus, it was crucial for the researcher to use the qualitative research method in order to get a holistic view on the subject as disability inclusion and transformation is a challenge, especially in the public sector.

In exploring a multifaceted phenomenon such as leadership, the use of qualitative techniques allows researchers to delve deeper and further explore previously unexplored aspects while acquainting themselves with the context of their topics.³¹⁴ Consequently, these practical

³¹² M G Jervis & M Drake 'The use of qualitative research methods in quantitative science: A review' (2014) 29 *Journal of Sensory Study* 234.

³¹³ Jervis & Drake note 312 (above) 234.

³¹⁴ J Bempah 'How can we best interpret effective leadership? The case for Q method' (2014) 5 (3) *Journal of Business Studies Quarterly* 48.

observations assist researchers better to understand the dynamics of the particular subject and provide sound, adequate and authentic data analysis.

Beail and Williams say that qualitative research is generally concerned with people and their individuality rather than quantity and statistics.³¹⁵ Qualitative research method further assists in understanding the reason why people react in a particular way. The qualitative approach has been found to be helpful in “enhancing relationship and dialogue between researchers and participants in their communities, minimise the imposition of researcher assumptions on diverse others; empower participants by helping them to voice their stories and by honouring their strengths, needs, and values; stimulate collaborative social change efforts by researchers and participants; catalyse theory development; and frame communication and dissemination of research outcomes in ways that are immediately useful to communities”.³¹⁶ Fassinger and Morrow contend that the ultimate purpose of qualitative study technique is to comprehend and explore expressive explanations, resemblances as well as dissimilarities of social occurrences.³¹⁷ They further argue that “qualitative method focuses on applied and theoretical findings or discoveries, based on research questions through field study in natural conditions”.³¹⁸ They conclude by saying that the qualitative method is adequate and relevant for detection, taking into consideration its aim and precise outcomes.³¹⁹

The important purpose of qualitative research, according to Meadows, is the description of people or social phenomena where there is insufficient information known about the particular group of people or social phenomena.³²⁰ Meadows continues to argue that the intention of qualitative research is to formulate a hypothesis “which could be tested more formally in subsequent research, and theory development -- where qualitative data are analysed with the view of developing an integrated scheme to explain the observed phenomena”.³²¹ In this regard, while generally there is consciousness of the existence of persons with disabilities, it appears that leaders in the public sector are failing to include them in the workplace. The qualitative

³¹⁵ Beail & Williams note 310 (above) 86.

³¹⁶ R Fassinger & S L Morrow ‘Toward best practices in quantitative, qualitative and mixed-method research: A social justice perspective’ (2013) 5 (2) *Journal of Social Action in Counseling and Psychology* 74.

³¹⁷ Fassinger & Morrow note 316 (above) 74.

³¹⁸ Fassinger & Morrow note 316 (above) 74.

³¹⁹ Park & Park note 292 (above) 3.

³²⁰ Meadows note 144 (above) 465.

³²¹ Meadows note 144 (above) 465.

research method therefore helps to gain an understanding of underlying reasons and provides insights in this regard.

Meadows argues that qualitative research is inductive in nature in that it is driven by data that directly produce results and conclusions.³²² Defining qualitative research has been found not to be straightforward; however “it is generally accepted that qualitative researchers study experiences in their natural settings”.³²³ Neale et al highlight that the intention is to explore “how people account for, take action and otherwise manage their day to day situations”.³²⁴ Qualitative research is perceived as having a practical purpose -- utilising data that is valuable to examine individual perceptions and standards.³²⁵ Qualitative research questions are broad and open ended and the qualitative approach provides “not only answers to the researcher’s question, but also the participant’s feelings, perceptions, experiences, and thoughts about the question”.³²⁶ It can therefore be concluded that qualitative research is beneficial particularly where humans are at the centre of the research topic. Vanderstoep and Johnston argue that qualitative methods necessitate engagement of people in order to develop knowledge and understand the entity as a whole.³²⁷ In contrast “quantitative methods are too narrow and too reductionist for studying the social world”.³²⁸ Qualitative research has been found to be more descriptive.³²⁹ Neale et al contend that --

“human beings are purposeful, goal seeking, feeling, meaning-attributing and meaning-responding creatures, consequently, it is necessary to understand how they perceive and interpret their environment by personally engaging them if their behaviour is ever to be interpreted usefully”.³³⁰

On this basis, the researcher chose qualitative research method in order to explore, contextualise and understand the rationale behind non-compliance with disability policies and legislation in the Municipality. Using this method has various advantages. Rahman asserts that the qualitative research method generates a comprehensive account of the state of mind,

³²² Meadows note 144 (above) 465.

³²³ J Neale, D Allen & L Coombes ‘Qualitative research methods within addictions’ (2005) 100 (11) *Addiction* 1584.

³²⁴ Neale, Allen & Coombes note 323 (above) 1584.

³²⁵ Neale, Allen & Coombes note 323 (above) 1584.

³²⁶ J Ivey ‘The value of qualitative research methods’ (2012) 38 *Pediatric Nursing* 319.

³²⁷ S W Vanderstoep & D D Johnston *Research Methods for Everyday Life: Blending Qualitative and Quantitative Approaches* (Jossey-Bass Publishers 2009) 166.

³²⁸ Neale, Allen & Coombes note 323 (above) 1586.

³²⁹ Vanderstoep & Johnston note 327 above 167.

³³⁰ Neale, Allen & Coombes note 323 (above) 1586.

involvements and feelings of the participants and effectively translates their actions.³³¹ Rahman further argues that qualitative research methods comprehend individual encounters especially in particular groups.³³² Additionally, Ashraf et al assert that qualitative research remains pertinent to discover various ideologies that people associate with their experiences.³³³

With particular reference to this study, Chwalisz et al contend that qualitative research methods have been utilised to collect data from persons with disabilities as well as “professionals”.³³⁴ Consequently, it can be said that the value of qualitative research is that it gives participants a sense of belonging and goes to the heart of how individuals give meaning to incidents. Qualitative research method has the potential to explore human conduct extensively.³³⁵ It has been found to be flexible, thus allowing the participant sufficient freedom to participate and engage in complex issues.³³⁶ In addition, it has been found to be of value in that it develops new mechanisms to deal with existing information.³³⁷ It is therefore argued that the qualitative research method is pertinent to this study as the aim is to discover and develop new mechanisms to ensure effective implementation of disability policies and provisions in the Municipality.

Whilst there are benefits for using the qualitative research method, it has been said that it also has some disadvantages in that it focuses on individual encounters and “leave[s] out contextual sensitivities”.³³⁸ In other words it attempts only to expose and understand participants’ knowledge on a particular matter. Despite these disadvantages, the qualitative research method gives perspective on why things are done or not done in a particular way. In this regard, Prowse and Camfield state that “qualitative research methods are generally able to shed light on ‘why’ and ‘how’ questions, are good at capturing processes, and pay greater attention to why certain individuals benefit from an intervention and others do not”.³³⁹

³³¹ Rahman note 311 (above) 104.

³³² Rahman note 311 (above) 104.

³³³ S Ashraf, G Haider & M Ashraf ‘Violence against women with disabilities: A qualitative investigation’ (2017) 23 (4) *Annals of King Edward Medical University* 3.

³³⁴ K Chwalisz, S R Shar & K M Hand ‘Facilitating rigorous qualitative research in rehabilitation psychology’ (2008) 53 (3) *Rehabilitation Psychology* 389.

³³⁵ A Queiros, D Faria & F Almedia ‘Strengths and limitations of qualitative and quantitative research methods’ (2017) 3 (9) *European Journal of Education Studies* 372.

³³⁶ Rahman note 311 (above) 104.

³³⁷ O P Atieno ‘An analysis of the strengths and limitation of qualitative and quantitative research paradigms’ (2009) 13 *Problems of Education in the 21st Century* 16 http://www.scientiasocialis.lt/pec/files/pdf/Atieno_Vol.13.pdf accessed on 13 May 2018.

³³⁸ Rahman note 311 (above) 104.

³³⁹ M Prowse & L Camfield ‘Improving the quality of development assistance: What role for qualitative methods in randomized experiments?’ (2013) 1 *Journal of Eastern African Studies* 55.

Houe and Murphy explain that the intention of qualitative research methods is to ascertain the worth of certain behaviours and incidents.³⁴⁰ They further find the qualitative research method to be valuable because of “its ability to generate certainty by embodying the complexity of the phenomenon under examination”.³⁴¹ Thus, qualitative research method has a human factor in that it affords the researcher a chance to engage the participants on their life experiences in relation to the particular subject.

Qualitative research provides a fresh perspective on the subject and often assists with new techniques.³⁴² It further develops analytical philosophy and knowledge.³⁴³ Van den Berg and Struwig contend that qualitative research is influential in assessing complex relations between individuals and their environment and the impact thereof.³⁴⁴ Turpin et al argue that qualitative research is natural and original and the views of the participants cannot be tainted by the biasness of the researcher.³⁴⁵ Therefore, it can be concluded that qualitative research will play a critical role in this study by developing new methods, authentic knowledge and philosophy that will assist in ensuring transformation and disability inclusion in the Municipality and the public sector. It will further assist in understanding the environment and relations particularly for employees with disabilities and the impact thereof on the implementation of disability laws in the Municipality.

The current research project seeks to explore the impediments to compliance with disability related legislation in the workplace, particularly in the Municipality. As can be seen from the Literature Review, the responsibility for implementing and monitoring disability policies lies with the senior leaders in the workplace. The benefit of utilising the qualitative research method is that the researcher had an opportunity to interview leaders in various occupational levels in the Ethekwini Municipality in order to ascertain the rationale behind the failure to comply with disability laws. The researcher further had an opportunity to interview employees with disabilities to ascertain the level of transformation with regard to disability inclusion in the

³⁴⁰ T Houe & E Murphy ‘A study of logistics networks: The value of a qualitative approach’ (2017) 14 *European Management Review* 5.

³⁴¹ Houe & Murphy note 340 (above) 5.

³⁴² P Bansal, W K Smith & E Vaara ‘New ways of seeing through qualitative research’ (2018) 61 (4) *Academy of Management Journal* 1190.

³⁴³ Bansal, Smith & Vaara note 342 (above) 1190.

³⁴⁴ A van den Berg & M Struwig ‘Guidelines for researchers using an adapted consensual qualitative research approach in management research’ (2017) 15 (2) *The Electronic Journal of Business Research Methods* 110.

³⁴⁵ M J Turpin, M Asano & M Finlayson ‘Combining qualitative and quantitative data collection and analysis methods in understanding multiple sclerosis fatigue management’ (2015) 14 (2) *International Journal of Qualitative Methods* 55.

Municipality. Consequently, through qualitative research technique, the researcher was able to engage personally with leaders of the Municipality to get a better understanding of the challenges they encounter which hinder disability inclusion and transformation in the Municipality.

2.7 Research Strategies

Research strategy is defined as an action plan by a researcher detailing how the research will go about answering the research question.³⁴⁶ It is a procedural connection between the research idea and the choice of method for data collection and analysis.³⁴⁷ Generally, there are two research strategies, namely, the positivist approach and the phenomenological approach.³⁴⁸ Positivism is a research strategy that is premised on the notion that the reality and actual facts are not dependent on the observer.³⁴⁹ It underscores that the actual, accurate and truthful phenomenon can be examined scientifically and be clarified by way of a logical analysis.³⁵⁰ It is premised on the idea that the researcher is capable of withholding his or her own views on the subject thereby ensuring objectivity in the research.³⁵¹ Thus, it can be said that positivism is a research approach that utilises experiential techniques and comprehensive quantitative analysis to develop the data.³⁵²

On the contrary, the phenomenological approach is concerned with human lived experience in a historical and natural setting.³⁵³ It has been said that in order for the researcher to get an in-depth comprehension of the particular phenomenon, the researcher should, through the phenomenological approach, explore lived experiences.³⁵⁴ The basis of such approach is premised on the idea that individual experience is fundamentally subjective in nature, thus, it should be explored in the context in which people live.³⁵⁵ The aim of phenomenological strategy is to gather comprehensively the meaning of occurrences and the intention of human behaviour.³⁵⁶ Thus, in phenomenological research, the “reality is determined by the lived

³⁴⁶ Saunders, Lewis & Thornhill note 220 (above) 177.

³⁴⁷ Saunders, Lewis & Thornhill note 220 (above) 177.

³⁴⁸ A A Aliyu, M U Bello, R Kassim & D Martin ‘Positivists and non-positivists paradigm in social science research: Conflicting paradigms or perfect partners?’ (2014) 4 (3) *Journal of Management and Sustainability* 81.

³⁴⁹ Aliyu, Bello, Kassim & Martin note 348 (above) 81.

³⁵⁰ Aliyu, Bello, Kassim & Martin note 348 (above) 83.

³⁵¹ M Alessandrini ‘Non-positivist approaches to research in the third sector: Empowered policy making’ (2013) *International Society for Third-sector Research* 4 www.istr.org accessed on 15 January 2019.

³⁵² W I Al-Habil ‘Positivist and phenomenological research in American public administration’ (2011) 34 (14) *International Journal of Public Administration* 948.

³⁵³ Al-Habil note 352 (above) 950.

³⁵⁴ Al-Habil note 352 (above) 950.

³⁵⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 128.

³⁵⁶ Al-Habil note 352 (above) 951.

experiences, values, norms, culture, and social background of both the researchers and the observed people”.³⁵⁷

Positivist researchers emphasise quantitative data collection through experimental, scientific and survey research strategies, while phenomenological researchers prefer qualitative data by utilising, inter alia, case studies, action research, ethnography, grounded theory, focus groups and interviews.³⁵⁸ This study utilised the phenomenological approach by conducting interviews to answer the research questions. In this context, the subsequent section explores phenomenological strategies.

2.7.1 Phenomenological research strategies

2.7.1.1 Case studies

Case studies focus on gathering data on a particular object, event or activity.³⁵⁹ The rationale behind a case study is for a researcher to obtain an entire perspective of a problem through exploring real life phenomena from different positions using various data collection techniques.³⁶⁰ Case study research is usually utilised when the limits between the situation being investigated and the setting within which it is being investigated are not obvious.³⁶¹ Thus, understanding the setting within which the case study is being investigated is an important aspect in a case study research.³⁶² Through case studies, both qualitative and quantitative data can be produced for scrutiny and clarification.³⁶³ Case study technique has the potential to develop an accurate and deeper understanding of a particular real life phenomenon from in-depth research, resulting in sound experimental descriptions and the advancement of philosophy.³⁶⁴

In this study, the researcher targeted specific leaders tasked with implementing disability inclusion and equity strategies in the Municipality. To respond successfully to the research question, the researcher needed to engage relevant leaders and some employees with disabilities to gauge whether the information given by the leaders tied to encounters of the employees with disabilities. Therefore, case studies were not utilised in this study.

³⁵⁷ Al-Habil note 352 (above) 950.

³⁵⁸ Saunders, Lewis & Thornhill note 220 (above) 168 and 178.

³⁵⁹ Sekaran & Bougie note 222 (above) 103.

³⁶⁰ Sekaran & Bougie note 222 (above) 103.

³⁶¹ Saunders, Lewis & Thornhill note 220 (above) 185.

³⁶² Saunders, Lewis & Thornhill note 220 (above) 185.

³⁶³ Sekaran & Bougie note 222 (above) 103.

³⁶⁴ Saunders, Lewis & Thornhill note 220 (above) 185.

2.7.1.2 Action plan

Action research is a suitable method for effecting planned changes in an organisation³⁶⁵ and for developing solutions to the challenges facing the organisation through a participative and collaborative approach.³⁶⁶ In such research, the researcher begins with a recognised problem and collects pertinent data to afford a provisional solution to the problem.³⁶⁷ Such provisional solution is then implemented taking into consideration that it is temporary and may have unintended consequences.³⁶⁸ The effects of such implementation are then evaluated and diagnosed to allow the research to continue further until such time that the challenge is completely solved.³⁶⁹ Therefore, action plan study is a continuous developing assignment with “interplay among problem, solution, effects or consequences, and new solution”.³⁷⁰

Action research is unique because it is action driven with particular emphasis on organisational change.³⁷¹ This research strategy is directed at change management and is continuous in nature. While change management is among the key aspects on the inclusion of persons with disabilities, the emphasis of this study is on transformational leadership and implementation of disability laws in the workplace. The study has an end date and is not continuous in nature. Consequently, this research strategy was found not to be useful in this study.

2.7.1.3 Ethnography

Ethnography is utilised when a study investigates the culture or social aspect of a particular group.³⁷² It has been described as express explanation of individuals or a cultural group.³⁷³ The main aim is learn from people rather than scrutinising them.³⁷⁴ In this regard, the researcher becomes part of that culture or environment, observes what people ordinarily do, records and analyses the data gathered.³⁷⁵ Ethnography has been found to be time consuming as it happens over a long period of time.³⁷⁶ Despite that, ethnographic studies are valuable where individuals in a particular environment are reluctant to share their views or feelings.³⁷⁷

³⁶⁵ Sekaran & Bougie note 222 (above) 103.

³⁶⁶ Saunders, Lewis & Thornhill note 220 (above) 189.

³⁶⁷ Sekaran & Bougie note 222 (above) 103.

³⁶⁸ Sekaran & Bougie note 222 (above) 103.

³⁶⁹ Sekaran & Bougie note 222 (above) 103.

³⁷⁰ Sekaran & Bougie note 222 (above) 103.

³⁷¹ Saunders & Lewis note 216 (above) 124.

³⁷² Saunders, Lewis & Thornhill note 220 (above) 185.

³⁷³ Saunders, Lewis & Thornhill note 220 (above) 185.

³⁷⁴ Saunders & Lewis note 216 (above) 124.

³⁷⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 129.

³⁷⁶ Saunders & Lewis note 216 (above) 126.

³⁷⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 129.

Thus, it can be said that ethnography focuses on culture and explores culture from within.³⁷⁸ While culture might be a factor in the non-implementation of disability laws in the workplace, the focus of this study is not to explore culture or to examine people in the workplace. Instead, this study examines the role and impact of transformational leadership in the execution of disability policies in the workplace. Consequently, this research strategy was found not to be an effective approach to respond to the research question.

2.7.1.4 Grounded theory

Grounded theory has been described as a “systematic set of procedures to develop an inductively derived theory from the data”.³⁷⁹ It is an inductive study in which the researcher asks questions based on participants’ responses or from historical records.³⁸⁰ Critical tools for grounded theory “are theoretical sampling, coding and constant comparison”.³⁸¹ Theoretical sampling is --

“the process of data collection for generating theory whereby the analyst jointly collects, codes and analyses the data and decides what data to collect next and where to find them in order to develop his theory as it emerges”.³⁸²

Thus, the researcher continually compares data to other data and once the new data has developed, the researcher compares the new information with the theory.³⁸³ If there is no nexus between the data and the emerged theory, “then groupings and theories have to be adapted until the research groupings and theory fit the data”.³⁸⁴ There are generally three characteristics in a research problem that necessitate the use of grounded theory.³⁸⁵ The first characteristic is that the research should be “interpretivist”, secondly, it should be about multifaceted social practices and lastly, there should be no existing philosophies about the subject under study.³⁸⁶ Therefore, grounded theory has been found to be more useful when the intention of the study is to develop a philosophy.³⁸⁷ It appears that this research strategy would be more suitable when the study uses the mixed research method as it integrates quantitative and qualitative

³⁷⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 130.

³⁷⁹ Sekaran & Bougie note 222 (above) 103.

³⁸⁰ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 130.

³⁸¹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 130.

³⁸² Sekaran & Bougie note 222 (above) 103.

³⁸³ Sekaran & Bougie note 222 (above) 103.

³⁸⁴ Sekaran & Bougie note 222 (above) 103.

³⁸⁵ D Levy ‘Qualitative methodology and grounded theory in property research’ (2006) 12 (4) *Pacific Rim Property Research Journal* 378 doi: 10.1080/14445921.2006.11104216 accessed on 15 January 2019.

³⁸⁶ Levy note 385 (above) 378.

³⁸⁷ Levy note 385 (above) 378.

perspectives in the action process. Since this study is qualitative in nature, this research strategy was rejected.

2.7.1.5 Focus groups

Focus group discussions are commonly utilised to gather information from a group of individuals through brainstorming sessions on how they perceive a particular topic.³⁸⁸ Focus groups are usually used in management science to gather a particular sample's perceptions towards an advertised product.³⁸⁹ From a social science perspective, focus group interviews are used to examine subjects who have little information or where there is a need for views from a particular sample (eg gender, culture or age group).³⁹⁰ To some extent, participants must have expertise on the phenomenon in order to participate fully in the study.³⁹¹ Generally, such sessions "take place in small groups of between six to eight individuals, representing the group of interest, and are directed by a moderator who controls the flow of the discussion".³⁹² Focus groups have been found to produce genuine opinions on the subject under investigation.³⁹³ Nonetheless, focus group discussions are not a suitable technique to gather data when the subject matter is delicate and the participants are unlikely to converse freely while there are other people present.³⁹⁴

Focus groups were found not to be suitable in this study due to the sensitivity of the topic and to ensure confidentiality and anonymity. The researcher needed participants to talk freely while ensuring that no one was harmed in the process. For example, employees with disabilities would not want publicly to share their thoughts about the Municipality and its leaders on the issue of disability inclusion. At the same time, some leaders would not speak freely in front of colleagues whom they believed may be responsible for non-compliance with disability related laws by the Municipality. Consequently, focus groups were found not to be suitable in this study.

2.7.1.6 Interviews

According to Levy, where the subject under study is sensitive and complex in nature, individual in-depth interviews are a most effective method to collect the data and tend to create an

³⁸⁸ Levy note 385 (above) 380.

³⁸⁹ Struwing & Stead note 145 (above) 103.

³⁹⁰ Struwing & Stead note 145 (above) 103.

³⁹¹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 252.

³⁹² Levy note 385 (above) 380.

³⁹³ Sekaran & Bougie note 222 (above) 113.

³⁹⁴ Levy note 385 (above) 380.

environment which is conducive to allowing participants to talk freely and frankly about their experiences.³⁹⁵ Other advantages include that participants concentrate on the questions and are encouraged to express personal views on the subject.³⁹⁶ Interviews further afford the researcher the opportunity to observe non-verbal reaction.³⁹⁷ Interviews are recorded thereby producing comprehensive and enlightening data.³⁹⁸ Consequently, it can be said that in-depth interviews are an effective data collection strategy as they allow the participants to share their personal experiences on the subject thereby producing valid and reliable data.

Interviews were found to be the most suitable method to answer the research question. As indicated above, the study is sensitive and complex in nature and requires in-depth interviews in order to collect data. In such process, the researcher is able to ask follow-up questions and gather data from people who are directly linked to the research question, thereby producing relevant and reliable data. The rationale for utilising interviews is broadly explored below under data collection methods. Since the plan of action has been explored, the process of selecting participants to participate in the study is now examined.

2.8 Sampling Strategy

Sampling is the process whereby the researcher chooses an adequate number of participants from the population with the intention to understand its characteristics thereby making an informed conclusion about the entire population.³⁹⁹ In other words, through individual participants, the researcher is able to measure particular elements and make a generalised assumption as to their applicability to the entire population.⁴⁰⁰ Sampling is used to draw an inference about a particular group of people or to make a generalisation about the current theory on the subject under investigation.⁴⁰¹ Generally, “there are two broad types of sampling techniques being: probability or random sampling and non-probability or non-random sampling”.⁴⁰²

³⁹⁵ Levy note 385 (above) 380.

³⁹⁶ Levy note 385 (above) 380.

³⁹⁷ Levy note 385 (above) 380.

³⁹⁸ Levy note 385 (above) 380.

³⁹⁹ Sekaran & Bougie note 222 (above) 244.

⁴⁰⁰ Cooper, Schindler & Sharma note 203 (above) 413-14.

⁴⁰¹ H Taherdoost ‘Sampling methods in research methodology: How to choose a sampling technique for research’ (2016) 5 (2) *International Journal of Academic Research in Management* 20.

⁴⁰² Taherdoost note 401 (above) 20.

2.8.1 Probability sampling

Probability sampling basically means that each elements in the population or targeted group will, on an equal basis, be included in the sample.⁴⁰³ Such an exercise can be done through constructing a sampling frame and utilising a “random number generation compute program to select a sample from the sampling frame”.⁴⁰⁴ The sampling frame consists of a “list of all cases in the target population from which the sample will be drawn”.⁴⁰⁵ Thus, in a probability sampling there is a chance or probability “of being chosen in the sample”.⁴⁰⁶ While probability sampling has been seen to be impartial, it has been criticised for being time consuming and producing sampling errors.⁴⁰⁷ Since in this study, the researcher was targeting particular leaders and specifically focusing on persons with disabilities in the workplace, probability sampling was found not to be a suitable sampling method. Instead non-probability sampling, which is explored below, was found to be useful.

2.8.2 Non-probability sampling

In a non-probability sampling, the likelihood of who will be chosen in a particular population is unknown as the researcher relies on personal judgment to select the sampling group.⁴⁰⁸ Non-probability sampling is usually linked with case studies and qualitative research designs.⁴⁰⁹ In relation to qualitative research, the case study focuses on a small specimen and is meant to explore the actual situation without making references to statistical analysis of the population.⁴¹⁰ Consequently, the sample size does not need to be representative or random, rather what is required is a clear reasoning behind choosing or including particular individuals to participate in the study.⁴¹¹

With regard to suitable sample size, there are no specific rules as is the case with probability sampling.⁴¹² Instead, the determining factors are the research questions and objectives, particularly what the researcher intends to find out, what will be useful and credible and what research can be completed with the available resources.⁴¹³ It has been said that while it would

⁴⁰³ Taherdoost note 401 (above) 20.

⁴⁰⁴ Taherdoost note 401 (above) 20.

⁴⁰⁵ Saunders, Lewis & Thornhill note 220 (above) 277.

⁴⁰⁶ Sekaran & Bougie note 222 (above) 245.

⁴⁰⁷ Taherdoost note 401 (above) 20-1.

⁴⁰⁸ Struwing & Stead note 145 (above) 116.

⁴⁰⁹ Taherdoost note 401 (above) 22.

⁴¹⁰ Taherdoost note 401 (above) 22.

⁴¹¹ Taherdoost note 401 (above) 22.

⁴¹² Saunders, Lewis & Thornhill note 220 (above) 293.

⁴¹³ Saunders, Lewis & Thornhill note 220 (above) 293.

be “statistically inappropriate” to assume that the chosen data is a true reflection of the population, there are instances where non-probability sampling will be suitable for the researcher’s needs.⁴¹⁴ Such approach is more appropriate when the researcher intends to collect qualitative data through semi-structured or unstructured interviews.⁴¹⁵

As indicated above, the non-probability sampling technique was found to be useful in this research as the intention was to examine the real-life situation why persons with disabilities are not adequately included in the workplace as required by disability policies. In addition, the study explores the level of awareness of municipal leaders on the role they should play as transformational leaders towards accommodating persons with disabilities in the Municipality. Thus, the study targeted leaders involved in disability policy implementation in the Municipality in order to get information on the critical factors affecting the implementation of disability laws in the Municipality without the need for statistical analysis. Further to that, non-probability sampling was found to be useful on qualitative data collection, particularly on assessing the effect of transformational leadership on the execution of disability laws in the Municipality. Consequently, through non-probability sampling, leaders were chosen based on the research question and objectives and on usefulness to the researcher’s needs.

Once the researcher has decided on the appropriate sample size, the researcher should select the most appropriate sampling technique to fully answer the research question from various non-probability sampling techniques which comprise “quota sampling, snowball sampling, purposive or judgmental sampling and convenience sampling”.⁴¹⁶ The aforesaid non-probability sampling techniques are now dealt with.

2.8.3 Non-probability sampling techniques

2.8.3.1 Quota sampling

Quota sampling is completely non-random and is usually utilised “for structured interviews as part of the survey strategy”.⁴¹⁷ The selection is done in accordance with the characteristics of the participants (eg gender, age or socio-economic status).⁴¹⁸ Thus, in order for participants to be included in quota sampling, they have to meet particular criteria.⁴¹⁹ Quota sampling is founded on the principle that “the sample will represent the target population as the variability

⁴¹⁴ Struwing & Stead note 145 (above) 118.

⁴¹⁵ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴¹⁶ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴¹⁷ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴¹⁸ Struwing & Stead note 145 (above) 116.

⁴¹⁹ Struwing & Stead note 145 (above) 116.

in the sample for various quota variables is the same as the target population.⁴²⁰ It is a type of stratified sample as it is completely non-random in nature”.⁴²¹ Quota sampling is not costly.⁴²² It does not require a sampling frame and is normally used for large populations.⁴²³ What determines the sample size is the necessity to have enough responses for purposes of statistical scrutiny.⁴²⁴ Quite often, the sample size ranges between 2000 and 5000.⁴²⁵

Quota sampling was not employed in this research as the researcher used semi-structured interviews and not surveys. The criteria for selecting the participants were not centred on particular features, instead leaders responsible for implementing disability policies were targeted. In addition, the study is qualitative and not quantitative in nature and does not need responses for statistical analysis. In this study, the sample size was small as compared to the general size required in quota sampling. On those bases, this sampling technique was not utilised.

2.8.3.2 Snowball sampling

Snowball sampling is the process whereby the researcher supplements participants as per the information received from the initial participants who were chosen based on the probability technique.⁴²⁶ It is further used where it is problematic to classify participants thus relying on “referral networks”.⁴²⁷ This sampling method is usual utilised to find individuals of uncommon populations through recommendations by the participants.⁴²⁸ For this study the researcher managed to secure all participants without the need to supplement any information. Hence this sampling method was not found to be useful in this study.

2.8.3.3 Purposive sampling

Purposive sampling has been described as “non-random ways of ensuring that particular categories of cases within a sampling universe are represented in the final sample of a project”.⁴²⁹ Purposive sampling, as per Etikan et al, is a method whereby participants are

⁴²⁰ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²¹ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²² Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²³ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²⁴ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²⁵ Saunders, Lewis & Thornhill note 220 (above) 293.

⁴²⁶ Struwing & Stead note 145 (above) 118.

⁴²⁷ Cooper, Schindler & Sharma note 203 (above) 438.

⁴²⁸ Struwing & Stead note 145 (above) 118.

⁴²⁹ Robinson note 142 (above) 32.

purposefully chosen because of the qualities they possesses.⁴³⁰ In other words, the researcher deliberately involves participants in the sample because the researcher believes that such participants deserve to be included in the study.⁴³¹ The reason for utilising a purposive approach is based on researcher's assumption and prior theoretical knowledge of the topic under scrutiny, that particular individuals may have diverse viewpoints on the issue in question and their attendance and contribution would contribute to unpacking such views.⁴³²

In other words, the participants are purposefully chosen because they have information that cannot be obtained from others.⁴³³ This view is supported by Bernard who found that purposive sampling may also be called judgment sampling, because the researcher may deliberately choose the participants so that the researcher can decide what needs to be known and who can provide the information related to the topic.⁴³⁴ Consequently, the selection of the participants depends on the researcher's judgment.⁴³⁵

Purposive sampling was found to be useful in this study, particularly on the identification of executive leaders responsible for developing strategies and ensuring inclusion of persons with disabilities in the Municipality. In this regard, the leaders were selected based on their decision-making powers which influence day-to-day operations in their respective departments and the fact that they are tasked to ensure transformation and compliance with the EEA which promotes disability inclusion and transformation in the workplace. Additionally, they are expected to promote and protect human rights and to develop and drive an inclusive workplace culture through change management programmes. Some of the leaders selected are involved in the formulation of strategy for inclusion of persons with disabilities in the Municipality.

The researcher further selected leaders involved in infrastructure development who are tasked to ensure that buildings are conducive for all employees including persons with disabilities. Also selected were leaders involved in occupational health, who assist the Municipality on disability matters from an occupational health point of view. Some leaders are involved in education and training as well as change management in the Municipality. Rutberg and

⁴³⁰ I Etikan, S Musa & R Alkassim 'Comparison of convenience sampling and purposive sampling' (2016) 5 (1) *American Journal of Theoretical and Applied Statistics* 4.

⁴³¹ Taherdoost note 401 (above) 23.

⁴³² Robinson note 142 (above) 32.

⁴³³ Taherdoost note 401 (above) 23.

⁴³⁴ H R Bernard *Research Methods in Anthropology: Qualitative and Quantitative Methods* (California AltaMira Press 2002) 3 ed.

⁴³⁵ Struwing & Stead note 145 (above) 116.

Bouikidis assert that participants in qualitative research need to be knowledgeable on the matter being explored.⁴³⁶ Thus, the researcher deliberately selected the sample according to their influence on driving transformation and disability inclusion in the Municipality which makes them relevant to answer the research questions. In addition, leaders were chosen purposively as they are relevant in achieving the research aim and objectives.

Having said that, Acharya et al found that purposive sampling is a method mainly utilised in qualitative research since the participants chosen are the right target to achieve the research objective.⁴³⁷ Supporting this view, Etikan et al contend that the participants selected to participate in the study must be competent and be knowledgeable and have an interest in the subject.⁴³⁸ The researcher chose to interview the selected participants so that they could provide pertinent responses on the subject and assist the researcher to fulfil the objectives of the study.

For data collection, “purposive sampling and face-to-face semi-structured in-depth interviews” must be utilised to obtain descriptive information from the relevant sample based on individual encounters.⁴³⁹ According to Meadows, “the aim of qualitative research is to identify the different behaviours and attitudes of participants in relation to a particular subject”.⁴⁴⁰ Further that “it is important that the participants for in-depth interviews and discussion groups are selected purposively so as to represent a wide spectrum of these views and experiences and to cover the full range of sub-groups so as to identify, explore and explain variations in the nature of the views and experiences between them”.⁴⁴¹ It is for these reasons that the researcher used purposive sampling to identify leaders to participate in the study.

It has been said that a suitable sample is crucial for ensuring reliable and valid data.⁴⁴² It has further been said that the sample must have pertinent and appropriate participants with information on the topic.⁴⁴³ In this regard, the researcher selected the sample based on the relevancy to the research. The researcher interviewed participants who are directly involved and tasked with developing strategies for disability inclusion and ensuring effective

⁴³⁶ S Rutberg & C D Bouikidis ‘Focusing on the fundamentals: A simplistic differentiation between qualitative and quantitative research’ (2018) 45 (2) *Nephrology Nursing Journal* 211.

⁴³⁷ A S Acharya, A Prakash, A Nigam & P Saxena ‘Sampling: Why and how of it?’ (2013) 4 (2) *Indian Journal of Medical Specialities* 330.

⁴³⁸ Etikan, Musa & Alkassim note 430 (above) 2.

⁴³⁹ Meadows note 144 (above) 466.

⁴⁴⁰ Meadows note 144 (above) 466.

⁴⁴¹ Meadows note 144 (above) 466.

⁴⁴² J M Morse, M Barrett, M Mayan, K Olson & J Spiers ‘Verification strategies for establishing reliability and validity in qualitative research’ (2002) 1 (2) *International Journal of Qualitative Methods* 12.

⁴⁴³ Morse, Barret, Mayan, Olson & Spiers note 442 (above) 12.

implementation of disability laws in the Municipality. The researcher further interviewed employees with disabilities employed by the Municipality as they are directly linked to the research topic. This arrangement ensured that all-embracing and reliable data was gathered.

In this context, the Municipality has various departments and leaders; however, twelve leaders were selected based on their positions and departments, taking into consideration their role in disability inclusion and policy implementation in the Municipality. Thus, the sample size was determined based on the leader’s role in transformation and disability inclusion, with a view to developing a new philosophy that will enhance disability inclusion in the Municipality. In this regard Whittaker asserts that --

“an adequate sample size in a qualitative research is one that permits -- by virtue of not too large -- the deep case orientated analysis that is hallmark of all qualitative inquiry, and that result in – by virtue of not being too small -- a new and richly textured understanding of experience”.⁴⁴⁴

The leaders participated in the interviews with the researcher and gave their views and perspectives on the topic. The interviews were conducted on the municipality’s premises in the various departments where the participants were based. Some leaders opted to conduct interviews outside their offices. The interviews took between 45 minutes and an hour each and took place in June, July and August 2018. Detailed information on the interviews is explored in chapter five. The table below indicates the information pertaining to the leaders who participated in the interviews.

Table 2.8.3.1.1: Details of participants (leaders)

Participant	Department
L1	Human Resources
L2	Municipal Academy/Skills Development
L3	Organisational Development & Change Management
L4	Labour Relations (HR)
L5	Human Resources
L6	Employment Equity (HR)
L7	Human Resources

⁴⁴⁴ Whittaker note 160 (above) 252.

L8	Human Resources-Services
L9	City Integrity
L10	Engineering & Infrastructure
L11	Occupational Health
L12	Office of the City Manager

Most participants are at the senior management echelon, with some based in the office of the City Manager. Thus, these participants have the highest decision-making authority, including decision making involving persons with disabilities in the Municipality. Therefore, it is submitted that the data gathered during the qualitative research interviews with municipal leaders is reliable and trustworthy. The researcher broadly explores the dependability and validity of the data later on in this research.

2.8.3.4 Convenience sampling

Convenience sampling is selected based accessibility of participants.⁴⁴⁵ The participants are selected based on their convenience and preparedness to cooperate and partake in the research.⁴⁴⁶ In this context, Struwing and Stead assert that convenience sampling should only be utilised in “special cases” -- especially when the population has common characteristics.⁴⁴⁷ In this study, convenience sampling was used to identify employees with disabilities to partake in the research. Due to the nature and sensitivity of the research it was important to select employees with disabilities based on their availability and willingness to partake in the study. It was further important to protect the rights of employees with disabilities and to safeguard them against prejudiced as a result of the interviews.

The Municipality has a disability champion who assisted in identifying employees with disabilities to participate in the study. This assisted in ensuring that employees with disabilities participated freely and willingly without any reservations. It is important to state that the researcher randomly selected employees with disabilities from a suggested list to minimise biasness in the study. The employees were selected to share their experiences with the Municipality as their employer, particularly on the role of the municipality in transformation and disability inclusion. Convenience sampling has been found to be helpful to the researcher

⁴⁴⁵ Struwing & Stead note 145 (above) 116.

⁴⁴⁶ Struwing & Stead note 145 (above) 116.

⁴⁴⁷ Struwing & Stead note 145 (above) 116.

since the participants were selected according to their accessibility and willingness to participate in the interviews.⁴⁴⁸

Emerson asserts that in convenience sampling, participants who are relevant to the study are selected in any feasible way.⁴⁴⁹ Convenience sampling has further been found to “meet purposive sample selection criteria that are relevant to the research aim”.⁴⁵⁰ In other words, convenience sampling is used to recognise people who are aligned to the nature of the study. In this case, the employees interviewed are employees with disabilities who often meet to discuss their challenges in the workplace. The researcher was alerted to such meetings by the disability champion. They further have commonalities in that they are employees with disabilities working for the Municipality. Thus, convenience sampling was the appropriate method to identify employees with disabilities in the Municipality.

Convenience sampling therefore assisted in collecting information that gave the researcher a better insight of the encounters confronted by employees with disabilities in the Municipality. The researcher interviewed various employees with disabilities, without being specific to the type of disability, to share their views on how the working environment had been transformed to include persons with disabilities. The municipality employs employees with disabilities in various departments. Five employees with disabilities were selected to participate in this study based on their convenience and enthusiasm to contribute to the research. The sample was selected with the intention of either confirming or denying the perspective of the leaders.

The employees participated in the interviews with the researcher and gave their views and perspectives on the topic, particularly on transformation and protection of the rights of persons with disabilities by the Municipality. The interviews were conducted on the Municipality’s premises in the various departments where the participants are based. The interviews took about 30 minutes each and took place between July and August 2018. The participants did not disclose their disabilities. The table below indicates the information pertaining to employees with disabilities who participated in the interviews.

⁴⁴⁸ Struwing & Stead note 145 (above) 116.

⁴⁴⁹ R W Emerson ‘Convenience sampling, random sampling and snowball sampling: How does sampling affect the validity of the research’ (2015) 109 (2) *Journal of Visual Impairment & Blindness* 166.

⁴⁵⁰ Saunders, Lewis & Thornhill note 220 (above) 304.

Table 2.8.3.1.2: Details of participants (Employees with disabilities)

Participant	Department/unit
E1	Engineering
E2	Electricity
E3	Human Resources
E4	Human Resources
E5	Human Resources

2.9 Data Collection Methods

Data can be gathered in various ways.⁴⁵¹ These include, inter alia, interviews, observation of individuals and events and questionnaires.⁴⁵² Choosing a technique of data collection hinges on the availability of facilities, the extent of the accuracy required in the study, the expertise of the researcher, the duration of the study and the budget for data gathering.⁴⁵³ Creswell identifies the four basic types of collecting data in qualitative research, being observation, interviews, documents and audio and visual materials.⁴⁵⁴ In a qualitative observation, the researcher basically goes to the field and observes the actions and behaviour of individuals in a research field and generates field notes.⁴⁵⁵

The observational method is mostly suitable for research that does not require participants to be directly engaged on the subject.⁴⁵⁶ Observational data has been found to be impartial and valuable.⁴⁵⁷ However, the observational method has been found to be time consuming and requires the researcher to be physically present for long periods of time.⁴⁵⁸ Observations are open-ended and the researcher asks general questions and allows respondents freely to share their views.⁴⁵⁹ Questionnaires are arranged questions developed by the researcher in which the participants record their responses. They have been found to be useful when the study is descriptive and explanatory in nature. While they are less expensive, they may bring challenges on non-responses from the participants and errors. They are generally designed to collect large

⁴⁵¹ Sekaran & Bougie note 222 (above) 116.

⁴⁵² Sekaran & Bougie note 222 (above) 116.

⁴⁵³ Sekaran & Bougie note 222 (above) 116.

⁴⁵⁴ Creswell note 260 (above) 190.

⁴⁵⁵ Creswell note 260 (above) 190.

⁴⁵⁶ Sekaran & Bougie note 222 (above) 130.

⁴⁵⁷ Sekaran & Bougie note 222 (above) 130.

⁴⁵⁸ Sekaran & Bougie note 222 (above) 142-3.

⁴⁵⁹ Creswell note 260 (above) 190.

amounts of quantitative data. Since this study is exploratory and not scientific in nature, this method was found not to be useful for data collection. Instead, interviews were found to be relevant and useful.

Basically, there are five different types of interviews in research, being one-to-one, group, telephone, online and photo-elicitation interviews.⁴⁶⁰ A one-to-one interview is an in-depth interview where the researcher engages one respondent at a time.⁴⁶¹ In such interviews, the researcher has the chance to create a connection with the interviewee which assists the researcher fully to engage with the interviewee on the particular subject under investigation.⁴⁶² Such interviews necessitate confidentiality, openness and honesty between the researcher and the interviewee.⁴⁶³ Qualitative interviews have been found to be of value in that the participants personally share their own views and feelings.⁴⁶⁴ They have also been found to be of value in that they develop a holistic overview of the subject, examine expressions and provide detailed opinions of participants.⁴⁶⁵

Thus, during the interview process, the researcher has the opportunity to observe participant behaviour, including the way in which the participant engages and responds to questions, and to record verbal and non-verbal behaviours.⁴⁶⁶ In addition, the researcher gets the opportunity to probe (not in a challenging way) the responses from the participant for clarification and more details based on the answers elicited from questions already asked.⁴⁶⁷ Since during the interview process the interviewee becomes the only focus of the researcher, the interviewee has the opportunity and is given enough time to share his or her individual experiences and voice his or her views on the subject being researched.⁴⁶⁸

In group interviews the researcher conducts the interview with a group of participants simultaneously.⁴⁶⁹ In a group interview, the researcher cannot build rapport which may lead into the interviewee not providing more information on the subject, which is possible in a one-

⁴⁶⁰ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 244.

⁴⁶¹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 244.

⁴⁶² Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁶³ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁶⁴ H Alshenqeeti 'Interviewing as a data collection method: A critical review' (2014) 3 (1) *English Linguistic Research* 39 doi: 10.5430/elr.v3n1p39.

⁴⁶⁵ Alshenqeeti note 464 (above) 39.

⁴⁶⁶ Cooper, Schindler & Sharma note 203 (above) 193.

⁴⁶⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁶⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁶⁹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

to-one interview.⁴⁷⁰ Setia describes focus group dialogues as “a method of group interview or discussion, in which more than one participant is interviewed at the same time and is usually led by a facilitator”.⁴⁷¹ They are commonly used to understand issues of communities or group dynamics.⁴⁷² Whilst the aforementioned types of qualitative methods are relevant to a specific research objective for any researcher, it is important to note that they both have an effect in that they generate outcomes such as field notes, audio recordings and transcripts that assist the researcher to gather data.⁴⁷³

A telephone interview, as the name suggests, is an interview conducted over the phone.⁴⁷⁴ Besides being convenient to both interviewer and interviewee with regard to travelling, the researcher cannot observe participants although such an interview allows for some degree of anonymity as the researcher does not physically see the respondent.⁴⁷⁵ Online interviews are conducted through online systems like emails and web-conferencing software.⁴⁷⁶ A photo-elicitation interview is one where the researcher engages participants through exploring and analysing a photograph or a series of photographs.⁴⁷⁷ Thus in such interviews, the central point of discussion is guided by the photos.⁴⁷⁸

Setia asserts that, ordinarily, the techniques employed “in qualitative research are in-depth interviews and focus group discussion”.⁴⁷⁹ In-depth interviews have been described as face-to-face interviews, where the researcher asks open-ended questions and has a chance to probe participants based on their responses.⁴⁸⁰ In-depth interviews have been found to be useful in that the participants can speak freely on their views without feeling intimidated.⁴⁸¹ Thus, detailed interviews are most appropriate for gathering data if the researcher is exploring a sensitive topic and wants to explore the participants’ personal history, perceptions, perspectives and experiences. In this study, interviews were utilised to gather the information. In this regard,

⁴⁷⁰ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷¹ Setia note 433 (above) 368.

⁴⁷² Setia note 433 (above) 368.

⁴⁷³ Setia note 433 (above) 368.

⁴⁷⁴ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷⁶ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 245.

⁴⁷⁹ Setia note 433 (above) 368.

⁴⁸⁰ Setia note 433 (above) 368.

⁴⁸¹ Setia note 433 (above) 368.

the following provides the reasons for utilising interviews as a technique to gather data in this study.

2.9.1 Reasons for using interviews as a data collection method

The rationale behind using in-depth interviews to gather the data was to get the perspectives of the participants on the subject. As indicated in chapter one, the public sector has been unsuccessful in achieving the required targets of persons with disabilities since South Africa attained democracy. Reaching required targets and transformation require human conduct that is aligned to transformation, justice and fairness. Since this issue is social in nature, it was necessary to use in-depth interviews to collect data to elicit the views of the relevant people on the subject. As mentioned above, in this study the researcher interviewed leaders who are directly involved in disability inclusion in the Ethekewini Municipality.

In ensuring reliability, validity and objectivity of the study, the researcher asked the participants to answer the questions based on their own experience and not voice any opinions. In other words, the researcher emphasised to the participants that they had to answer the questions and that, as the researcher, neutrality was crucial during the qualitative research interviews. It has been said that one of the possible threats to the rationality of qualitative research interviews is researcher objectivity.⁴⁸² In this regard, Johnson summarises researcher's bias as follows:

“It is true that the problem of researcher bias is frequently an issue because qualitative research is open ended and less structured than quantitative research. This is because qualitative research tends to be exploratory. (One would be remiss, however, to think that the researcher bias is never a problem in quantitative research!) Research bias tends to result from a selective observation and selective recording of information, and also from allowing one's personal views and perspectives to affect how data are interpreted and how the research is conducted.”⁴⁸³

Therefore, the researcher was cautious of personal bias during the interviews and remained neutral throughout the process to guarantee that the legitimacy of the information was not tainted. Having said that, the interviews were effective and valuable for this research as the researcher was able to gauge objectively how serious the participants were about the subject by reading their body language and evaluating their understanding of the subject. The interviews motivated and encouraged the researcher through learning the partakers' views on the topic and allowed for the researcher to probe more on the subject as impartial listener. The researcher did not lead the participants to give responses that may have been more appropriate

⁴⁸² R B Johnson 'Examining the validity structure of qualitative research' (1997) 118 (2) *Education Journal* 283.

⁴⁸³ Johnson note 482 (above) 283-4.

for the researcher; the participants had the opportunity to express their opinions on the subject without having the researcher approve or disapprove of their responses.

The researcher arranged for all the interviews to be conducted face-to-face to allow for one individual to be interviewed at a time and also to allow the participants time to engage the researcher on the subject. In-depth individual interviews were more beneficial to gauge how the participants put into perspective and gave meaning to what happens within their surroundings, unlike focus groups which examine the group norms of society or the communities they live in.

The researcher recorded the interviews through digital recording in order to secure accurate data. It has been said that “in order to have the interview data captured more effectively, recording of the interviews is considered an appropriate choice”.⁴⁸⁴ The rationale behind this contention is that the researcher is able to analyse accurate data at a later stage by referring to the recordings. It further helps the researcher to develop appropriate themes using accurate information and by quoting participants verbatim. Additionally, the recordings contribute to ensuring reliable, accurate and valid data, and assist in the transcription of record.

The knowledge of the topic by the researcher assisted in ensuring that the researcher asked relevant questions that would be beneficial to answer the study objectives. The focus of the study was not on participants’ gender, age, nature of disability or race but rather on their input in the investigation based on their own personal experiences, especially having worked for the Ethekwini Municipality. Thus, the focus was on information gathering targeted mainly at leaders who had influence to achieve transformation and inclusion of persons with disabilities and also targeted at employees with disabilities to get their views as affected employees.

In the course of the dialogue, the researcher was able to probe the partakers in order to extract greater clarity. This exercise was an advantage especially using the qualitative research method. The disadvantage of choosing the qualitative method to conduct the study was that it was time consuming for the researcher to gather the data and analyse it because of the sample size and the tight work schedules of the researcher and the participants. Another disadvantage was that at times some participants who were mandated to develop disability strategies, and selected as such, gave information which may not necessarily have been relevant and it was

⁴⁸⁴ Jamshed note 149 (above) 87.

difficult to stop them. As a result, the qualitative research interviews produced voluminous data necessitating the need for data analysis, which is explored below.

2.10 Ethical Considerations

From a study perspective, ethics refers to the standard of conduct that guides the researcher throughout the research stages to ensure that he or she conducts the research in an ethical and proper manner.⁴⁸⁵ Generally, there are two basic principles in research ethics which are confidentiality or privacy and anonymity.⁴⁸⁶ In addition, the researcher is ethically obliged to disclose to the participants the nature of their involvement and the research as well as potential consequences through informed consent.⁴⁸⁷

Confidentiality in research is an assurance by the researcher to the participants that whatever information is provided during data collection will not be used for any purpose other than the research.⁴⁸⁸ The assurance given is that “only the researcher and the supervisor will have access to” any data provided by the participants.⁴⁸⁹ Therefore, the researcher has a responsibility to safeguard participants’ personal information and must not disclose any features that could easily identify participants, particularly when the sample size is not large.⁴⁹⁰ Confidentiality is maintained by giving the participants an option not to disclose their details.⁴⁹¹

In this regard, the researcher can use coding as a method to maintain confidentiality during the research stage and when the results are published.⁴⁹² The researcher must further ensure that the data is stored in a secured place.⁴⁹³ Another option that the researcher can utilise is to conduct interviews at a private place outside the participants’ place of work thus safeguarding their privacy.⁴⁹⁴ In general, participants will consent to partake in a study if confidentiality and anonymity are guaranteed.⁴⁹⁵

⁴⁸⁵ Struwing & Stead note 145 (above) 68.

⁴⁸⁶ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁸⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁸⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁸⁹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁹⁰ C Clark-Kazak ‘Ethical considerations: Research with people in situations of forced migration’ (2017) 33 (2) *Refugee* 13.

⁴⁹¹ Struwing & Stead note 145 (above) 71.

⁴⁹² W Walker ‘Ethical considerations in phenomenological research’ (2007) 14 (3) *Nurse Researcher* 42 doi: 10.7748/nr2007.04.14.3.36.c6031 accessed on 14 January 2019.

⁴⁹³ Walker note 492 (above) 42.

⁴⁹⁴ Walker note 492 (above) 42.

⁴⁹⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

As indicated above, informed consent is another ethical consideration in the research process. An informed consent form is a document detailing a participant's understanding of what the research entails and what is expected of the participant.⁴⁹⁶ In addition, it is a document indicating the willingness of the participant to partake in the research and that, should the participant decide to withdraw from the process, he or she may do so at any stage of the research.⁴⁹⁷ In a case where the researcher is working for the institution where the research will be conducted, the researcher must not pressurise subordinates and colleagues to participate in the study as such conduct infringes on the right to privacy of the individual.⁴⁹⁸

Another ethical consideration is the researcher's impartiality during the data collection stage.⁴⁹⁹ The researcher must fully and precisely collect the data without being selective of the data to be recorded.⁵⁰⁰ If the researcher does not objectively collect the data, the analysis and the report on the findings of the research will be impaired leading to the validity and reliability of the research being questioned.⁵⁰¹ In addition, fabricating data during the data collection stage is unethical and should be avoided by researchers.⁵⁰²

During the analysis and reporting stage, the researcher must maintain impartiality by not misrepresenting the data collected, especially through being selective on which data to report.⁵⁰³ Further to that, the researcher must exercise a level of care with regard to confidentiality and anonymity of the participants during the reporting and publication stage of the research.⁵⁰⁴ Consequently, it can be said that the researcher is expected to be ethical from the minute the researcher decides to conduct the study until the research is finalised. In this regard, the ethics considered in this study are now discussed.

Prior to conducting interviews, the researcher obtained ethical clearance certificate (protocol reference number: **HSS/2267/017D**) from the University of KwaZulu-Natal's research office to conduct the study (**Appendix 1**). The researcher further obtained the gate keeper's letter from the Ethekwini Municipality granting permission to conduct the study through the Municipality (**Appendix 2**). After obtaining the gate keeper's letter and ethical clearance

⁴⁹⁶ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁹⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 46.

⁴⁹⁸ Saunders, Lewis & Thornhill note 220 (above) 249.

⁴⁹⁹ Saunders, Lewis & Thornhill note 220 (above) 255.

⁵⁰⁰ Saunders, Lewis & Thornhill note 220 (above) 255.

⁵⁰¹ Saunders, Lewis & Thornhill note 220 (above) 255.

⁵⁰² Saunders, Lewis & Thornhill note 220 (above) 255.

⁵⁰³ Saunders, Lewis & Thornhill note 220 (above) 255.

⁵⁰⁴ Saunders, Lewis & Thornhill note 220 (above) 255.

certificate, the researcher approached participants firstly telephonically followed by formal email requests. All participants who were approached by the researcher voluntarily offered to contribute to the research.

The researcher sent study information sheet (**Appendix 3**) and informed consent form (**Appendix 4**) prior to the interviews to ensure that the participants were aware of the nature of research as well as the nature of their involvement in the research. This further gave the participants the opportunity to read and familiarise themselves with the nature of the interviews and to freely decide whether they wanted to partake in the research or not. The information sheet contained details of the research and the topic, purpose and data treatment. The participants were advised of their rights, through the information sheet, should they feel aggrieved by the interviews and that they had a right to opt out at any stage of the interviews. They were all advised that the interviews would be recorded and assured of the confidentiality of their identity.

During the interview stage, each participant signed an informed consent form (**Appendix 4**) which detailed the nature of participant's involvement in the research as well as confidentiality and anonymity. Before signing the informed consent form, the researcher clarified the content of the form to ensure that participants were comfortable in answering the questions prepared by the researcher and that they understood the nature of their involvement. The researcher further verbally emphasised the information contained on the study information sheet prior to beginning the conversation, in particular the right of any partaker who felt aggrieved by the interviews to opt out at any stage of the interviews. They were all advised that the interviews would be recorded and were assured of the confidentiality of their identity.

The researcher created the interview questions (**Appendix 5**) guided by the subjects covered in the Literature Review as well as the objectives of the study. The questions were further designed to allow participants to get to the core of non-compliance with disability related legislation by the Municipality. The interview questions were semi-structured which allowed flexibility for the researcher to probe more from the answers given by the participants. Semi-structured interviews have been described as flexible unrestricted questions intended to permit the participants to give in-depth information and are often used to interview individuals or groups of people.⁵⁰⁵ Thus, the researcher explained to the participants the role of and necessity

⁵⁰⁵ Jamshed note 149 (above) 87.

for their input as well as the nature of the subject under investigation before the commencement of the interviews in order to make sure that the partakers understood the need to participate and give in-depth information, and to gain the trust of the participants. All interviews were done in the strictest confidentiality and this was shared with the participants so that they could trust that the information they shared during their interviews would not be discussed with fellow participants or fellow employees.

During the data collection stage, the researcher ensured that there were no disruptions to the Municipality's business activities by negotiating convenient times with the participants. The researcher further ensured that all participants were given the same treatment. The researcher did not share any personal impression on the subject with the participants. In addition, the researcher only used questions listed in the interview protocol unless there was a follow-up question for clarity purposes. Participants were happy to conduct interviews in their offices.

When analysing the data, the researcher did not take sides with the participants and ensured that both negative and positive findings were disclosed. The researcher further ensured that the privacy and anonymity of the participants were respected by creating coding instead of using the names of the participants as listed in Tables 2.8.3.1.1 and 2.8.3.1.2 above. In addition, the researcher ensured that the evidence, data and findings were correct and ensured that any information that could harm participants was not disclosed. When reporting on the findings, the researcher was honest and did not falsify information. The researcher shared the outcome of the research with the participants and the Municipality. Finally, the researcher stored the data and material with the Faculty of Law in line with ethical clearance certificate requirements. Consequently, it can be said that ethics played a role in ensuring reliable and valid data in this study.

2.11 Data Analysis

It has been said that qualitative interviews usually develop huge “amounts of data”.⁵⁰⁶ While that is the case, it is submitted that researchers are required to reduce the amount of data while engaging on the critical aspects of the interviews. In this context, Alshenqeeti argues that an examination of the data can be conducted through data coding.⁵⁰⁷ Alshenqeeti further asserts

⁵⁰⁶ Alshenqeeti note 464 (above) 41.

⁵⁰⁷ Alshenqeeti note 464 (above) 41.

that such exercise should decrease the quantity of the data gathered.⁵⁰⁸ Consequently, thematic data analysis was employed to scrutinise the data.

Aksan and Baki argue that “thematic content analysis entails synthesising and interpreting studies on a given topic from a critical perspective by developing themes or basic templates (matrices/templates)”.⁵⁰⁹ In this context, the researcher coded and analysed responses that emanated from the interviews and created themes that developed from the questions. The researcher ensured that the critical points emanated from all interviews were captured through data coding. The researcher physically developed the themes from the data through markers/highlighters.

The researcher transcribed the data which assisted in identifying common themes and experiences from the participants. The transcripts were thoroughly examined by the researcher to gather precise data and identify common themes. To maintain confidentiality, the names of the participants were not disclosed in the study. Thus to identify the participants, leaders were coded, for example, as leader 1 (L1) while employees were coded as employee 1 (E1) -- as per Tables 2.8.3.1.1 and 2.8.3.1.2 above. Consequently, the process of thematic content analysis was crucial for purposes of gathering constructive information that could be used to formulate informed recommendations and reach conclusions.

2.12 Validity and Reliability of Qualitative Research Methods

For research to be trustworthy, it must be valid and reliable.⁵¹⁰ Put differently, all research must be truthful, applicable, dependable, and impartial in order to be considered to be valuable.⁵¹¹ Validity concerns the degree to which the results of the research is a true reflection of the topic under scrutiny. ⁵¹² Validity according to Golafshani “determines whether the research truly measures that which it was intended to measure or how truthful the research results are”.⁵¹³ It relates to the rationality, honesty, comprehensiveness and reasonableness of the study.⁵¹⁴ It

⁵⁰⁸ Alshenqeeti note 464 (above) 41.

⁵⁰⁹ E Aksan & A Baki ‘Content analysis of curriculum-related studies in Turkey between 2000 and 2014’ (2017) 17 (3) *Educational Sciences: Theory & Practice* 882.

⁵¹⁰ L Amankwaa ‘Creating protocols for trustworthiness in qualitative research’ (2016) 23 (3) *Journal of Cultural Diversity* 121.

⁵¹¹ Amankwaa note 510 (above) 121.

⁵¹² Saunders & Lewis note 216 (above) 134.

⁵¹³ N Golafshani ‘Understanding reliability and validity in qualitative research’ (2003) 8 (4) *The Qualitative Report* 599 <https://nsuworks.nova.edu/tqr/vol8/iss4/6>.

⁵¹⁴ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 24.

further relates to how meaningful and valuable the research is, as well as “the extent to which a score truthfully represents a concept”.⁵¹⁵

On the other hand, research reliability is about consistency and dependability of the research findings.⁵¹⁶ It is about the extent to which the research can be repeated while attaining consistent and similar outcomes.⁵¹⁷ The focus is on determining the rigour and reliability of the research.⁵¹⁸ Positivist researchers raised concerns regarding the credibility and trustworthiness of qualitative research as such research is naturalistic in nature.⁵¹⁹ Instead of depending on validity and reliability as defined above and to address the aforesaid concerns, trustworthiness in qualitative research is ascertained by considering the following criteria, namely credibility, dependability, confirmability and transferability.⁵²⁰

Credibility has been found to be one of the critical aspect in establishing trustworthiness in qualitative research.⁵²¹ It refers to the extent to which the outcome of the study truly embodies the views of the participants.⁵²² In other words, it is about assurance in relation to the accuracy of the results of the study.⁵²³ Credibility ascertains whether or not the research findings are an accurate reflection of the information ascertained from the partakers and whether the researcher interpreted correctly what was said by the participants.⁵²⁴ In this research, the researcher firmly linked the respondents’ individual encounters, perceptions and evidence in dealing with persons with disabilities as well as policy issues on disability in the Municipality to guarantee credibility of the research.

To ascertain this, only experienced leaders who are involved in developing and implementing strategies for inclusion of persons with disabilities in the Municipality participated in this study. In addition, operational managers responsible for employing persons with disabilities and who directly work with them on a daily basis were engaged in order to guarantee credible and trustworthy of the findings. The researcher also persistently pursued interpretations of the

⁵¹⁵ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 24.

⁵¹⁶ Saunders & Lewis note 216 (above) 135.

⁵¹⁷ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 24.

⁵¹⁸ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 259.

⁵¹⁹ Struwing & Stead note 145 (above) 136.

⁵²⁰ Struwing & Stead note 145 (above) 137.

⁵²¹ A K Shenton ‘Strategies for ensuring trustworthiness in qualitative research projects’ (2004) 22 *Education for Information* 64 doi: 10.3233/EFI-2004-22201 accessed on 10 January 2019.

⁵²² V N Anney ‘Ensuring the quality of the findings of qualitative research: Looking at trustworthiness criteria’ (2014) 5 (2) *Journal of Emerging Trends in Educational Research and Policy Studies* 276.

⁵²³ Anney note 522 (above) 276.

⁵²⁴ Anney note 522 (above) 276.

various aspects of disability in different ways with participants. Additionally, the researcher compiled thorough interview notes for referential and reliability purposes.

Transferability is the degree “to which results of the research apply to other contexts, settings or respondents”.⁵²⁵ It has been said that the “researcher facilitates the transferability judgment by a potential user through ‘thick description’ and purposeful sampling”.⁵²⁶ By providing a thorough narrative on the subject, the researcher provides an opportunity for others to evaluate whether the conclusion and findings are transferable to other similar situations in other settings or people.⁵²⁷ It has been said that “a qualitative study has met this criterion if the results have meaning to individuals not involved in the study and readers can associate the results with their own experiences”.⁵²⁸ In this study, data gathered was detailed enough to ensure transferability of the results and recommendations to other departments within the public sector, especially other municipalities.

Disability inclusion is a challenge facing both the private and public sector at large. The researcher therefore ensured that the information was collected in such a way that it can be transferable to other sectors outside of the public sector. The findings of this study and the recommendations made thereafter centred on the role of transformational leadership in the implementation of disability related legislation in the Municipality which is the local government; but they are transferrable to implementation of disability policies in the public sector at large including national and provincial government. By employing purposive sampling in this study, the researcher was able to collect relevant information which ultimately produced in-depth findings that are transferable to other settings.

Confirmability is the extent to which the results of the study are based on the participant’s opinions, involvements and understandings instead of the researcher’s personal description and “preferences”.⁵²⁹ It is about impartiality and consistency of the research findings.⁵³⁰ To achieve confirmability in the research findings, the researcher keeps memos and an audit trail throughout the research process.⁵³¹ In the present research, confirmability was attained by

⁵²⁵ Anney note 522 (above) 277.

⁵²⁶ Anney note 522 (above) 277.

⁵²⁷ Amankwaa note 510 (above) 121.

⁵²⁸ D G Cope ‘Methods and meanings: Credibility and trustworthiness of qualitative research’ (2014) 41 (1) *Oncology Nursing Forum* 89.

⁵²⁹ L M Connelly ‘Trustworthiness in qualitative research’ (2016) 25 (6) *MEDSURG Nursing* 435.

⁵³⁰ Connelly note 529 (above) 435.

⁵³¹ Connelly note 529 (above) 435.

retaining records as well as connecting the data based on the study outcome. In addition, the literature review and a sample of disability related legislation and policies was utilised to minimise the researcher's partiality.

Dependability according to Connelly "refers to the constancy of the data over time and similar circumstances".⁵³² It "is about reflecting evidence that if the same study is repeated -- in the same context, methods and participants -- then similar results would be obtained".⁵³³ It has been argued that there is a close tie between dependability and credibility in the sense that the researcher's dependability must ensure that the evidence collected must be in detail to ensure that future researchers are able to repeat the work and possibly be able to achieve similar results.⁵³⁴ In this regard, a detailed account of participants (experience and positions in the Municipality and their willingness to add value to this study) was provided by the researcher as well as a detailed narration of data gathering and analysis techniques.

As mentioned above, the main intention of utilising qualitative research is to capture data that is authentic from participants. Thus, the data gathered from the participants must be credible especially for the purposes of interpretation. In order to capture accurate data, the method and tools used to collect data must be appropriate. Thus, Leung asserts that validity in qualitative research refers to suitability of the tools utilised to gather information, mechanisms followed and the actual data.⁵³⁵ Brigitte asserts that in qualitative research, validity is about the correctness and reliability of methodical results.⁵³⁶ Consequently, appropriate tools and mechanisms in qualitative research produce sound, reliable, accurate and valid research outcomes.

2.13 Elimination of Bias

According to Simundic, all research must be done in an honest and transparent manner and must not diverge from the truth.⁵³⁷ Any research that does not comply with those fundamental values is deceptive.⁵³⁸ From a research perspective, bias has been described as any divergence from the facts in relation to data gathering, analysis, interpretation and publication which may

⁵³² Connelly note 529 (above) 435.

⁵³³ Cope note 528 (above) 89.

⁵³⁴ Shenton note 521 (above) 71.

⁵³⁵ Leung note 277 (above) 325.

⁵³⁶ S Brigitte 'Rigor or reliability and validity in qualitative research: Perspectives, strategies, reconceptualization and recommendations' (2017) 36 (4) *Dimension of Critical Care Nursing* 256.

⁵³⁷ A Simundic 'Bias in research' (2013) 23 (1) *Biochemia Medica* 12 doi: 10.11613/BM.2013.003 accessed on 16 January 2019.

⁵³⁸ Simundic note 537 (above) 12.

result in incorrect conclusions.⁵³⁹ In qualitative research, bias has been associated with the choice of purposive sampling, observations and researcher assumptions.⁵⁴⁰ At the sampling stage, potential bias can occur when the “sample is not representative of the population” relevant to the study resulting in what is normally called selective bias.⁵⁴¹

During the data analysis stage, a researcher can be biased by, inter alia, being selective in terms of the data, introducing non-existing data and analysing data in such a way that conclusions will favour the research hypothesis.⁵⁴² Consequently, it can be said that the researcher must remain impartial in all research stages and if there is any form of bias or potential bias, the researcher must eliminate such biasness to ensure trustworthiness and reliable research.

In this study the researcher remained neutral throughout the process. While purposive sampling was utilised to select leaders, leaders were independently chosen and were not aware of each other. During interviews, the researcher asked follow-up and clarification questions in order to capture authentic data from the participants thus eliminating the researcher’s assumptions. The researcher further took notes during interviews so that during data analysis, the researcher did not use assumptions thereby eliminating bias. Having said that, purposive sampling has been found to eliminate bias in qualitative research because such sampling is regularly “refined” to meet the aims of the study.⁵⁴³

Therefore, it can be argued that by utilising purposive sampling to engage leaders, the researcher greatly eliminated bias in the study. While the major focus was on the Municipal leaders, the research included employees with disabilities so as to guarantee their perspective in the study since, at the heart of this study, is disability inclusion in the workplace. Such action ensured that the data collected was not selective thus eliminating bias. The researcher assured that the information collected throughout the interviews was measured in accordance with the literature reviewed. Some aspects relating to elimination of bias have been indirectly explored under Ethical Considerations above.

⁵³⁹ Simundic note 537 (above) 12.

⁵⁴⁰ B Borowska-Beszta ‘Decoding of bias in qualitative research in disability cultures: A review and methodological analysis’ (2017) 6 (3) *International Journal of Psycho-Educational Sciences* 57.

⁵⁴¹ Simundic note 537 (above) 13.

⁵⁴² Simundic note 537 (above) 13.

⁵⁴³ J Smith & H Noble ‘Bias in research’ (2014) 17 (4) *Evidence-Based Nursing* 100 doi: 10.1136/eb-2014-101946 accessed on 19 January 2019.

2.14 Limitations

Limitations of a study relate to restraints “that are beyond researchers control but could have an impact on the outcome of the study”.⁵⁴⁴ Ordinarily, limitations emanate from the research methodology and design.⁵⁴⁵ As a result, the extent of the study is limited which may have an impact on the research outcome.⁵⁴⁶ In qualitative research, limitations are usually associated with validity and reliability of the study.⁵⁴⁷ Other practical limitations include time and accessibility of resources.⁵⁴⁸ Inadequate previous studies in the research area, especially if the research topic is evolving, have been identified as a limitation in a study.⁵⁴⁹

This study is multidisciplinary in nature and necessitated literature encompassing both leadership and the law. There was limited literature which explored transformational leadership within the disability context in the workplace. In particular, there was limited literature which explored transformational leadership as a mechanism to implement disability laws in the workplace. Similarly, there was limited literature that explored law from a leadership perspective. As a result, the extent of the study was limited.

Despite such limitations the researcher was able to read and identify elements from existing literature that dealt generally with transformational leadership which are crucial for inclusion of persons with disabilities in the workplace thereby minimising the limitation and ensuring the validity and reliability of the data. By so doing, the researcher developed new research interpretations which have necessitated further development in future studies.

The other limitation was that some leaders who were selected to participate in the study displayed a lack of insight of the notion of transformation and disability. These leaders were purposively selected on the basis that they are drivers of disability inclusion, transformation and equity in the Municipality and have adequate information on the topic. Some of these leaders’ key performance areas include a performance indicator linked to employing persons with disabilities in the three highest levels of management. Therefore, the researcher purposively selected leaders based on the premise that they ought to have an extensive

⁵⁴⁴ M K Simon & J Goes ‘Assumptions, limitations, delimitations and scope of the study’ (2013) <http://www.dissertationrecipes.com/wp-content/uploads/2011/04/Assumptions-Limitations-Delimitations-and-Scope-of-the-Study.pdf> accessed on 13 January 2019.

⁵⁴⁵ Simon & Goes note 544 (above).

⁵⁴⁶ Simon & Goes note 544 (above).

⁵⁴⁷ Simon & Goes note 544 (above).

⁵⁴⁸ Simon & Goes note 544 (above).

⁵⁴⁹ <https://research-methodology.net/research-methods/research-limitations/> accessed on 14 January 2019.

knowledge of disability and transformation as outlined in the EEA and the Disability Code. As a result, the extent of the information was partly affected. To minimise this limitation, the researcher had to probe the participants and give examples related to the topic without posing leading questions. While such limitation did not adversely affect the validity of the research, it proved that there was a need for research on disability and transformation in the Ethekewini Municipality. As such, an appropriate framework was recommended to assist the Municipality and its leaders effectively to implement legislation governing disability in the workplace.

2.15 Conclusion

Choosing the appropriate research technique is critical in order to answer the research question successfully. Research methodology is a critical component of research as it provides direction to the achievement of the research objectives. As explored above, the research methodology provides guidance on data gathering, scrutiny and amplification. Most importantly the advancement of themes is guided by the kind of research methodology chosen by the researcher. Consequently, the researcher opted for a qualitative research technique based on the nature of the study, which relates to human experience, to respond to the question under investigation and the objectives of the study. In this context, the next chapter is a review of literature aimed at identifying the existing literature on issues of transformational leadership and disability inclusion in the workplace.

CHAPTER THREE

LITERATURE REVIEW

3.1 Introduction

The focus of the study is to investigate the role of transformational leadership in implementation of disability laws in the workplace thus achieving disability equity and transformation. This chapter explores existing literature on the subject in order to ascertain the degree to which the literature has engaged with the issues of leadership and disability in the working environment. It further aims to explore the literature pertinent to the problem statement posed by this study. The theoretical approach of the study is premised on the philosophy of transformational leadership. The contention is that disability is an issue that requires to be considered from an individual human rights standpoint. Furthermore, it is maintained that an inclusive approach is necessary towards the attainment of disability parity in the workplace. Thus, the inclusive approach to disability will be considered.

While transformational leadership is identified as a relevant leadership style suitable for disability inclusion and implementation of disability laws in the Municipality, it is crucial briefly to explore other common leadership styles and explain why they were found not to be relevant in this study. Therefore, the literature review is thematically organised as follows: firstly, various leadership styles are explored. Secondly, the literature on human rights conception to disability, inclusive approach, transformational change and organisational culture is considered. Thirdly, the literature on the role of transformational leadership is explored. Finally, the literature review is concluded by examining transformational leadership in the workplace as it relates to persons with disabilities.

3.2 Leadership Styles

Persons with disabilities have been secluded in the workplace. They struggle to retain employment and even when they are employed, they are still victims of the stereotypes of the employer. In addition, persons with disabilities are not regarded as people with rights like people without disabilities. As a result, they are not fully included in the workplace despite various disability laws designed to ensure that they are included and reasonably accommodated. The implementation of disability laws requires leaders who are committed to transformation in the workplace. Moreover, it requires workplace leaders who ascribe to certain attributes, such as openness, respect for human rights and dignity, equality, fairness and

legislative compliance. Additionally, it requires leaders who are accommodative, action oriented and results driven, leaders who can develop practical methodologies to ensure disability inclusion in the workplace. Consequently, effective implementation of disability laws requires leaders who can go beyond legislative requirements and consider individual needs. Although there are various types of leadership styles, it is argued that not all of them may be relevant for disability inclusion in the workplace. On this basis, the researcher opted not to explore all of them instead, having identified the aforementioned attributes, the researcher identified pertinent leadership styles that possess the common leadership attributes required to include persons with disabilities in the workplace. The leadership styles identified by the researcher are servant leadership, authentic leadership and transformational leadership. The identified leadership styles are now briefly explored.

3.2.1 Servant leadership

Servant leadership has been defined as leadership that exceeds self-interest to serve the interests of other people by assisting them to develop individually and professionally.⁵⁵⁰ Servant leaders essentially sacrifice themselves for other people without any expectations in return.⁵⁵¹ Furthermore, servant leadership's perspective is that all human beings have an ethical responsibility to each other and that leaders have a duty to help while leading people.⁵⁵² In this context, the attributes of servant leadership are the desire to help others and doing what is right for others, effective listening, honesty and helping employees to discover their potential to make a difference.⁵⁵³ In addition, Spears asserts that servant leaders always attempt to understand and empathise with employees.⁵⁵⁴ They rely on "persuasion rather than positional authority in making a decision within an organisation".⁵⁵⁵

Servant leaders are committed to the development of employees.⁵⁵⁶ It has been said that servant leadership is characterised by providing direction and demonstrates humbleness, "authenticity,

⁵⁵⁰ C F Achua & R N Lussier *Effective Leadership* (Cengage Learning 2013) 5 ed 327.

⁵⁵¹ Achua & Lussier note 550 (above) 327.

⁵⁵² Achua & Lussier note 550 (above) 327.

⁵⁵³ Achua & Lussier note 550 (above) 328.

⁵⁵⁴ L C Spears 'Character and servant leadership: Ten characteristics of effective, caring leaders' (2010) 1 (1) *The Journal of Virtues & Leadership* 27.

⁵⁵⁵ Spears note 554 (above) 28.

⁵⁵⁶ Spears note 554 (above) 28.

interpersonal acceptance, and stewardship”.⁵⁵⁷ Consequently, it can be said that servant leaders are caring leaders who focus on individual development in the workplace.

Servant leadership was found not to be useful in this study. The challenge identified in this study is the lack of disability inclusion and effective implementation of disability laws in the Municipality. While servant leadership is people centred, it appears that it is not strategic and operational in its approach which is necessary to drive inclusion of persons with disabilities in the workplace. In addition, it appears that the attributes identified above required for disability inclusion do not feature in servant leadership. Furthermore, it appears that servant leadership is more aligned to sympathy and integration which is the current challenge faced by persons with disabilities where they are looked at with sympathy in the workplace. This study advocates for disability inclusion through a human rights approach in the workplace. Persons with disabilities are capable of working like non-disabled employees, provided that they are reasonably accommodated where needed, provided workplaces are accessible, and provided that workplace cultures are inclusive. Consequently, the leadership required is the one that ascribes to transformation, human rights, equality and legislative compliance.

3.2.2 Authentic leadership

Authentic leadership is premised on genuineness where leaders conduct themselves in line with their “values, beliefs and human supreme nature”.⁵⁵⁸ In other words, authentic leaders lead their employees through their personal values and beliefs. It has been said that authenticity elements include, among others, “self-awareness, non-distorted information processing, genuine conduct, and reliable relationships”.⁵⁵⁹ The ultimate goal of authentic leadership is to stimulate naturally the inherent inspirations of employees thereby creating happiness and advanced wellbeing.⁵⁶⁰ Consequently, authentic leadership may result in satisfaction, individual contentment and a decent life.⁵⁶¹ Authentic leadership has further been found to have an impact on employees’ “commitment, work engagement, job satisfaction and job performance”.⁵⁶²

⁵⁵⁷ L T Tuan ‘Knowledge sharing in public organizations: The roles of servant leadership and organizational citizenship behavior’ (2017) 40 (4) *International Journal of Public Administration* 362.

⁵⁵⁸ S M T Otaghsara & H Hamzehzadeh ‘The effect of authentic leadership and organizational atmosphere on positive organizational behavior’ (2017) 4 (11) *International Journal of Management, Accounting and Economics* 1129.

⁵⁵⁹ Otaghsara & Hamzehzadeh note 558 (above) 1129.

⁵⁶⁰ Otaghsara & Hamzehzadeh note 558 (above) 1129

⁵⁶¹ Otaghsara & Hamzehzadeh note 558 (above) 1129

⁵⁶² B Milic, L Grubic-Nesic, B Kuzmanovic & M Delic ‘The influence of authentic leadership on the learning organization at the organizational level: The mediating role of employees’ affective commitment’ (2017) 22 (1) *Journal for East European Management Studies* 13.

Authentic leadership was found not to be useful in this study. While it may be relevant to a certain extent, it is not operational and strategic in its approach. It focuses on building trust and improving individual and team performance. It further appears to be focused more on organisational growth than individual consideration. Consequently, authentic leadership, while premised on ethics and values, does not fully possess attributes required practically to implement disability laws in the workplace. It is for these reasons that it was not utilised in this study.

3.2.3 Transformational leadership

Transformational leadership was initially expressed by James Burns in 1978 before Bernard Bass expanded on it.⁵⁶³ Transformational leaders challenge the existing state of affairs and advance a persuasive case for change.⁵⁶⁴ They stimulate a common vision for the future, provide operational leadership during the transition and institutionalise the transformation.⁵⁶⁵ Transformational leadership is composed of four behaviour dimensions, being “idealised influence, inspirational motivation, individual consideration and intellectual stimulation”.⁵⁶⁶ Carter et al affirm that transformational leaders offer individualised consideration through modified support to employees.⁵⁶⁷ According to Song et al transformational leadership is action orientated which makes it the appropriate leadership for implementation of disability policies and laws in the workplace.⁵⁶⁸ Furthermore, Mthethwa asserts that --

“to lead the transformation process, undoubtedly, transformational leaders are needed who can inspire the employees, strategise and galvanise the resources to navigate and give effect to the changes needed. Transformational leaders are visionary leaders of potentially historical significance who react to a crisis with great vision and great ideas, and possess a willingness to foster grand experiments in solving great problems of the day”.⁵⁶⁹

Transformational leaders are influential, visionaries and committed leaders who always challenge the status quo. They have the ability to influence employees to commit to new visions and potentials through effective communication skills.⁵⁷⁰ They are the champions of workplace

⁵⁶³ Achua & Lussier note 550 (above) 311.

⁵⁶⁴ Achua & Lussier note 550 (above) 314.

⁵⁶⁵ Achua & Lussier note 550 (above) 314.

⁵⁶⁶ Achua & Lussier note 550 (above) 320.

⁵⁶⁷ Carter, Self, Bandow, Wheatley, Thompson, Wright & Li note 54 (above) 48.

⁵⁶⁸ J H Song, J A Kolb, U H Lee & H K Kim ‘Role of Transformational Leadership in Effective Organizational Knowledge Creation Practices: Mediating Effects of Employees’ Work Engagement’ (2012) 23 (1) *Human Resource Development Quarterly* 70.

⁵⁶⁹ R M Mthethwa ‘Transformational leadership in the South African public sector’ (2012) 5 (3) *African Journal of Public Affairs* 110.

⁵⁷⁰ Achua & Lussier note 550 (above) 311.

transformation particularly if the change will improve the status quo.⁵⁷¹ Additionally, they “are more strategic in their approach”.⁵⁷²

It is for these reasons that transformational leadership was found to be useful for this study as the Municipality requires committed and influential leadership that can develop strategies to ensure inclusion and effective implementation of disability laws in the Municipality. The law requires reasonable accommodation and for practical measures to be developed to accommodate and include persons with disabilities in the workplace. As it can be seen from the synopsis above, transformational leadership possesses the necessary attributes to achieve disability inclusion and equity in the Municipality. Transformational leadership is fully explored later on in this chapter and is used throughout all the chapters to support its relevancy to the study. Having justified the choice of transformational leadership, the following explores unfounded assumptions about persons with disabilities in the workplace.

3.3 Unfounded Assumptions about Persons with Disabilities

Stereotypes and unfounded assumptions about persons with disabilities are among the reasons for them to be discriminated in society and the workplace. For example, Nelissen et al assert that “some of the important barriers that people with disabilities face, in the road to employment, are stereotypes and attitudes of employers and their employees”.⁵⁷³ They further argue that once they are working, certain persons with disabilities are not appraised on their functioning or effectiveness, instead they are considered on the stereotypical beliefs of their employers.⁵⁷⁴ Ngwena argues that persons with disabilities are a typically stigmatised, underprivileged and susceptible group that is covered by constitutional and legislative protection against unfair discrimination.⁵⁷⁵ As a result of stereotyping, persons with disabilities encounter high levels of joblessness and occupies entry level jobs in the workplace.

Stereotyping has been described as “the way a group of people is viewed by society” and stereotypes “have been defined as shared beliefs about a person’s attributes, usually personality traits, but often also behaviors, of a group of people”.⁵⁷⁶ Galli et al define stereotypes as “sets of attributes that are often negative, such as moral or intellectual qualities, that individuals learn

⁵⁷¹ Achua & Lussier note 550 (above) 313.

⁵⁷² Achua & Lussier note 550 (above) 323.

⁵⁷³ Nelissen, Hulshager, Van Ruitenbeek & Zijlsta note 4 (above) 1613.

⁵⁷⁴ Nelissen, Hulshager, Van Ruitenbeek & Zijlsta note 4 (above) 1613.

⁵⁷⁵ C Ngwena ‘Deconstructing the definition of “disability” under the Employment Equity Act: Legal deconstruction’ (2007) 23 (1) *South African Journal on Human Rights* 118.

⁵⁷⁶ Nelissen, Hulshager, Van Ruitenbeek & Zijlsta note 4 (above) 1613.

to associate with a person who belongs to a certain, often disadvantaged, cultural or social group”.⁵⁷⁷ They assert that “immediately, and from early life and thereafter, people perceive individuals with disability as ‘vulnerable’ and of low competence, and, accordingly, treat members of this group differently”.⁵⁷⁸

From a workplace point of view it has been found that “stereotypes influence employees’ expectancies toward working with people with disabilities, which in turn will have an effect on how people with disabilities are treated and assisted within the organisation”.⁵⁷⁹ Nelissen et al contend that person with disabilities are often barred from partaking in mainstream employment due to environmental, attitudinal, social and organisational barriers and not issues relating to the effects of their impairments.⁵⁸⁰ Ruhindwa et al argue that “barriers to accommodation of people with disabilities are linked to stigma, prejudice, stereotypes and discrimination”.⁵⁸¹ Wang and Dovidio found that persons with disabilities are perceived as lacking autonomy and agency.⁵⁸²

Specifically Wang and Dovidio assert that persons with disabilities tend to be viewed as warm but incompetent individuals constrained to lower-status positions in society, eliciting ambivalent feelings of sympathy and aversion as well as requiring help.⁵⁸³ It can be concluded that as a result of such perceptions and subconscious reactions, persons with disabilities are greatly prejudiced not only in the workplace but in society as a whole. In other words, as Hills asserts, “discrimination occurs as a result of the prejudice and stereotyping arising from stigmatisation”.⁵⁸⁴

It follows that there is a need to change the mindset of employers and employees in the workplace to deal with unfounded assumptions about persons with disabilities, and to remove obstacles preventing them from accessing the labour market. There should be practical strategies to work with and accommodate persons with disabilities so that employers cannot

⁵⁷⁷ G Galli, B Lenggenhager, G Scivoletto, M Molinari & M Pazzaglia ‘Don’t look at my wheelchair! The plasticity of long-lasting prejudice’ (2015) 49 *Medical Education* 1240.

⁵⁷⁸ Galli, Lenggenhager, Scivoletto, Molinari & Pazzaglia note 577 (above) 1240.

⁵⁷⁹ Nelissen, Hulsheger, Van Ruitenbeek & Zijlsta note 4 (above) 1614.

⁵⁸⁰ A Ruhindwa, C Randall & J Cartmel ‘Exploring the challenges experienced by people with disabilities in the employment sector in Australia: Advocating for inclusive practice -- A review of literature’ (2016) 7 (1) *Journal of Social Inclusion* 6.

⁵⁸¹ Ruhindwa, Randall & Cartmel note 580 (above) 6.

⁵⁸² K Wang & J F Dovidio ‘Disability and autonomy: Priming alternative identities’ (2011) 56 (2) *Rehabilitation Psychology* 123.

⁵⁸³ Wang & Dovidio note 582 (above) 123.

⁵⁸⁴ M Hills ‘Overcoming the stigma of epilepsy’ (2010) 15 Supplement 1 *Neurology Asia* 22.

rely on stereotypes when working with employees with disabilities. It is argued that stigma and discrimination against persons with disabilities in the workplace go to the heart of human dignity and self-esteem.

Hills' research has found that "stigma and discrimination on the individual can lead to lower self-esteem, self-fulfilling prophecies, self-blame and self-rejection and dehumanisation".⁵⁸⁵

Lim and Tan set out the characteristics of stigma as follows:

"Stigma is a label, a spoiled social identity different from the actual social identity (social identity), based on an inaccurate simplistic generalisation of a group of people, not only on their illness, but also on their attributes and personality (stereotype), with unfair judgement and unreasonable attitudes toward an undesired difference (prejudice), resulting in discredit and rejection of the stigmatised by the society (discrimination), with restriction imposed by society, without given a fair chance or a basic human right, and persists despite condition improves (social model of disability)."⁵⁸⁶

Gaskin asserts that stigma against persons with disabilities does not impact them equally.⁵⁸⁷ In other words, the nature of the disability determines the level of stigmatisation of persons with disabilities. Gaskin explains that "people with psychiatric and intellectual impairments, for example, are typically more stigmatised than those with sensory or physical impairments, and those with severe impairments face greater stigma than those with mild impairments".⁵⁸⁸ The aforementioned features postulate that stigmatisation attached to persons with disabilities is a human rights violation which needs to be rooted out in the workplace and society at large. It is discriminatory and therefore requires urgent intervention to ensure that persons with disabilities enjoy protection of the law. Consequently, addressing stigma and discrimination in the workplace will restore the human dignity of persons with disabilities thereby protecting their constitutional rights.

While research has been conducted on stereotypes and inclusive culture in the workplace, it appears that a transformational leadership model has not been explored as machinery that can deal with unfounded assumptions and stigma attached to persons with disabilities, which this study seeks to explore. In addition, the role of organisational leaders, ie those leaders in an organisation who are responsible for dealing with stigma and ignorance associated to persons with disabilities, has not been explored. Organisational leadership has a huge responsibility to

⁵⁸⁵ Hills note 584 (above) 22.

⁵⁸⁶ K Lim & C T Tan 'Epilepsy stigma in Asia: The meaning and impact of stigma' (2014) 19 (1) *Neurology Asia* 1.

⁵⁸⁷ C J Gaskin 'On the potential for psychological researchers and psychologists to promote the social inclusion of people with disability: A review' (2015) 50 (6) *Australian Psychologists* 447 doi: 10.1111/ap.12128.

⁵⁸⁸ Gaskin note 587 (above) 447.

create an inclusive culture and organisational climate that is sensitive to employees' needs. It has been said that transformational leaders are focused on change.⁵⁸⁹ It follows therefore that transformational leadership is the leadership style that organisational leaders must adopt to deal with unfounded assumptions and stigma attached to persons with disabilities.

Gewurtz and Kirsh argue that "the climate of the organisation reflects the prevalent norms, values and attitudes of the organisation and acts to shape the behavior of members".⁵⁹⁰ It has further been said that "together these concepts can offer much insight into the values and rules of an organisation, and the way differences among members are tolerated".⁵⁹¹ It follows that for organisations to change the behaviours and attitudes towards persons with disabilities, they need to focus on the transformational leadership approach. Transformational leadership has been identified as a system of transforming and changing people's behaviour.⁵⁹² It is asserted that transformational leadership may play a crucial part in eradicating the stigma attached to persons with disabilities and in creating a climate that is accommodative of every individual in the workplace.

To achieve the aforementioned workplace transformation for persons with disabilities in the workplace, there is a need for a radical approach to change to deal with stereotypical behaviors of employers and fellow employees. The display of an inclusive culture by an organisation will ensure successful accommodation of persons with disabilities in the workplace. By so doing the organisation will attain a diverse workforce thereby achieving equity in the workplace. It has been said that "work environments that are fair and responsive are specifically beneficial for persons with disabilities".⁵⁹³ As discussed above, transformational leaders always take into consideration individual needs and are responsive to employee needs. Transformational leadership may play a critical role in eliminating unfounded assumptions towards persons with disabilities.

Lack of experience in dealing with disability in the workplace is another challenge which leads to employees being stereotyped. Holness asserts that "a lack of understanding, ignorance,

⁵⁸⁹ K von Treuer, G Karantzas, M McCabe, D Mellor, A Konis, T E Davison & D O'Connor 'Organisational factors associated with readiness for change in residential aged care settings' (2018) 18 (77) *BMC Health Service Research* 2 doi: 10.1186/s12913-018-2832-4.

⁵⁹⁰ R Gewurtz & B Kirsh 'Disruption, disbelief and resistance: A meta-synthesis of disability in the workplace' (2009) 34 (1) *Work* 34 doi: 10.3233/WOR-2009-0900.

⁵⁹¹ Gewurtz & Kirsh note 590 (above) 34.

⁵⁹² W Malik, M Javed & S Hassan 'Influence of transformational leadership components on job satisfaction and organizational commitment' (2017) 11 (1) *Pakistan Journal of Commerce and Social Sciences* 147.

⁵⁹³ Nelissen, Hulshager, Van Ruitenbeek & Zijlsta note 4 (above) 1622

stigma and prejudice -- particularly due to assumptions about the employees' abilities and performance in the workplace, can scupper recruitment, appointment, retention and advancement of employees with disabilities".⁵⁹⁴ Thus, there are baseless assumptions about capabilities of job applicants and employees with disabilities.

Ordinarily, disabled employees are urged to consider applying for disability benefits which leads to them retiring earlier than employees without disabilities while paradoxically should their needs be accommodated in the workplace, they can contribute meaningfully.⁵⁹⁵ Chen et al assert that baseless assumptions towards persons with disabilities are a main concern in our society including workplaces.⁵⁹⁶ They further argue that such stereotypes are an obstacle that prevent them from securing a job.⁵⁹⁷

It is apparent that transformational leadership could play a major role in ensuring inclusivity since transformational leaders foster change in organisations. It is therefore submitted that it may be imperative for the Ethekewini municipal leaders to adopt a transformational leadership approach and develop an effective change management programme to deal with stigma and discrimination against persons with disabilities. In this regard, what follows is a discussion on disability discrimination against persons with disabilities in the workplace.

3.4 Disability Discrimination against Persons with Disabilities in the Workplace

Historically, South Africa has experienced various discriminatory practices not only in the workplace but also in society as a whole. Some of these practices still remain even though South Africa attained democracy and prevail despite the new constitutional dispensation. Among these discriminatory practices is disability discrimination in the workplace. Ngwena describes the characteristics of disability related discrimination as --

“the systematic and egregious exclusion of people with disabilities from a world whose social arrangements have been constructed on an implicit assumption that everyone conforms to a certain biological norm”.⁵⁹⁸

Rohmer and Louvet contend that despite important changes in disability related legislation aimed at fostering parity, persons with disabilities continue to be subject to considerable

⁵⁹⁴ Holness note 3 (above) 510-11.

⁵⁹⁵ item 1 of the Disability Code.

⁵⁹⁶ R K Chen, C J Blankenship, B S Austin, V C Cantu & W Kotbunkair 'Hiring of people with disabilities: Perceptions of Hispanic small business owners' (2016) 45 *Journal of Vocational Rehabilitation* 186.

⁵⁹⁷ Chen, Blankenship, Austin, Cantu & Kotbunkair note 596 (above) 187.

⁵⁹⁸ Ngwena note 575 (above) 121.

discrimination.⁵⁹⁹ Marumoagae argues that “even though a fair amount of attention has been given to discrimination relating to race, religion and gender, not much has been accorded to disability discrimination, particularly in the workplace.”⁶⁰⁰ It follows that persons with disabilities continue to suffer marginalisation and prejudice in the workplace.

Marumoagae, in continuing to explore the encounters confronted by persons with disabilities, argues that “the International Labour Organisation (ILO) and various countries, including South Africa, have conducted intensive research which has revealed that the perceptions which some employers have cause insurmountable barriers for persons with disabilities to enter the labour market”.⁶⁰¹ He further asserted that “biased attitudes and unjustified perceptions are largely strengthened by widespread ignorance and a belief in stereotypes, which ultimately lead to such persons being unfairly discriminated against in society at large and in employment in particular”.⁶⁰² It can therefore be said that discrimination against persons with disabilities is still predominant in the workplace and there is an urgent need to ensure that they are reasonably accommodated.

Perhaps it is important to define the concept of discrimination from a legislative perspective. Discrimination is defined as “any act or omission ... which directly or indirectly ... imposes burdens, obligations or disadvantage on; or ... withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds”.⁶⁰³ From a workplace perspective, the foundation of the embargo of unfair discrimination is section 6(1) of the EEA which states that:

“No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.”

It is argued that the aforementioned jurisprudence on discrimination requires that the handling of disability affairs in the workplace should be dealt with as a rights issue and that each employee with a disability should be able to participate on an equal footing with others and be reasonably accommodated where necessary. Piggott et al suggest that in dealing with disability

⁵⁹⁹ O Rohmer & E Louvet ‘Implicit measure of the stereotype content associated with disability’ (2012) 51 *British Journal of Social Psychology* 733.

⁶⁰⁰ Marumoagae note 134 (above) 345.

⁶⁰¹ Marumoagae note 134 (above) 348.

⁶⁰² Marumoagae note 134 (above) 348.

⁶⁰³ section 1(viii) of the PEPUDA.

discrimination, persons with disabilities should be recognised as citizens with full economic, political and moral rights.⁶⁰⁴ They argue that persons with disabilities should not be seen as people deserving of help.⁶⁰⁵ It has been contended that issues surrounding discrimination against persons with disabilities are inherently unique and that solutions will therefore not always follow similar patterns to those applicable to other forms of discrimination.⁶⁰⁶ It follows that employers have a responsibility to eliminate and prevent unfair discrimination in the workplace. In *Piliso v Old Mutual Life Assurance Co (SA) Ltd & others*⁶⁰⁷ the court said:

“[T]here is no doubt that employers are obliged to provide their employees with a safe working environment. It is equally clear that employers are obliged to take steps to eliminate unfair discrimination in any employment policy or practice. ‘Employment practice’ is defined in s 1 of the EEA as including ‘the working environment and facilities’. There is no doubt that employers are required to take steps in advance, and to be proactive, in the elimination and prevention of unfair discrimination.”

The aforementioned case suggests that leadership of the organisation has a duty to eliminate discrimination in the workplace. Generally, an organisation performs its duties through its directors or leaders who give strategic direction to the organisation. Belias and Koustelios assert that strategic leadership needs to be transformational if it is aimed to serve the organisation.⁶⁰⁸ Consequently, tackling discrimination issues in the workplace lies with leadership. Transformational leadership appears to be the leadership model that may address disability discrimination in the workplace as it is more people orientated. In other words, transformational leaders understand that people are unique and may have different needs. As transformational leaders value individual rights and are equipped to confront the existing state of affairs, it is asserted that transformational leadership may play a critical role in managing disability in the workplace thereby eradicating discrimination faced by persons with disabilities.

3.5 Accessibility to Workplace for Persons with Disabilities

Among the key challenges confronted by persons with disabilities is accessibility to the workplace. There is a general perception that when one talks of accessibility to the workplace for persons with disabilities, this is only in relation to the structural architecture of buildings.

⁶⁰⁴ L Piggott, S Sapey & F Wilenius ‘Out of touch: Local government and disabled people’s employment needs’ (2005) 20 (6) *Disability & Society* 607 doi: 10.1080/09687590500248365.

⁶⁰⁵ Piggott, Sapey & Wilenius note 604 (above) 607.

⁶⁰⁶ O C Dupper, C Garbers, A Landman, M Christianson, A Basson & E M L Strydom *Essential Employment Discrimination Law* (Juta Law Publishers 2004) 154.

⁶⁰⁷ (2007) 28 *ILJ* 897 (LC) at paragraph 77.

⁶⁰⁸ D Belias & A Koustelios ‘The impact of leadership and change management strategy on organisational culture’ (2014) 10 (7) *European Scientific Journal* 457.

This is because of a narrow understanding of disability and the preconception that has generally been created that disability is about physical impairment. However, it goes beyond that. For example, Holness asserts that “attitudinal barriers to accessible workplaces include misconceptions and attitudes that people within the workplace may have about disabilities including ignorance, pity, denial and fear”.⁶⁰⁹ Holness provides examples of attitudinal barriers as “general negative attitudes among employers such as the perception of high costs of training, limit the opportunities of these employees for employment, career advancement and training”.⁶¹⁰ It can therefore be said that workplace accessibility for persons with disabilities is not limited to only structural architecture but covers diverse initiatives that the employer may incorporate to guarantee their accessibility to the workplace.

The type and severity of disability is another huge challenge hindering access to the workplace for persons with disabilities. It appears that organisations prefer to employ employees with minor conditions as they are perceived to be easier to accommodate. As a result, those with moderate to severe conditions remains secluded and not able to access the workplace. This practice perpetuates discrimination against persons with disabilities. Chen et al assert that “hiring decisions are often influenced by the types of and severity of disabilities.”⁶¹¹ For example, “people with visual impairments have trouble maintaining, seeking, or even obtaining a job”.⁶¹² They continue to state that “people with mental disabilities (e.g depression and anxiety) also face challenges finding employment”,⁶¹³ and that “[p]eople with paranoid delusional disorder, major depression, bipolar disorder and schizophrenia have been found to experience challenges in obtaining and maintaining employment”.⁶¹⁴

While the issue of accessibility to the workplace for persons with disabilities has been widely explored by various scholars, it appears that transformational leadership has not been given attention as a leadership model that can bring about change to guarantee persons with disabilities access and fully involvement in the workplace. Urban and Govender assert that transformational leadership assists in building and shaping organisational culture, and transforming employees to become change agents within an organisation.⁶¹⁵ Transformational

⁶⁰⁹ Holness note 3 (above) 520.

⁶¹⁰ Holness note 3 (above) 520.

⁶¹¹ Chen, Blankenship, Austin, Cantu & Kotbungkair note 596 (above) 187.

⁶¹² Chen, Blankenship, Austin, Cantu & Kotbungkair note 596 (above) 188.

⁶¹³ Chen, Blankenship, Austin, Cantu & Kotbungkair note 596 (above) 188.

⁶¹⁴ Chen, Blankenship, Austin, Cantu & Kotbungkair note 596 (above) 188.

⁶¹⁵ B Urban & T Govender ‘Cultivating an entrepreneurial mindset through transformational leadership: A focus on the corporate context’ (2017) 15 (2) *International Research Journal* 127.

leadership has been found to be “a necessary organisational requirement for accommodating ever-changing needs of the organisations”.⁶¹⁶ It is asserted that transformational leadership may bring about the required organisational change to ensure accessibility to the workplace for persons with disabilities.

3.6 Human Rights Approach to Disability in the Workplace

The prevailing disparity and discrimination against persons with disabilities in the workplace leads one to question how their rights can be effectively attained to ensure their full protection and benefits of the law. Ngwena asserts that:

“The treatment of people with disability in the workplace raises difficult questions about how to secure the full enjoyment of human dignity, equality and freedom for a minority that has been the object of entrenched marginalisation. It brings to the fore questions about the efficacy of law as an instrument for securing equality and social justice for people that have historically been assigned to the bottom of the social ladder. In particular circumstances of the workplace, it raises questions about the kind of reparative or compensatory justice that is necessary to ensure that people with disabilities are able to enter and advance in employment without serious impediments that they have hitherto faced.”⁶¹⁷

Thus it is contended that disability is fundamentally “a human rights issue”.⁶¹⁸ Basson underscores that the perspective on “disability must address the rights of persons with disabilities and the development of their fundamental rights.”⁶¹⁹ The argument by Basson postulates that at the center of the human rights model there is emphasis on individual necessities. Within the disability framework, it proposes that the employee or person with disabilities has the same rights as all other individuals. Holness asserts that changing workplace habits to safeguard true openness for persons with disabilities continues to be a challenge.⁶²⁰ There has been a call for employers to enforce practical methodologies to diversify workforces to accommodate persons with disabilities.⁶²¹ Consequently, there is a necessity to address disparities, violations of dignity and the renunciation of autonomy suffered by persons with disabilities in the workplace.

While the aforementioned literature underscores the value of a human rights approach to disability issues as well the need for protection of human dignity in the workplace, it appears

⁶¹⁶ Urban & Govender note 615 (above) 128.

⁶¹⁷ Ngwena note 28 (above) 170.

⁶¹⁸ Y Basson ‘Selected developments in South African labour legislation related to persons with disabilities’ (2017) 20 *PER/PELJ* 4.

⁶¹⁹ Basson note 618 (above) 4.

⁶²⁰ Holness note 3 (above) 518.

⁶²¹ A Greef & P Nel ‘Employment transformation enhancement in South Africa: Establishing a job sharing model to promote employment equity’ (2003) *South African Journal of Labour Relations* 28.

that there is a gap with regard to the type of leadership required in order to achieve transformation, social justice and equality for persons with disabilities in the workplace. Additionally, it appears that there has not been much focus on the role of workplace leadership in addressing disability equity in the workplace even though workplace leaders are accountable for implementing workplace policies and ensuring adherence to legislation. Leadership should be at the front on all issues relating to the execution of workplace policies and legislation and should ensure that they are effectively implemented.

Consequently, there is a need for transformational leadership to eradicate discriminatory practices by identifying obstacles that unfavourably affect designated employees, and thereby to secure human rights protection for persons with disabilities. Mwambazambi and Banza describe that transformational leaders are those leaders who have due regard to the doctrine of individual worth, privileges, communal principles, individual and socio-political change.⁶²² Transformational leaders have been found to recognise, accommodate and improve the quality of existing needs of employees.⁶²³ It is affirmed that organisational leaders have a responsibility to ensure parity and to safeguard individual rights for persons with disabilities and such protection can be attained through transformational leadership.

The aforementioned discussion postulates that individual rights are generally entitlements that everyone must enjoy by the mere fact that they are human beings, and this includes persons with disabilities. The human rights approach to disability has been found to “shift from the treatment of persons with disabilities as objects of charity, medical treatment and social protection, towards viewing persons with disabilities as people with rights who are capable of claiming those rights and making decisions for their lives based on their free and informed consent, as well as being active members of society”.⁶²⁴

Rioux and Carbert affirm that a human rights approach posits that society is compelled to come up with systems that are essential for individuals to attain their rights.⁶²⁵ Within the disability context a human rights approach has been described as a “mechanism that provides supports, services and aids to enable social and economic integration, self-determination and the

⁶²² K Mwambazambi & A K Banza ‘Developing transformational leadership for sub-Saharan Africa: Essential missiological considerations for church workers’ (2014) 35 (1) *Verbum et Ecclesia* 1 doi: 10.4102/ve.v35i1.849.

⁶²³ Mwambazimba & Banza note 622 (above) 1.

⁶²⁴ Njelesani, Cleaver, Tataryn & Nixon note 9 (above) 23.

⁶²⁵ M Rioux & A Carbert ‘Human rights and disability: The international context’ (2003) 10 (2) *Journal of Developmental Disabilities* 2.

enjoyment of legal and social rights”.⁶²⁶ It follows that all individuals have the right to enjoy equal benefits of the law. Rioux and Carbert explain:

“The human rights perspective means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems toward viewing them as rights holders. Importantly, it means locating any problems outside the person and especially in the manner by which various economic and social processes accommodate the difference of disability or not as the case may be. The debate about the disability rights is therefore connected to a larger debate about the place of difference in society.”⁶²⁷

Whilst on the concept of human rights, Gumbis et al emphasise that individual rights are entitlements essential for the advancement of independence.⁶²⁸ They further argue that the advancement of individual rights cannot be attained until there is recognition of people’s worthiness.⁶²⁹ They continue that renunciation of the “individual as the main master of his or her own life is the logical consequence of gross human rights violation in all societies”.⁶³⁰ Gumbis et al underscore the superiority and significance of human rights by stating that “human rights are ethically superior to society and state, and under the control of individuals, who hold them and may exercise them against the state in extreme cases”.⁶³¹ In other words, personal rights cannot be taken away from people and must always be safeguarded. Degener argues that “human rights are acquired by birth and are universal, i.e. every human being is a human rights subject”.⁶³² It has further been asserted that the superiority of human rights “reflects not only the equality of all individuals but also their autonomy, their right to have and pursue interests and goals different from those of the state”.⁶³³ Consequently, a human rights approach to disability encompasses the view that having an impairment does not deprive an individual of their human rights.

Although the aforementioned literature emphasises the originality and superiority of human rights, it appears that there is a need to explore the importance and the role of the human rights model within the disability context in the workplace. It further appears that much emphasis has been placed on the social and medical approach to disability. It is also for this reason that this study intends to explore an individual rights method approach to disability in the workplace

⁶²⁶ Rioux & Carbert note 625 (above) 2.

⁶²⁷ Rioux & Carbert note 625 (above) 2.

⁶²⁸ J Gumbis, V Bacianskaite & J Randakeviciute ‘Human rights today’ (2010) 1 (119) *Jurisprudence* 131.

⁶²⁹ Gumbis, Bacianskaite & Randakeviciute note 628 (above) 131.

⁶³⁰ Gumbis, Bacianskaite & Randakeviciute note 628 (above) 131.

⁶³¹ Gumbis, Bacianskaite & Randakeviciute note 628 (above) 133.

⁶³² T Degener ‘Disability in a human rights context’ (2016) 5 (35) *Laws* 4 doi: 10.3390/laws5030035 www.mdpi.com/journal/laws accessed on 4 February 2018.

⁶³³ Gumbis, Bacianskaite & Randakeviciute note 628 (above) 133.

through transformational leadership. Research has indicated that “disability rights have been of utmost significance within the human rights exploration agenda particularly if compared to issues of gender and ethnicity”.⁶³⁴ This is supported by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which is regarded as a landmark statement on disability rights.

In this context, article 1 states that the “the purpose of CRPD is to promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. The CRPD has been found to be the primary people’s rights tool which recognises “that all disabled persons are right holders and that impairment may not be used as an excuse for denial or limitations of human rights”.⁶³⁵ Greco & Giovanni assert that within the legalistic underpinning of human rights, whose modern endorsement dates back to the 1920s, disability has been mostly overlooked for almost a century.⁶³⁶ Consequently, there is a necessity to explore a human rights approach to disability and practical methodologies that can be utilised to ensure the realisation of disability rights in the workplace and society at large.

It follows that independence and human rights are intertwined. All individuals, including persons with disabilities, must be afforded the dignity they deserve. The human rights approach to disability necessitates that persons with disabilities be recognised as legal persons in the workplace and further necessitates a fundamental transformation in the way things are managed in the workplace in respect to persons with disabilities. Such an approach calls for a leadership that values moral judgment and respect human dignity. The argument by Alatawi is that one factor that distinguishes the transformational leadership model from other managerial styles is the inclusion of supportive management that encourages problem solving in innovative ways.⁶³⁷ Consequently, transformational leadership may be a solution to achieve radical transformation in the workplace.

Greco and Giovanni contend that “notwithstanding the impact of disability studies, and with the social model of disability as a guiding principle, the complex procedures that led to the formulation of the UNCRPD moved mainly within the legalistic approach to human rights as

⁶³⁴ Greco & Giovanni note 15 (above) 243.

⁶³⁵ Degener note 632 (above) 2.

⁶³⁶ Greco & Giovanni note 15 (above) 243.

⁶³⁷ M A Alatawi ‘Can transformational managers control turnover intention?’ (2017) 15 *South African Journal of Human Resource Management* 2-3.

the UNCRPD itself does”.⁶³⁸ They continue to assert that, as a result, the modern deliberation on disability and human rights still faces most of the limitations and controversies proper to the whole legalistic approach, often assuming disability as a neutral and universal concept.⁶³⁹

Greco and Giovanni have found that socio-legal disability studies have been legal philosophy oriented rather than serving to connect to the foundation of human rights, and highlighting and discussing the role disability should play.⁶⁴⁰ The human rights based approach to disability appears not to have been extensively explored in the workplace. Consequently, its role has not properly materialised within the disability context. It is asserted that a human rights approach can play a major role in promoting inclusive culture and diversity in relation to disability in the workplace. Inclusive culture and diversity may be achieved through transformational leadership since transformational leaders are associated with justice, equity and fairness -- the principles of human rights.

The South African Constitution 1996 was founded on human dignity, equality and the advancement of human rights. Holness asserts that fundamental to a knowledge of all essential human rights in the South African Constitution, including the right to equality, is that these rights seek to safeguard certain fundamental interests as human beings, and particularly acknowledge the equal importance of individual lives.⁶⁴¹ She further describes fundamental human rights as follows referring to Bilchitz:

“These rights relate to the very most elements of our lives -- the necessary conditions of our freedom, the resource we need to live lives of value, and to function adequately. Rights have a form of urgency that flows from the impact they have on our ability as individuals to lead lives of value to us. Rights are thus best understood as ‘weighty principles that protect the most fundamental interests of the individual’. At their foundation is a concern for the value and quality of individual lives. In a just political community, each individual life will be understood as having equal value. Thus, rights can be understood to flow from what may be termed the ‘equal importance of individual lives’. This understanding of rights is fundamentally congruent with the text of South African Constitution. The fundamental values underlying the Constitution are ‘human dignity, equality and freedom’. Human dignity involves a fundamental assumption of the worth of each individual life and thus captures the notion of the importance of individual lives. Equality represents the notion that each life is to be treated as equally valuable. Freedom is part of what constitutes the value in individual lives: to be able to flourish and live according to one’s own conception of the good.”⁶⁴²

⁶³⁸ Greco & Giovanni note 15 (above) 243.

⁶³⁹ Greco & Giovanni note 15 (above) 243.

⁶⁴⁰ Greco & Giovanni note 15 (above) 243.

⁶⁴¹ W Holness ‘Equal recognition and legal capacity for persons with disabilities: Incorporating the principle of proportionality’ (2014) 30 *South African Journal on Human Rights* 330.

⁶⁴² Holness note 641 (above) 330.

It follows that human rights should be at the forefront on all disability matters in the workplace. The execution of disability laws and policies should therefore be approached from a human rights point standpoint. It has been said that at the heart of a rights based approach is the notion that persons with disabilities possess the right to be afforded equal treatment (formally), but also practically may require differentiated treatment where needed, such as reasonable accommodation.⁶⁴³ Transformational leadership can play a crucial role in this regard as such leadership ascribes to an individual needs and rights based approach when dealing with employee issues in the workplace.

It is maintained that a human rights based approach, especially for persons with disabilities, can be achieved through transformational leadership in the workplace. It has been recommended that a human rights approach should lead to participation, integration, inclusion and achievement of government's responsibility towards persons with disabilities.⁶⁴⁴ It has further been said that the "human rights model is indicative of the movement towards greater accountability for states to ensure that the rights of persons with disabilities are realised".⁶⁴⁵

Bhabha argues that the disability human rights paradigm offers a specified view of the transformational agenda in relation to persons with disabilities.⁶⁴⁶ Disability as a basis of equality has been found to be adequately unique and distinct from other bases to justify that a particularised variation of the transformative purpose behind substantive equality be developed.⁶⁴⁷ Bhabha illustrates the disability human rights notion as a concept that incorporates an inclusive framework to foster the human dignity and capacities of each person, regardless of social classification of their capabilities.⁶⁴⁸

Having explored the jurisprudence on human rights, it follows that government and organisations at large have a huge obligation to encourage individual rights culture in the workplace. Grobbelaar-Du Plessis and Nienaber assert that the state has the responsibility to value, safeguard and accomplish human rights by adopting legal, managerial and other essential measures to guarantee enforcement of individual rights.⁶⁴⁹ However, while the authors

⁶⁴³ Glicksman, Goldberg, Hamel, Shore, Wein, Wood & Zummo note 148 (above) 182.

⁶⁴⁴ Basson note 618 (above) 5.

⁶⁴⁵ Basson note 618 (above) 5.

⁶⁴⁶ Bhabha note 45 (above) 238.

⁶⁴⁷ Bhabha note 45 (above) 238.

⁶⁴⁸ Bhabha note 45 (above) 239.

⁶⁴⁹ I Grobbelaar-Du Plessis & A Nienaber 'Disability and reasonable accommodation: *HM v Sweden* Communication 3/2011 (Committee on the Rights of Persons with Disabilities)' (2014) 30 (2) *South African Journal on Human Rights* 370.

correctly underscore the duty of the state towards the fulfilment of human rights in the workplace, they did not elaborate on the type of management/leadership required to address this in relations to persons with disabilities. It further appears that there is a need to explore the obligations of the state to disability inclusion within the leadership framework since leadership of an organisation is responsible for the implementation of disability laws as well as ensuring respect, protection and fulfilment of human rights of all employees including employees with disabilities. Consequently, leaders in the public sector must move towards a human rights based approach to ensure that the rights of employees with disabilities are safeguarded, thus ensuring transformation in the workplace.

The contention has been that “public authority must have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and encourage good relations”.⁶⁵⁰ Thus, it is argued that through transformational leadership, a human rights approach to disability can be realised in the workplace. It has been said that the most significant goal of human rights law is the validation of human dignity.⁶⁵¹ Accordingly, human rights law establishes a reasonable expectation on individuals that the law can and must be employed to assist in eradicating disparities.⁶⁵² It is on these basis the human rights model forms the foundation of the discussion of the rights of persons with disabilities in this study. The following is an account of the right to equality and human dignity of persons with disabilities in the workplace.

3.6.1 Rights to equality and human dignity

Unfair discrimination has been found to be a barrier that undermines the right to dignity and socio-economic well-being of persons with disabilities.⁶⁵³ It has been globally agreed that parity is the fundamental tool for confronting the discrimination and shortcomings experienced by persons with disabilities in the workplace.⁶⁵⁴ For example, Ngwena asserts that the deeply rooted methodical “marginalisation of persons with disabilities necessitates no less than a legal approach that recognises that disability takes many forms, and that the creation of an environment in which barriers that stand in the way of the rights to human dignity and equality of persons with disabilities are dismantled, is a fundamental objective”.⁶⁵⁵ Ngwena further

⁶⁵⁰ S Fredman ‘The public sector equality duty’ (2011) 40 (4) *Industrial Law Journal* (United Kingdom) 411.

⁶⁵¹ J C Mubangizi ‘The role of human rights law in community development: A South African perspective’ (2004) 3 *Stellenbosch Law Review* 535.

⁶⁵² Mubangizi note 651 (above) 535.

⁶⁵³ Ngwena note 575 (above) 118.

⁶⁵⁴ Ngwena note 28 (above) 171.

⁶⁵⁵ Ngwena note 28 (above) 171.

contends that “it is not only the individual’s working capacity that should matter, but also the physical and socio cultural environment”.⁶⁵⁶ Holness argues that parity for persons with disabilities encompasses “not only the eradication of discrimination, but also the removal of impediments to opportunities and the provision of positive measures to accommodate and include persons with disabilities.”⁶⁵⁷

There has been an acknowledgment that South Africa has made strides towards transforming the country “however the issue of discrimination still prevails in the workplace”.⁶⁵⁸ Mubangizi asserts that, while South Africa has achieved an astonishing transformation from apartheid to democracy, the entire economic and social fabric is still riddled with the consequences of the policy of institutionalised discrimination of the past.⁶⁵⁹ Mubangizi further contends that the execution and protection of parity right is critical.⁶⁶⁰ As Bhabha says, fundamental to the positive rights mandate is “an approach to disability that values the enhancement of capabilities, the realisation of self-worth and individual potential, the preservation of human dignity and the promotion of individual and collective self-determination”.⁶⁶¹ What is fundamental, according to Bhabha, is the idea “of equality that recognises difference as not necessarily a basis of disadvantage, but as a source of richness and intrinsic value”.⁶⁶²

Steinmann describes and emphasises the importance of the recognition of human dignity by saying that “dignity represents a ‘wide moral view’; a metaphysical notion which implies an objective moral principle on the one hand and on the other hand legal recognition of equal human rights”.⁶⁶³ Steinmann continues to maintain that as an ethical view, dignity signifies the core of what being a human being entails; as an acknowledgment of a human right, it legalises the notion that the essence of humanity must be recognised and respected in equal significance.⁶⁶⁴ In *S v Dodo*⁶⁶⁵ Ackerman J said that “human beings are not commodities to which a price can be attached, they are creatures with inherent and infinite worth, they ought to be treated as ends in themselves, never merely as a means to an end.” The emphasis of the

⁶⁵⁶ Ngwena note 28 (above) 171.

⁶⁵⁷ Holness note 3 (above) 521.

⁶⁵⁸ Mubangizi note 651 (above) 528.

⁶⁵⁹ Mubangizi note 651 (above) 528.

⁶⁶⁰ Mubangizi note 651 (above) 528.

⁶⁶¹ Bhabha note 45 (above) 220.

⁶⁶² Bhabha note 45 (above) 220.

⁶⁶³ C Steinmann ‘The core meaning of human dignity’ (2016) 19 *PER/PELJ* 1.

⁶⁶⁴ Steinmann note 663 (above) 1.

⁶⁶⁵ (2001) 3 SA 382 (CC) paragraph 38.

above jurisprudence is the worth of human dignity and the way in which individual rights should be protected in our society.

It goes without saying that human rights must be safeguarded and valued at all times. Oelofse asserts that to violate human rights, is to forbid individuals their indispensable moral prerogative; in other words, to treat an individual less as than a human being as if he or she does not deserve respect and dignity.⁶⁶⁶ In *Hoffmann v South African Airways*⁶⁶⁷ the Constitutional Court held that “at the heart of the prohibition of unfair discrimination is the recognition that under our Constitution all human beings, regardless of their position in society, must be accorded equal dignity.” It can be said that human dignity is compromised when a person does not receive equal treatment or dignity in society, including in the workplace. Thus the need to protect, promote and respect human dignity in recognition of the rights of persons with disabilities in the workplace has to be considered.

It is contended that, while scholars have acknowledged the challenges that exist for persons with disabilities in the workplace as well as society in general, it appears that there has not been a study focusing on the type of organisational management that may work towards the achievement of parity for persons with disabilities in the workplace, which this study seeks to address through transformational leadership. The aforesaid jurisprudence on equality and human dignity signifies that, although South Africa has attained democracy and has legal instruments to address disparities in the workplace, persons with disabilities are still marginalised. It is apparent that there is a need for organisational leadership that can go beyond the legalistic approach in dealing with disability affairs in the workplace. There is an urgent need for profound transformational change to ensure inclusivity and diversity particularly for persons with disabilities in the workplace.

It is argued that transformational leadership may be a solution to the protection of human dignity and achievement of equality, especially for persons with disabilities in the Municipality. The rationale behind this contention is that transformational leaders have been found to believe in inclusiveness and to possess the potential to change the effects of diversity.⁶⁶⁸ Kim asserts that transformational leaders set well-defined goals and have a vision

⁶⁶⁶ M Oelofse ‘Universal dignity, justice and accountability: Protection of human rights and dealing with atrocities’ (2010) 6 (1) *Journal for Transdisciplinary Research in Southern Africa* 116.

⁶⁶⁷ 2001 (1) SA 1 (CC); (2000) 21 *ILJ* 2357 (CC); [2000] 12 *BLLR* 1365 (CC) paragraph 27.

⁶⁶⁸ M Kim ‘Effects of team diversity, transformational leadership and perceived organizational support on team-learning behavior’ (2017) 45 (8) *Social Behaviour and Personality: An International Journal* 1259.

for an organisation and can thus play a convergent role to assist in solving problems emanating from diversity.⁶⁶⁹ Ciurea et al contend that transformational leadership is highly persuasive, particularly when transforming and upholding organisational systems and customs.⁶⁷⁰ They further affirm that transformational leadership installs consciously, or sometimes unconsciously, humanistic principles and objectives which lead to transformation and development of other people.⁶⁷¹ Consequently, in an organisation that is led through transformational leadership, individual differences, values and human dignity are always recognised and safeguarded. In *S v Makwanyane*⁶⁷² the court held:

“Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many other rights that are specifically entrenched in the Bill of Rights.”

In an environment led through transformational leadership, there is a sense of belonging and inclusiveness.⁶⁷³ It follows that transformational leadership may be utilised to address disparities and stigma attached to persons with disabilities and ensure that their dignity and human rights are recognised and safeguarded in the Municipality.

The primary foundation of legal rights for persons with disabilities is the Bill of Rights, entrenched in the Constitution. Section 7(1) of the Constitution pronounces that “the Bill of Rights as a cornerstone of democracy in South Africa”. It enshrines the rights of all people in our country and underscores the democratic values of human dignity, equality and freedoms. According to Liebenberg, equality is not merely a foundational value to be encouraged, along with human dignity and freedom, in the understanding of all rights in the Bill of Rights, it is also a fundamental right specifically defined to include the full and equal enjoyment of all rights and freedoms.⁶⁷⁴ Bhabha asserts that the Bill of Rights provides a framework for substantive equality -- that is, a conception of equality that is concerned with situation, influence, difference and values.⁶⁷⁵ Bhabha maintains that the Bill of Rights guarantees that

⁶⁶⁹ Kim note 668 (above) 1259.

⁶⁷⁰ A V Ciurea, E Avram & A Mohan ‘Leadership in private medical clinic’ (2017) 25 (1) *Review of General Management* 23.

⁶⁷¹ Ciurea, Avram & Mohan note 670 (above) 23.

⁶⁷² 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC).

⁶⁷³ K Moon ‘The effects of diversity and transformational leadership climate on organizational citizenship behavior in the U.S. Federal Government: An organizational-level longitudinal study’ (2016) 40 (2) *Public Performance & Management Review* 361 at 366.

⁶⁷⁴ S Liebenberg ‘Toward an equality-promoting interpretation of socio-economic rights in South Africa: Insight from the egalitarian liberal tradition’ (2015) 132 (2) *South African Law Journal* 416-17.

⁶⁷⁵ Bhabha note 45 (above) 220.

constitutional rights are proactive, integrated and remedial -- what has been described as a Constitution with transformative ambitions.⁶⁷⁶

Consequently, the constitutional provisions dealing with disability parity demand transformative measures to ensure full inclusion of persons with disability in our society. Dupper et al emphasise that the Constitution sanctions the notion that disability discrimination should not be allowed in an egalitarian South Africa.⁶⁷⁷ In addition, Dupper et al say that the underlying right to parity and human worthiness are essential to the inclusion of persons with disabilities.⁶⁷⁸ Holness shares the same sentiments when she asserts that equality for persons with disabilities encompasses “not only the eradication of discrimination, but also the eradication of barriers to opportunities, and the provision of positive measures to accommodate and include persons with disabilities.”⁶⁷⁹ It is contended that, in order for those transformative measures to be accomplished, there must be a willingness and commitment to drive transformation from management of the institution. As mentioned above, transformational leaders are influential on issues of transformation and challenging the status quo in the workplace. Accordingly, transformational leadership may be necessary to attain disability parity in the workplace.

The Constitution provides for the right to equality.⁶⁸⁰ “Equality includes the full and equal enjoyment of all rights and freedoms.”⁶⁸¹ It further requires the national legislature to promote the attainment of parity by enacting laws to forbid unfair discrimination. The Constitution further provides that “[e]very citizen has the right to choose their trade, occupation or profession freely”.⁶⁸² The Constitution is built on the values of human worth, the achievement of equality and the advancement of human rights. It is argued that transformational leaders have a strong connection to morals and justice, and are therefore suited to accomplish a culture of inclusion of persons with disabilities in the workplace.

Ngwena asserts that equality is a worth for all universal “value under the Constitution” and has been portrayed as a fundamental worth underlying the post-apartheid society.⁶⁸³ It has been

⁶⁷⁶ Bhabha note 45 (above) 220.

⁶⁷⁷ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 158.

⁶⁷⁸ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 158.

⁶⁷⁹ W Holness ‘Equal recognition and legal capacity for persons with disabilities: Incorporating the principle of proportionality’ (2014) 30 *South African Journal on Human Rights* 320.

⁶⁸⁰ section 9 of the Constitution.

⁶⁸¹ section 9 of the Constitution.

⁶⁸² section 22 of the Constitution.

⁶⁸³ Ngwena note 28 (above) 188.

said that the Constitution established the legal and moral obligations to correct injustices of the past and the aspiration to reinstate human worth for all people in South Africa.⁶⁸⁴ While the contention by Ngwena is imperative, it appears that there is a need to elaborate on the type of leadership required in order to accomplish the legal and moral obligations required by the Constitution in the workplace, which this study seeks to explore through transformational leadership. A transformational leader has been described as a leader who values his or her moral obligation as that of contributing to the transformation and enhancement of individuals and communities or organisations for a higher communal good.⁶⁸⁵ Utilising transformational leadership can assist in ensuring that the legal and moral obligations created by the Constitution are achieved in the workplace, especially for persons with disabilities thereby ensuring their full inclusion and participation in society.

The Constitution therefore requires restoration of human dignity and the inclusion of persons with disabilities in all aspects of life. These provisions taken together suggest that there should not be any barriers to any citizen, including persons with disabilities, entering into and advancing in any profession or occupation. Ngwena maintains that the goal is to attain practical parity for persons with disabilities in the workforce.⁶⁸⁶ The Constitutional Court in *Bhe & others v Khayelitsha Magistrate & others*⁶⁸⁷ held:

“Not only is the achievement of equality one of the founding values of the Constitution, s 9 of the Constitution also guarantees the achievement of substantive equality to ensure that the opportunity to enjoy the benefits of an egalitarian and non-sexist society is available to all including those who have been subjected to unfair discrimination in the past.”

Holness and Rule explain:

“The goal is to achieve a barrier-free society for persons with disabilities which accommodates a wide spectrum of individual abilities and not a society which simply expects all to conform to one hypothetical, typically fictional ‘normalcy’ standard before they ‘fit in’. Equality seeks to attain an environment whose old barriers have been removed and where new barriers are prevented before they are created, in which persons with disabilities are fully included as of right, free from stereotype or other impediment, with full respect for their dignity and worth as individuals, and with full, effective and timely accommodation.”⁶⁸⁸

⁶⁸⁴ Sing note 10 (above) 162.

⁶⁸⁵ Mwambazimba & Banza note 622 (above) 2.

⁶⁸⁶ Ngwena note 28 (above) 189.

⁶⁸⁷ (2005) 1 SA 580 (CC) paragraph 50.

⁶⁸⁸ W Holness & S Rule ‘Barriers to advocacy and litigation in the equality courts for persons with disabilities’ (2014) 17 (5) *PER/PELJ* 1911.

The jurisprudence on equality and dignity has advanced to give contours to creating a society where unfair discrimination is prohibited and equality promoted. In *President of the Republic of South Africa & another v Hugo*⁶⁸⁹ the court held:

“At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups. The achievement of such a society in the context of our deeply inegalitarian past will not be easy, but that is the goal of the Constitution should not be forgotten or overlooked.”

The court further held:

“The South African Constitution is primarily and emphatically an egalitarian Constitution. The supreme laws of comparable states may underscore their principles and rights. But in light of our own particular history, and our vision for the future, a Constitution was written with equality at its centre. Equality is our Constitution’s focus and its organising principle.”⁶⁹⁰

The South African courts have relied on foreign jurisprudence for guidance on matters relating to human dignity and equality.⁶⁹¹ In *Egan v Canada*⁶⁹² the court lamented as follows with regard to human dignity and equality:

“This court has recognised that inherent human dignity is at the heart of individual rights in a free and democratic society. ... More than any other right in the *Charter*, s.15 gives effect to this notion. ... Equality, as that concept is enshrined as a fundamental human right within s.15 of the *Charter*, means nothing if it does not represent a commitment to recognizing each person’s equal worth as a human being, regardless of individual differences. Equality means that our society cannot tolerate legislative distinctions that treat certain people as second-class citizens that demean them, that treat them as less capable for no good reason, or that otherwise offend fundamental human dignity.”⁶⁹³

The aforementioned jurisprudence on equality and human dignity indicates that employers and organisational leaders have a duty to ensure inclusivity especially for persons with disabilities in the workplace, and to ensure that they are accorded the equal dignity and respect they deserve. Nxumalo asserts that this responsibility on the employer to safeguard and advance the employment of persons with disabilities necessitates affording persons with disabilities some advantage in the spirit of full inclusion and parity within society.⁶⁹⁴ Transformational leadership is aligned to equity and justice. Consequently, transformational leadership may be

⁶⁸⁹ 1997 (1) SA 1 (CC); 1997 (6) BCLR 708 (CC) paragraph 41.

⁶⁹⁰ *President of the Republic of South Africa & another v Hugo* note 689 (above) paragraph 74.

⁶⁹¹ For example, see the Constitutional Court decision of *National Coalition for Gay and Lesbian Equality & another v Minister of Justice & others* 1999 (1) SA 6 (CC); 1999 (12) BCLR 1517 (CC) paragraph 49.

⁶⁹² (1995) 29 CRR (2d) 79.

⁶⁹³ *Egan v Canada* note 692 (above) 104-5.

⁶⁹⁴ L Nxumalo ‘Transformation and the duty of care concerning people with disabilities in the workplace: An analysis of *Smith v Kit Kat Group (Pty) Ltd*’ (2017) 38 *Industrial Law Journal* 1529.

a mechanism to ensure that persons with disabilities are able fully to participate in the workplace. It is contended that the achievement of human dignity for persons with disabilities entails a substantive approach to equality. Thus, what follows is an account of the substantive approach to disability parity in the workplace.

3.6.2 Substantive equality as means of achieving disability equity

Langa asserts that the attainment of equality necessitates a radical communal and fiscal change in which all people enjoy equal access to services and facilities of life and are in a position to advance to their full human potential.⁶⁹⁵ Elphick et al contend that “the interconnectedness and interdependence of rights is an idea advanced by the inclusion of the standard of fair versus unfair discrimination in the equality as provided for in sections 9(3)-(5) of the Constitution”.⁶⁹⁶ It has further been said that “through the use of this terminology, the bill of rights provides a framework for substantive equality”.⁶⁹⁷ The Constitutional Court in *National Coalition for Gay and Lesbian Equality & another v Minister of Justice & others*⁶⁹⁸ endorsed substantive equality as follows:

“We need, therefore, to develop a concept of unfair discrimination which recognises that although a society which affords each human being equal treatment on the basis of equal worth and freedom is our goal, we cannot achieve that goal by insisting upon identical treatment in all circumstances before that goal is achieved. Each case therefore, will require a careful and thorough understanding of the impact of the discriminatory action upon the particular people concerned to determine whether its overall impact is one which furthers the constitutional goal of equality or not. A classification which is unfair in one context may not necessarily be unfair in a different context.”

Emanating from constitutional provisions, Elphick et al describe substantive equality as “a conception that intends to attain equality of outcome by concerning itself with the context within which the law operates, existing differences between people and an assessment of the impact of legislation and state policies”.⁶⁹⁹ Substantive equality has further been described as the reason for inclusive citizenship as well as the ultimate juridical value and vehicle through

⁶⁹⁵ P Langa ‘Transformative constitutionalism’ (2006) 3 *Stellenbosch Law Review* 352-3.

⁶⁹⁶ R Elphick, J Elphick & Z de Sas Kropiwnicki ‘Substantive equality and caregiver responses to discrimination against children with disabilities in Orange Farm’ (2014) 30 *South African Journal on Human Rights* 227.

⁶⁹⁷ Bhabha note 45 (above) 220.

⁶⁹⁸ note 691 (above) paragraph 61. The same sentiments were shared in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & others* (2004) 4 SA 490 (CC) paragraph 74 where Ngcobo J found that “in this fundamental way, our Constitution differs from other constitutions which assume that all are equal and in so doing simply entrench existing inequalities. Our Constitution recognises that decades of systematic racial discrimination entrenched by the apartheid legal order cannot be eliminated without positive action being taken to achieve the result. We are required to do more than that. The effects of discrimination may continue indefinitely unless there is a commitment to end it.”

⁶⁹⁹ Elphick, Elphick & Kropiwnicki note 696 (above) 227.

which such citizenship can be realised.⁷⁰⁰ Ngwena and Pretorius explain that substantive equality attempts to advance an interpersonal diversity or classification philosophy that is intensely receptive to the morals of removing universal disparity, valuing human dignity and removing social differences.⁷⁰¹ They continue that substantive equality within transformative theory strives to strike a balance by being objective to ensure egalitarianism and protection of every individual.⁷⁰²

Smith asserts that substantive equality is a preferred notion of parity.⁷⁰³ According to Smith, “a substantive approach to equality orients the right to equality from a negatively-oriented right of non-discrimination to a positively oriented right to substantive equality”.⁷⁰⁴ Albertyn argues that “the Constitutional Court has endorsed characteristics that gives substantive equality transformative potential”.⁷⁰⁵ Among those characteristics identified by Albertyn is an emphasis on “understanding inequality within its social and historic context; a primary concern with the impact of the alleged inequality on the complainant; a recognition of difference as a positive feature of society; and attention to the purpose of the right and its underlying values in a manner that evinces a direct or indirect concern with remedying systemic subordination or disadvantage”.⁷⁰⁶ The Constitutional Court has accentuated that the Constitution requires a substantive approach to equality. In *Minister of Finance & another v Van Heerden*⁷⁰⁷ the Constitutional Court held that ---

“what is clear is that our Constitution and in particular s 9 thereof, read as a whole, embraces for good reason a substantive conception of equality inclusive of measures to redress existing inequality. Absent a positive commitment progressively to eradicate socially construed barriers to equality and to root out systematic or institutionalised underprivilege, the constitutional promise of equality before the law and its equal protection and benefit must, in the context of our country, ring hollow”.

There has been a view that “one of the central building blocks of substantive equality is its linking of status and disadvantage.”⁷⁰⁸ In this context, status has been described as “individual

⁷⁰⁰ C Ngwena & L Pretorius ‘Substantive equality for disabled learners in state provision of basic education: A commentary on *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*’ (2012) 28 *South African Journal on Human Rights* 83.

⁷⁰¹ Ngwena & Pretorius note 700 (above) 83.

⁷⁰² Ngwena & Pretorius note 700 (above) 83.

⁷⁰³ A Smith ‘Equality constitutional adjudication in South Africa’ (2014) 14 *African Human Rights Law Journal* 612.

⁷⁰⁴ Smith note 703 (above) 612-13.

⁷⁰⁵ C Albertyn ‘Substantive equality and transformation in South Africa’ (2007) 23 *South African Journal on Human Rights* 253 at 258.

⁷⁰⁶ Albertyn note 705 (above) 258.

⁷⁰⁷ (2004) 6 SA 121 (CC); (2004) 25 *ILJ* 1593 (CC) paragraph 31.

⁷⁰⁸ Du Plessis note 2 (above) 59.

and group characteristics that have made people targets of oppression and exploitation.”⁷⁰⁹ These, according to Du Plessis, include “the so called prohibited grounds of discrimination”.⁷¹⁰ The argument by Du Plessis is that “the linking of status and disadvantage requires us to consider how we construct status and disadvantage, respectively, as well as their interrelationship”.⁷¹¹ Consequently, in order to achieve substantive equality in the workplace, we need to understand our individual differences. In other words, we need to go beyond legislative compliance and strive for inclusion to achieve workplace diversity.

It appears that the role of transformational leadership in achieving workplace inclusion and substantive equality has not been explored in literature. It further appears that the concept of substantive equality and transformational leadership within the disability context has not been explored. The assertion is that transformational leadership may play a crucial role in achieving inclusion and substantive equality for persons with disabilities in the workplace. As transformational leadership has been described as an innovative style of leadership in which leaders promote individual support,⁷¹² it follows that transformational leadership may achieve workplace inclusion and substantive equality for persons with disabilities.

Ngwena asserts that substantive equality transcend uniform treatment to eradicate not only disparities founded on preconception, but also to challenge forms of discrimination and the effects of historical unfair treatment.⁷¹³ He further affirms that in its most radical or ideal form, it strives not merely to take cognisance of physical disparities, but more importantly, to safeguard egalitarianism.⁷¹⁴ Ngwena continues to argue that “substantive equality does not endorse the status quo of assigning persons with disability to their historical position of exclusion from the workplace.”⁷¹⁵ Substantive equality calls for investigation of the current status quo to determine whether persons with disabilities are not rejected by system disparities.

The concept of substantive equality, according to Goonesekere, requires a new paradigm of legal and progressive initiatives that link to communal policies and resource allocation and

⁷⁰⁹ Du Plessis note 2 (above) 59.

⁷¹⁰ Du Plessis note 2 (above) 59.

⁷¹¹ Du Plessis note 2 (above) 59.

⁷¹² M K Imran, M Ilyas, U Aslam & U Ur-Rahman ‘Organizational learning through transformational leadership’ (2016) 23 (4) *The Learning Organisation* 234.

⁷¹³ Ngwena note 28 (above) 172.

⁷¹⁴ Ngwena note 28 (above) 172.

⁷¹⁵ Ngwena note 28 (above) 172-3.

foster attitudinal transformation.⁷¹⁶ There is, in other words, a need for intervention that goes beyond the legal requirements so as to achieve substantive equality thus addressing disadvantage and systemic discrimination. It has been said that “the constitutional right to equality envisages a two pronged strategy to achieve the goal of ‘substantive equality’ – the elimination of existing inequality, and the implementation of measures designed to protect and advance those people disadvantaged by past discrimination”.⁷¹⁷

It follows that substantive equality aims to achieve human dignity, equality and esteem for everyone. It has been said that substantive equality is sensitive to rooted, physical disparity, concentrating on the outcome or effects of a specific law rather than the form it takes.⁷¹⁸ Dupper et al argue that substantive equality requires an investigation of the real social circumstances of individuals in order to ascertain whether the constitutional obligation to equality is being advocated.⁷¹⁹ There is a need for a profound level of change on how organisations operate in order to achieve inclusion, transformation and equality for persons with disabilities. Such change will require organisational leaders who are conscious of their constitutional obligation to respect human dignity and equality for all. It has been said that transformational leaders are attentive to the issues of justice, liberty and equality⁷²⁰ and they always submerge themselves in the needs of employees.⁷²¹

Transformational leadership has been described as a process by which leaders accomplish noteworthy positive changes in individuals, groups and organisations by using inspiration, vision and skills in encouraging people to go beyond their self-centredness to achieve a greater purpose.⁷²² It is asserted that transformational leadership may play a crucial part in achieving substantive equality for persons with disabilities in the workplace. What follows is the role of local government on disability inclusion and the protection of human rights in the workplace.

⁷¹⁶ S Goonesekere ‘From social welfare to human rights for girls -- A path to achieving gender equity’ (2014) 10 (4) *International Journal of Law in Context* 480-1.

⁷¹⁷ O Dupper ‘Affirmative action and substantive equality: The South African Experience’ (2002) *South African Mercantile Law Journal* 275.

⁷¹⁸ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 17.

⁷¹⁹ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 18.

⁷²⁰ A S van Aswegen & A S Engelbrecht ‘The relationship between transformational leadership, integrity and ethical climate in organisations’ (2009) 7 (1) *South African Journal of Human Resource Management* 221.

⁷²¹ G Miller, C Marchel & S Gladding ‘From inhumane to humane: A longitudinal study of leadership transformation’ (2010) 38 *The Humanistic Psychologist* 222.

⁷²² D D Warrick ‘The urgent need to educate present and future leaders on organisational development and change’ (2017) 49 (3) *OD Practitioner* 55.

3.6.3 Role of local government on disability inclusion and human rights in the workplace

The legislative framework which describes the role and obligation of local government in the protection of human rights for persons with disabilities has been explored in chapter one. Local government has a responsibility to promote and protect of human rights not only in the workplace but also in local communities. “The objects of the local government are to provide democratic and accountable government for local communities.”⁷²³ The contention is that local government must have a system that treats everyone equally and must ensure implementation of human rights law as well as international instruments dealing with human rights in the workplace.

The *White Paper on Local Government 1998* (the *White Paper*)⁷²⁴ underscores the importance of equality and human dignity for all citizens as provided for in the Constitution. It states that “the Constitution enshrines the rights of all people in our country to dignity, equality before the law, freedom and security”.⁷²⁵ The *White Paper* provides that “local government must play a central role in representing communities, protecting human rights and meeting basic needs”,⁷²⁶ and further mandates “local government to focus its efforts and resources on improving the quality of life of communities, especially those members and groups within communities that are most often marginalised or excluded, such as women, disabled people and very poor people”.⁷²⁷

Municipalities must develop all-encompassing methods to encourage public participation including plans to eradicate barriers that hinder inclusion and active participation of designated groups in communities.⁷²⁸ The *White Paper* therefore proposes that local government must develop strategies that will achieve inclusion of persons with disabilities. According to Inyang, inclusivity necessitates the establishment of an environment that efficiently accommodates the entire workforce of an organisation.⁷²⁹ Inyang further asserts that the inclusive approach recognises the reality of diversities and resemblances that exist in our society.⁷³⁰ Vohra et al describe inclusion to mean the degree to which humans are permitted to partake and contribute

⁷²³ section 152(1)(a) of the Constitution.

⁷²⁴ *White Paper on Local Government 1998* (9 March 1998).

⁷²⁵ note 724 (above) item 1 of section B.

⁷²⁶ note 724 (above) item 1 of section B.

⁷²⁷ note 724 (above) item 1 of section B.

⁷²⁸ note 724 (above) item 1.3 of section B.

⁷²⁹ B Inyang ‘Managing workforce diversity and inclusiveness in the public service: Going beyond Nigeria Federal Character Principles (FCP)’ (2007) 31 (2) *South African Journal of Labour Relations* 89.

⁷³⁰ Inyang note 729 (above) 89.

fully in society.⁷³¹ They further define inclusion as “the degree to which an employee is accepted and treated as an insider by others in a work system”.⁷³² They continue that “attempts to create inclusive workplaces must consider individual differences, needs, and perceptions as well as focus on creating structures, systems, and processes that make people feel valued and treated equitably”.⁷³³ Importantly, leadership has been identified as a key factor in ensuring inclusivity in the workplace.⁷³⁴ An inclusive leader has been characterised as “one who visibly champions diversity and initiatives linked to it, seeks out and values employees’ contributions, demonstrates a collaborative leadership style, has the ability to manage conflict, embodies merit-based decision-making, possesses cultural competency, and creates a sense of collective identity”.⁷³⁵

Municipalities are under a constitutional obligation to foster and safeguard people’s rights including persons with disabilities. The *Disability Framework*, discussed in chapter one, underscores that the role of municipal mayors is to “[p]olitically championing disability issues ... and oversee the promotion and advancement of the rights of people with disabilities”.⁷³⁶ This denotes that disability issue does not only lie with the administration or municipal manager of the municipality -- the municipal mayor must advocate for disability parity in the IDP of a municipality. It further appears that the inclusion of municipal mayors in the framework is to ensure political buy-in on issues of disability in the local government sector. It follows that political office-bearers have a responsibility to encourage and advance the rights of persons with disabilities in local government.

Similarly, the *Disability Framework* places the responsibility on the municipal manager to prioritise disability issues and ensure that they are included in the IDP: “The role of the municipal managers’ office is to [p]rioritise disability issues and integrate them in IDPs, [i]mplement agreed performance management targets related to disability ... [and] [c]oordinate

⁷³¹ N Vohra, V Chari, P Mathur, P Sudarshan, N Verma, N Mathur, P Thakur, T Chopra, Y Srivastava, S Gupta, V Dasmahapatra, S Fonia & H Gandhi ‘Inclusive workplaces: Lessons from theory and practice’ (2015) 40 (3) *The Journal of Decisions Makers* 326.

⁷³² Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 327.

⁷³³ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 327.

⁷³⁴ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 328.

⁷³⁵ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 328.

⁷³⁶ note 82 (above) item 4.6.

and mainstream disability policies in strategies and structures.”⁷³⁷ In order effectively to address the needs of and provide development opportunities as well as inclusion of persons with disabilities, “municipal directorates should, among other things, undertake to:

- Set performance measures in relation to disability for directorate personnel and monitor and evaluate performance.
- Integrate disability components into budgets, programmes, policies, legislation and strategies.
- Implement programmes of benefit to people with disabilities in conjunction with civil society organisations of and for people with disabilities.
- Establish disability directorates/units/focal points with built-in appraisal systems.
- Prepare and submit reports to oversight committees and to management structures.
- Include disability information in all reports.”⁷³⁸

The critical challenge is that, although the *White Paper*, the *Disability Framework* and the *Systems Act* place a massive obligation on municipalities, to date most municipalities are not inclusive of all people within their communities, especially persons with disabilities. This is supported by the report published by the PSC, discussed in chapter one, indicating statistics of persons with disabilities in the public service, and reflecting a failure to meet equity target. This failure clearly shows that municipalities are non-compliance with the *Systems Act* and the *Constitution*. This non-compliance hinders transformation which is required by the *Constitution* to tackle the disparities of the past. Consequently, there is a need for a radical approach to change to accommodate persons with disabilities to ensure equity as well as protection of human rights in municipalities. It is argued that such radical approach to change may be achieved through transformational leadership.

Ultimately it is the local government responsibility to guarantee practical execution of the legislation relating to disability including universal human rights instruments aimed at safeguarding persons with disabilities in the workplace and society. Bosire asserts that there is a growing realisation of the importance of local government in the implementation of international human rights law.⁷³⁹ As indicated in chapter one, municipalities by their nature are responsible for the implementation of human rights in our society. The final report of the UN Human Rights Council Advisory Committee states that “local authorities are close to the citizen’s everyday needs and they deal with human rights issues on an everyday basis. Therefore, there exists a clear and strong connection between human rights and local

⁷³⁷ note 82 (above) item 4.6.

⁷³⁸ note 82 (above) item 4.9.

⁷³⁹ Bosire note 24 (above) 150.

government”.⁷⁴⁰ Mathenjwa asserts that the developmental duties of local government demand that it should play a key role in protecting human rights and meeting the basic needs and improving the life of the community.⁷⁴¹ It can be concluded that local government has a constitutional duty to inculcate the culture of human rights in the workplace.

The Municipality has a unit called the City Integrity and Investigations Unit (CIU); among its functions is to “promote respect for human rights and cultivate a culture of human rights within the Municipality.” It is submitted that this unit working with other departments such as ODCM and HR must develop practical human rights initiatives designed to promote human rights for persons with disabilities in the Municipality. Having said that, it is acknowledged that the lack of human rights promotion for persons with disabilities can at times flow from ignorance or misunderstanding of what disability means – both for the lived reality of the employee with the disability and in terms of the legal and organisational meaning that allows persons with disabilities to attain protected class status. In this context, the following unpacks the meaning of disability.

3.7 Understanding the Term Disability

Understanding the concept of disability is a critical challenge hindering transformation in the workplace. Disability is complex and requires thorough understanding to ensure appropriate and necessary adaptation to include persons with disabilities in the workplace. Lack of understanding of disability results in persons with disabilities not being adequately protected in the workplace. The extent of the definition and understanding of the term disability may be found in the EEA and the Disability Code. The EEA defines “people with disabilities” as “people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment”.⁷⁴² The Disability Code underscores that the “scope of protection for persons with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment and not on the diagnosis or the impairment”.⁷⁴³

⁷⁴⁰ item 26 of the final report of the UN Human Rights Council Advisory Committee *Role of Local Government in the Promotion and Protection of Human Rights A/HRC/30/49*.

⁷⁴¹ M Mathenjwa ‘The role of local government in strengthening democracy’ (2016) 3 (1) *Journal of Law, Society and Development* 126.

⁷⁴² section 1 of the EEA.

⁷⁴³ item 5.3 of the Disability Code.

The court shared the same sentiments in *Standard Bank of South Africa v Commission for Conciliation, Mediation & Arbitration & others*⁷⁴⁴ where it found that “defining disability in relation to employment shifts the focus from the diagnosis of the disability to its effect on both the employee’s ability to work and to find work.” The challenge is that the aforementioned provisions of the EEA and the Disability Code appear to be limiting without taking into consideration the complexity of disability. Cole and Van der Walt say the following with regard to complexity and understanding of disability:

“The definition of disability is complex as persons with disabilities are not a homogeneous group; they may have a physical, sensory, intellectual or mental disability. The time of the onset of the disability, whether it was from birth, acquired in childhood, or later life, acquired during further education or while in employment will determine the ability to work or take part in society, or it may have a major impact, requiring considerable support or assistance.”⁷⁴⁵

It follows that disability should be understood from a broader perspective. This requires organisations to go beyond a legalistic approach to disability. Understanding disability requires organisations to determine the most important and essential realities of persons with disabilities. For organisations to have an understanding of disability, organisational leadership can play a critical role when adopting strategies that prioritise disability. Martin asserts that “among the tools for transformational leaders is the individualised consideration which attempts to treat every individual in the workplace equally and working to understand their needs”.⁷⁴⁶ Martin further argues that “using individual or idealised influence, transformational leaders allocate tasks and provide support and guidance to ensure that employee reach his or her potential”.⁷⁴⁷

In other words, the employer should provide individual support to an employee to ensure that the employee is reasonably accommodated in the workplace. It is asserted that such individual support is what is required to ensure that persons with disabilities are accommodated and protected in the workplace. In the process of giving such support, the organisation can learn about the realities and challenges facing persons with disabilities thereby getting a deeper understanding of what disability is, and consequently leading to the required accommodation of persons with disabilities in the workplace.

⁷⁴⁴ (2008) 29 *ILJ* 1239 (LC) paragraph 68.

⁷⁴⁵ E C Cole & A van der Walt ‘The effect of labour legislation in the promotion and integration of persons with disabilities in the labour market’ (2014) *Obiter* 510.

⁷⁴⁶ J Martin ‘Perceptions of transformational leadership in academic libraries’ (2016) 56 *Journal of Library Administration* 270.

⁷⁴⁷ Martin note 746 (above) 270.

Transformational leaders are known to be value driven and have moral character.⁷⁴⁸ This suggests that leading through transformational leadership will result in values and morals being instilled in the entire organisation, thereby achieving the transformational change required in order to understand disability. It has been said that transformational leaders develop the types of organisations and organisational norms that respond well to effective change.⁷⁴⁹ It follows that transformational leadership may be a relevant leadership style to ensure understanding of disability thereby achieving equality and effective implementation of disability laws in the workplace. Transformational leadership may further be instrumental in ensuring reasonable accommodation of persons with disabilities, which is discussed below.

3.8 Reasonable Accommodation of Persons with Disabilities

Reasonable accommodation is a measure required by the EEA. According to the EEA “reasonable accommodation” means “any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment”.⁷⁵⁰ For example, workplace accommodation such as job modification and flexible working hours have been found to potentially benefit persons with disabilities.⁷⁵¹ It has been said that “reasonable accommodation entails alteration of the status quo to enable a person with disability to participate in work or public life to the same extent as the nondisabled”.⁷⁵² It should be noted that reasonable accommodation is not only applicable to persons with disabilities. It generally applies to everyone irrespective of disability. Thus it has been said that “reasonable accommodation must be provided to ensure equal opportunities on account of not only disability, but other grounds for discrimination such as age and sex”.⁷⁵³

The Disability Code in item 6.2 state that “employers may adopt the most cost-effective means that are consistent with effectively removing the barrier to a person being able to perform a job and to enjoy equal access to the benefits and opportunities of employment.” It has been said that “reasonable accommodation is an instrument used to eliminate or overcome obstacles to equal opportunities for persons with disabilities (primary possibilities for employment and

⁷⁴⁸ Martin note 746 (above) 271.

⁷⁴⁹ Martin note 746 (above) 271.

⁷⁵⁰ section 1 of the EEA.

⁷⁵¹ P Anand & P Sevak ‘The role of workplace accommodation in the employment of people with disabilities’ (2017) 6 (12) *Journal of Labor Policy* 1.

⁷⁵² ‘Three formulations of the nexus requirement in reasonable accommodations law’ (2013) 126 *Harvard Law Review* 1392 <https://harvardlawreview.org> accessed on 4 March 2018.

⁷⁵³ United Nations Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities 7th session New York 2006.

work and obstacles to access to buildings, services and goods, access to programs available for the public at large)”.⁷⁵⁴

Villoti et al assert that “workplace accommodations are individualised solutions that enable people with disabilities to attain and maintain employment. The purpose of an accommodation is not to give the disabled worker an upper hand in the work environment, but rather to level the playing field so that employees with disabilities can successfully perform the essential functions of the job, or enjoy equal benefits and privileges of employment”.⁷⁵⁵ This understanding is in line with the concept of substantive equality, discussed earlier. Item 6.1 of the Disability Code provides that “employers should reasonably accommodate the needs of persons with disabilities”. In *Bennett and Mondipak*⁷⁵⁶ the Commission for Conciliation, Mediation and Arbitration established the principle that “employers are under an obligation to consider ways to adapt duties to accommodate disabilities or reduce stress experienced by an employee. In addition, employers have a positive obligation fully to investigate issues which give rise to the work stress and explore whether the work can be made less stressful.”

It has been said that “reasonable accommodation constitutes no temporarily allowed exceptions to the rule of equal treatment, but forms part of the general obligation of non-discrimination and equal treatment”.⁷⁵⁷ Thus, employers are expected to reasonably accommodate persons with disabilities by removing the barriers that hinders them from performing the critical functions of the job, through “cost effective” measures towards ensuring substantive equality in the workplace.⁷⁵⁸

According to clause 6.4 of the Disability Code, “the obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer.” This denotes that changes may be necessary in recruitment and selection processes in order to reasonably accommodate an applicant for employment, and may also be required to the “physical working environment, the manner in which work is usually done, evaluated and

⁷⁵⁴ Z Poposka ‘Idea behind reasonable accommodation as a way forward to achieving equality’ (2016) 7 (31) *Balkan Social Science Review* 10.

⁷⁵⁵ P Villoti, M Corbiere, S Zaniboni & F Fraccaroli ‘Individual and environmental factors related to job satisfaction in people with severe mental illness employed in social enterprises’ (2012) 43 (1) *Work* 34 doi: 10.3233/WOR-2012-1445.

⁷⁵⁶ (2004) 25 *ILJ* 583 (CCMA) at 595 c-d.

⁷⁵⁷ J E Goldschmidt ‘Reasonable accommodation in EU equality law in a broader perspective’ (2007) 8 (1) *ERA Forum* 47 doi: 10.1007/s12027-007-0006-7 accessed on 9 June 2019.

⁷⁵⁸ ‘Protecting the disabled -- The new code’ (2002) 25 *Employment Law Journal* LexisNexis online.

rewarded and to the benefits and privileges attached to the employment”.⁷⁵⁹ The employer should, after thorough engagement with employees, consider, among others: relevant adjustments such as reallocation of work; transfer of an employee to another position or workplace; making changes to infrastructure; putting in place necessary training; allowing flexible working hours to be introduced; and provision of readers or interpreters.⁷⁶⁰

Ngwena and Pretorius explain as follows:

“The determination of the reasonableness of a proposed accommodation depends very much on a fair balancing of competing considerations, such as the nature of the risk involved, the extent of the duties that have to be reassigned, the effect of reassignment on the normal operations of the business and the performance of the other jobs, and the impact on other employees who will be assigned different or additional duties against the aspirations and interests of the excluding party.”⁷⁶¹

As Dupper et al say, “accommodation is central to the employment of people with disabilities”.⁷⁶² They further say that “a person with a disability is deemed to be a person who is suitably qualified and able to do the job provided that the work environment is adapted in some way to accommodate the person with the disability”.⁷⁶³ Consequently, reasonable accommodation of persons with disabilities is necessary and failure to provide such accommodation is regarded as unfair discrimination. Behari notes that persons with disabilities have different qualities and characteristics from mainstream society, therefore, they should not be required to perform in accordance with mainstream norms.⁷⁶⁴ This suggests that employers must provide necessary adaptation to ensure accommodation of persons with disabilities in the workplace.

Behari argues that “positive measures such as the reasonable accommodation of disabled employees who are able to carry out workplace duties advance the principles of substantive equality envisioned by s 9(3) of the Constitution and the EEA”.⁷⁶⁵ Behari further argues that “the objective of such reasonable accommodation is to prevent discrimination which arises from the employer’s perception that it is inconvenient to employ or to continue to employ a

⁷⁵⁹ www.direct.gov.uk/en/disabledpeople accessed on 29 December 2017.

⁷⁶⁰ note 759 (above).

⁷⁶¹ C Ngwena & L Pretorius ‘Conceiving disability and applying the constitutional test for fairness and justifiability: A Commentary on *IMATU v City of Cape Town*’ (2007) 28 *Industrial Law Journal* 768.

⁷⁶² Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 144.

⁷⁶³ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 144

⁷⁶⁴ A Behari ‘Disability and workplace discrimination: *Smith v Kit Kat Group (Pty) Ltd* (2017) 38 *ILJ* 483 (LC)’ (2017) 38 *Industrial Law Journal* 2238.

⁷⁶⁵ Behari note 764 (above) 2238.

disabled employee”.⁷⁶⁶ The aforementioned literature postulates that there is a need for organisational leaders who are genuine and understand the importance of addressing individual needs in the workplace.

It is argued that reasonable accommodation for persons with disabilities in the workplace may be achieved through transformational leadership. One of the challenges facing employers is psychosocial illness in the workplace. Since disability is diverse it is important to explore reasonable accommodation for mental illness in the workplace.

3.8.1 Reasonable accommodation for mental illness in the workplace

Mental illness is a term that varies in its breadth and complexity but it has been found to be “associated with an emotional or behavioral disorder”.⁷⁶⁷ Minjoo et al assert that “mental illness is naturally associated with functional impairments that interrupt life activities”.⁷⁶⁸ It has further been said “that mental health problems affects not only individual quality of life, but also his or her work capacity”.⁷⁶⁹ Mental illness is one of the challenges faced by employers in the workplace: some mental illnesses are so severe that they can affect an employee’s performance. Employers are placed in the difficult position of determining how such illness is to be dealt with in the workplace. As mental illness is unique by its nature (being an invisible disability), there is a need to have adequate mechanisms and guidelines dealing with mental illnesses in the workplace.

The question is whether South African labour legislation provides clear guidelines for addressing mental illnesses in the workplace. If not, how are organisations dealing with mental illnesses in the workplace? The EEA expressly includes mental illness in its definition of people with disabilities -- “people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment”.⁷⁷⁰ From this definition it can be concluded that mental illness falls within the

⁷⁶⁶ Behari note 764 (above) 2238.

⁷⁶⁷ K Minjoo, E Mpofu, K Brock, M Millington & J Athanasou ‘Cognitive-behavioural therapy effects on employment-related outcomes for individuals with mental illness: A systematic review’ (2014) 40 (2) *South African Journal of Industrial Psychology* 1188.

⁷⁶⁸ Minjoo, Mpofu, Brock, Millington & Athanasou note 767 (above) 1188.

⁷⁶⁹ S-L Huang, R H Li, F-Y Huang & F-C Tang ‘The potential for mindfulness-based intervention in workplace mental health promotion: Results of a randomized controlled trial’ (2015) 10 (9) *Plos One* 1 doi: 10.1371/journal.pone.013808.

⁷⁷⁰ section 1 of the EEA.

ambit of disability and therefore deserves the protection afforded to all persons with disabilities.

The EEA further mandates employers “to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice”,⁷⁷¹ and prohibits unfair discrimination on the grounds of disability.⁷⁷² Prejudice and discrimination have been found to be a major barrier to the recovery of persons with serious mental illness because they impede the restoration of the person’s self-esteem, sense of purpose and quality of life.⁷⁷³ The courts have further emphasised that discrimination on the basis of an employee’s mental problem has the potential to impair fundamental human dignity. In *New Way Motor & Diesel Engineering (Pty) Ltd v Marsland*⁷⁷⁴ the Labour Appeal Court said:

“Unquestionably the discrimination suffered by respondent as a result of his mental health problem had, in the words of Stein AJ, ‘the potential to impair the fundamental dignity of that person as a human being or to affect him in a comparably serious manner’.”

As Russinova et al argue “the need to address workplace prejudice and discrimination in a systematic and aggressive way has been identified as one of the key principles in promoting the workplace integration of individuals with psychiatric disabilities”.⁷⁷⁵ The question is whether the EEA provides adequate protection and concise clarity on mental impairment/illness in the workplace. The EEA is an empowering and non-specific Act and does not attempt to deal with specific issues, such as discrimination on grounds of sexual harassment, HIV, pregnancy or disability, in the Act itself. Attempts to protect against discrimination in specific areas is dealt with in the codes of good practice in terms of section 54 of the EEA. The protection of persons with mental illness can be found in the Disability Code.

The Disability Code describes mental impairment as “a clinically recognised condition or illness that affects a person’s thought processes, judgment or emotions”,⁷⁷⁶ and mandates employers to “reasonably accommodate the needs of persons with disabilities”.⁷⁷⁷ In this context, the duty to accommodate may be necessary when the job applicant or employee

⁷⁷¹ section 5 of the EEA.

⁷⁷² section 6(1) of the EEA.

⁷⁷³ Z Russinova, S Griffin, P Bloch, N J Wewiorski & I Rasoklija ‘Workplace prejudice and discrimination towards individuals with mental illnesses’ (2011) 35 *Journal of Vocational Rehabilitation* 227.

⁷⁷⁴ (2009) 30 *ILJ* 2875 (LAC) paragraph 24

⁷⁷⁵ Russinova, Griffin, Bloch, Wewiorski & Rasoklija note 773 (above) 228.

⁷⁷⁶ item 5.3.1(b) of the Disability Code.

⁷⁷⁷ item 6.1 of the Disability Code.

willingly disclose a disability or when the need to accommodate is rationally obvious to the employer.⁷⁷⁸ However, the Disability Code does not define the term “reasonably self-evident”, thus making it difficult, in cases of mental illness, for the employer to assess whether an employee is mentally impaired. Generally, employees with mental illnesses do not disclose their mental conditions, especially those conditions that are not self-evident.

Among the reasons for non-disclosure is fear and stigma once a person has disclosed his or her condition. The EEA prohibit “[p]sychological testing and other similar assessments unless the test or assessment being used ... is not biased against any employee or group”.⁷⁷⁹ It follows that, even if it is self-evident that an employee may have a mental illness, it may be a challenge for the employer to do mental or psychological assessments because the employee with the mental illness falls within a designated group, namely people with disabilities. The employer will automatically be discriminating against the employee. Although the employee may consent to a medical examination, the decision to conduct the medical examination must be justifiable in order to be lawful and enforceable. In *Pharmaco Distribution (Pty) Ltd v EWN*⁷⁸⁰ (*Pharmaco*) the Labour Appeal Court held:

“It is manifestly clear from the record of evidence that the appellant had discriminated against the respondent because of her bipolar disorder. Crucially, on the appellant’s version, its primary concern was the respondent’s bipolar disorder and the perceived dangers associated with it. On this account, no matter her exceptional performance reviews, and no matter the legitimacy of her grievance, the mere fact that she suffered from bipolar disorder was a matter of such grave concern to the appellant, that she had to be subjected to a psychiatric assessment. So grave did the appellant consider her condition to be, that her refusal to undergo a psychiatric assessment resulted in her dismissal. There was, as a result, a direct causal connection between the respondent’s bipolar disorder and her dismissal. Simply put, but for her medical condition, the appellant would not have dismissed her.”

The court found that the approach adopted by the employer was insulting, degrading and humiliating.⁷⁸¹ Mental illness is a sensitive issue which should not be handled like other matters of disability. As mentioned above, mental illness is invisible and at times it is hard even to identify whether a person has a mental illness. It is therefore argued that, because labour legislation should provide adequate protection for employees with mental illness in the workplace, there is a need for more clarity and better mechanisms and guidelines on how to handle mental illness in the workplace.

⁷⁷⁸ item 6.4 of the Disability Code.

⁷⁷⁹ section 8(c) of the EEA.

⁷⁸⁰ (2009) 30 *ILJ* 2875 (LAC) paragraph 32.

⁷⁸¹ *Pharmaco* note 780 (above) paragraph 43.

The Disability Code describes mental impairment as a clinically recognised illness; therefore it is argued that although a person may appear to have a mental illness (where it is self-evident to the employer), it may become a challenge to the employer to recognise and deal with an employee especially when the employee denies that he or she has a mental illness. Mental illness affects the mood, thinking and behaviour of an individual and as a result it may not be possible to have effective consultation with the employee as envisaged by item 6.6 of the Disability Code. Consequently, it is recommended that the code should provide clear guidelines on how to deal with symptoms of mental illness in the workplace.

It is argued that transformational leadership may bridge the existing gap in the legislation as it focuses on individual needs. Transformational leaders have been found to have “the ability to assess, diagnose and evaluate employees’ individual needs rather than treating employees as a group”.⁷⁸² This approach by transformational leaders has been found to “ensure that the needs of the individuals are identified, addressed and mentorship provided to equip employees with skills to deal with challenging situations”.⁷⁸³ It appears that transformational leadership is best suited to deal with mental illness in the workplace. It is maintained that currently organisations do not have adequate mechanisms to deal with mental illness in the workplace; as a result employees with mental illness continue to suffer prejudice, are ill-treated and eventually dismissed based on incapacity. Holness asserts that --

“definitional difficulties, with further clarity from the code of good practice on employment of persons with disabilities (the code), a non-binding guideline and its companion, the Technical Assistance Guidelines on employment of persons with disabilities (TAG), mean that employers are ill equipped to know how to promote psychosocial health and safety in the workplace -- and how to reasonably accommodate psychosocial illness (also known as workplace adjustments or modifications)”.⁷⁸⁴

Lack of understanding and the paucity of mechanisms to deal with mental illness in the workplace as well as inadequate protection of employees with mental illness result in their disability being treated as incapacity – they are therefore not afforded reasonable accommodation like that afforded to persons with other types of disability. While it is argued that labour legislation does not adequately protect persons with mental illness in the workplace, organisations, especially the leadership of organisation, have a constitutional obligation to

⁷⁸² L Louw, S Muriithi & S Radloff ‘The relationship between transformational leadership and leadership effectiveness in Kenyan indigenous banks’ (2017) 15 *South African Journal of Human Resource Management* 3.

⁷⁸³ Louw, Muriithi & Radloff note 782 (above) 3.

⁷⁸⁴ Holness note 3 (above) 512.

achieve equity and fight against discrimination in the workplace. It is argued that protection of employees with mental illness may be achieved through transformational leadership.

The responsibility to transform the country ultimately lies with every citizen, including employers. Within the disability context, organisational leadership has a responsibility to ensure transformation through eliminating barriers that hinder transformation in the workplace. Thus, leaders must ensure that employees with mental illness are adequately protected and must address stigma attached to employees with mental illness. It has been said that “workers with mental illness often worry about what will happen if others in the workplace know about their illnesses, and that their worries can be traced to the stigma attached to mental illness”.⁷⁸⁵ Organisations therefore have a duty to create an environment that is conducive to and accommodative of employees with mental illness to ensure inclusivity and diversity in the workplace.

Lorenzo asserts that organisations need to recognise the high prevalence of mental illness and adopt strategies and policies to ensure that employees with mental illness are reasonably accommodated.⁷⁸⁶ Lorenzo further argues that at the moment organisations resort to performance improvement plans when there are challenges or issues emanating from mental illness.⁷⁸⁷ From this it is apparent that organisations need to adopt better policies to accommodate employees with mental conditions in order to ensure transformation as well as adequate protection of such employees in the workplace.

It is argued that the responsibility for ensuring reasonable accommodation of employees with mental illness lies with the leadership of the organisation. Delman et al assert that “it is important for senior leadership of the organisations to endorse and be actively involved in the development of the corporate culture that supports employees with mental illness including the use of external technical assistance”.⁷⁸⁸ Therefore, it is submitted that municipal leaders must create a conducive environment that will enable employees with mental illness to disclose their mental illness so that they can be reasonably accommodated.

⁷⁸⁵ A Jones ‘Disclosure of mental illness in the workplace: A literature review’ (2011) 14 *American Journal of Psychiatric Rehabilitation* 212.

⁷⁸⁶ M Lorenzo ‘Employee mental illness: Managing the hidden epidemic’ (2013) 25 *Employee Responsibilities and Rights Journal* 221.

⁷⁸⁷ Lorenzo note 786 (above) 221.

⁷⁸⁸ J Delman, L Kovich, S Burke & K Martone ‘The promise of demand side employer-based strategies to increase employment rates for people living with serious mental illness’ (2017) 40 (2) *Psychiatric Rehabilitation Journal* 180.

Transformational leadership has been found to benefit employees in the workplace on issues relating to psychological wellbeing and physical health.⁷⁸⁹ According to Hildenbrand and Sacramento, “among the dimensions of transformational leadership is individualised consideration which signifies the attention leaders pay to employees’ needs and concerns in the workplace”.⁷⁹⁰ Transformational leadership may be the relevant leadership to support and accommodate employees with mental illness in the Municipality. Having said that, reasonable accommodation and disability inclusion necessitate compliance with disability laws and employment equity plans. In this context, the next section explores the provisions relating to employment equity plans and justification for non-compliance by employers.

3.9 Justification for Non-compliance with Employment Equity Plan

Section 20(1) of the EEA provides that “[a] designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer’s workforce”. Section 24(1)(a) requires “every designated employer” to “assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan”. The minister issued the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans (EE Code) to provide good practice guidelines in terms of the requirements of EEA.

The EE Code however does not “impose any legal obligations in addition to those in the Act and the failure to observe it does not, by itself, render a designated employer liable in any proceedings, except where the code refers to obligations that are required by the Act”.⁷⁹¹ As a result of this relaxation, employers justify their non-compliance with employment equity plans. Furthermore, the fines that are imposed by the Department of Labour do not deter employers from non-compliance. However, the impact of such non-compliance is that persons with disabilities will not be adequately accommodated and will continue to be discriminated against and remain excluded in the workplace.

What is required is an organisation that is mindful of the current situation especially with regard to disability equity in the workplace. The effective implementation of employment equity plans calls for organisational leaders who make conscious and moral decisions to ensure adherence to such plans. Conscious leadership may be achieved through transformational leadership.

⁷⁸⁹ K Hildenbrand & C A Sacramento ‘Transformational leadership and burnout: The role of thriving and follower’s openness to experience’ (2018) 23 (1) *Journal of Occupational Health Psychology* 31.

⁷⁹⁰ Hildenbrand & Sacramento note 789 (above) 33.

⁷⁹¹ item 2.2 of the EE Code.

Singh and Krishnan assert that “transformational leader would be successful in getting a change plan implemented by intellectually encouraging employees to rethink long standing techniques and customs of the organisation”.⁷⁹² An employment equity plan, by its nature, can be regarded as a change tool and organisational strategy, vision and goal to achieve equity in the workplace. Transformational leaders have been found to be influential when setting organisational goals and values.⁷⁹³

It follows that transformational leadership may be a tool to ensure effective implementation of employment equity plans thus achieving realistic improvement towards employment parity in the workplace. It is undeniable that there is a need for radical transformational change in the workplace to compensate for historical disparities. Such change requires leadership that ascribes to social justice and equity, and that cares about individual needs. It is asserted that radical transformational change and equity for persons with disabilities can be achieved by transformational leadership. The following is an account of transformational change.

3.10 Transformational Change

The implementation of disability rights requires a radical approach to change in any organisation to accommodate persons with disabilities. Radical change, according to McAdam, is a fundamental reconsidering and dramatic revolutionary change.⁷⁹⁴ McAdam continues to say that radical change includes reconsidering organisational norms as well as the organisational culture and management process.⁷⁹⁵ McAdam further notes that “radical approach refers to radical changes in terms of steps, processes as well as structures of the organisation”.⁷⁹⁶ To embed radical transformational change, according to McAdam, “leaders need to constantly question individual assumptions within the workplace”.⁷⁹⁷

However, the literature currently does not appear to consider the practical methods and leadership style required to ensure radical change in the workplace, which this research intends to cover through transformational leadership. The literature has further not considered a radical approach to change on the implementation of disability laws in the workplace, which is the

⁷⁹² N Singh & V R Krishnan ‘Towards understanding transformational leadership in India: A grounded theory approach’ (2005) 5 (2) *The Journal of Business Perspective* 7.

⁷⁹³ Y Y Chang ‘Strategic human resource management, transformational leadership organizational ambidexterity: Evidence from Taiwan’ (2015) 21 (4) *Asia Pacific Business Review* 520.

⁷⁹⁴ R McAdam ‘Radical change: A conceptual model for research agendas’ (2003) 24 *Leadership & Organisational Development Journal* 227.

⁷⁹⁵ McAdam note 794 (above) 227.

⁷⁹⁶ McAdam note 794 (above) 226.

⁷⁹⁷ McAdam note 794 (above) 226.

focus of this research. It has further not considered the importance of leadership on the initiation of a radical approach to change in the workplace.

Radical change requires transformation and can only be attained if employers themselves are transformed and understand their constitutional obligation to ensure equality and to free the potential of all persons, irrespective of their status. Herold et al explain:

“[I]n the context of change, commitment goes beyond just positive attitudes toward the change to include the intention to support it as well as a willingness to work on behalf of its successful implementation. Thus, change commitment represents a psychological alignment with, or attachment to, the change rather than just reflecting a favourable disposition toward it, such as being open to, or accepting of it. Furthermore, commitment to a change has been found to be conceptually and empirically distinct from organisational commitment.”⁷⁹⁸

It is therefore asserted that transformational leadership can be a driving method to ensure that the theory on radical change is put into practice thus ensuring effective implementation of the legislation that relates to aspects of disability in the workplace. Organisational transformation and change happen largely as a result of external forces rather than an internal desire or need to change. Booysen and Beaty identify that one of the external factors that contributes to transformational change in South Africa is government legislation.⁷⁹⁹ The literature correctly states that government legislation has a role to play in safeguarding transformational change; however the literature does not suggest the methods that can be used to ensure that such legislation contributes meaningfully to society, hence the introduction of transformational leadership. As indicated above, South Africa has legislation which is founded on the notion of transformation. What is now lacking is the driving machinery of the legislation. It is important to emphasise that the slow pace of change to inclusive workplaces for persons with disabilities, including the slow rate of uptake as is evident from the 2% equity target, indicate that incremental change had not been enough, and that radical change is needed.

It is evident that change commitment is therefore required by organisations to implement legislation. In order for transformation to take place, there must be a radical commitment to end the effects of the discrimination and injustices of the past. To achieve this, there must be a radical shift in strategy, structure, systems and processes. What is needed to effect radical transformational change, according to Wylson and Chesley is --

⁷⁹⁸ D M Herold, D B Fedor, S Caldwell & Y Liu ‘The effects of transformational and change leadership on employees’ commitment to a change: A multilevel study’ (2008) 93 *Journal of Applied Psychology* 347.

⁷⁹⁹ L Booysen & D Beaty ‘Linking transformational and change leadership in South Africa: A review of principles and practices’ (1997) 1 *SBL Research Review* 10.

“[a] radical shift of strategy, structure, systems, processes or technology. In contrast to developmental change which improves existing ways of operating and transitional change which replaces something (e.g., a process) that already exists, transformational change involves profound shifts in the way a company operates in relationship to its environment and necessitates a corresponding shift in culture, behaviour and mindset for the change to be successful and sustained over time”.⁸⁰⁰

Wylson and Chesley however do not consider the practical ways to implement radical transformational change, eg coaching, the use of industrial psychologists, etc, which this study intends to explore. Further to this, the study intends to consider a change management model that will assist an organisation to transition into a transformed working environment that includes persons with disabilities. Hence it is believed that transformational leadership is required to achieve radical transformational change. This places a responsibility on management of an organisation to prepare leaders to be the custodians of transformational change.

Studies emphasise the “positive relationship between transformational leadership and change management”.⁸⁰¹ Transformational leaders are entrusted to carry out an organisation’s strategic plan by implementing transformation through various activities that enable the organisation to fulfil its objectives. Therefore, transformational leadership has been globally accepted due to its success rate over other forms of leadership.⁸⁰² According to Fitzgerald and Schutte, “among the characteristics of a transformational leaders is their ability to identify and articulate a vision, providing appropriate business models, fostering the acceptance of organisational goals, articulating high performance expectations, providing individualised support and high level of charisma”.⁸⁰³

Fitzgerald and Schutte regard transformational leadership as an asset to an organisation because of its effectiveness in adaptation to change.⁸⁰⁴ As indicated above, the existing literature does not provide practical ways of driving change in the workplace which is needed for the implementation of disability laws. Transformational leaders has been found to be prepared to take risks by adopting new work methods, changing existing procedures and systems in order

⁸⁰⁰ A Wylson & J Chesley ‘The benefits of mindfulness in leading transformational change’ (2016) 19 *Graziadio Business Review* 1.

⁸⁰¹ E Eckhaus ‘A shift in leadership’ (2017) 16 (1) *Academy of Strategic Management Journal* 27.

⁸⁰² Imran, Ilyas, Aslam, & Ur-Rahman note 712 (above) 234.

⁸⁰³ S Fitzgerald & N S Schutte ‘Increasing transformational leadership through enhancing self-efficacy’ (2010) 29 (5) *Journal of Management Development* 496.

⁸⁰⁴ Fitzgerald & Schutte note 803 (above) 496.

to ensure an inclusive and diverse work environment.⁸⁰⁵ Nging and Yazdanifard have found transformational leadership to be the essential leadership style to augment the implementation of successful change in the organisation.⁸⁰⁶ Transformational leadership appears to be a leadership style that can contribute through innovation thereby ensuring a diverse workforce.

Shanker and Bin Sayeed describe transformational leaders as change agents who tend to nurture the idea of receptivity to an organisational transformation process.⁸⁰⁷ Transformational leaders have been found to have a deeper understanding of organisational culture which assists in ensuring an effective and smooth organisational change process.⁸⁰⁸ Persons with disabilities are not likely to be reasonably accommodated in the workplace until transformation of the workplace culture and conditions has taken place. Both employers and employees need to be sensitised to the issue of disability in order for them to accept persons with disabilities and not resist any change which may require reasonable accommodation of persons with disabilities to ensure their equal and full participation in the workplace. This study will therefore recommend that municipal leaders should adopt an effective change management strategy to ensure inclusion of persons with disabilities in the Municipality.

Bendix asserts that radical transformational change requires that employment relationships should be viewed as normal human relationships.⁸⁰⁹ She further says that “employment relationships are concerned with people who, because of their mutual involvement in the work situation, have been placed in a specific relationship with one another”.⁸¹⁰ Although the view of Bendix is supported, it does not explore the role that can be played by leadership in achieving relational contract and transformation in the workplace as well as recognising interpersonal relational norms, which this study intends to explore. It goes without saying that employment relationships will be improved by mutual support and understanding. This can only be understood by a transformational leader. It is therefore asserted that transformational leadership is a tool to effect radical change in an organisation.

⁸⁰⁵ B Afsar, Y F Badir & B Bin Saeed ‘Transformational leadership and innovative work behavior’ (2014) 114 (8) *Industrial Management & Data Systems* 1275.

⁸⁰⁶ T K Nging & R Yazdanifard ‘The general review of how different leadership styles cause the transformational change efforts to be successful’ (2015) 2 (9) *International Journal of Management, Accounting and Economics* 1138.

⁸⁰⁷ M Shanker & O Bin Sayeed ‘Role of transformational leaders as change agents: Leveraging effects on organisational climate’ (2012) 47 (3) *The Indian Journal of Industrial Relations* 470.

⁸⁰⁸ Shanker & Bin Sayeed note 807 (above) 472.

⁸⁰⁹ S Bendix *Labour Relations: A Southern African Perspective* (Juta Law Publishing 2015) 6 ed 5.

⁸¹⁰ Bendix note 809 (above) 5.

The courts have also made a call for transformation when dealing with employees' personal circumstances. In *Smith v Kit Kat Group (Pty) Ltd (Smith)*,⁸¹¹ the Labour Court made the following remarks with regard to personal circumstances of employees:

“This matter was borne out of a tragic event which, instead of being resolved on the basis of compassion and good sense, escalated into unfortunate litigation on the basis of discrimination. I am still surprised how often employers can be short sighted where it comes to personal circumstances of their employees. The employment relationship, in modern constitutional era, is akin to a marriage, and as an employer one has to ask yourself how you would treat your spouse in the case of personal tragedy, and then act accordingly.”

This is indicative of the fact that employers need to be transformed and transformational change is required in order for them to be able to deal with disabled employees in the workplace. For transformational change to happen, leadership/management will have to play a major role by ensuring that the organisational strategy which is adopted includes the reasonable accommodation of persons with disabilities. Boga and Ensari say that organisational leadership has the ability to have an effect on the character, development and behaviour of employees.⁸¹² They also say that the ability to appreciate whether change is necessary progress or a nuisance to be avoided, largely depends on the dynamic role of senior leadership and managers during the process of transformation in the workplace.⁸¹³ A transformed leader can more easily understand the need reasonably to accommodate persons with disabilities as he or she will be in a better position to understand the personal circumstances of employees.

For successful implementation of organisational change, leadership plays a pivotal role. Nging and Yazdanifard say that “people with different personalities will adopt different leadership models. Irrespective of the leadership style, the possession of leadership qualities is very essential for organisational change in order to handle the resistance, confusion, exploration and commitment of management”.⁸¹⁴ They further argue that successful leaders are adaptable and capable of adapting to new conditions, are open to alternatives and are willing to take risks.⁸¹⁵ The authors, however, do not elaborate on the qualities required to ensure effective and successful organisational change, which this study will investigate.

Having described transformational leadership above, it can be argued that transformational leaders possess qualities required to effect change. Leadership should therefore design change

⁸¹¹ (2017) 38 *ILJ* 483 (LC) paragraph 1.

⁸¹² Boga & Ensari note 125 (above) 236.

⁸¹³ Boga & Ensari note 125 (above) 236.

⁸¹⁴ Nging & Yazdanifard note 806 (above) 1131-2.

⁸¹⁵ Nging & Yazdanifard note 806 (above) 1131-2.

management strategies to ensure that persons with disabilities are included thereby ensuring effective implementation of the laws relating to disability in the workplace. It is through transformational leadership that radical transformational change can be attained.

3.10.1 Emotional and psychological alignment to change: Disability perspective

In order to accommodate persons with disabilities in the workplace, there must be commitment to change not only through a positive support system but also through emotional and psychological alignment. Herold et al argue that change is not only about showing positive attitudes and supporting its successful implementation in the organisation, it requires mental adaptation to change.⁸¹⁶ Furthermore, commitment to change has been found to be “conceptually and empirically distinct from organisational commitment”.⁸¹⁷

Nging and Yazdanifard assert that the success of carrying out organisational change is highly dependent on the employee’s acceptance and support.⁸¹⁸ In other words, “to successfully implement changes requires the employees to have a positive attitude towards it and to show supportive behaviour”.⁸¹⁹ The authors do not elaborate on the appropriate methods and techniques to be used to ensure employees’ acceptance and a positive attitude towards change. Nor did the authors elaborate on how mental adaptation can be achieved. This study will therefore explore the role of transformational leadership in ensuring mental adaptation to change in the workplace.

Change management is a consultative process with employees in the organisation to understand the need for and the benefit of change. Taking into consideration the diverse nature of disabilities, it is important that employees are consulted and sensitised on disability so that they are emotionally and psychologically prepared to include persons with disabilities in the workplace. Employees react differently to different situations, hence employee wellbeing needs to be taken into consideration when intending to employ persons with disabilities. This can be achieved through, for example, emotional and psychological counselling. It is therefore recommended that diversity and inclusion workshops promoting a culture of inclusion should be adopted to ensure that employees who acquire disabilities in the scope or course of employment, as well as employees with pre-existing disabilities, are included in the workplace.

⁸¹⁶ Herold, Fedor, Caldwell & Liu note 798 (above) 347.

⁸¹⁷ Herold, Fedor, Caldwell & Liu note 798 (above) 347.

⁸¹⁸ Nging & Yazdanifard note 806 (above) 1131.

⁸¹⁹ Nging & Yazdanifard note 806 (above) 1131.

There is a need for change in the way persons with disabilities are perceived and to move towards ensuring inclusive and diverse workplaces. Disability is a natural part of human experience and, as such, persons with disabilities should be treated with due regard to their inherent dignity and equality. This requires that employees are educated and counselled emotionally and psychologically -- such preparation will go a long way to ensuring elimination of unfair discrimination against persons with disabilities in the workplace, thereby ensuring harmonious working relationships.

An example on how persons with disabilities are perceived in the workplace can be traced from *Smith v Kit Kat Group*.⁸²⁰ In this case the employee attempted suicide for unknown reasons in September 2013 by placing a firearm in his mouth and pulling the trigger. This left him severely injured and his face disfigured. The employer was provided with a report from the employee's psychiatrist, confirming that his speech had improved to the extent that he could make himself understood, that he was mentally and intellectually stable and intact, and that it was unlikely that the unfortunate circumstances would re-occur. As far as the employee was concerned, all was in place for him to report for work. The employer responded to the psychiatrist report by indicating that although the employee "had physically recovered and was mentally able to work, he was "not facially acceptable", and his presence would remind other employees of the unfortunate event."⁸²¹ It was intimated that the employee should pursue a disability claim. According to the employer, the employee was --

"cosmetically unacceptable to come back to work, and the other employees would be traumatised if he come back to work. The employer suggested that the applicant pursue a disability claim with the provident fund, and even made recommendations as to how to complete and lodge the claim to overcome the benefit exclusion of self-inflicted disability in the fund. It was made clear that the employee was not welcome back at work".⁸²²

It is apparent that in *Smith* the employer wanted to run away from the employee's situation and do whatever it took to ensure that he did not come back to work. This is clearly an indication of discrimination based on disability. The sole reason why the employer did not want the employee to come back to work was because of his facial appearance. The employer did nothing to accommodate the employee's situation. The employer could have prepared employees emotionally and psychologically to deal with the trauma of the attempted suicide

⁸²⁰ *Smith* note 811 (above).

⁸²¹ *Smith* note 811 (above) paragraph 19.

⁸²² *Smith* note 811 (above) paragraph 20.

and the resultant disability. The Labour Court in *Smith* found the following with regard to the conduct of the employer:

‘In the current instance, it appears that the respondent’s approach was in effect one avoiding coming to grips with the difficulty it had with the applicant’s disability. It did not want the applicant back to work, but equally did not want to deal with the issue of the applicant’s continued employment. It encouraged the applicant to pursue a fraudulent disability claim, which the applicant was not up for. It repeatedly asked for medical reports, which were provided. The respondent suggested the applicant was not able to fulfil his normal job functions, but implemented no process in order to assess whether this was in fact so and then determine the issue of continuing of employment relationship. It was only due to the applicant’s persistence in continuing tendering services that the respondent even engaged the applicant. And then, right at the end on 29 April 2014, the respondent tried to procure an agreed separation with the applicant, which did not come to pass.’⁸²³

The court felt that the “manner in which the respondent dealt with the matter was unacceptable.” The employer did not consider whether reasonable accommodation was necessary for the employee.⁸²⁴ The *Smith* case is a clear example that our organisations have not yet reached a point where they are willing to prepare employees mentally to deal with different disabilities and their causes and to educate employees about various disabilities and be able to share what persons with disabilities endure in their daily lives.

It further shows that leaders themselves have not reached a point where they understand the individual circumstances of employees and are prepared, emotionally and psychologically, to include persons with diverse disabilities. Preparing an organisation as a whole emotionally and psychologically on disability will help better to understand what disability is and what it means to be a person with a disability. Transformational leadership can be a relevant mechanism for workplace change as it is associated with an understanding of individual needs. As indicated above, “disability is a natural part of human experience and in no way diminishes the rights of individual to belong and contribute to the labour market.” The employer in *Smith* had identified that its other employees could be traumatised by the employee’s condition but did nothing to prepare them to deal with that trauma simply because the organisation lacked understanding of its role in including persons with disabilities in the workplace. McGrath explains:

“The work environment can have a considerable impact on the health and wellbeing of employees. The psychological work environment has been defined as ‘those features of the

⁸²³ *Smith* note 811 (above) paragraph 47.

⁸²⁴ Du Plessis note 2 (above) 174.

work environment which are relevant to worker behaviour' and thus affect how the worker feels, thinks and behaves."⁸²⁵

It is therefore important to ensure that inclusion of persons with disabilities is not simply imposed on employees; a commitment to psychological change should be emphasised to prepare individual employees to accept and include persons with disabilities as human beings with rights and as people who can contribute meaningfully to the labour market. It is submitted that industrial psychologists can play a meaningful role in assisting employees to accept persons with disabilities and to deal with any condition a disabled employee may have and the accommodations needed to promote his or her full participation. Transformational leadership can better understand the need for an organisation to have a dedicated industrial psychologist to deal with such issues in the workplace.

3.11 Role of Industrial Psychologists in Disability in the Workplace

Generally, an industrial psychologist's role is to help workplace employees. This includes assisting employees when they have to deal with unusual situations as well as personal problems. It has been said that the role of psychologists involves counselling employees in the workplace.⁸²⁶ It has further been said that psychologists consider the working circumstances of employees, diagnose the problem and provide advice.⁸²⁷ However, it appears that the role of industrial psychologists in the implementation of disability laws and accommodating persons with disabilities in the workplace has not been explored in the literature. Barkhuizen et al advocate that psychologists are able to provide solutions and advices to organisations through research and objectivity: "Such intervention consequently improves the quality of both individuals' and organisations' lives and levels of psychological wellbeing."⁸²⁸

Interpersonal and structural oppression, inequality and stigma are related and have a wide range of adverse consequences relevant to psychology. Therefore, it is important for psychologists to focus attention to these issues to contribute meaningfully to the goal of understanding individual behaviour. It has been argued that "beyond understanding human behaviour, psychology also has at its core a goal of helping people to promote health and well-being".⁸²⁹

⁸²⁵ D McGrath 'Interpersonal contact at work: Consequences for wellbeing' (2012) 2 *The International Journal of Health, Wellness and Society* 33.

⁸²⁶ H Barkhuizen, L I Jorgensen & L Brink 'Exploring the role of the industrial-organisational psychologists as counsellor' (2014) 40 *South African Journal of Industrial Psychology* 1.

⁸²⁷ Barkhuizen, Jorgensen & Brink note 826 (above) 1.

⁸²⁸ Barkhuizen, Jorgensen & Brink note 826 (above) 2.

⁸²⁹ L Rosenthal 'Incorporating intersectionality into psychology: An opportunity to promote social justice and equity' (2016) 71 (6) *American Psychologist* 476.

Thus, taking into consideration the workplace challenges of disparity, tyranny and stigma, psychologists have a responsibility to promote social justice and substantive equality for all particularly those with disabilities.⁸³⁰

One can therefore conclude that industrial organisational psychology can contribute to the development and implementation of employee wellness strategies including psychology development programmes. Industrial psychologists can clearly play a role in ensuring psychological alignment to change to include persons with disabilities in the workplace. Consequently, this study will recommend a transformational leadership model that can be utilised to develop a transformational culture that is inclusive of persons with disabilities which includes leadership development for municipal leaders. The model will further recommend the use of psychologists to coach and develop leaders of the Municipality to be transformational thereby including persons with disabilities.

3.12 Organisational Culture and Disability in the Workplace

Organisational culture plays a vital role towards accommodation of persons with disabilities in the workplace. Gewurtz and Kirsh assert that organisational culture and organisational climate are important constructs in understanding the experiences of persons with disabilities in the workplace.⁸³¹ The leadership style of an organisation's leaders has a major impact on the development of the organisation's culture. Organisational culture, in turn, has a major effect on organisational outcomes which include ethical behaviour. Several definitions have been proposed to describe culture. Givens defines culture as the "glue that holds an organisation together".⁸³² He further describes culture as follows:

"In general, culture is a property of an organisation constituted by its members taken for granted beliefs regarding the nature of reality, called assumptions, a set of normative, moral and functional guidelines or criteria for making decisions, called values, and the practices or ways of working together that follow from aforementioned assumptions and values, called artefacts. Organisational culture reflects a sort of negotiated order that arises and evolves as members work together, expressing preferences, exhibiting more-or-less effective problem-solving styles, and managing, at least satisfactorily, external demands and internal needs for coordination and integration. In effect, culture represents an aspect of the organisational environment that helps members make sense of their own and others' behaviour."⁸³³

⁸³⁰ Rosenthal note 829 (above) 476.

⁸³¹ Gewurtz & Kirsh note 590 (above) 34.

⁸³² Givens note 147 (above) 8.

⁸³³ Givens note 147 (above) 8.

Givens continues to state that the leadership style and values of a leader shape and influence the culture of the organisation.⁸³⁴ The said value systems are then shared with all in the organisation.⁸³⁵ Leaders, according to Givens, “have the power to embed organisational culture through various methods such as mentoring, role modelling, and teaching”.⁸³⁶ To introduce change in an organisation, organisational culture has, in part, an influence.⁸³⁷ Givens underscores the role of leadership on organisational culture as well as on individual needs in general. Although the literature provides for a general role for organisational culture in the working environment, it appears that the literature has not explored the role of organisational culture in accommodating persons with disabilities in the workplace. Transformational leadership, being centred on values, equity and justice, may influence the organisation to include persons with disabilities thereby implementing disability laws and policies.

Patnaik argues that “organisational values develop organisational norms, guidelines, or expectations that prescribe appropriate kinds of behaviour by employees in particular situations and control the behaviour of organisational members towards one another”.⁸³⁸ He continues to state that the “organisation needs to create a transformational culture that is sensitive to individual needs”.⁸³⁹ Culture has been describe as “the personification of the values of the organisation, an organisation’s culture is the one that makes the organisation unique”.⁸⁴⁰

Transformational culture has been described as an “environment that has sense of purpose and feeling of family”.⁸⁴¹ It has further been said that “leaders and employees share mutual interests and sense of shared natural association”.⁸⁴² “The inclusion of assumptions, norms, and values which are transformationally based does not preclude individuals pursuing their own desires” according to Givens.⁸⁴³ It can therefore be said that there is a need for supportive leadership that can develop a culture that embraces people with disabilities.

⁸³⁴ Givens note 147 (above) 8.

⁸³⁵ Givens note 147 (above) 8.

⁸³⁶ Givens note 147 (above) 8.

⁸³⁷ F Dark, H Whiteford, N M Ashkanasy, C Harvey, M Harris, D Crompton & E Newman ‘The impact of organisational change and fiscal restraint on organisational culture’ (2017) 11 *International Journal of Mental Health Systems* 1.

⁸³⁸ J B Patnaik ‘Role of work culture in improving organisational health’ (2011) 2 *Amity Journal of Applied Psychology* 40.

⁸³⁹ Nging & Yazdanifard note 806 (above) 1133.

⁸⁴⁰ Nging & Yazdanifard note 806 (above) 1133.

⁸⁴¹ Givens note 147 (above) 9.

⁸⁴² Givens note 147 (above) 9.

⁸⁴³ Givens note 147 (above) 9.

Supportive leadership is the most important leadership role in managing and developing organisational culture. Nging and Yazdanifard say that “organisational culture plays an important role in the development of changes in any organisation”.⁸⁴⁴ Leaders must therefore come up with strategies to develop and manage culture. A need exists for leaders to prepare existing employees in advance before a person with disability takes up employment. This will assist in ensuring that by the time the disabled person arrives for duty, the environment and culture of the organisation is embracive of persons with disabilities. A more onerous duty may be placed on the department where the employee will be placed to ensure inclusion, although general education of all employees should be conducted so that an employee with a disability feels included both in his or her department and in the workplace at large.

I am of the view that at present employers are merely accommodating persons with disabilities in order to meet statutory requirements. They have not fully accepted such persons within their hearts. The organisational culture generally does not fully include persons with disabilities, and, until such time as they are fully included and accepted, they will continue to be discriminated against. It is believed that through transformational leadership, organisational culture can be receptive of persons with disabilities in the workplace.

Moynihan et al argue that transformational leaders use their influence to shape workplace culture.⁸⁴⁵ They promote the advancement of culture by underscoring novelty, resolving problems and empowering employees.⁸⁴⁶ The said culture advancement relates to an organisation that is adaptable willing and developmental, and can invest in necessary resources towards ensuring an all-encompassing workplace culture.⁸⁴⁷ It can therefore be said that transformational leadership should be a method through which enforcement of disability laws can be executed, through flexibility and adaptability. The physical appearance of a person, for example as shown in the *Smith* case, does not make one incompetent or unable to work. The disability that is most prevalent is our inability to change our mindset and include persons with disabilities in the workplace. To implement organisational change successfully, it is important that employees are in possession of a positive attitude and display supportive behaviour.

⁸⁴⁴ Nging & Yazdanifard note 806 (above) 1133.

⁸⁴⁵ D P Moynihan, S K Pandey & B E Wright ‘Setting the table: How transformational leadership fosters performance information use’ (2011) *Journal of Public Administration and Theory Advance* 7.

⁸⁴⁶ Moynihan, Pandey & Wright note 845 (above) 7.

⁸⁴⁷ Moynihan, Pandey & Wright note 845 (above) 7.

As discussed above, employees' personal attitudes and emotions have been shown to be the most vital contribution to organisational change. It has been said that there are many companies that fail to implement changes as companies have neglected the importance of transformational leadership and employee responses.⁸⁴⁸ This study therefore explores transformational leadership as a possible tool that can be utilised to achieve transformational change in the Municipality and to implement effectively legislation governing disability in the workplace.

3.13 Impact of Diversity Management on Disability in the Workplace

Diversity plays a critical role in the working environment as it deals with understanding each individual and recognising individual differences. Henry and Evans describe diversity as follows:

“Diversity refers to the co-existence of employees from various socio-cultural backgrounds within the company. Diversity includes cultural factors such as race, gender, age, colour, physical ability, ethnicity, etc. The broader definition of diversity may include age, national origin, religion, disability, sexual orientation, values, ethnic culture, education, language, lifestyle, beliefs, physical appearance and economic status (Wentling and PalmaRivas, 2000). Diversity requires a type of organisational culture in which each employee can pursue his or her career aspirations without being inhibited by gender, race, nationality, religion, or other factors that are irrelevant to performance (Bryan, 1999). Managing diversity means enabling the diverse workforce to perform its full potential in an equitable work environment where no one group has an advantage or disadvantage (Torres and Bruxelles, 1992).”⁸⁴⁹

Henry and Evans continue to argue that “diversity not only involves how people think of others and how this affects their interaction, but how they conceive of themselves”.⁸⁵⁰ Diversity has been found to include all possible ways in which employees may differ.⁸⁵¹ It follows that understanding and accepting individual differences, including those of persons with disabilities, in the workplace is crucial. Although there is literature on diversity generally, it appears that the literature has not explored diversity within the context of disability and the practical implementation of disability laws in the workplace.

It further appears that the literature has not examined the role that can be played by transformational leadership in managing diversity to ensure adequate protection of persons with disabilities, which this study intends to explore. Organisations needs to encourage diverse workplaces in order to enable people to reach their full potential. Effective management of

⁸⁴⁸ Nging & Yazdanifard note 806 (above) 1139.

⁸⁴⁹ O Henry & A J Evans ‘Critical review of literature on workforce diversity’ (2007) *African Journal of Business Management* 73 <http://www.academicjournals.org/ajbm>.

⁸⁵⁰ Henry & Evans note 849 (above) 72-3.

⁸⁵¹ Henry & Evans note 849 (above) 72-3.

diversity in the workplace can result in an organisation improving its ability to handle a diverse workforce and individual acceptance. Ledimo has shared the following sentiments with regard to encouraging diversity in the workplace:

“Organisations need diversity to become more creative and open to change (Martin and Roodt, 2008; Mazur, 2010). Encouraging a diverse workplace where individual differences are valued enables employees to work to their full potential in a more creative and productive work environment (DeNisi and Griffin, 2008; Wrech, 2005). This is seen as an inclusive approach of diversity management; the one which therefore encompasses the interests of all employees in the organisation. Mazur (2010) indicated that organisations need to focus on diversity and look for ways to become totally inclusive organisations because diversity has the potential of yielding greater productivity and competitive advantages.”⁸⁵²

It has been said that “equal employment opportunity begins externally and is enforced through legislation, whereas diversity management begins internally, through the efforts to create an atmosphere of equality and a fully inclusive organisational culture at work”.⁸⁵³ Shen et al further say that “diversity management seeks to overcome labour market segregation through addressing inequalities based on individual differences, such as race, gender and class”.⁸⁵⁴ Shen et al continue to assert that “diversity emphasises valuing and taking advantage of individual differences in order for all people to maximise their potential, which is beyond legal compliance-oriented equal employment opportunity”.⁸⁵⁵

Gewurtz and Kirsh provide compelling arguments for increasing diversity in the workplace by hiring employees with disabilities.⁸⁵⁶ They assert that “among the reasons for increasing diversity is a sense of social equity and responsibility, and the positive impact such practices can have on reputation of the organisation”.⁸⁵⁷ Consequently, “organisational culture can play an important role in the way persons with disabilities are treated in the workplace, the type of work they are assigned, and the opportunities they are given for mentoring, advancement and promotion”.⁸⁵⁸

⁸⁵² O Ledimo ‘Diversity management: An organisational culture audit to determine individual differences’ (2015) 31 *The Journal of Applied Business Research* 1748.

⁸⁵³ J Shen, A Chanda, B D’Netto & M Monga ‘Managing diversity through human resource management: An international perspective and conceptual framework’ (2009) 20 (2) *The International Journal of Human Resource Management* 238.

⁸⁵⁴ Shen, Chanda, D’Netto & Monga note 853 (above) 238.

⁸⁵⁵ Shen, Chanda, D’Netto & Monga note 853 (above) 238.

⁸⁵⁶ Gewurtz & Kirsh note 590 (above) 34.

⁸⁵⁷ Gewurtz & Kirsh note 590 (above) 34.

⁸⁵⁸ Gewurtz & Kirsh note 590 (above) 34.

The literature on diversity appears to be theoretical without disclosing practical ways on how diversity can be managed in the workplace. The literature has further not adequately explored the role of transformational leadership in diversity in the workplace, which this study intends to cover. Diversity management can play a major role in accommodating persons with disabilities in the workplace thereby ensuring effective implementation of disability related legislation in the workplace.

The courts have emphasised the importance of diversity in the workplace. In *Standard Bank of South Africa v Commission for Conciliation, Mediation & Arbitration & others*⁸⁵⁹ the Labour Court held the following with regard to diversity and embracing people with disabilities:

“Our Constitution, like its Canadian counterpart, strives to inculcate an inclusive mind set towards all vulnerable people. In a case concerning the accommodation of cultural diversity, the Constitutional Court (CC) digressed to endorse an inclusive approach towards people with disabilities.⁸⁶⁰ ... Difference renders people with disabilities incapable of conforming to the norms of mainstream society. Living with a disability must be hard enough without having the additional burden of conforming to mainstream society. The least that mainstream society can do is to adapt to and embrace their difference to achieve substantive equality. After all, the essence of true equality is the accommodation of difference.”⁸⁶¹

The court further said that “integration and inclusion in mainstream society aim not only to achieve equality but also to restore the dignity of people with disabilities”.⁸⁶²In *MEC for Education, KwaZulu-Natal & others v Pillay*⁸⁶³ Langa CJ emphasised the importance of reasonable accommodation, diversity and the need to ensure equality and to remove barriers that may hinder acceptance of people with disabilities in the workplace. He found that:

“While the extent of this exclusion is most powerfully felt by the disabled, the same exclusion is inflicted on all those who are excluded by rules that fail to accommodate those who depart from the norm. Our society which values dignity, equality, and freedom must therefore require people to act positively to accommodate diversity. Those steps might be as simple as granting and regulating an exemption from a general rule or they may require that the rules or practices be changed or even that buildings be altered or monetary loss incurred.”⁸⁶⁴

In *Independent Municipal & Allied Workers Union & another v City of Cape Town*⁸⁶⁵ the Labour Court explained the purpose of the EEA and stressed the role of equality in achieving

⁸⁵⁹ note 744 (above).

⁸⁶⁰ note 744 (above) paragraph 62.

⁸⁶¹ note 744 (above) paragraph 64.

⁸⁶² note 744 (above) paragraph 65.

⁸⁶³ (2008) 1 SA 474 (CC).

⁸⁶⁴ note 863 (above) paragraph 75.

⁸⁶⁵ (2005) 26 ILJ 1404 (LC).

a diverse workforce. The court held that:

“The purpose of the EEA is to achieve equity in the workplace by, inter alia, promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. The Act provides that it must be interpreted in compliance with the Constitution and so as to give effect to its purpose. Equality lies at the heart of the Constitution and aims to ensure that we achieve a diverse workforce with opportunities for all, including diabetics, to pursue their preferred calling.”⁸⁶⁶

The key guiding principles of the Disability Code are, among others, “human rights and the respect for inherent dignity, effective participation and inclusion in society and respect for difference and diversity.”⁸⁶⁷ Undoubtedly diversity management plays a critical role in an organisation.⁸⁶⁸ It is therefore important for organisations to provide adequate support and to establish workforce diversity programmes that ensure inclusion of persons with disabilities in the workplace. Issues of discrimination and disability should form part of a diversity programme so that employees are able to understand the impact of discrimination in the workplace.

Barrett and Bourke say that “organisations should develop and support organisational culture that increases the benefits of diversity and uses that culture to manage workforce”.⁸⁶⁹ They continue to argue that “respecting and valuing diversity must become part of organisational culture if its full benefits are to be gained”.⁸⁷⁰ They further suggest that “senior managers need to ensure that their commitment to diversity produces appropriate behaviours by being a deeply engrained value in the organisation’s culture”.⁸⁷¹ Such commitment can possibly be achieved through transformational leadership.

Creating an inclusive environment requires committed leadership that supports individual differences. To create an inclusive environment successfully, there must be a commitment from the leadership, respect for diversity and implementation of organisational policies in an equitable way. It has been said that an organisation that employs an inclusive framework goes beyond acknowledging diversity and recognises that each individual is unique and has the potential to contribute to the labour market no matter his or her condition.⁸⁷² It is argued that

⁸⁶⁶ note 865 (above) paragraph 115.

⁸⁶⁷ item 4(a), (d) and (e) of the Disability Code.

⁸⁶⁸ J Barrett & J Bourke ‘Managing for inclusion: Engagement with an ageing workforce’ (2013) 13 *Employment Relations Record* 16.

⁸⁶⁹ Barrett & Bourke note 868 (above) 16.

⁸⁷⁰ Barrett & Bourke note 868 (above) 16.

⁸⁷¹ Barrett & Bourke note 868 (above) 16.

⁸⁷² Sabharwal note 8 (above) 200.

through an intense diversity management programme employees will accept the existing state of affairs, including embracing people with disabilities, and will try to cooperate and support each other regardless of their differences. Diversity management can therefore assist in ensuring adequate protection for persons with disabilities in the workplace.

3.14 Transformational Leadership

Transformational leadership is a leadership style that seeks positive transformation and attains anticipated transformation through the action plan and structure of the organisation. It has been said that “transforming leaders are concerned with end-values such as liberty, justice and equality, and with raising followers to higher levels of morality”.⁸⁷³ The literature postulates that challenging the status quo becomes a regular occurrence for the transformational leader.⁸⁷⁴ Transformational leaders seek to transform the organisation into an environment that perpetuates the greater good over individual interests. The leadership style impacts on how the organisation is run and ultimately the organisation’s performance. It is submitted that if leaders adopt a transformational leadership style, the issues of inequality and disability discrimination can be addressed.

A transformational leader is concerned with transformation in the workplace and society at large. As such there is a need for transformational leadership to address non-compliance with laws relating to disability. At the heart of transforming leadership is a moral character, where transformational leadership recognises human conduct and ethical aspirations of both leaders and employees through their moral character.⁸⁷⁵ Miller et al explain that such moral character has an effect on both leaders and employees,⁸⁷⁶ and that transformational leaders submerge themselves in the needs and desires of employees in an engaged and highly motivating way, resulting in elevated hopes of employees.⁸⁷⁷

Gida and Ortlepp are of the view that for successful employment and inclusion of persons with disabilities, leadership commitment is critical.⁸⁷⁸ They further say that leadership commitment on its own is not sufficient for inclusion of persons with disabilities, leadership must invest in

⁸⁷³ A S van Aswegen & A S Engelbrecht ‘The relationship between transformational leadership, integrity and ethical climate in organisations’ (2009) 7 (1) *South African Journal of Human Resource Management* 221.

⁸⁷⁴ Van Aswegen & Engelbrecht note 873 (above) 221.

⁸⁷⁵ Miller, Marchel & Gladding note 721 (above) 222.

⁸⁷⁶ Miller, Marchel & Gladding note 721 (above) 222.

⁸⁷⁷ Miller, Marchel & Gladding note 721 (above) 222.

⁸⁷⁸ P Gida & K Ortlepp ‘Employment of people with disabilities: Implications for human resource management practices’ (2007) *Acta Commercii* 140.

resources and be willing to spend in order to ensure their successful inclusion.⁸⁷⁹ Although the idea of investing in resources is supported, the authors do not examine the psychological intervention required to implement disability laws in the workplace, which this study intends to explore.

Gida and Ortlepp mention leadership as a critical component for successful employment and inclusion of persons with disabilities without being specific as to a leadership style that can drive employment and inclusion of persons with disabilities. It is on this basis that this study will explore transformational leadership as a tool to employ to include persons with disabilities in the workplace. The implementation of disability rights and successful inclusion of persons with disabilities requires transformation and can be achieved through transformational leadership. Van Aswegen and Engelbrecht uphold that “leaders are truly transformational when they are always conscious of what is right, good and important. They do not put their needs before the needs of their employees”.⁸⁸⁰ They continue to argue that there are four dimensions of transformational leadership identified by Bass and Avolio: “These are idealised influence, inspirational motivation, intellectual stimulation and individualised consideration.”⁸⁸¹

Idealised influence relates to a transformational leader being able to “develop great symbolic power” that is utilised to influence employees in the workplace.⁸⁸² Inspirational motivation relates to how a transformational leader fervently expresses “a future idealistic goal or situation that is much better alternative to the status quo”.⁸⁸³ Intellectual stimulation relates to a transformational leader being creative by encouraging employees to find new ways of dealing with existing challenges in the workplace.⁸⁸⁴ Lastly, “individualised consideration is reflected when a leader pays special attention to each individual’s needs for realisation or fulfilment of his or her talent and potential, growth and performance by acting as a coach or mentor.”⁸⁸⁵

Having explored the dimensions of transformational leadership, it is important to explore transformational leadership in the implementation of disability related legislation in the Municipality.

⁸⁷⁹ Gida & Ortlepp note 878 (above) 140.

⁸⁸⁰ Van Aswegen & Engelbrecht note 873 (above) 221.

⁸⁸¹ Van Aswegen & Engelbrecht note 873 (above) 221.

⁸⁸² Achua & Lussier note 550 (above) 320.

⁸⁸³ Achua & Lussier note 550 (above) 320.

⁸⁸⁴ Achua & Lussier note 550 (above) 320.

⁸⁸⁵ Van Aswegen & Engelbrecht note 873 (above) 221.

3.15 Transformational Leadership in the Implementation of Disability Related Legislation

The implementation of the laws relating to disability requires leaders who can pay attention to the needs of the disabled and accept individual differences. Van Aswegen and Engelbrecht contend that personalised consideration is the ability to analyse employees.⁸⁸⁶ They explain that personalised consideration is the capacity of the leader to scrutinise and envisage the needs and desires of employees.⁸⁸⁷ The leader believes in people and is sensitive to their needs. The emphasis is on empathy and compassion balanced with honesty for the sake of the employees and their teams. It has been said that by their behaviour, “transformational leaders demonstrate acceptance of individual differences and assign the tasks in accordance with their personal affinities”.⁸⁸⁸

Mthethwa argues that, “to lead the transformation process, undoubtedly, transformational leaders are needed who can inspire the employees, strategise and galvanise the resources to navigate and give effect to the changes needed”.⁸⁸⁹ He further says:

“Transformational leaders are visionary leaders of potentially historical significance who react to a crisis with great vision and great ideas, and possess a willingness to foster grand experiments in solving great problems of the day. Transformational leaders also consider a problem as an opportunity to transform society and leave their legacies behind. Putting it simply, transformational leaders are those who can transform themselves, their followers and their organisations to greater heights. They are the architects of an organisation’s future.”⁸⁹⁰

Although the above literature recommends transformational leadership in order for transformation to materialise in the workplace, it does not provide practical methodologies to be employed to achieve such transformation. The role of transformational leadership in supporting employees with all kinds of physical or psychological disabilities has been explored.⁸⁹¹ While research has been conducted on the role transformational leadership in supporting employees with disabilities in the workplace, it appears that there has not been a study to investigate the role of transformational leadership in the implementation of the legislation governing disability in the workplace, which this study seeks to address.

⁸⁸⁶ Van Aswegen & Engelbrecht note 873 (above) 221.

⁸⁸⁷ Van Aswegen & Engelbrecht note 873 (above) 221.

⁸⁸⁸ P Sahgal & A Pathak ‘Transformational leaders: Their socialization, self-concept, and shaping experiences’ (2007) 2 (3) *International Journal of Leadership Studies* 265.

⁸⁸⁹ Mthethwa note 569 (above) 108.

⁸⁹⁰ Mthethwa note 569 (above) 110.

⁸⁹¹ J M Kensbock & S A Boehm ‘The role of transformational leadership in the mental health and job performance of employees with disabilities’ (2016) 27 (14) *International Journal of Human Resource Management* 1581.

Transformational leadership has been associated with successful organisational change.⁸⁹² It has further been closely associated with change management, and is said to have a major impact on the implementation of reforms by promoting an environment imbued with organisational justice.⁸⁹³ Persons with disabilities were previously deprived of their rights and did not enjoy the full protection of the law. Ensuring the implementation of disability laws in the working environment requires someone who can emphasise new possibilities, understand the meaning of disability, and understand individual challenges.

It has been said that transformational leaders promote a compelling vision of the future.⁸⁹⁴ The view of Givens is that transformational leaders are guided by a strong sense of purpose.⁸⁹⁵ “Transforming organisations led by transforming leaders have been found to be appealing to human characteristics that lift their sights above the routine, everyday elements of a mechanistic, power-oriented system.”⁸⁹⁶ It is this strong sense of purpose and sensitivity to human characteristics that this study intends to explore within the context of the implementation of disability laws in the workplace through transformational leadership.

For successful implementation of disability laws in the workplace, there is a need for caring and supportive leaders. Transformational leaders hold a particular set of behaviours. Transformational leaders have been found to “be models of integrity and fairness, set clear goals, have high expectations, provide support and recognition, stir the emotions and passions of people and get people to look beyond their self-interest to reach for the improbable”.⁸⁹⁷ It has further been said that “transformational leadership focuses on social values and appears in times of distress and change”.⁸⁹⁸

Transformational leaders are closely connected with employees. As such, transformational leadership should be more effective in implementing disability related legislation in the organisation. In other words, it will not be a challenge for a transformational leader to accommodate a person with disability and to ensure compliance with the legislation that relates to disability. Transformational leadership focuses on systematic changes and the human

⁸⁹² C Deschamps ‘Transformational leadership and change: How leaders influence their followers’ motivation through organizational justice’ (2016) 61 *Journal of Healthcare Management* 196.

⁸⁹³ Deschamps note 892 (above) 196.

⁸⁹⁴ Givens note 147 (above) 9.

⁸⁹⁵ Givens note 147 (above) 9.

⁸⁹⁶ Givens note 147 (above) 9.

⁸⁹⁷ A Sadeghi & Z A L Pihie ‘Transformational leadership and its predictive effects on leadership effectiveness’ (2012) 3 (7) *International Journal of Business and Social Science* 187.

⁸⁹⁸ Sadeghi & Pihie note 897 (above) 187.

relation aspect. It requires that employees should be included in the transformation plan and strategies. Including employees in the transformation process of an organisation involves the need to make a diagnosis of employees' necessities and capabilities in a correct way, such as by being non-judgmental and listening intently.

It has been said that a transformational leader has the role of finding the best way of dealing with and resolving issues, and that he or she communicates his or her perceptions to employees by exercising skills.⁸⁹⁹ Nging and Yazdanifard argue that a transformational leader provides the necessary resources that inspire followers to share a vision and empower them to attain that vision in order to develop their full personal potential.⁹⁰⁰ It goes without saying that in order to implement changes and to improve an organisation, transformational leadership plays a critical role. Transformational leadership has been associated with successful organisational change and the promotion of an environment imbued with organisational justice.⁹⁰¹

Astrauskaite et al argue that a “transformational leader creates and supports team spirit and shared vision among employees in the organisation, and builds the conditions for commitment and social identification with the employees by providing recognition for team achievement”.⁹⁰² Van Aswegen and Engelbrecht say that transformational leaders are commended, respected and trusted because of their consideration of the needs of employees.⁹⁰³ They continue to argue that transformational leaders question assumptions, reframe challenges and approach the general state of things in a different way.⁹⁰⁴ This study seeks to explore the practical ways in which transformational leaders can reframe and approach the general state of affairs in the workplace, in particular with regard to disability.

Van Aswegen and Engelbrecht explain the impact of idealised influence on organisational climate:

“Idealised influence may lead to the following climate dimensions: Law and code. In this climate, the law and professional standards are put above all other considerations (Victor & Cullen, 1988). The leader will always consider the applicable law whenever a decision has to be made, and can be counted on to do the right thing. The leader demonstrates high ethical and

⁸⁹⁹ Nging & Yazdanifard note 806 (above) 1134.

⁹⁰⁰ Nging & Yazdanifard note 806 (above) 1134.

⁹⁰¹ Deschamps note 892 (above) 196.

⁹⁰² M Astrauskaite, R M Kern, & G Notelaers ‘An individual psychology to underlying factors of workplace bullying’ (2014) 70 *The Journal of Individual Psychology* 229.

⁹⁰³ Van Aswegen & Engelbrecht note 873 (above) 2.

⁹⁰⁴ Van Aswegen & Engelbrecht note 873 (above) 2.

moral standards and thereby becomes a role-model who is respected and trusted by his or her followers.”⁹⁰⁵

Transformational leaders emphasise and adhere strictly to company rules and procedures. It has been asserted that transformational leaders adhere to “the ethical standards that have been set” by the organisation, this displays “integrity, resulting in” employees “trusting their leaders.”⁹⁰⁶ It is reasonable to postulate that a transformational leader is more likely to emerge when there is a crisis and a need for an immediate solution in the workplace. Currently, the implementation of disability laws in the Municipality is a challenge, and this is when adoption of a transformational leadership style is particularly critical.

3.16 Conclusion

The above literature underscores the importance of transformational leadership for the attainment of parity, and the promotion and safeguarding of individual rights in the workplace. It further emphasises the role that can be played by transformational leadership towards the attainment of disability equity, fairness and diversity in the workplace. Transformational leadership is the cornerstone of organisational change, culture and transformation. Without transformational leadership organisations cannot take objective decisions which encompass individual human rights. Transformational leadership influences organisational decisions and culture, and transforms leaders and employees within the organisation. Transformational leaders challenge the status quo, believe in justice and fairness as well as inclusivity. It follows that transformational leadership may be utilised for effective implementation of disability related legislation in the public sector.

In summary, this chapter demonstrated the gaps in the literature relating to inclusion of persons with disabilities in the workplace. It found that stereotypes and inclusive culture in respect of persons with disabilities remain a huge challenge in the workplace. Furthermore, it was established that the transformational leadership model has not been explored as a tool to deal with unfounded assumptions associated with persons with disabilities. The leadership role in dealing with stigma associated with persons with disabilities has not been explored. Additionally, it appears that there is a lack of experience in dealing with disability in the workplace, leading to employers stereotyping persons with disabilities. There are unfounded

⁹⁰⁵ Van Aswegen & Engelbrecht note 873 (above) 2.

⁹⁰⁶ Van Aswegen & Engelbrecht note 873 (above) 2.

assumptions about abilities and job performance of job applicants and employees with disabilities.

Disability discrimination persists despite the fact that employers have an obligation in law “to eliminate unfair discrimination in any employment policy or practice.” In addition, it appears that transformational leadership has not been given attention as a leadership model that can bring about change to ensure that persons with disabilities access and fully participate in the workplace. The literature review demonstrated that there is a lacuna with regard to the type of leadership required in order to achieve transformation, social justice and equality for persons with disabilities, which this study seeks to address through transformational leadership. Furthermore, while a human rights approach has been broadly explored, it appears that there is a need to explore the importance and role of a human rights model within the disability context. It further appears that much focus has been on a social and medical approach to disability.

It is contended that, while scholars have acknowledged the challenges that exists for persons with disabilities in the workplace as well as society in general, there has not been a study focusing on the type of organisational management (leadership) that could work towards the realisation of equality for persons with disabilities in the workplace. Consequently, the role of transformational leadership in achieving workplace inclusion and substantive equality has not been explored in the literature. In other words, it appears that the concept of substantive equality and transformational leadership within the disability context has not been explored despite the fact that transformational leaders are closely associated with issues of justice, liberty and equality, and take into consideration individual needs, which is the approach required reasonably accommodate to persons with disabilities in the workplace.

Among the key findings from the literature is that there is a lack of understanding of disability, which hinders transformation in the workplace. Municipalities are under a constitutional obligation to promote and protect the human rights of all citizens, including persons with disabilities. As highlighted above, the *Disability Framework* places responsibility on municipal leadership (in particular, the municipal manager) to prioritise disability issues and ensure that they are included in the IDP. The literature demonstrated that most municipalities (including the Ethekwini Municipality) are not inclusive of all people within their communities, especially persons with disabilities. This indicates that there is non-compliance with disability laws in municipalities. It is on this basis that this study focuses on transformational leadership to

ensure equity and inclusion of persons with disabilities in the workplace. The next chapter will explore the legislative and policy framework for transformational leadership.

CHAPTER FOUR

LEGISLATIVE AND POLICY FRAMEWORK FOR TRANSFORMATIONAL LEADERSHIP

4.1 Introduction

This chapter explores pertinent legislation and the policy framework for transformational leadership with reference to the international and regional law obligations resting on the state to include persons with disabilities in the workplace. In this regard, various pertinent international and regional instruments on human rights and disability will be explored. South African labour legislation will further be examined to ascertain whether it amply safeguards persons with disabilities in harmony with international and regional disability instruments. Consequently, this chapter is thematically structured as follows: firstly, the international and regional perspective on disability law is considered. Secondly, South African legislation and policies dealing with disability are explored. Finally, this chapter is concluded by exploring the role of transformational leadership on the legislative and policy framework for persons with disabilities in the workplace.

4.2 Legislative and Policy Framework on Disability: International and Regional Perspective

The Constitution recognises international law as applicable law in South Africa unless it is in conflict with “Constitution or an Act of Parliament.”⁹⁰⁷ Thus, the Constitution states that “when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law”.⁹⁰⁸ The Constitution is the highest law of the land, any “law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”⁹⁰⁹ Added to this, is the body of treaties that have been domesticated through incorporation into our law -- the Constitution provides that “any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is

⁹⁰⁷ section 232 of the Constitution.

⁹⁰⁸ section 233 of the Constitution.

⁹⁰⁹ section 2 of the Constitution.

inconsistent with the Constitution or an Act of Parliament.”⁹¹⁰ Grobbelaar-Du Plessis and Nienaber construe the aforementioned constitutional provisions by stating that “South Africa belongs to the dualist tradition regarding the incorporation of treaties into its national law”.⁹¹¹ In this regard, the following pertinent international treaties have been incorporated into our law thus become binding: The Universal Declaration of Human Rights (UDHR)⁹¹² is binding as international customary law and played a crucial role in the drafting of the South African Bill of Rights.⁹¹³ This instrument is explored further later in this chapter. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹¹⁴ and the International Covenant on Civil and Political Rights (ICCPR)⁹¹⁵ were adopted, South Africa having signed and ratified them in 1994 and 2015 respectively.⁹¹⁶

There are a number of international instruments (discussed below) which are not necessarily binding on South Africa but have had an impact on our domestic law. For example, the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No 159)⁹¹⁷ and Recommendation (No 168) of 1983⁹¹⁸ has not been ratified by South Africa but it plays an indirect role in the employment and protection of the rights of persons with disabilities.⁹¹⁹ The Standard Rules for Equalisation of Opportunities for Persons with Disabilities 48 of 1996⁹²⁰

⁹¹⁰ section 231(4) of the Constitution. The Constitution further provides, in section 231(2), that an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces.

⁹¹¹ Grobbelaar-Du Plessis & Nienaber note 649 (above) 371. They further clarify this point and say: “This is determined by s 231(2) of the Constitution which states that international agreements bind the Republic only after they have been approved by resolution in both houses of Parliament (the National Assembly and the National Council of Provinces), unless they are of the type of agreement referred to in s 231(3). International agreements that require ratification thus require an act in the form of a resolution by the legislature to transform them into national or municipal law.”

⁹¹² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

⁹¹³ This international human rights instrument has been described as the foundation of the South African Bill of Rights: https://www.parliament.gov.za/storage/app/media/EducationPubs/human_rights_email accessed on 10 November 2018.

⁹¹⁴ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁹¹⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

⁹¹⁶ https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv3&chapter=4&clang=_en#EndDec accessed on 20 October 2018, issued 13 February 2002, ISBN 92-2-111639.

⁹¹⁷ International Labour Organization, *Vocational Rehabilitation and Employment (Disabled Persons) Convention*, 1983 (No. 159), 1983.

⁹¹⁸ International Labour Organization, *RI68 - Vocational Rehabilitation and Employment (Disabled Persons) Recommendation*, 1983 (No. 168) adopted Geneva, 69th ILC session on 20 Jun 1983.

⁹¹⁹ The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 was adopted on the 20 June 1983 following general conference of the International Labour Organisation in Geneva on 1 June 1983. https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:8427383311855:::P11210_INSTRUMENT_SORT:4 accessed on 26 October 2018.

⁹²⁰ UN General Assembly, *The Standard Rules for Equalisation of Opportunities for Persons with Disabilities* 48 of 1996 A/RES/48/96.

discussed below, have also been considered by the South African government, particularly on issues of equity. These standards acted as a precursor to the United Nations Convention on the Rights of Persons with Disabilities (discussed below). The ILO Code of Practice on Managing Disability in the Workplace⁹²¹ (developed by the tripartite meeting of experts on the management of disability in the workplace at Geneva in October 2001) “aimed to provide practical guidance on the management of disability issues in the workplace.”⁹²² As will be seen from the discussion below, although not binding and merely providing guidance on the management of disability issues in the workplace, South Africa relied on the ILO Code in drafting its Disability Code. Recently, the United Nations adopted the United Nations Convention of the Rights of Persons with Disabilities (CRPD) which is the most important global human rights convention for persons with disabilities.

South Africa signed and ratified the CRPD and its optional protocol without reservation in March and November 2007 respectively, thereby committing the country to respect and implement the rights of persons with disabilities.⁹²³ By ratifying an international instrument like the CRPD, the state party (South Africa) is bound by the obligations imposed by the treaty. However, section 231(4) provides that the international instrument like CRPD becomes law in South Africa when it is enacted into law by parliament, through the passing of legislation by parliament. As aforementioned, where parliament has agreed to the ratification of an international instrument such as the CRPD by resolution, such instrument is binding on the Republic of South Africa.⁹²⁴

Beside the aforementioned international instruments, South Africa is a party to regional human rights instruments which are pertinent to this study. South Africa signed and ratified the African Charter on Human and People’s Rights of 1986 on 9 July 1996.⁹²⁵ Recently, the Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities was adopted on 31 January 2018.⁹²⁶ This document was ratified by South Africa but has not yet come into force. In addition, South Africa is a member of the Southern African Development

⁹²¹ International Labour Organisation, *Code of Practice on Managing Disability in the Workplace*, TMEMDW/2001/2.

⁹²² Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 187.

⁹²³ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en accessed on 26 October 2018.

⁹²⁴ s 231(2) of the Constitution.

⁹²⁵ <http://www.achpr.org/instruments/achpr/ratification> accessed on 28 April 2018.

⁹²⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E> accessed on 10 November 2018.

Community (SADC)⁹²⁷ a main objective of which is to “enhance the standard and quality of life of the people of Southern Africa” and to ensure equitable and sustainable development.⁹²⁸ Thus, South Africa has adopted and signed various protocols and charters, some of which are pertinent to this study.⁹²⁹ It is therefore necessary to explore these international and regional laws that govern the rights of persons with disabilities.

4.2.1 Universal Declaration of Human Rights of 1948

The Universal Declaration of Human Rights (UDHR) of 1948 was adopted to tackle disparities and to safeguard individual rights, especially the right to human dignity. De Baets notes that the moral outrage about violations of human rights during World War II was in the minds of the drafters and ultimately formed the foundation for the adoption of the UDHR.⁹³⁰ This is reinforced by the preamble to the UDHR which states, inter alia, that human dignity, parity and absolute rights for all human beings are the basis of liberty, fairness and harmony in the world. The preamble to the UDHR further emphasises the need to safeguard human rights through upholding the rule of law. Member states to the UDHR pledged themselves, by signing the instrument, to promote worldwide respect for human rights and fundamental liberty.⁹³¹ Article 1 of the UDHR stipulates that “all human beings are born free and equal in dignity and rights”. While article 2 states that “everyone is entitled to all the freedoms set forth in the declaration, without distinction of any kind”.

Article 2 does not talk of persons with disabilities. Basson asserts that the expression “other status” includes, by implication, persons with disabilities.⁹³² Basson further contends that by virtue of the UDHR’s inclusiveness, article 2 should be understood to include persons with disabilities.⁹³³ However, it has been argued that disability should have been expressly incorporated in the UDHR as it was adopted after World War II,⁹³⁴ the rationale being that, at

⁹²⁷ note 919 (above).

⁹²⁸ <https://www.sadc.int/about-sadc/overview/sadc-objectiv/> accessed on 17 November 2018.

⁹²⁹ For example, South Africa adopted and signed the SADC Charter on Fundamental Social Rights of 2003, the SADC Protocol on Gender and Development of 2008 and the SADC Protocol on Employment and Labour of 2014 <https://www.sadc.int/documents-publications/show/837> accessed on 15 November 2018.

⁹³⁰ A de Baets ‘The impact of the Universal Declaration of Human Rights on the study of history’ (2009) 20 (43) *History and Theory* 21.

⁹³¹ preamble to the UDHR.

⁹³² Y Basson ‘State obligation in international law related to the right to an adequate standard of living for persons with disabilities’ (2017) 21 (1) *Law, Democracy & Development* 72. See also Ngwena note 28 (above) 173, where he says that “United Nations human rights instruments have largely not addressed disability as a discrete status, especially in the context of equality and non-discrimination”.

⁹³³ Basson note 932 (above) 72.

⁹³⁴ <http://www.un.org/en/sections/universal-declaration/history-document/index.html> accessed on 20 October 2018.

the time the UDHR was adopted, it was known that the war had caused untold deaths, injuries and disabilities.⁹³⁵ Hardy and Reyes record that during World War II countless injuries occurred as a result of weapons and bombs.⁹³⁶ They further note that about 70% of combat injuries were musculoskeletal which led to amputations of body limbs in many cases.⁹³⁷ Dupper et al state that “much of the initial focus on disability in employment came after the First and Second World Wars when returning veterans, suffering from obvious physical disabilities, and perhaps not so obvious mental disabilities, needed to be integrated back into society and employment”.⁹³⁸

Ultimately, it can be said that, as so many people became disabled as a result of the World Wars, the drafters of the UDHR should have been acutely aware of the obligation expressly to incorporate disability in the Declaration, particularly in relation to disabilities in the workplace. However, at the time when the UDHR was adopted, disability was considered to be a condition which needed to be viewed from a social welfare and rehabilitation perspective and not from a human rights perspective.⁹³⁹

Persons with disabilities were regarded as people who needed assistance and medical treatment and not as people who could claim any rights and be actively involved in society.⁹⁴⁰ Skarstad and Stein assert that society’s understanding of disability from a medical standpoint contributed to the historical oversight of not viewing disability as a human rights issue and thus not including it in the drafting of human rights rules.⁹⁴¹ They further argue that the medical model focuses more on the condition of persons with disabilities unlike the human rights model which focuses on creating an enabling environment to accommodate persons with disabilities.⁹⁴² It appears that, at that time, there was no full understanding of what disability is and thus no mindset for transformation.

Consequently, persons with disabilities were not accorded the full recognition given to non-disabled persons, particularly from a human rights perspective. It is argued that this situation

⁹³⁵ M A Hardy & M A Reyes ‘The longevity legacy of World War II: The intersection of GI status and mortality’ (2016) 56 (1) *The Gerontologist* 106 doi: 10.1093/geront/gnv041 accessed on 20 October 2018.

⁹³⁶ Hardy & Reyes note 935 (above) 106.

⁹³⁷ Hardy & Reyes note 935 (above) 106.

⁹³⁸ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 157

⁹³⁹ The United Nations and Disability: 70 years of work towards a more inclusive world (Division of Social Policy and Development) 6 www.un.org/development/desa/disabilities accessed on 20 October 2018.

⁹⁴⁰ note 932 (above) 2.

⁹⁴¹ K Skarstad & M A Stein ‘Mainstreaming disability in the United Nations treaty bodies’ (2018) 17 (1) *Journal of Human Rights* 4.

⁹⁴² Skarstad & Stein note 941 (above) 4.

persists today. As may be seen from the background set out in chapter one, persons with disabilities are still not fully recognised in society. They are not treated as people with rights. The fact that since 1994 South Africa has been struggling to attain a 2% target of persons with disabilities in the public sector indicates a lack of understanding of disability and a stereotyping of persons with disabilities. It is for these reasons that this study advocates for transformational leadership in the public sector, and in the Ethekwini Municipality in particular, to ensure that the rights of persons with disabilities are adequately protected in the workplace.

Despite the lack of disability recognition in the UDHR, articles 6 and 7 provide for recognition and equality of all human beings before the law and for equal protection without any discrimination. It further provides for “equal access to public service in the country.”⁹⁴³ The right to equality is fundamental and measures to execute this right are binding on all state parties by virtue of their being members of the international community.⁹⁴⁴ Consequently, state parties must guarantee equality for all in their societies. The UDHR expressly makes provision for a good working environment and freedom of choice with regard to employment.⁹⁴⁵ Furthermore, it has been said that the preamble to the UDHR confirms individual self-worth and privileges.⁹⁴⁶ Thus, inherent dignity is a foundational fact and a value upon which the declaration was founded. Since South Africa is a member of the United Nations and has ratified many UN Human Rights Conventions, it has internationally committed itself to safeguard human rights and to comply with the standard afforded in the international human rights instruments.⁹⁴⁷

It can be concluded that the South African state has a commitment to monitor and safeguard the human rights of persons with disabilities. The UDHR has a specific significance to this study as it emphasises the needs for parity and protection of human rights, which this study advocates through a human rights approach to disability. Recognition of the human rights of persons with disabilities encompasses not only the deterrence of discrimination but also transformative action in the form of positive measures to tackle inequalities. Basson asserts

⁹⁴³ article 21(2) of the UDHR.

⁹⁴⁴ Elphick, Elphick & Kropiwnicki note 696 (above) 223.

⁹⁴⁵ article 23(1) of the UDHR.

⁹⁴⁶ G Hughes ‘The concept of dignity in the Universal Declaration of Human Rights’ (2011) 39 (1) *Journal of Religious Ethics* 3.

⁹⁴⁷ <http://www.claiminghumanrights.org/southafrica.html> accessed on 12 January 2018.

that although the UDHR does not have the same rank as a treaty of the UN, it has, to a certain extent, achieved the rank of international customary law.⁹⁴⁸

South Africa being a member of the United Nations has a duty to advance mechanisms to tackle human rights violations, such as eliminating barriers, deterring the creation of new barriers, providing opportunities, disability inclusion and diversity. It is argued that transformational leadership may be utilised to advance methods to deal with human rights violations especially for persons with disabilities, thus achieving the objectives of the UDHR. While at the time of drafting of the UDHR, workplaces were not transformed due to the colonial inheritance and the apartheid regime and probably the leadership of the time was more autocratic than transformational, it is argued that the idea behind the adoption of the UDHR was transformational as it sought to ensure the protection of human dignity, equality and harmony in a post-war world.⁹⁴⁹ The fact that the adoption of the UDHR was informed by cruelty and moral outrage from two World Wars which necessitated the need for change from that behaviour, is an indication that the member states wanted to be transformational and to challenge the status quo.

It can further be said that the adoption of the UDHR was the commitment by the member states to new ways of managing and leading people in public and private spaces (including the workplace and communities) by taking into consideration the promotion and protection of individual human rights, particularly the rights to human dignity and equality. Thus, it is argued that the UDHR advocated for member states to be transformational in managing their domestic affairs and ensuring that individual needs were taken into consideration by their governments.

⁹⁴⁸ Basson note 925 (above) 72. See also J von Bernstorff 'The changing fortunes of the Universal Declaration of Human Rights: Genesis and symbolic dimensions of the turn to rights in international law' (2008) 19 (5) *European Journal of International Law* 913 who say that abundant references to the Declaration in later UN documents and state practice meant that the Declaration had acquired the status of customary international law. Since then, the reference to customary law has become a standard argument in discussions of the legal nature of the Declaration and its individual provisions. V Dimitrijevic 'Customary law as an instrument for the protection of human rights' ISPI Working Paper Series WP – 7 (2006) 9 argues that the references to the Universal Declaration continue to support claims that at least some rights have attained the quality of customary rules in other forms. See further H Hannum 'The status of the Universal Declaration of Human Rights in national and international law' (1996) 23 *Georgia Journal of International and Comparative Law* 289 where the author says that many of the Universal Declaration's provisions have also become incorporated into customary international law, which is binding on all states. J Dugard *International Law: A South African Perspective* (Juta Law Publishers 1994) 204 comments that "the Universal Declaration now forms part of customary international law".

⁹⁴⁹ G Singh *International Law* (Macmillan 2003) 73 says that "the second World War proved to many the close relationship between outrageous behaviour by a government towards its own citizens and aggression against other nations, between respect for human rights and the maintenance of peace. The experience of the war resulted in the widespread conviction that effective international protection of human rights was an essential condition of international peace and progress and that conviction found expression in a number of statements, declarations and proposals made while the war was still being fought".

This can be traced from the UDHR itself which talks of the will of people based on the authority of government⁹⁵⁰ and democratic society.⁹⁵¹ The UDHR further condemns autocracy and oppression in its preamble and promotes the protection of human rights by the rule of law.

Consequently, it can be said that the UDHR requires government leaders (national governments) to inculcate a transformational culture in workplace leaders (provincial and local government) by responding to the needs of employees and protecting their human rights. In this context, this study endeavours to respond to the UDHR by exploring the role that can be played by transformational leadership in the effective execution of disability related legislation in the workplace, in line with the human rights approach.

The study seeks to analyse the role of transformational leadership in the protection of the rights of persons with disabilities, in particular the rights to equality and human dignity, in the workplace. Transformational leaders have been found to promote and protect the human rights of individuals and to transform workplaces and communities.⁹⁵² Transformational leadership has further been recommended for workplaces that are flexible and ascribe to transformation.⁹⁵³ It is argued that transformational leadership, due to its characteristics and being people centred, should be adopted globally as a leadership model that can practically achieve transformation in the workplace, particularly for persons with disabilities. Lewis et al assert that transformational leadership can be used globally as a model of management for implementation of government's initiatives in all spheres of government.⁹⁵⁴ Consequently, the proposition is that transformational leadership may achieve equality and inclusion of persons with disabilities in the workplace thereby achieving the objectives of the UDHR.

South Africa is a juristic person which acts through its leaders. The attainment of equality and the protection of the rights of persons with disabilities as required by the UDHR and other international instruments on equality necessitate a particular type of government leadership that can ensure that workplace leaders are able to implement obligations under international instruments on human rights. They further necessitate that government leadership should utilise

⁹⁵⁰ article 21 of the UDHR.

⁹⁵¹ article 29 of the UDHR.

⁹⁵² Mwambazimba & Banza note 622 (above) 2.

⁹⁵³ W Ndlovu, H Ngirande, S T Setati & S Zhuwao 'Transformational leadership and employee organisational commitments in a rural-based higher education institution in South Africa' (2018) 16 *South African Journal of Human Resource Management* 2.

⁹⁵⁴ E Lewis, D Boston & S Peterson 'A global perspective of transformational leadership and organisational development' (2017) 2 (3) *Journal of Research Initiatives* 2 <http://digitalcommo ns.uncfsu.edu/jri/> accessed on 21 October 2018.

the transformational leadership model and ensure that there is an awareness by workplace leaders that they should be transformational in managing workplace affairs. The contention is that there is a link between government leadership and workplace leadership in the sense that government leaders (particularly at national level) make decisions for their countries and pass legislation through their parliaments. Thereafter, workplace leaders (particularly those at local government level) are responsible for implementing the decisions, strategies and lawful policies taken at national level.⁹⁵⁵ In this regard section 195(1)(i) of the Constitution requires “public administration to be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.” The aforementioned principle applies “to administration in every sphere of government, organs of state and public enterprises.”⁹⁵⁶

While “a municipality has the right to govern on its own initiative the local government affairs of its community”, such initiative must be “subject to national and provincial legislation, as provided for in the Constitution.”⁹⁵⁷ The “government of the Republic is constituted by national, provincial and local spheres of government which are distinctive, interdependent and interrelated.”⁹⁵⁸ It is therefore important that there is meeting of minds between government and workplace leaders with regard to workplace transformation, applicable leadership models as well as the promotion and protection of human rights in the workplace.

4.2.2 International Covenant on Economic, Social and Cultural Rights of 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁵⁹ was adopted to ensure that social, economic and cultural rights are embedded in laws and policies. It may be said that the ICESCR is an extension of the provisions of the UDHR.⁹⁶⁰ In addition, the

⁹⁵⁵ Section 197(1) of the Constitution states that within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day. The terms and conditions of employment in the public service must be regulated by national legislation.

⁹⁵⁶ section 195(1)-(2) of the Constitution.

⁹⁵⁷ section 151(3) of the Constitution. Section 6(1) and (2) of the Local Government: Municipal Systems Act states that a municipality’s administration is governed by democratic values and principles as provided for in the Constitution and must be responsive to the needs of the local community and create a culture of public service and accountability amongst staff.

⁹⁵⁸ section 40(1) of the Constitution.

⁹⁵⁹ Note 154 (above): UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁹⁶⁰ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. The preamble to the ICESCR makes reference to the UDHR and states that state parties recognise that, in accordance with the UDHR, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

ICESCR is crucial particularly for the human rights agenda as it provides for universal measures to execute human rights.⁹⁶¹ The preamble to the Covenant states, inter alia, that “the parties to the Covenant consider it the duty of states under the Charter of the United Nations to globally promote, observe and respect human rights and liberty.”

Article 2(1) of the Covenant states that “each state party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”. Article 3 obligates the state parties to safeguard equality for all to enjoy all economic, social and cultural rights.

South Africa has signed, and ratified, the ICESCR in 1994 and 2015 respectively.⁹⁶² Viljoen and Orago assert that South Africa’s ratification of the Covenant is likely to ensure constitutional, legislative and policy compliance with South Africa’s international socio-economic rights commitments.⁹⁶³ They further maintain the importance of socio-economic rights on substantive equality, human dignity and transformation.⁹⁶⁴ Socio-economic rights, embedded in the Constitution, have been found by the courts to be crucial in addressing injustices of the past and improving substantive equality, individual self-worth, social justice and transformation of South Africa into a democratic and considerate society.⁹⁶⁵

Consequently, South Africa has an obligation to enhance the respect, protection, promotion and enforcement of socio-economic rights and to ensure equality and human dignity, especially for persons with disabilities in the workplace. In this respect, Bhabha asserts that the organs of the state are mandated, within the socio-economic rights context, to provide practical sense to the principles of human dignity, equality and freedom.⁹⁶⁶ Bhabha further argues that there is a need to develop new ideas to conceptualise the relationships between socio economic rights

⁹⁶¹ Singh note 949 (above) 74.

⁹⁶²https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv3&chapter=4&clang=_en#EndDec accessed on 20 October 2018.

⁹⁶³ F Viljoen & N Orago ‘An argument for South Africa’s accession to the optional protocol to the International Covenant on Economic, Social & Cultural Rights in the light of its importance and implication’ (2014) 17 (6) *PER/PELJ* 2576.

⁹⁶⁴ Viljoen & Orago note 963 (above) 2576.

⁹⁶⁵ Viljoen & Orago note 963 (above) 2577.

⁹⁶⁶ Bhabha note 45 (above) 241.

and human rights values such as human dignity, equality and freedom to accommodate changing environmental conditions.⁹⁶⁷

While the provisions of the ICESCR do not specifically list persons with disabilities, the language, object and spirit of the ICESCR implies protection of the rights of persons with disabilities.⁹⁶⁸ Basson argues that since the ICESCR was designed to protect everyone, persons with disabilities are impliedly protected by the ICESCR.⁹⁶⁹ Further, that there is a well-known nexus between persons with disabilities and the ICESCR, therefore, the ICESCR must be consulted on issues affecting the rights of persons with disabilities.⁹⁷⁰

Parker asserts that despite the invisibility of disability in the ICESCR, it remains a tool to advance rights of persons with disabilities through its general comments.⁹⁷¹ Broderick argues that the provisions in the ICESCR are pertinent to persons with disabilities and must be taken into consideration when considering reasonable accommodation of persons with disabilities.⁹⁷² Cooper and Whittle are of the view that the argument whether disability forms part of the ICESCR has since been positively settled by virtue of *General Comment No 5* of 1994.⁹⁷³ They further argue that the *General Comment* is authority on the application of the ICESCR to persons with disabilities.⁹⁷⁴

The *General Comment No 5* of the United Nations Committee on Economic, Social and Cultural Rights has since incorporated persons with disabilities as part of its transformation agenda to ensure that they are not deprived of the “opportunity to enjoy the full range of economic, social and cultural rights documented in the Covenant.”⁹⁷⁵ The *General Comment* essentially clarifies that, although the Covenant does not specifically list persons with disabilities, the provisions in the Covenant apply to everyone including persons with

⁹⁶⁷ Bhabha note 45 (above) 241.

⁹⁶⁸ Basson note 932 (above) 74.

⁹⁶⁹ Basson note 932 (above) 74.

⁹⁷⁰ Basson note 932 (above) 74.

⁹⁷¹ S Parker ‘International justice: The United Nations, human rights and disability’ (2006) 22 (1) *Journal of Comparative Social Welfare* 66.

⁹⁷² A Broderick ‘Harmonisation and cross fertilisation of socio-economic rights in the Human Rights Treaty bodies: Disability and the reasonableness review case study’ (2016) 5 (38) *Laws* 4 www.mdpi.com/journal/laws accessed on 26 October 2018.

⁹⁷³ J Cooper & R Whittle ‘Enforcing the rights of disabled people: The role of transnational law (part I)’ (1998) 2 (2) *Mountbatten Journal of Legal Studies* 15.

⁹⁷⁴ Cooper & Whittle note 973 (above) 15.

⁹⁷⁵ *General Comment No 5* (1994) E/C.12/1994/WP.13.1 December 1994 paragraph 5.

disabilities. It is therefore imperative briefly to explore the *General Comment* as it relates to persons with disabilities.

4.2.2.1 General Comment No 5 of the United Nations Committee on Economic, Social and Cultural Rights of 1994

The general comments of the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) are pertinent to this study as they provide guidance on the application and interpretation of the ICESCR. The general comments do not place any obligation on state parties, they merely serve as guidelines on the interpretation and application of the ICESCR.⁹⁷⁶ In this regard, Cooper and Whittle argue that *General Comment No 5* is authority on the application of the ICESCR to persons with disabilities.⁹⁷⁷ They further argue that “although the General Comment is not binding, and governments may therefore ignore its content, it is to be hoped that contracting States will, in the light of this General Comment, adopt a more purposive approach to their anti-discrimination provisions as they affect people with disabilities”.⁹⁷⁸

Paragraph 5 of the *General Comment* states that “the Covenant does not refer explicitly to persons with disabilities”. The *General Comment* however suggests that persons with disabilities are protected by the UDHR therefore, by implication, they are protected by the Covenant.⁹⁷⁹ In addition, paragraph 5 requires state parties to take suitable measures, within available resources, to eradicate obstacles that hamper the full enjoyment of the rights provided for in the Covenant by persons with disabilities and emanating from their disability. Paragraph 5 continues to state that “moreover, the requirement contained in article 2(2) of the Covenant that the rights ‘enunciated ... will be exercised without discrimination of any kind’ based on certain specified grounds ‘or other status’ clearly applies to discrimination on the grounds of disability”.

What is significant is that the *General Comment* acknowledges that general domestic laws are not sufficient to promote and safeguard the rights of persons with disabilities. Since disability

⁹⁷⁶ It should be noted that by signing and ratifying any convention, the state binds itself to implement the convention and/or optional protocol <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html> accessed on 10 November 2018.

⁹⁷⁷ Cooper & Whittle note 973 (above) 15.

⁹⁷⁸ Cooper & Whittle note 973 (above) 16.

⁹⁷⁹ In this regard paragraph 5 of the *General Comment No 5* provides that “nevertheless, the Universal Declaration of Human Rights recognises that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognised in the Covenant”.

is unique, it also requires specialised laws and policies specifically designed to deal with disability affairs. In this regard, paragraph 6 of the *General Comment* states that the protection of human rights of persons with disabilities requires tailor-made disability policies and programmes to ensure its realisation. Thus governments are required to go beyond developing appropriate measures and must see to it that such measures are effectively implemented.⁹⁸⁰ The *General Comment* further requires state parties to develop methods to ensure inclusion of persons with disabilities.⁹⁸¹ State parties are required to eradicate discrimination on the basis of disability. State parties are further required to formulate inclusive anti-discrimination legislation. The *General Comment* states that --

“in order to remedy the past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life”.⁹⁸²

The importance of equality, equal participation and access to public resources for persons with disabilities is also stressed.⁹⁸³ It can be concluded that the UNCESC has interpreted the ICESCR to place an obligation on the state to ensure equality and inclusion of persons with disabilities. It further requires states to design and implement practical measures to address disparity and to guarantee transformation for persons with disabilities in society.⁹⁸⁴ Consequently, government, through its leadership, is required to take measures to accommodate persons with disabilities both in the community and the workplace.⁹⁸⁵ The

⁹⁸⁰ Paragraph 9 of the *General Comment No 5* states that “the obligation of States parties to the Covenant to promote progressive realisation of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.”

⁹⁸¹ Paragraph 13 of the *General Comment No 5* states that the methods “include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international cooperation and assistance”.

⁹⁸² note 975 (above) paragraph 16.

⁹⁸³ note 957 (above) paragraph 17.

⁹⁸⁴ note 957 (above) paragraph 18.

⁹⁸⁵ note 957 (above) paragraph 22. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers. In paragraph 23 it is stated that similarly, the failure of governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to

ICESCR in article 7 recognises the need for the promotion of equal opportunities in employment and the right of everyone to enjoy favourable working conditions. Thus, persons with disabilities are protected by the ICESCR and should be accommodated in the workplace to ensure the realisation of equality and transformation in the workplace.

4.2.3 ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No 159) and Recommendation (No 168) of 1983

One of the ground-breaking international instruments, particularly on the right to work for persons with disabilities, is the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention. This Convention was adopted in 1981, the year the UN declared to be the international year of disability with the theme “full participation and equality”, and with the objective of safeguarding “equality of opportunity and treatment to all categories of disabled persons, in both rural and urban areas, and ensuring their employment and integration into the community.”⁹⁸⁶ O’Reilly asserts that the Convention was designed to encourage member states to make adaptations to the workplace reasonably to accommodate and to create employment opportunities for persons with disabilities.⁹⁸⁷ The Convention is upfront about informing persons with disabilities of their rights and opportunities in the workplace.⁹⁸⁸

This Convention, while crucial for persons with disabilities as it serves as a basis for rights of persons with disabilities in the workplace, has not been ratified by South Africa⁹⁸⁹ and is consequently not binding on South Africa. Nevertheless, as will be seen under South African legislation (discussed later), it appears that the Convention has had an indirect influence on South African labour laws, particularly on workplace transformation and reasonable accommodation of persons with disabilities.⁹⁹⁰ It is for these reasons that it is necessary to explore the Convention in this study.

The ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention was adopted to allow persons with disabilities to acquire, preserve and progress in suitable

appropriate and, where necessary, specially tailored forms of transportation is crucial to the realisation by persons with disabilities of virtually all the rights recognised in the Covenant.

⁹⁸⁶ Preamble to ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention No 159 of 1983.

⁹⁸⁷ A O’Reilly ‘The right to decent work of persons with disabilities’ IFP /Skills Working Paper No 14, 24 www.ilo.org/public/english/employment/skills/disability/index.htm accessed on 26 October 2018.

⁹⁸⁸ O’Reilly note 987 (above) 24.

⁹⁸⁹ https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:8427383311855:::P11210_INSTRUMENT_SORT:4 accessed on 26 October 2018.

⁹⁹⁰ For example, item 6 of the Disability Code provides for reasonable accommodation and requires employers to adopt effective measures to remove barriers for persons with disabilities to perform the job.

employment and to include them in society.⁹⁹¹ A member state to the Convention is required to develop policies founded on the notion of equality and equal opportunities between “abled” and “disabled” workers.⁹⁹² The Convention requires respect of equal opportunities for persons with disabilities,⁹⁹³ and provides that affirmative measures intended to safeguard equality for persons with disabilities are not to be viewed as discriminating against other employees.⁹⁹⁴

The Convention compels “member states to take necessary steps through legislations and policies to guarantee that persons with disabilities are safeguarded”.⁹⁹⁵ Article 7 of the Convention requires the “competent authorities” to --

“take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment; existing services for workers generally shall, wherever possible and appropriate, be used with necessary adaptations”.

An inference can be drawn from this provision that the words “competent authorities” refer to member states through their government departments including their leaders. Consequently, member states through their government leaders have a responsibility to ensure inclusion of persons with disabilities in the workplace. Article 9 of the Convention requires member states to ensure “the training and availability of rehabilitation counsellors and other suitably qualified staff responsible for the vocational guidance, vocational training, placement and employment of disabled persons”. Article 7 of the Recommendation No 168 states that “disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment”. The Recommendation further underscores the importance of equality for all workers.

The state is required to adopt measures to encourage employment prospects for persons with disabilities and ensure an equivalent salary standard to that of employees without disabilities.⁹⁹⁶ Those measures, include, among others --

⁹⁹¹ article 1(2) of Convention No 159.

⁹⁹² article 4 of Convention No 159.

⁹⁹³ article 4 of Convention No 159.

⁹⁹⁴ article 4 of Convention No 159.

⁹⁹⁵ article 6 of Convention No 159.

⁹⁹⁶ clause 10 of Recommendation No 168.

“elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of disabled persons”.⁹⁹⁷

The Convention and its Recommendation are therefore crucial for persons with disabilities from an employment perspective. They require member state to guarantee inclusivity of persons with disabilities in the workplace by adopting necessary policies to promote and protect employment of persons with disabilities. They further require member states to ensure that society is educated on the concept of disability. Pertinently, especially for this study, the Convention emphasises the importance of equality and the protection of the rights of persons with disabilities. Finally, it requires state parties to develop practical and effective measures to address disparities, especially for persons with disabilities.

In this regard, Ngwena interprets the Convention to mean that government must create employment, promote equal opportunities and develop affirmative action measures to accommodate persons with disabilities.⁹⁹⁸ This view is shared by Cole and Van der Walt who explicate that the Convention was designed to ensure that there are practical and effective measures at national and domestic level to guarantee full inclusion and protection of persons with disabilities.⁹⁹⁹ Thus, it can be said that the Convention underscores the need to promote and protect the rights of persons with disabilities. It further mandates government and its leaders to develop strategies reasonably to accommodate persons with disabilities.

However, the critical challenge is that, while the Convention makes provisions for the inclusion of persons with disabilities and is transformational in its nature, it does not indicate the type of leadership required to implement it to achieve its objective of guaranteeing inclusion of persons with disabilities. As Carter et al affirm that transformational leaders offer individualised consideration through customised or individual support to employees,¹⁰⁰⁰ it is submitted that transformational leadership can play a key role in ensuring that there are special measures aimed at effective equality of opportunity and treatment of persons with disabilities in the workplace thereby achieving equity as required by the Convention and Recommendation.

⁹⁹⁷ clause 11(b), (g) and (m) of Recommendation No 168.

⁹⁹⁸ Ngwena note 28 (above) 177.

⁹⁹⁹ Cole & Van der Walt note 745 (above) 514.

¹⁰⁰⁰ Carter, Self, Bandow, Wheatley, Thompson, Wright & Li note 54 (above) 48.

4.2.4 United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities 48 of 1996

As explored above, the UDHR and ICESCR did not explicitly recognise disability as a human rights issue. It has been said that where these international instruments made mention of disability, it was from a social and medical perspective.¹⁰⁰¹ Thus, Degener asserts that persons with disabilities were neglected for decades by the United Nations without any specific treaty dealing with the protection and promotion of the rights of persons with disabilities.¹⁰⁰² “In recognition of the fact that persons with disabilities have been marginalised for too long and excluded from both social development and human rights” agendas, the General Assembly adopted the non-binding United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules).¹⁰⁰³

These were the first rules adopted by the UN specifically designed to address equality and equal opportunities for persons with disabilities as the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, discussed above, focused more on their inclusion and development in the workplace and society. It has been said that the Standard Rules indicate the UN’s validation of the human rights approach to disability.¹⁰⁰⁴

While the Rules are not obligatory, they may develop into international rules once they are supported and applied by a large number of states with the aim of obeying them.¹⁰⁰⁵ The Rules suggest a robust ethical and political assurance on behalf of states to adopt measures to ensure equal prospects for persons with disabilities.¹⁰⁰⁶ Ngwena asserts that whilst the Rules are not binding, they provide a realistic approach to eliminate physical challenges that hinder inclusion of persons with disabilities in the workplace and society.¹⁰⁰⁷ Ngwena further argues that the Rules are crucial for global society when formulating national laws concerning disability

¹⁰⁰¹ T Degener ‘International disability law -- A new legal subject on the rise: The interregional experts’ meeting in Hong Kong, December 13-17, 1999’ (2000) 18 (1) *Berkeley Journal of International Law* 187.

¹⁰⁰² Degener note 1001 (above) 187. Degener further argues that “only in the 1970s, with the promulgation of the Declaration on the Rights of the Mentally Retarded Persons (1971) and the Declaration on the Rights of Disabled Persons (1975), did persons with disabilities become subjects of human rights declarations. Even these early instruments reflect a notion of disability within the medical model, according to which disabled persons are primarily seen as persons with medical problems, dependent on social security and welfare and in need of segregated services and institutions. It was also during this time that the General Assembly affirmed that the ‘other status’ phrase of the equality provisions of the International Bill of Human Rights covered disabled persons”.

¹⁰⁰³ Degener note 1001 (above) 189.

¹⁰⁰⁴ M Rioux & A Carbert note 625 (above) 5.

¹⁰⁰⁵ rule 14 of the Standard Rules.

¹⁰⁰⁶ rule 14 of the Standard Rules.

¹⁰⁰⁷ Ngwena note 28 (above) 177.

inclusion.¹⁰⁰⁸ Thus, the Rules serve as a framework to enlighten member states on their disability strategies and execution.¹⁰⁰⁹

The purpose of the Rules is to “safeguard the rights of persons with disabilities and to ensure that they enjoy the same rights as those without disabilities enjoy.”¹⁰¹⁰ In other words, the UN, through these Rules, has endeavoured to provide guidance to member states on strategy development for equal opportunities for persons with disabilities. Thus, the Rules highlight the need for transformation away from the misconception about persons with disabilities towards disability inclusion in our society. The Rules further highlight the need to “view disability as a human rights issue and for persons with disabilities to be permitted to exercise their human rights, particularly in the employment sector.”¹⁰¹¹

The Rules identify that there are still obstacles that prevent persons with disabilities from enjoying their human rights and they place the responsibility on the state to take suitable action to eliminate such impediments.¹⁰¹² The principle of equality denotes that individual necessities are of high importance and the said necessities must form the basis for the advancement of societies and that the resources must be shared equally among all to enhance space for full “participation”.¹⁰¹³ The Rules therefore highlight the importance of equality for persons with disabilities and require the state to pay special attention to disability in order to achieve transformation. They further emphasise the importance of persons with disabilities enjoying equal access like non-disabled persons in society.

In this regard, Rioux and Carbert assert that the Rules encourage a human rights approach to disability and require states to develop effective programmes for disability inclusion in society.¹⁰¹⁴ Bickenbach comments that the Rules were designed to persuade states to develop mechanisms to ensure guaranteed equal prospects and equal privileges for persons with disabilities.¹⁰¹⁵ Consequently, the EEA was adopted in South Africa “to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through

¹⁰⁰⁸ Ngwena note 28 (above) 177.

¹⁰⁰⁹ T W Shumba & I Moodley ‘Review of policy and legislative framework for disability services in Namibia’ (2018) 74 (1) *South African Journal of Physiotherapy* 1.

¹⁰¹⁰ rule 15 of the Standard Rules.

¹⁰¹¹ rule 15 of the Standard Rules.

¹⁰¹² rule 15 of the Standard Rules.

¹⁰¹³ rule 25 of the Standard Rules.

¹⁰¹⁴ Rioux & Carbert note 625 (above) 5.

¹⁰¹⁵ J E Bickenbach ‘Monitoring the United Convention on the Rights of Persons with Disabilities: Data and the International Classification of Functioning, Disability and Health’ (2011) 11 (4) *BMC Public Health* 2 doi: 10.1186/1471-2458-11-S4-S8.

elimination of unfair discrimination.”¹⁰¹⁶ Section 5 of the EEA requires “employer to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy and practice.”

The Rules have been considered by the South African government. In its report to the United Nations Committee on the Rights of Persons with Disabilities, South Africa acknowledged that the *White Paper on an Integrated National Disability Strategy* of 1997 was drafted taking into consideration the provisions of the Rules.¹⁰¹⁷ In her speech, the then Minister of Health Manto Tshabalala-Msimang referred to rule 4 and said that:

“The first point that this rule makes is that it is the duty of the state to ensure the provision of assistive devices. Indeed this government is committed to deliver on this obligation. We also want to create the right environment for this to happen. It was in this spirit that we have published guidelines for the Standardisation of Provision of Assistive Devices in South Africa. These guidelines will ensure that the provision and maintenance of assistive devices is uniform throughout the country.”¹⁰¹⁸

Whilst there is a commitment by the South African government to ensure equal opportunities and equal rights for persons with disabilities in line with the Rules, it is argued that to date persons with disabilities are not adequately protected and do not enjoy opportunities equal to those enjoyed by persons without disabilities. It is argued that while there may be a commitment from government to adhere to the Rules, what is now lacking is appropriate leadership to drive inclusion and equality for persons with disabilities. Government needs to adopt a leadership model to drive disability inclusion in the public sector. As indicated above, there must be a link between national, provincial and local government and, therefore, the leadership model used to implement government initiatives should be the same at all levels of government.

There is a need for public sector leaders who put people first and consider their individual needs in order to achieve equality in the workplace. Consequently, government leaders must develop strategies to ensure equality, inclusion and the protection of dignity for persons with disabilities. Government must develop strategies to ensure that persons with disabilities are not

¹⁰¹⁶ section 2(a) of the EEA.

¹⁰¹⁷ item 1 of the *First Periodic Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa* CRPD/C/ZAF/1 dated 24 November 2015.

¹⁰¹⁸ <http://www.polity.org.za/article/tshabalalamsimang-handing-over-assistive-devices-in-eastern-cape-29012004-2004-01-29> accessed on 7 July 2018.

prevented from full and effective involvement and inclusion in the workplace and society. It is through transformational leadership that the aforementioned initiatives can be achieved.

The Rules were designed to strengthen cohesion in the workplace and communities to promote equal opportunity for and rights of persons with disabilities. Further to that, it can be said that the Rules were geared towards encouraging the promotion and protection of human rights, particularly, the right to human dignity and equality in the workplace and communities.

The Rules played a vital role in the absence of a specific treaty on disability, prior to the enactment of the Convention on the Rights of Persons with Disabilities (discussed later).¹⁰¹⁹

4.2.5 ILO Code of Practice on Managing Disability in the Workplace of 2001

As indicated at the beginning of the this chapter, the ILO Code of Practice on Managing Disability in the Workplace of 2001 (ILO Code on Managing Disability) was developed by the tripartite meeting of experts on the management of disability in the workplace at Geneva in 2001, with a view to ensuring that there was guidance on all disability issues in the workplace.¹⁰²⁰ The Code is a guide and therefore not binding on states. However, as will be seen below, South Africa relied on the ILO Code to draft its Disability Code.¹⁰²¹ Ultimately, it is important to explore the ILO Code as it has had a direct impact on the development of disability law in South Africa. The Code is also crucial as it provides practical guidance on the inclusion of persons with disabilities in the workplace in the absence of a specific treaty on disability.

The objectives of the ILO Code on Managing Disability is to provide a realistic direction on disability matters in the workplace.¹⁰²² The Code was designed to guarantee equal prospects for persons with disabilities in the workplace.¹⁰²³ The code is intended to be of benefit to, among others, “public sector agencies with responsibility for national policy concerning the promotion of employment opportunities for people with disabilities and its implementation”.¹⁰²⁴ Ngwena asserts that the Code affords direction on appropriate measures

¹⁰¹⁹ In this regard rule 24 defines the term “equalization of opportunities” to mean the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities. Rule 26 states that persons with disabilities are members of society and have the right to remain within their local communities -- they should receive the support they need within the ordinary structures of education, health, employment and social services.

¹⁰²⁰ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 187.

¹⁰²¹ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 187.

¹⁰²² item 1.1 of the ILO Code on Managing Disability.

¹⁰²³ item 1.1(a) of the ILO Code on Managing Disability.

¹⁰²⁴ item 1.3.1(iv) of the ILO Code on Managing Disability.

designed to safeguard equal distribution of opportunities for persons with disabilities in the workplace.¹⁰²⁵

Consequently, employers have a responsibility to manage disability affairs in the workplace, adopt disability strategies and include them in employment policies and ensure that disability strategy forms part of their human resource development plans.¹⁰²⁶ The ILO Code requires employers to develop a disability strategy that will include provision for, among others, equivalent prospects for persons with disabilities and reasonable accommodation of employees who suffer a disability.¹⁰²⁷ The Code requires government to adopt disability strategies that promote employment for persons with disabilities in both the private and the public sector.¹⁰²⁸ From time to time, government must review rules governing employment and retention of persons with disabilities to ensure that they are not prejudicial against persons with disabilities.¹⁰²⁹ The Code requires a strategy to be designed to achieve these objectives:

“To promote the introduction of disability management strategies in the workplace, competent authorities should introduce and implement such a strategy for their own employees, and become model employers in relation to the recruitment of people with disabilities, equal opportunity for workers with disabilities, provision for job retention and return-to-work measures.”¹⁰³⁰

In other words, leaders must spearhead the campaign of ensuring disability inclusion in the workplace. The ILO Code requires the employer to prioritise disability affairs in the workplace.¹⁰³¹ Most importantly --

“the disability management strategy in the workplace should include provision for consultation from the employment service or other specialist agencies, where necessary, to ensure that the individual with a disability is well matched to the job in terms of ability, work capacity and interest, as is usual in recruitment procedures”.¹⁰³²

The state therefore is tasked with the responsibility to develop a national policy on disability. Employers should develop disability policies in their workplaces in line with national policies. Ultimately, each employer should prioritise disability in its strategy to ensure equity and transformation in the workplace. South Africa as a member of International Labour

¹⁰²⁵ Ngwena note 28 (above) 177.

¹⁰²⁶ item 2.1.1 of the ILO Code on Managing Disability.

¹⁰²⁷ item 2.1.2(b)-(c) of the ILO Code on Managing Disability.

¹⁰²⁸ item 2.2.1 of the ILO Code on Managing Disability.

¹⁰²⁹ item 2.2.3 of the ILO Code on Managing Disability.

¹⁰³⁰ item 2.2.12 of the ILO Code on Managing Disability.

¹⁰³¹ Item 3.1.1 of the ILO Code on Managing Disability states that “employers should consider the management of disability issues in the workplace a priority task which contributes to business success, and regard it as an integral part of the workplace human resource development strategy”.

¹⁰³² item 3.1.6 of the ILO Code on Managing Disability.

Organisation undertook to adhere with ILO principles to eliminate disability discrimination in the workplace.¹⁰³³ South Africa has considered the ILO Code in its disability strategies. Dupper et al assert that the South African Disability Code has included several notions emanating from the ILO Code.¹⁰³⁴ For example items 7 and 8 of the Disability Code deal with recruitment and selection, interviews and testing respectively while the ILO Code provides for recruitment and testing in its item 4. Although such intervention is commended, it appears that the ILO Code is rarely applied or considered in the workplace.

This view is shared by Potgieter et al who assert that the disability laws in South Africa are failing persons with disabilities.¹⁰³⁵ They further argue that disability provisions have merely created awareness of disability but are not effective in ensuring disability inclusion in the workplace.¹⁰³⁶ Consequently, it can be said that the South Africa government has considered the ILO Code on paper, but in practice persons with disabilities are not yet fully included in the workplace. It can therefore be said that the South African government and workplace leaders must drive the implementation of the ILO Code. Furthermore, the effective implementation of the ILO Code requires influential leaders who are morally exemplary and who can work towards the betterment of the country.

The achievement of a realistic direction on disability matters in the workplace as required by the ILO Code needs leaders who lead with integrity and can set clear goals for the workplace. Transformational leaders have been described as world-class, influential and trustworthy leaders who use innovative techniques to solve problems.¹⁰³⁷ It is for these reasons that this study advocates for transformational leadership in order to ensure that the ILO Code and other disability laws are effectively implemented in the workplace.

¹⁰³³ I L Potgieter, M Coetzee & T Ximba 'Exploring career advancement challenges people with disabilities are facing in the South African work context' (2017) 15 *South African Journal of Human Resource Management* 2 doi: 10.4102/sajhrm.v15i0.815.

¹⁰³⁴ Dupper, Garbers, Landman, Christianson, Basson & Strydom note 606 (above) 187 say that "in the ILO Code 'disability management' is defined as 'a process ... designed to facilitate the employment of persons with a disability through a coordinated effort of addressing individual's needs, work environment, enterprise needs and legal responsibilities' (paragraph 1.4 of the ILO Code). It is these very same issues that the EEA and Disability Code address with the fundamental rights to equality and human dignity further enshrined in the Constitution".

¹⁰³⁵ Potgieter, Coetzee & Ximba note 1033 (above) 2.

¹⁰³⁶ Potgieter, Coetzee & Ximba note 1033 (above) 2.

¹⁰³⁷ D Hayati, M Charkhabi & A Naami 'The relationship between transformational leadership and work engagement in government hospitals nurses: A survey study' (2014) 3 (25) *Springerplus* 2 doi: 10.1186/2193-1801-3-25 accessed on 17 November 2018.

4.2.6 United Nations Convention of the Rights of Persons with Disabilities of 2007

The United Nations Convention of the Rights of Persons with Disabilities (CRPD)¹⁰³⁸ seeks to address discrimination and transformation and to fight stereotypes against persons with disabilities. Lang et al argue that the CRPD is the primary global legal binding treaty that extensively deals with the rights of persons with disabilities.¹⁰³⁹ Lang et al further argue that the CRPD is likely to bring about transformation in the execution and formulation of disability policies.¹⁰⁴⁰ Harpur contends that the CRPD is the first global human rights instrument to safeguard expressly the rights of persons with disabilities.¹⁰⁴¹

Bhabha asserts that the CRPD signifies consensus among the member states on human rights protection with emphasis on disability inclusion in both society and the workplace.¹⁰⁴² Basson explains that the main purpose of the CRPD is to guarantee full inclusion and involvement of persons with disabilities in society.¹⁰⁴³ Basson further argues that the realisation of inclusivity and equal participation may be attained once persons with disabilities are afforded the same status as individuals in all spheres of society, including workplaces.¹⁰⁴⁴

The CRPD obligates national government to achieve substantive equality for persons with disabilities in their respective countries.¹⁰⁴⁵ Therefore, the CRPD was adopted to safeguard persons with disabilities against discrimination on the basis of their impairment and to ensure that they enjoy the same rights as other citizens in society.¹⁰⁴⁶ The CRPD describes persons with disabilities as 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”.¹⁰⁴⁷ The CRPD requires the state parties:

¹⁰³⁸ Note 15 (above). UN General Assembly, *Convention on the Rights of Persons with Disabilities resolution adopted by the General Assembly*, 24 January 2007, A/RES/61/106.

¹⁰³⁹ R Lang, M Kett, N Groce & J Trani ‘Implementing the United Nation Convention on the Rights of Persons with Disabilities: Principles, implications, practice and limitations’ (2011) 5 *European Journal of Disability Research* 208.

¹⁰⁴⁰ Lang, Kett, Groce & Trani note 1039 (above) 208.

¹⁰⁴¹ P Harpur ‘Embracing the new disability rights paradigm: The importance of the Convention on the Rights of Persons with Disabilities’ (2012) 27 (1) *Disability & Society* 4 doi: 10.1080/09687599.2012.631794.

¹⁰⁴² Bhabha note 45 (above) 228.

¹⁰⁴³ Basson note 932 (above) 82.

¹⁰⁴⁴ Basson note 932 (above) 83.

¹⁰⁴⁵ J McKenzie, G Mji & S Gcaza ‘With or without us? An audit of disability research in the southern African region’ (2014) 3 (2) *African Journal of Disability* 1.

¹⁰⁴⁶ Lang, Kett, Groce & Trani note 1039 (above) 208. In this regard article 1 of the CRPD states that “the purpose of the Convention is 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”.

¹⁰⁴⁷ article 1 of the CRPD.

“to initiate and maintain effective public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities; to promote positive perceptions and greater social awareness towards persons with disabilities and to promote awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities”.¹⁰⁴⁸

Among the principles of the CRPD is:

“respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance for persons with disabilities as part of human diversity and humanity as well as equality of opportunity”.¹⁰⁴⁹

Article 4(1) of the CRPD places an obligation on the state to safeguard and “promote human rights for persons with disabilities without discrimination of any kind.” In this regard, “the state must adopt appropriate legislative and other methods to ensure effective implementation of the rights provided for in the CRPD and to consider the protection and promotion of the human rights of persons with disabilities in all strategies and programmes.”¹⁰⁵⁰ Article 4(3) of the CRPD requires “state parties to develop and implement legislation and policies concerning issues relating to persons with disabilities in order to give effect to the Convention.” State parties to the CRPD acknowledge the right of equality before the law and that people are entitled to benefit from the law without any form of discrimination.¹⁰⁵¹ Thus, as Bhabha asserts, protection from discrimination and reasonable accommodation are the mechanisms to promote equality for persons with disabilities in the workplace.¹⁰⁵²

The CRPD further requires state parties to --

“adopt immediate, effective and appropriate measures to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; and to promote awareness of the capabilities and contributions of persons with disabilities”.¹⁰⁵³

State parties therefore have a duty to safeguard and promote the realisation of the right to work. Furthermore, state parties acknowledge the right to work for persons with disabilities and that they should be afforded equal opportunities which include, among others, an opportunity to

¹⁰⁴⁸ article 2(a)(i)-(ii) of the CRPD.

¹⁰⁴⁹ article 3(a), (b), (c), (d) and (e) of the CRPD.

¹⁰⁵⁰ article 4(1)(a) and (c) of the CRPD.

¹⁰⁵¹ article 5(1) of the CRPD.

¹⁰⁵² Bhabha note 45 (above) 228.

¹⁰⁵³ article 8(1)(a), (b) and (c) of the CRPD. Such measures include, according to article 27(1), “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”.

work in a free and conducive environment of their choice that is “inclusive and accessible” of and to them.¹⁰⁵⁴

South Africa signed and ratified the CRPD and its optional protocol without reservation in March and November 2007 respectively, “thereby committing the country to respect and implement the rights of persons with disabilities as documented in the various articles.”¹⁰⁵⁵ That notwithstanding, it has not yet incorporated the treaty into domestic law, a requirement under the dualist system that South Africa subscribes to.¹⁰⁵⁶ According to Mittler, by ratifying the Convention, parties commit to implement international law in their jurisdictions.¹⁰⁵⁷ In this regard, South African courts have relied on this international instrument. In *Singh v Minister of Justice & Constitutional Development & others*¹⁰⁵⁸ (*Singh*) the Equality Court said that:

“Furthermore the duty to advance and promote the position of disabled people are clearly mentioned in the Convention on the Rights of Persons with Disabilities (CRPD) which South Africa ratified on 30 November 2007 and the African Charter on Human and People’s Rights (African Charter).”

The court further referred to the preamble to and article 1 of the CRPD on the need “to promote and protect the rights of persons with disabilities.”¹⁰⁵⁹ The court underscored the importance of not only eliminating discrimination in the workplace but also promoting the employment of persons with disabilities.¹⁰⁶⁰ It further highlighted the significance of understanding the constitutional and Convention obligations in order effectively to advance and promote persons with disabilities. In this respect, the court said that “knowing about the disability without understanding how the Constitution and conventions expect how such people should be promoted and be advanced is a serious injustice and contrary to the spirit of the Equality Act”.¹⁰⁶¹

¹⁰⁵⁴ article 27(1) of the CRPD.

¹⁰⁵⁵ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en accessed on 26 October 2018.

¹⁰⁵⁶ C Capri, L Abrahams, J McKenzie, O Coetzee, S Mkabile, M Saptouw, A Hooper, P Smith, C Adnams & LSwartz ‘Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?’ (2018) 7 *African Journal of Disability* 3 doi: 10.4102/ajod.v7i0.396 accessed on 18 November 2018.

¹⁰⁵⁷ P Mittler ‘The UN Convention on the Rights of Persons with Disabilities: Implementing a paradigm shift’ (2015) 12 (2) *Journal of Policy and Practice in Intellectual Disabilities* 79.

¹⁰⁵⁸ (2013) 34 *ILJ* 2807 (EqC) paragraph 34.

¹⁰⁵⁹ *Singh* note 949 (above) paragraphs 35 and 36.

¹⁰⁶⁰ *Singh* note 949 (above) paragraph 40.

¹⁰⁶¹ *Singh* note 949 (above) paragraph 47.

The *White Paper on the Rights of Persons with Disabilities* clearly relies on the CRPD when it comes to human rights protection for persons with disabilities.¹⁰⁶² While South Africa has not incorporated the CRPD into its national law,¹⁰⁶³ it can be said that the CRPD is a persuasive quasi-legal instrument on disability matters in South Africa and should be considered by employers to safeguard the rights of persons with disabilities and to ensure their inclusion in the workplace.

Article 33(1) of the CRPD provides that --

“states parties, in accordance with their system of organisation, shall designate one or more focal points within Government for matters relating to the implementation of the Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within Government to facilitate related action in different sectors and at different levels”.

Thus, government must provide mechanisms to drive implementation of the Convention through the enactment of legislation and the introduction of monitoring mechanism. Megret and Msipa assert that the CRPD transforms the common concept of discrimination in the global human rights law to incorporate reasonable accommodation, which has been denied over time.¹⁰⁶⁴ They further contend that the CRPD mandates the state to adopt a substantive approach and take into account profound individualised considerations when dealing with reasonable accommodation of persons with disabilities.¹⁰⁶⁵

Phatakji argues that the CRPD necessitates the need for society “to perceive disability as part of human diversity and to make a major departure from formal equality to substantive equality.”¹⁰⁶⁶ It can be concluded that the CRPD places emphasis on the state to ensure that there are effective and practical ways of accommodating persons with disabilities and to ensure that their individual circumstances are taken into consideration in the workplace. TenBroek is of the view that the CRPD essentially necessitates a new approach on disability to exist within

¹⁰⁶² Item 2.2 of the *White Paper on the Rights of Persons with Disabilities* of 2016 (GG no 39792) states that protecting and promoting the human rights of persons with disabilities is an underlying principle in all the articles of the CRPD.

¹⁰⁶³ Grobbelaar-Du Plessis & Nienaber note 649 (above) 371 said that “in order to incorporate the CRPD into its national law, South Africa had to pass enabling legislation incorporating the CRPD and the Optional Protocol into its legal system. This was not done in the case of the CRPD”.

¹⁰⁶⁴ F Megret & D Msipa ‘Global reasonable accommodation: How the convention on the rights of persons with disabilities changes the way we think about equality’ (2014) 30 *South African Journal on Human Rights* 252 at 253.

¹⁰⁶⁵ Megret & Msipa note 1064 (above) 273.

¹⁰⁶⁶ N Pathakji ‘A reflexive law approach and accessibility rights of persons with disabilities to the virtual world: Seeking the Midas touch of corporations’ (2015) 15 (2) *Queensland University of Technology Law Review* 144.

governments to fight the world-wide propensity of excluding disability in policies.¹⁰⁶⁷ Government therefore has a responsibility to accommodate and include persons with disabilities in workplace strategies and policies.

This is in line with *General Comment No 2* of 2014 of the Committee on the Rights of Persons with Disabilities which obligates the state to ensure access for persons with disabilities by removing barriers and ensuring that they are reasonably accommodated in the workplace.¹⁰⁶⁸ In this regard the *General Comment* highlights the need for the workplace to be accessible to persons with disabilities.¹⁰⁶⁹ It further requires the state to ensure, not only physical accessibility, but also transport and support services for persons with disabilities to access the workplace and effectively perform their duties at work.¹⁰⁷⁰ The state is required to take appropriate measures including law reform to promote equality and eliminate discrimination to guarantee reasonable accommodation of persons with disabilities.¹⁰⁷¹ The Committee's *General Comment No 6* of 2018 highlights the need to view disability as a human rights issue. It provides that disability laws and policies must take the diversity of persons with disabilities into account.¹⁰⁷² It further requires a human rights approach to disability in order to guarantee inclusive equality.¹⁰⁷³ Most importantly, it emphasises the need for the state to ensure that there is no discrimination on the ground of disability in connection to work and employment and the need for inclusive and accessible, safe and healthy working environments.¹⁰⁷⁴

Despite such protection, it has been argued that while the idea of accommodation is widely understood, what constitutes “reasonableness” within the disability context is not clear.¹⁰⁷⁵ The term “reasonable” has been found to have a dual meaning in that it can mean either that accommodation must not result in undue hardship or that accommodation must be effective or suitable for persons with disabilities.¹⁰⁷⁶ The “interpretation of reasonableness of the accommodation can be found in the joint dissenting opinion regarding the *Marie-Louise*

¹⁰⁶⁷ J tenBroek ‘The United Nations Convention on the Rights of Persons with Disabilities: Toward a new international politics of disability’ (2009) 15 (1) *Texas Journal of Civil Liberties & Civil Rights* 37.

¹⁰⁶⁸ paragraphs 26 and 27 of the UNCRPD *General Comment No 2* (2014) CRPD/C/GC/2.

¹⁰⁶⁹ note 1068 (above) paragraph 41.

¹⁰⁷⁰ note 1068 (above) paragraph 41.

¹⁰⁷¹ note 1068 (above) paragraph 23.

¹⁰⁷² paragraph 8 of the CRPD *General Comment No 6* (2018).

¹⁰⁷³ note 1063 (above) paragraph 8.

¹⁰⁷⁴ note 1063 (above) paragraph 67.

¹⁰⁷⁵ R Cera *The United Nations Convention on the Rights of Persons with Disabilities, A Commentary* (Springer International Publishing AG 2014) 114.

¹⁰⁷⁶ Cera note 1075 (above) 114

Jungelin v Sweden case before the CRPD Committee.”¹⁰⁷⁷ In this case, an author, an individual with severe sight impairment, brought a complaint against Sweden, claiming that her rights to equality and non-discrimination as well as work and employment were violated when, despite the fact that she met the required qualifications of the job for which she had applied, she was not considered because her potential employer’s computer system could not be adjusted for her sight impairment.¹⁰⁷⁸ The Committee explained that under the CRPD’s definition of “reasonable accommodation”, although the state is expected to take reasonable steps towards accommodating persons with disabilities and ensuring that they enjoy their rights like those without disabilities, such accommodation must not cause undue hardship to the employer.¹⁰⁷⁹ Therefore, the Committee concluded that “the author’s rights were not violated, given that the measures that would have been required to accommodate Jungelin’s condition would have constituted an “undue burden” on the state.”¹⁰⁸⁰

In a minority decision, which I submit interpreted the meaning of reasonable accommodation correctly, the dissenting committee members explained as follows:

“‘Reasonable accommodation’ must be analysed on a case-by-case basis, and the reasonableness and proportionality of the measures of accommodation proposed must be assessed in view of the context in which they are requested. In the present case, the accommodation was required in a professional context. The test of reasonableness and proportionality should therefore ensure, inter alia, that (i) the measures of accommodation were requested to promote the employment of a person with a disability, with the professional capacity and experience to perform the functions corresponding to the position for which he or she applied; and (ii) the public or private company or entity to which the candidate applied can reasonably be expected to adopt and implement accommodation measures. It was never questioned that the author had the professional capacity and work experience required to perform the duties of the position for which she had applied. One of the specific objectives of ‘reasonable accommodation’ is to compensate for factual limitations with a view to promoting the employment of persons with disability, so that the lack of factual capacity to perform such functions can therefore not be considered as the main obstacle to the employment of a person.”¹⁰⁸¹

They further felt that the CRPD Committee “should have determined that the judgment of the Labour Court reflects a wide interpretation of the notion of ‘undue burden’, severely limiting the possibility for persons with disabilities of being selected for positions requiring the

¹⁰⁷⁷ Cera note 1075 (above) 115 referring to Committee on the Rights of Persons with Disabilities *Marie-Louise Jungelin v Sweden* Communication No 5/2011 14 November 2014.

¹⁰⁷⁸ Committee on the Rights of Persons with Disabilities *Marie-Louise Jungelin v Sweden* Communication No 5/2011 14 November 2014 at paragraph 2.1-2.4.

¹⁰⁷⁹ note 1078 (above) paragraph 10.4.

¹⁰⁸⁰ note 1078 (above) paragraphs 10.6-11.

¹⁰⁸¹ paragraph 4 of the dissenting minority decision in *Marie-Louise Jungelin v Sweden* note 1069 (above).

adaptation of the working environment to their needs”.¹⁰⁸² It appears that the aforementioned confusion on reasonable accommodation will persist until the concept of undue hardship is revisited. It is argued that the concept is a barrier to substantive equality for persons with disabilities. Employers automatically rely on this justification not to accommodate persons with disabilities. This concept will further be explored under domestic law below.

Thus, the courts and bodies like the CRPD Committee should be more radical in their approach to dealing with disability matters in order to guarantee equality for persons with disabilities. Disability inclusion necessitates that employers must provide the necessary tools for employees with disabilities to perform their duties in the workplace. Therefore, while the majority decision of the Committee is final, the minority decision is supported as it interprets “reasonable accommodation” taking into consideration the need to promote substantive equality for persons with disabilities. This view is supported by Holness who asserts that the minority decision must be applauded for its vigorous and practical equality approach to reasonable accommodation which takes into consideration patterns of discriminatory practices in the workplace.¹⁰⁸³ Such approach, per Holness, is a step closer to a transformative technique to equality.¹⁰⁸⁴

Subsequently, as Cera asserts, reasonable accommodation should be interpreted within the framework of the Convention taking into consideration the necessity to safeguard substantive equality for persons with disabilities in the workplace.¹⁰⁸⁵ Muller argues that the duty of reasonable accommodation in the CRPD necessitates state parties to adopt an individualistic approach to the needs of persons with disabilities.¹⁰⁸⁶ Muller further argues that such duty necessitates the need to evaluate individual claims and develop appropriate relief for breach of the CRPD.¹⁰⁸⁷ This view is supported by Megret et al who say that in order to address disparities suffered by persons with disabilities and for reasonable accommodation to materialise, focus must be on individual needs of persons with disabilities.¹⁰⁸⁸

The Committee on the Rights of Persons with Disabilities had supported this view in *HM v Sweden*¹⁰⁸⁹ in which it highlighted the need to reflect on the individual conditions of persons

¹⁰⁸² note 1078 (above) paragraph 6.

¹⁰⁸³ Holness note 3 (above) 524.

¹⁰⁸⁴ Holness note 3 (above) 524.

¹⁰⁸⁵ Cera note 1066 (above) 116.

¹⁰⁸⁶ G Muller ‘On considering alternative accommodation and the rights and needs of vulnerable people’ (2014) 30 (1) *South African Journal on Human Rights* 56.

¹⁰⁸⁷ Muller note 1086 (above) 56.

¹⁰⁸⁸ Megret & Msipa note 1064 (above) 263.

¹⁰⁸⁹ *HM v Sweden* Communication 3/2011 CRPD/C/7/D/3/2011.

with disabilities and regarded such act as reasonable accommodation.¹⁰⁹⁰ Thus, Lord and Brown assert that the CRPD successfully positioned disability as a rights issue which creates legal obligations on states to achieve substantive equality for persons with disabilities.¹⁰⁹¹ It can therefore be said that the CRPD requires government and workplace leadership that will promote and protect human rights, particularly the rights of persons with disabilities. The CRPD requires leaders who can develop appropriate measures designed to accommodate persons with disabilities. It calls for transformation in the workplace and society in order to realise the dream of equality for all. The CRPD specifically deals with work and employment under article 27 and requires reasonable accommodation and equality for persons with disabilities in the workplace. Thus, workplace leaders must ensure that persons with disabilities are reasonably accommodated in the workplace. While the CRPD does not necessarily state the required leadership model for its implementation, the CRPD by its very nature is transformative as it has been said to have brought a “paradigm shift” in disability discourse and state obligations.¹⁰⁹² Consequently, it is argued that transformational leadership may be a tool to implement the CRPD thereby achieving its objective of safeguarding the rights of persons with disabilities.

Having explored the abovementioned international instruments, it can be concluded that there is an adequate international framework in place which is aimed at regulating disability in the workplace. These international instruments place the responsibility on governments to ensure that they are effectively implemented. In this context, Bhabha asserts that the importance of the Constitution and labour legislation is that they include provisions for driving transformation and disability equity.¹⁰⁹³ Bhabha further explains that the EEA, the LRA and the Bill of Rights are pertinent as they do not only outline the provisions relating to parity, but also provide remedies and monitoring and enforcement mechanisms.¹⁰⁹⁴ The challenge remains however the implementation of the legislation. Lang et al assert that “despite the fact that in many developing countries progressive human rights-based disability policies exist, and disability rights are often explicitly mentioned in the written national constitutions, it still remains the

¹⁰⁹⁰ I Grobbelaar-Du Plessis & A Nienaber note 649 (above) 373.

¹⁰⁹¹ J E Lord & R Brown ‘The role of reasonable accommodation in securing substantive equality for persons with disabilities: The UN Convention on the Rights of Persons with Disabilities’ (2010) *SSRN Electronic Journal* 2 doi: 10.2139/ssrn.1618903 accessed on 8 July 2018.

¹⁰⁹² L Series ‘The development of disability rights under international law: From charity to human rights’ (2015) 30 (10) *Disability & Society* 1590-3 doi: 10.1080/09687599.2015.1066975.

¹⁰⁹³ Bhabha note 45 (above) 221.

¹⁰⁹⁴ Bhabha note 45 (above) 221.

case that these rights are most frequently honoured in the breach”.¹⁰⁹⁵ They conclude that, as a result, there is a gap between policy formulation and implementation.¹⁰⁹⁶

Failure to implement legislation indicates that no substantial progress will be made with regard to protection of persons with disabilities. Cole and Van der Walt assert that South Africa’s leadership and government must display their responsibility to protect persons with disabilities in practice.¹⁰⁹⁷ Consequently, government, through its leadership, has an obligation to ensure protection and inclusion of persons with disabilities in the workplace. While South Africa has adopted the CRPD, it appears that it is failing to include persons with disabilities in the public sector and there is no commitment by public leaders to take robust steps to ensure they are included in the workplace in line with international norms.

The CRPD shortcomings can be traced from South Africa’s *First Periodic Country Report (the Report)*, which was submitted in 2015 despite the fact that it was due in 2009.¹⁰⁹⁸ The draft report was only released by cabinet for public comment in February 2015, with the deadline for public comment being 12 June 2015.¹⁰⁹⁹ Consequently, it is clear that while the South African government acknowledges the importance of implementing the CRPD, there is little political commitment and urgency to adhere to its provisions. There is therefore a lack of commitment from national government to adhere to the CRPD which has a direct influence on provincial and local government implementation of legislation governing disability in the workplace. Thus, it is argued that there is a need for transformational leaders as such leaders have the interests of people at heart and are results driven. By their nature, transformational leaders are decisive and act promptly to situations without delay as they are driven by the need for change. While the *Report* broadly covers various issues relating to disability, such as equality and non-discrimination, accessibility, right to life, etc, the focus below is on the shortcomings of the CRPD in relation to its implementation in South Africa.

In this regard, the *Report* notes that while attempts were made by South Africa to create awareness on universal access and inclusion of persons with disabilities through various means, including legislative audit, such awareness did not translate into meaningful reality “due to the lack of an effective monitoring and evaluation system to track implementation of the CRPD in

¹⁰⁹⁵ Lang, Kett, Groce & Trani note 1030 (above) 212.

¹⁰⁹⁶ Lang, Kett, Groce & Trani note 1030 (above) 212.

¹⁰⁹⁷ Cole & Van der Walt note 745 (above) 538.

¹⁰⁹⁸ *First Periodic Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa* CRPD/C/ZAF/1 dated 24 November 2015.

¹⁰⁹⁹ Comments on the Draft First Periodic Country Report to the UN on the CRPD GG 38802 dated 18 May 2015.

the country.”¹¹⁰⁰ Pertinent to this study, the *Report* states that the South African Local Government Association (SALGA) and the former Department of Provincial and Local Government released the *Disability Framework for Local Government 2009-2014* “to mainstream disability in the development programmes of the municipalities;” however implementing the framework has been a challenge.¹¹⁰¹ The *Report* further notes that South Africa is ready to introduce systems “to fast track systematic implementation of the CRPD across all three spheres of government.”¹¹⁰² Unfortunately, the *Report* does not make mention of such systems and to date it remains to be seen whether these systems will be introduced and implemented in the near future. Consequently, it can be said that the submission in the *Report* was made without any real commitment.

The *Report* acknowledges that “South Africa does not have a regulatory framework that governs universal access and design.”¹¹⁰³ The *Report* further states that the “focus to date has been primarily on accessibility in the physical environment, mainly on access for persons with physical disabilities and to a lesser extent for persons with visual impairments.”¹¹⁰⁴ With regard to work and employment the *Report* recognises that, although certain labour legislation and the Disability Code were adopted to establish reasonable accommodation mechanisms for persons with disabilities, “there has been insufficient progress in translating these mechanisms into economic independence for persons with disabilities due to the lack of access to built environment and public transport as well as persistent attitudinal and communication barriers.”¹¹⁰⁵ In addition, especially for persons with psycho-social disabilities, “stigma and ignorance pertaining to reasonable accommodation measures” remain a challenge.¹¹⁰⁶ The *Report* concludes by acknowledging that “weaknesses in the governance machinery of the state, capacity constraints and lack of coordination within the disability sector have detracted from a systematic approach to the implementation of the CRPD.”¹¹⁰⁷

In response, the Committee on the Rights of Persons with Disabilities raised concerns that some South African legislation still reflected the medical model of disability and that consideration needed to be given to aligning the legislation to the human rights model of disability as

¹¹⁰⁰ note 1099 (above) paragraph 37.

¹¹⁰¹ note 1099 (above) paragraph 38.

¹¹⁰² note 1099 (above) paragraph 41.

¹¹⁰³ note 1099 (above) paragraph 69.

¹¹⁰⁴ note 1099 (above) paragraph 69.

¹¹⁰⁵ note 1099 (above) paragraph 289.

¹¹⁰⁶ note 1099 (above) paragraph 289.

¹¹⁰⁷ note 1099 (above) paragraph 414.

envisaged by the CRPD.¹¹⁰⁸ The committee further noted with great concern the very low rate of employment of persons with disabilities, especially women with disabilities¹¹⁰⁹ -- persons with disabilities comprised only 1.2 per cent of the workforce according to the 16th annual report, which was based on data from 2014 and 2015, of the Commission for Employment Equity.¹¹¹⁰ With regard to national implementation and monitoring, the committee recommended that South Africa must establish a mechanism and system of focal points, including adopting measures to strengthen the efficiency of the focal points at national, regional and local levels, to implement the Convention.¹¹¹¹ In addition, it recommended that South Africa must accelerate the designation of the South African Human Rights Commission (SAHRC) as the independent monitoring mechanism and allocate sufficient financial resources to enable it fully to execute its mandate.¹¹¹²

It can therefore be said that there is no system designed to measure compliance with the CRPD in South Africa. The lack of a system to measure its effectiveness means that persons with disabilities will remain discriminated against with only rare chances to advance in the labour market. While the *Report* acknowledges that stereotyping is among the reasons for non-compliance with international law instruments, it does not, however, provide for mechanisms to deal with stigma attached to persons with disabilities.

In general, the *Report* identifies challenges without providing practical measures to ensure substantive equality for persons with disabilities. In addition, the *Report* is silent about workplace leaders in relation to their role in ensuring effective implementation of disability related legislation as well as the kind of leadership required to achieve international obligations, including obligations to persons with disabilities in the workplace. Workplace leadership is a critical component to the achievement of disability equity in the workplace. The South African Constitution is transformative in nature. In order to achieve its objectives, it is argued that public administration and its leaders must be transformational.

It is submitted that the gaps identified above underscore the importance, relevancy and the need for this study. It appears that the main reason for non-compliance with the CRPD and other international instruments on disability is the lack of commitment from national government

¹¹⁰⁸ paragraphs 4-5 of the Concluding Observation on the Initial Report of South Africa of the UN Committee on the Rights of Persons with Disabilities CRPD/C/ZAF/CO/1.

¹¹⁰⁹ note 1108 (above) paragraph 44(a).

¹¹¹⁰ note 1108 (above) paragraph 44(a).

¹¹¹¹ note 1108 (above) paragraph 55(a).

¹¹¹² note 1108 (above) paragraph 55(b).

leaders and this has a direct impact on provincial and local government workplace leaders' capacity to implement legislation connected to disability in the workplace. Disability is not given priority in the public sector as required by the international standards.

It is argued that transformational leadership may be necessary as such leaders identify the need for transformation and execute transformation in the workplace. It has been said that transformational leadership not only provides ideas for constant change but also always take into consideration the individual needs of employees.¹¹¹³ Individual attention has been identified as a critical leadership factor in the workplace.¹¹¹⁴ Individual consideration has been described as “the inclusion of people into the transformation process” of the workplace.¹¹¹⁵ It has further been said that individual or personal attention by transformational leaders results in attendance to employee needs, sustainable development and the development of employees.¹¹¹⁶

Ultimately, it can be said that, since disability has been neglected for such a long time, particularly from the human rights agenda, there is a need for workplace leaders who are adaptable to change and consider individual needs in order reasonably to accommodate persons with disabilities. It is submitted that transformational leadership appears to be a leadership style that may assist the state to achieve the international law obligations (explored above) relating to the rights of persons with disabilities thereby achieving equity in the workplace.

Having explored international law on disability and human rights, I now deal with regional legal instruments aimed at addressing disparities for persons with disabilities in the workplace.

4.2.7 African Charter on Human and People's Rights of 1986 and the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities of 2018

The formulation of African Charter on Human and People's Rights was initially discussed at the African Conference on the Rule of Law convened by the International Commission of

¹¹¹³ J Hertland, H Hertland, A B Bakker & E Demerouti 'Daily transformational leadership and employee job crafting: The role of promotion focus' (2018) 1 *European Management Journal* 2. This view is also shared by M G O Ogola, D Sikalieh & T K Linge 'The influence of individualized consideration leadership behaviour on employee performance in small and medium enterprises in Kenya' (2017) 8 (2) *International Journal of Business and Social Science* 164, where they say “that individualized consideration is the first factor of transformational leadership style”.

¹¹¹⁴ A E Rafferty & M A Griffin 'Refining individualised consideration: Distinguishing developmental leadership and supportive leadership' (2006) 79 *Journal of Occupational and Organisational Psychology* 38.

¹¹¹⁵ Ogola, Sikalieh & Linge note 1113 (above) 164.

¹¹¹⁶ Ogola, Sikalieh & Linge note 1113 (above) 164.

Jurists.¹¹¹⁷ The resolutions at the conference “make clear the responsibility of the world legal order to devise a regime for the protection of individuals”.¹¹¹⁸ There was a recommendation for African governments to explore the possibility of adopting an African Convention on Human Rights and establishing the appropriate court to deal with human rights violations¹¹¹⁹ in order to give full effect to the UDHR.¹¹²⁰ Thus it can be said that the African Charter was developed to institutionalise and safeguard individual rights on the African continent.¹¹²¹

Recently, the Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities was adopted by the African Commission on Human and People’s Rights on 29 January 2018.¹¹²² The Protocol was designed to complement the African Charter on Human and People’s Rights through safeguarding the rights of persons with disabilities on the African continent.¹¹²³ Consequently, the Protocol was adopted to ensure human rights protection, transformation and inclusion for persons with disability in the African diaspora. In this regard, this section explores the aforementioned instruments insofar as they relate to this study.

The African Charter on Human and People’s Rights (ACHPR) which was adopted in 1981 and came into force in 1986 “is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent”.¹¹²⁴ Although this instrument does not extensively deal with disability, it is nonetheless pertinent to this study as it deals with equality and protection of human rights of all persons, including persons with disabilities. Article 3 of the Charter provides “for equality and equal protection” before the law. The ACHPR highlights the importance of protection of and respect for human dignity,¹¹²⁵ with article 13(2) providing that “every citizen shall have the right of equal access to the public service of the country”.

¹¹¹⁷ R Gittleman ‘The African Charter on Human and Peoples’ Rights: A legal analysis’ (1982) 22 *Virginia Journal of International Law* 670.

¹¹¹⁸ Gittleman note 1117 (above) 670.

¹¹¹⁹ Gittleman note 1117 (above) 670.

¹¹²⁰ A B Akinyemi ‘The African Charter on Human and People’s Rights: An overview’ (1985) 46 (2) *The Indian Journal of Political Science* 214.

¹¹²¹ E O Ekhaton ‘The impact of the African Charter on Human and People’s Rights on domestic law: A case study of Nigeria’ (2015) 41 (2) *Commonwealth Law Bulletin* 253.

¹¹²² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E> accessed on 11 November 2018.

¹¹²³ note 1113 (above).

¹¹²⁴ <http://www.achpr.org/instruments/achpr> accessed on 22 April 2018.

¹¹²⁵ article 5 of the ACHPR.

The ACHPR highlights the importance of equality and enjoyment of similar privileges and respect.¹¹²⁶ As the main instrument that promotes human rights in the region,¹¹²⁷ it has been said that the Charter has played a critical role in the development of human rights in Africa and has been broadly accepted by African countries.¹¹²⁸ Within the disability context, the Charter provides that disabled persons shall have the right to special measures of protection in keeping with their physical or moral needs.¹¹²⁹ It follows that persons with disabilities should be safeguarded in society and the workplace and should enjoy the same protection as that afforded to persons without disabilities.

The relevance of the ACHPR to this study is that the study advocates for a human rights approach to disability in order to safeguard the rights of persons with disabilities in the workplace. South Africa signed and ratified the Charter on 9 July 1996.¹¹³⁰ South Africa has therefore committed itself to the protection and promotion of human dignity and equality for all, including persons with disabilities. Ultimately, government leaders have a responsibility to develop implementable strategies on human rights in order to attain equality as required by the Charter.

Such strategies must be developed taking into consideration the recently adopted Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa (Disability Rights Protocol) which was designed to address disability issues on the African continent and to be "an organic progression from the norms established in the African Charter".¹¹³¹ The Disability Rights Protocol was adopted in order "to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity."¹¹³² The Protocol obligates the state parties to promote and safeguard the rights and the dignity of persons with disabilities by taking measures to eliminate discrimination on the basis of disability and adopting appropriate measures for the execution of the rights provided for in the Protocol.¹¹³³

¹¹²⁶ article 19 of the ACHPR

¹¹²⁷ Bosire note 24 (above) 149.

¹¹²⁸ Ekhatior note 1121 (above) 256.

¹¹²⁹ article 18(4) of the ACHPR.

¹¹³⁰ <http://www.achpr.org/instruments/achpr/ratification> accessed on 28 April 2018.

¹¹³¹ H Combrinck & L M Mute 'Developments regarding disability rights during 2013: The African Charter and African Commission on Human and People's Right' (2014) 2 *African Disability Rights Yearbook* 316.

¹¹³² article 2 of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa.

¹¹³³ article 4 of the Disability Rights Protocol.

Article 5(2) of the Disability Rights Protocol requires the “state parties to prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” Article 6 provides for the right to equality, protection and benefit of the law for persons with disabilities.¹¹³⁴ Article 15(1) provides that every person with a disability has the right to barrier free access to the physical environment, transportation, information, including “communications technologies and systems, and other facilities and services open or provided to the public.” Thus, the Disability Rights Protocol requires the state to develop practical and effective measures to ensure full enjoyment of the aforementioned rights by persons with disabilities.

Article 19(1) states that every person with a disability has “the right to decent and productive work, to just and favourable conditions of work, to protection against unemployment and to protection from forced or compulsory labour.” Article 19(2)(f) provides for “the right to work and for state parties to take effective measures by ensuring that reasonable accommodation is provided for persons with disabilities in the workplace.” The public sector is required to employ persons with disabilities, including “reserving and enforcing minimum job quotas for employees with disabilities.”¹¹³⁵ It is important to note that this treaty provides for the “right to work” unlike other treaties and our Constitution, which provide for freedom of trade and profession. It appears that this is the first treaty in history to provide for a right to work and certainly, it is a step in a right direction towards full inclusion of persons with disabilities in the workplace.

Pertinent to this study, the Disability Rights Protocol requires “state parties to recognise that persons with disabilities have duties on an equal basis with others as elaborated in the African Charter.”¹¹³⁶ The recognition of duties and responsibilities of persons, not just of the state, is a key feature of the ACHPR as well as the African Charter on the Rights and Welfare of the Child (ACRWC), and now also the Protocol. This is important because it recognises the agency of persons and their responsibility to the state and others. For persons with disabilities, this is important too because it is an approach that supports a human rights and not charity/welfare model. Furthermore, the Protocol imposes a duty on “state parties to ensure that persons with

¹¹³⁴ In addition, article 7 specifically deals with equal recognition before the law.

¹¹³⁵ article 19(2)(d) of the Disability Rights Protocol. Additionally, the Protocol, in article 19(3), requires the states parties to take legislative, administrative and budgetary measures to ensure that the principle of equal pay for equal work is not used to undermine the right to work for persons with disabilities. It further states in article 19(4) that the states parties must take appropriate measures to recognise the social and cultural value of the work of persons with disabilities.

¹¹³⁶ article 31(1) of the Disability Rights Protocol.

disabilities are rendered the forms of assistance and support, including reasonable accommodations, which they may require in the performance of their duties.”¹¹³⁷

The Protocol places responsibility on the state to ensure its effective implementation at national level.¹¹³⁸ In this regard Viljoen and Biegon assert that having a specific treaty on the rights of persons with disabilities in Africa will assist by providing specific mechanisms to deal with the specific needs of persons with disabilities.¹¹³⁹ They further argued that the Protocol will assist in clarifying the disability provisions provided for in the UDHR as well as regional human rights instruments such as African Charter on Human and People’s Rights.¹¹⁴⁰

Combrinck and Mute assert that it was necessary to have a home grown protocol on the rights of persons with disabilities taking into consideration that the CRPD is the global instrument on the rights of persons with disabilities and to drive the disability agenda on the African continent.¹¹⁴¹ They further argue that the Disability Rights Protocol was drafted taking into considerations African realities and thus covers pertinent issues that were not covered by the CRPD.¹¹⁴² Enonchong asserts that among the drivers of the Protocol is the acknowledgment of the need for protection of the individual rights of persons with mental illness and it thus closes any gaps in protection that exist in the African Charter.¹¹⁴³

The Protocol has great potential to reinforce the execution of the UDHR to persons with disabilities in Africa.¹¹⁴⁴ While the acceptance of the Disability Rights Protocol should be commended, it has been said that the Protocol is merely a replication of the existing provisions on disability in other conventions¹¹⁴⁵ and does not provide for new practical mechanisms to

¹¹³⁷ article 31(2) of the Disability Rights Protocol.

¹¹³⁸ article 34(1) of the Disability Rights Protocol. In addition, article 34(2) requires the states parties to establish or designate national mechanisms, including independent national institutions, to monitor the implementation of the rights of persons with disabilities.

¹¹³⁹ F Viljoen & J Biegon ‘The feasibility and desirability on an African Disability Rights Treaty: Further norm-elaboration or firmer norm-implementation?’ (2014) 30 (2) *South African Journal on Human Rights* 347.

¹¹⁴⁰ Viljoen & Biegon note 1139 (above) 347.

¹¹⁴¹ Combrinck & Mute note 1131 (above) 314-15.

¹¹⁴² Combrinck & Mute note 1131 (above) 315-16. For example, the Protocol provides clarification that the support required by persons with disabilities to enjoy their legal capacity must respect their rights, will and preferences, and must not amount to substituted decision making and makes explicit mention that all persons with disabilities too have responsibilities to other individuals, their families and to the community.

¹¹⁴³ L S Enonchong ‘Mental disability and the right to personal liberty in Africa’ (2017) 21 (9) *The International Journal of Human Rights* 1321-52.

¹¹⁴⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E> accessed on 13 November 2018.

¹¹⁴⁵ K Appiagyei-Atua ‘A comparative analysis of the United Nations Convention on the Rights of Persons with Disabilities and the African Draft Protocol on the Rights of Persons with Disabilities’ (2017) 21 (1) *Law, Democracy & Development* 173-4 said: “This is very visible, for instance, in the definition section. Among others, consider the definition of discrimination by comparing article 1(b) of the AfDP with article 2 of the CRPD. The

guarantee implementation of the rights of persons with disabilities. This view is also shared by Enonchong who argues that the Protocol does not provide for any regional monitoring institution to ensure that the Protocol is implemented.¹¹⁴⁶ It is submitted that disability discrimination happens largely at the ground level and the expectation is that the Protocol should be more practical as to how disability inclusion should happen in the workplace. The Protocol does not address issues such as change management and workplace culture to ensure inclusion of persons with disabilities in the workplace.

The Protocol does not impose harsh sanction on member states which fail to adhere to its provisions.¹¹⁴⁷ It further does not talk about the kind of leadership commitment required to achieve its objectives. As a result, lack of accountability may compromise the objectives of the Protocol as member states may opt not to comply with it. In other words, there is no impetus in the Protocol to persuade member states to implement it. It is argued that the Protocol reinforces the understanding of disability and the expectation towards disability parity in society. It appears to be an awareness document rather than a practical guide to disability inclusion and protection of the rights of persons with disabilities. Consequently, the Protocol is likely not to be as effective as had been hoped in protecting the rights of persons with disabilities.

There is general awareness about the need to include persons with disabilities in society, but what is required is a leadership that ascribes to transformation, diversity and substantive equality in order to guarantee disability inclusion in the workplace. It has been said that transformational leaders are innovative and can play a critical role in the workplace,¹¹⁴⁸ and that in organisations where transformational leadership is practised there has been a positive outcome.¹¹⁴⁹ Transformational leadership has been found to be “more realistic than some of

only ‘difference’ between the two definitions is in the last sentence where the AfDP repeats ‘Discrimination on the basis of disability’ while the CRPD, having already referred to ‘discrimination on the basis of disability’ uses ‘it’ in place of the extended phrase. A similar style is adopted in copying the definition of ‘universal design’ where the ‘difference’ lies in the last paragraph. While the CRPD adopts two sentences and starts the second by repeating ‘universal design’, the AfDP combines the two sentences into one and avoids a repetition of ‘universal design’.”

¹¹⁴⁶ Enonchong note 1143 (above) 1368.

¹¹⁴⁷ Enonchong note 1143 (above) 1368 argues that “with respect to implementation, the requirements create little or no controversy to the extent that it is the responsibility of the state to ensure that all necessary steps are taken domestically to facilitate full implementation of the protocol. The problems, however, may arise as a result of the inability or unwillingness of the states to take the necessary action. That may be for financial reasons identified earlier. Other reasons may be political and such a situation may affect the level of both financial and operational independence of any national institution that is created.”

¹¹⁴⁸ M S Ghasabeh & M J Provitera ‘Transformational leadership: Building an effective culture to manage organisational knowledge’ (2017) 10 (2) *The Journal of Values-Based Leadership* 6 doi: 10.22543/0733.102.1187 accessed on 17 November 2018.

¹¹⁴⁹ Ghasabeh & Provitera note 1148 (above) 6.

the other leadership forms”.¹¹⁵⁰ It is submitted that transformational leadership, which is further explored later in this chapter, is essential for effective institutionalisation, inclusion and protection of the human rights of persons with disabilities thus achieving the objectives of the ACHPR and the Protocol. Such leadership will also behove state parties in their drafting and enforcement of policy and legislation to give effect to their obligations under international and regional law. The example of transformational leadership should come from the top so that employers can learn from best practices.

4.2.8 SADC Charter on Fundamental Social Rights of 2003

The SADC Charter on Fundamental Social Rights was adopted to expedite and promote harmonious labour relations within the region.¹¹⁵¹ The Charter was drafted taking into consideration “the recognition by governments, employers and workers in the region of the universality and indivisibility of basic human rights” as provided for in, inter alia, the UDHR and ACHPR.¹¹⁵² In addition, by adopting the Charter, member states undertook to respect the basic human rights referred to in the Charter.¹¹⁵³ South Africa is a signatory to the Charter.¹¹⁵⁴ Although the Charter is not legally binding, it plays a critical role particularly on human rights and workplace relations.¹¹⁵⁵ In order to ensure that the objectives of the Charter are attained (being harmonious labour relations), member states are to “create an enabling environment consistent with the ILO conventions on discrimination and equality” to ensure equal treatment and opportunities for all.¹¹⁵⁶ The Charter further requires member states to “develop reasonable measures to enable men and women to reconcile their occupational and family obligations.”¹¹⁵⁷

Pertinent to this study is article 9(1) of the Charter which specifically mandates “member states to create an enabling environment such that all persons with disabilities, whatever the origin and nature of their disability, will be entitled to additional concrete measures aimed at

¹¹⁵⁰ Ghasabeh & Provitera note 1148 (above) 6.

¹¹⁵¹ <https://www.sadc.int/documents-publications/show/837> accessed on 15 November 2018.

¹¹⁵² article 3(1) of the SADC Charter on Fundamental Social Rights of 2003.

¹¹⁵³ article 3(2) of the SADC Charter on Fundamental Social Rights of 2003.

¹¹⁵⁴ preamble to the SADC Charter on Fundamental Social Rights of 2003.

¹¹⁵⁵ O C Ruppel ‘Regional economic communities and human rights in East and Southern Africa’ in A Bosl & J Diescho (eds) *Human Rights in Africa* 294 https://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/9_Ruppel.pdf accessed on 15 November 2018.

¹¹⁵⁶ article 6(a)-(b) of the SADC Charter on Fundamental Social Rights of 2003. In particular states parties are expected to ensure that everyone has access to employment, remuneration, working conditions, social protection, education, vocational training and career development.

¹¹⁵⁷ article 6(c) of the SADC Charter on Fundamental Social Rights of 2003.

improving their social and professional integration.”¹¹⁵⁸ In other words, the Charter requires member states reasonable to accommodate persons with disabilities in society and the workplace. With regard to implementation of the Charter, national and regional structures bear responsibility for the implementation and the prevention of non-implementation.¹¹⁵⁹ Additionally, on regular basis, member states are expected to provide “detailed progress reports” to the Secretariat.¹¹⁶⁰

It has been said that the main drawback of the Charter is that it cannot be enforced directly and it does not provide for independent institutions that can hold members accountable for non-compliance.¹¹⁶¹ It has further been said that the provision for equal treatment suggests that everyone (including persons with disabilities) will have equal access to social security.¹¹⁶² Thus, member states must establish all-inclusive and practical methodologies to ensure social security for all as required by the Charter.¹¹⁶³ Consequently, it can be said that the Charter attempts to regulate issues relating to employment with a view to guaranteeing sound employment relations for all including persons with disabilities in the SADC. The key challenge is that this Charter is not binding and, as stated above, the responsibility to implement it lies with the national and regional structures of member states. In addition, no time frames are stipulated for reporting on implementation by member states.

It is argued that the Charter creates awareness about the need for reasonable accommodation and creates an enabling environment for persons with disabilities, but it does not provide practical mechanisms to guarantee their inclusion in the workplace. Taking into consideration that the Charter was founded on the universality of basic human rights and the promotion of sound working relations, it is argued that the Charter should have been more practical on the inclusion of persons with disabilities as they fall within vulnerable groups. Despite the lack of practical methodologies in the Charter, commitment by member states to implement the

¹¹⁵⁸ Article 9(2) states that the measures shall relate, in particular, to according capacities of beneficiaries, vocational training, accessibility and mobility, means of transport and housing and appropriate organisation of work and workplaces to take into account their needs.

¹¹⁵⁹ article 16(1)-(2) of the SADC Charter on Fundamental Social Rights of 2003.

¹¹⁶⁰ article 16(3) of the SADC Charter on Fundamental Social Rights of 2003.

¹¹⁶¹ P A Smit ‘Transnational labour relations in SADC: Regional integration or regional globalization?’ (2015) 6 (1) *Journal of Globalization Studies* 22.

¹¹⁶² M Nyeti & L G Mpedi ‘The impact of SADC social protection instruments on the setting up of a minimum social protection floor in Southern African countries’ (2012) 15 (1) *PER/PELJ* 254.

¹¹⁶³ Nyeti & Mpedi note 1162 (above) 254.

Charter and the model of leadership adopted are the factors that will ultimately provide for the inclusion of persons with disabilities in the workplace.

The transformational leadership approach has been found to have the best change management practices and greatest levels of commitment to change.¹¹⁶⁴ Therefore, it is submitted that transformational leadership may be necessary to fill the lacuna left by the Charter by ensuring that its provisions are effectively implemented by the member states, thus ensuring equality and inclusion of persons with disabilities in the workplace.

4.2.9 SADC Protocol on Gender and Development of 2008

The SADC Protocol on Gender and Development (the SADC Gender Protocol) was adopted “to empower women, eliminate discrimination and achieve gender equity through the development and implementation of gender legislation and policies.”¹¹⁶⁵ It was further adopted “to harmonise the implementation of various instruments to which SADC member states have subscribed at regional and international level which includes, among others, the United Nations Convention on the Rights of People with Disabilities of 2008.”¹¹⁶⁶ The SADC Gender Protocol is an instrument used “to set realistic, measurable targets, time frames and indicators for achieving gender equality and equity and to monitor and evaluate the progress made by member states.”¹¹⁶⁷ Munalula asserts that the Protocol intends to “take the Region a step closer to finding home-grown, concrete ways of achieving gender equity throughout its 15 member countries”.¹¹⁶⁸ Munalula further argues that the Protocol is founded on human rights such as equality, dignity and freedom.¹¹⁶⁹ South Africa is a signatory to the SADC Gender Protocol.¹¹⁷⁰

Against this background, the SADC Gender Protocol requires states parties, guided by relevant SADC protocols and international instruments on the protection and welfare of people with disabilities, “to adopt legislation and related measures to protect persons with disabilities that take into account their particular vulnerability.”¹¹⁷¹ Article 19(1) of the Protocol requires states

¹¹⁶⁴ R M Hechanova & R Cementina-Olpic ‘Transformational leadership, change management and commitment to change: A comparison of academic and business organisations’ (2013) 22 (1) *The Asia Pacific Education Researcher* 13 doi: 10.1007/s40299-012-0019-z accessed on 17 November 2018.

¹¹⁶⁵ article 3(a) of the SADC Gender Protocol.

¹¹⁶⁶ article 3(b) of the SADC Gender Protocol.

¹¹⁶⁷ https://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf accessed on 18 November 2018.

¹¹⁶⁸ M M Munalula ‘SADC Protocol on Gender and Development: Road map to equality?’ (2011) 1 *SADC Law Journal* 189.

¹¹⁶⁹ Munalula note 1168 (above) 189.

¹¹⁷⁰ https://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf accessed on 18 November 2018.

¹¹⁷¹ article 9 of the SADC Gender Protocol.

parties “to ensure equal access to employment and benefits through the enactment and amendment of policies and laws.” The Protocol places responsibility on “states parties to ensure implementation of the Protocol at national level.”¹¹⁷² It further require “states parties to develop and implement action plans and monitoring mechanisms.”¹¹⁷³ States parties are to submit implementation progress reports to the Executive Secretary of the SADC once every two years.¹¹⁷⁴ It has been said that the SADC Gender Protocol is legally binding and compels SADC member states to put greater effort into ensuring gender equity in their respective countries.¹¹⁷⁵ The adoption of the SADC Gender Protocol has been seen as a commitment from the SADC to prioritise gender equity and to guarantee equal access to employment for all.¹¹⁷⁶

However, from a disability perspective, there has been criticism that the SADC Gender Protocol omitted “to consider physical, economic and social needs of women with disabilities in relation to access to employment, training and participation in the decision making”.¹¹⁷⁷ Forere and Stone assert that the SADC Gender Protocol does not provide firm implementation methods and, as a result, enforcement of rights is weakened.¹¹⁷⁸ They further raised concern about the failure of the SADC Gender Protocol to address developing gender issues.¹¹⁷⁹

Therefore, it is submitted that the SADC Gender Protocol does not provide practical mechanisms for protection of persons with disabilities. It is not clear how the Protocol will achieve realistic and measurable targets other than by requests for reports on a regular basis from member states. In fact, except for stipulating the need to have disability legislation, the SADC Gender Protocol does not provide how the states parties should ensure disability inclusion in societies and workplaces. Like the SADC Charter on Fundamental Social Rights, the SADC Gender Protocol merely creates an awareness of the need for disability inclusion and provides no practical solutions. The Protocol should however be commended for calling

¹¹⁷² article 35(1) of the SADC Gender Protocol.

¹¹⁷³ article 35(2) of the SADC Gender Protocol.

¹¹⁷⁴ article 35(4) of the SADC Gender Protocol.

¹¹⁷⁵ M Y P Selebogo & V Ojakorout ‘SADC Gender and Development Protocol: An evaluation of equality, empowerment and gender based violence in South Africa (2008-2012)’ (2013) 11 (1) *Gender and Behaviour* 5179.

¹¹⁷⁶ P Guramatunhu-Mudiwa ‘Addressing the issue of gender equity in the presidency of the university system in the Southern African Development Community (SADC) Region’ (2010) 2 (1) *Forum on Public Policy* 7 <https://files.eric.ed.gov/fulltext/EJ903581.pdf> accessed on 17 November 447.

¹¹⁷⁷ M Forere & L Stone ‘The SADC Protocol on Gender and Development: Duplication or complementarity of the African Union Protocol on Women’s Rights?’ (2009) 9 *African Human Rights Law Journal* 447.

¹¹⁷⁸ Forere & Stone note 1177 (above) 452.

¹¹⁷⁹ Forere & Stone note 1177 (above) 455.

on member states to adopt disability legislation that will adequately protect the rights of persons with disabilities.

In this context, the researcher asserts that the complexity of disability necessitates disability legislation;¹¹⁸⁰ having disability legislation will go a long way towards transformation in the workplace. Ultimately, it is only through commitment and willingness to change by member states that the objectives of the Gender Protocol will be achieved. While the Protocol is silent about the kind of leadership required to meet its objectives, transformational leadership (discussed later) appears to be a tool that can achieve these objectives as such leaders are guided by morals and ascribe to the notion of transformation, justice and fairness.

4.2.10 SADC Protocol on Employment and Labour of 2014

The SADC Protocol on Employment and Labour provides a framework for harmonisation of policies and legislation on employment and promotes gender equality in employment and the labour sector, in particular equal treatment and opportunities for men and women.¹¹⁸¹ South Africa signed the Protocol on 18 August 2014.¹¹⁸² The Protocol require member states and employers to recognise human rights as provided for in, inter alia, the UDHR, the ACHPR, the SADC Charter on Fundamental Social Rights and other international and regional instruments.¹¹⁸³ It is important to note that in this Protocol employers are specifically mentioned and are required to acknowledge the human rights of employees. Therefore, the SADC Protocol on Employment and Labour mandates employers to develop strategies and policies to promote and protect human rights in the workplace. The Protocol further requires states parties to adopt laws and policies to guarantee equal treatment, opportunity and equal protection before the law.¹¹⁸⁴

Pertinent to this study, the SADC Protocol on Employment and Labour requires states parties to eliminate all forms of direct or indirect discrimination on several grounds, including disability.¹¹⁸⁵ It further mandates states parties to ensure that everyone is engaged in an occupation of his or her choice.¹¹⁸⁶ There must be fair and equal opportunities in the

¹¹⁸⁰ L Nxumalo 'Does South African labour legislation provide adequate protection for mental illness in the workplace?' (2018) 39 *Industrial Law Journal* 1449.

¹¹⁸¹ article 1(b) and (d) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁸² https://www.sadc.int/files/5714/6193/6406/Protocol_on_Employment_and_Labour_-_English_-_2014.pdf accessed on 18 November 2018.

¹¹⁸³ article 5(1) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁸⁴ article 7(1) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁸⁵ article 7(2) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁸⁶ article 8(a) of the SADC Protocol on Employment and Labour of 2014.

workplace.¹¹⁸⁷ Consequently, it can be said that the SADC Protocol on Employment promotes equality and inclusion for all, including persons with disabilities in the workplace. The Protocol mandates states parties to ensure that persons with disabilities are afforded the rights provided for in the UDHR, particularly employment and social protection rights.¹¹⁸⁸ States parties are required to curb discrimination against persons with disabilities and to foster acceptance and integration of persons with disabilities.¹¹⁸⁹

With regard to the implementation of the Protocol, states parties must ensure the application and implementation of the Protocol at national level, and must have national mechanisms with time frames to ensure implementation of the provisions of the Protocol.¹¹⁹⁰ States parties are required to submit bi-annual reports to the Council showing achievements in the implementation of the provisions of the Protocol.¹¹⁹¹ States parties must take all steps required to give effect to the provisions of the Protocol.¹¹⁹² As discussed under the SADC Gender Protocol, there is nothing much provided for persons with disabilities in the workplace, except to create an awareness of the need to curb discrimination and ensure equality for all by member states.

Since the study focuses on the public sector in South Africa, it is important briefly to examine whether the recommendations made by the abovementioned international and regional instruments are implemented in South Africa. In this regard, I now deal with the institutions that have been developed in South Africa to drive the implementation of the international and regional instruments on the rights of persons with disabilities in the workplace.

4.3 Institutions Driving the Implementation of Disability Laws in South Africa

Post 1994, the South African government has been driving the transformation agenda to ensure a just and equitable society for all.¹¹⁹³ The agenda includes persons with disabilities and has led to the development of a policy paper on disability and the “establishment of the Office on

¹¹⁸⁷ article 8(b) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁸⁸ article 17(1) of the SADC Protocol on Employment and Labour of 2014. In addition, subsection (2) requires states parties to ensure that persons with disabilities, whatever the nature and origin of such disability, are entitled to additional concrete measures aimed at improving their social and professional integration, such as rehabilitation, vocational training, accessibility and mobility, provision of assistive devices, means of transport, access to appropriately designed housing and the appropriate organisation of work and working environment.

¹¹⁸⁹ article 17(3) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁹⁰ article 25(1)-(2) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁹¹ article 25(5) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁹² article 25 (8) of the SADC Protocol on Employment and Labour of 2014.

¹¹⁹³ item 1.2.2 of the *White Paper on the Rights of Persons with Disabilities* (GG 39792 of 2016).

the Status of Disabled Persons (OSDP) in the Presidency.”¹¹⁹⁴ South Africa has adopted a rights based and mainstreaming approach as a strategy to realise the rights of persons with disabilities.¹¹⁹⁵ Those in decision-making are required to advocate for the advancement and protection of the rights of the disabled within their organisations.¹¹⁹⁶ With regard to disability rights coordination, “it is the responsibility of every public institution to put in place structural arrangements to ensure that the institution is able to fulfil its obligation of disability inclusion.”¹¹⁹⁷ At local government level, “local municipalities and metropolitan councils must establish disability rights consultative forums.”¹¹⁹⁸

Against this background, the Constitution lists the following state institutions that strengthen democracy in South Africa, as institutions that play an important role in ensuring that the rights of persons with disabilities are protected and promoted: “the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CPPRCRLC), the Commission for Gender Equality (CGE), the Auditor-General (AG), and the Electoral Commission (EC).”¹¹⁹⁹ While all these institutions are important, for the purposes of this study, which focuses more on the human rights approach to disability and transformation, the attention will be given to the SAHRC and the CEE.

I now deal with the SAHRC and the CEE as they relate to disability inclusion and the promotion and protection of human rights of persons with disabilities in the workplace.

4.3.1 South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is mandated by the Constitution “to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in South Africa.”¹²⁰⁰ Disability is among the focus areas of the mandate of the SAHRC, and thus the SAHRC must promote, protect and monitor the achievement of rights

¹¹⁹⁴ note 1184 (above) item 1.2.2.

¹¹⁹⁵ note 1184 (above) item 5.1 and 5.2.

¹¹⁹⁶ note 1184 (above) item 7.2.

¹¹⁹⁷ note 1184 (above) item 7.1.3.

¹¹⁹⁸ note 1184 (above) item 7.1.3.

¹¹⁹⁹ s 181(1)(b)(c)(d)(e)(f) of the Constitution. Additionally, s28 of the EEA establishes the Commission for Employment Equity (CEE).

¹²⁰⁰ section 184 of the Constitution. See also section 2 of the South African Human Rights Commission Act 40 of 2013 which sets out the same objects of the Commission.

by persons with disabilities.¹²⁰¹ The SAHRC has noted that people with disabilities continue to suffer prejudice with little prospect of securing employment.¹²⁰² In fulfilling its mandate, the SAHRC has received various complaints which focus mainly on systematic challenges as a barrier to the attainment of equality, particularly for persons with disabilities.¹²⁰³

According to the SAHRC, “complaints relating to disability accounted for the third highest number of equality-related complaints received by the Commission in 2015/6”.¹²⁰⁴ The SAHRC conducts site inspections at schools, workplaces and public facilities to check for “violations of the rights of persons with disabilities.”¹²⁰⁵ In addition, the SAHRC conducts hearings on “issues relating to the rights of persons with disabilities.”¹²⁰⁶ The Commission has powers to conciliate, mediate and negotiate a dispute emanating from the violation of human rights.¹²⁰⁷ The SAHRC also conducts investigations (on its own initiative or following complaints)¹²⁰⁸ on human rights abuses against persons with disabilities and recommends appropriate actions depending on the nature of the complaint.¹²⁰⁹

In addition, the SAHRC conducts advocacy and public education, attends international and regional conferences on disabilities and monitors compliance with the Constitution, the CRPD, PEPUDA and the *White Paper on the Rights of People with Disabilities* in order to ensure that

¹²⁰¹ <https://www.sahrc.org.za/index.php/focus-areas/disability-older-persons/disability> accessed on 18 November 2018.

¹²⁰² note 1201 (above).

¹²⁰³ note 1201 (above). T Thipanyane ‘Strengthen constitutional democracy: Progress and challenges of the South African Human Rights Commission and Public Protector’ (2015) 60 (16) *New York Law School Law Review* 131 says: “SAHRC’s responses to complaints have helped in building confidence in both the state and the rule of law.” In addition, according to South African Human Rights Commission *Annual Report* 18 (2014), in 2014 the SAHRC finalised 8550 cases out of 9217 thus contributing to the promotion of human rights in South Africa.

¹²⁰⁴ note 1192 (above): “Recent cases include Ndebele Nkosi vs BMW South Africa: GP/1516/0688, where the Commission mediated a compliant on the reasonable accommodation of a visually impaired employee at BMW. A complaint investigated by the Commission against Standard Bank resulted in findings against Standard Bank. These findings resulted in Standard Bank putting in place measures to ensure persons with disabilities could access Automatic Teller Machines with ease.”

¹²⁰⁵ note 1201 (above).

¹²⁰⁶ note 1201 (above): “In 2016 the Commission convened the National Hearing on Unfair Discrimination in the workplace. The aim of the hearing was to generate a deeper understanding and awareness of the trends of discrimination in the workplace; the form and inter-relatedness of types of discrimination; as well as the challenges and barriers to equality faced by all stakeholders, including employees, public and private sector employers, trade union bodies and government departments. The panel received submissions from several government departments including the department of labour, civil society, and trade unions.”

¹²⁰⁷ section 14 of the South African Human Rights Commission Act 40 of 2013.

¹²⁰⁸ section 13(3)(a) of the South African Human Rights Commission Act 40 of 2013. Sections 15 and 16 set out details in relation to investigations by the Commission including entering and searching premises and removal of articles.

¹²⁰⁹ note 1201 (above). In terms of section 13(3)(b) of the South African Human Rights Commission Act 40 of 2013 it may bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.

the rights of persons with disabilities are promoted and protected.¹²¹⁰ The SAHRC “must review government policies relating to human rights and make recommendations.”¹²¹¹ The SAHRC is required to “report to the National Assembly at least one every year on its activities, performance of its functions and achievement of its objectives.”¹²¹² Consequently, the SAHRC plays a critical role in monitoring disability rights as provided for in domestic and international laws.¹²¹³

While the SAHRC is required to monitor compliance with, inter alia, the Constitution and the CRPD, it appears that it does not have effective and sufficient monitoring mechanisms to monitor the implementation of the rights of persons with disabilities particularly in the workplace as required by the CRPD. This view is supported by Kamga who asserts that the SAHRC is not strong enough in monitoring disability rights in South Africa.¹²¹⁴ This weakness was admitted in the first draft report by South Africa to the United Nations on the execution of the CRPD.¹²¹⁵ Among the challenges noted in the report was the lack of capacity and financial resources to enable the SAHRC to meet its obligations as required by CRPD.¹²¹⁶ Consequently, it has been said that the role of SAHRC in the workplace has been ineffective.¹²¹⁷

Despite such challenges, SAHRC remains a valuable institution advancing the promotion and protection of the rights of persons with disabilities. Horsten argues that in addition to monitoring disability rights, the SAHRC has a mandate on matters relating to socio-economic rights.¹²¹⁸ It is further responsible for ensuring that international human rights obligations are

¹²¹⁰ note 1201 (above).

¹²¹¹ section 13(1)(b) of the South African Human Rights Commission Act 40 of 2013.

¹²¹² section 18 of the South African Human Rights Commission Act 40 of 2013.

¹²¹³ Holness & Rule note 688 (above) 1925-6: “The SAHRC has established a section 5 committee on the CRPD under its Treaty Monitoring Unit to monitor the implementation of the CRPD. The unit has developed a Disability Toolkit which contains manuals and other support materials for caregivers, businesses, trainers and other relevant stakeholders. It is aimed at spreading awareness about issues affecting persons with disabilities.”

¹²¹⁴ S D Kamga ‘Disability rights in South Africa: Prospects for their realisation under the White Paper on the Rights of Persons with Disabilities’ (2016) 32 (3) *South African Journal on Human Rights* 575 doi: 10.1080/02587203.2016.1264109.

¹²¹⁵ Kamga note 1214 (above) 575. See also item 53 of the *First Periodic Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa* CRPD/C/ZAF/1 dated 24 November 2015 which states that “the South African Human Rights Commission (SAHRC) has a constitutional mandate as an independent body to promote, protect and monitor the rights of all South Africans. It is, however, acknowledged that capacity challenges within the commission cause significant delays in the effective investigation and finalisation of complaints”.

¹²¹⁶ Kamga note 1214 (above) 575-6.

¹²¹⁷ W Holness ‘Employment equity and elimination of discrimination: Where are women with disabilities in the hierarchy?’ (2016) 30 (1) *Agenda* 58 doi: 10.1080/10130950.2016.1187521.

¹²¹⁸ D Horsten ‘The role played by the South African Human Rights Commission’s economic and social rights reports in good governance in South Africa’ (2006) 9 (2) *PER/PELJ* 179.

executed at the domestic level.¹²¹⁹ Thipanyane argues that SAHRC has played a crucial role in strengthening constitutional democracy, the rule of law and human rights.¹²²⁰ The SAHRC has further been commended on litigating matters that have made a contribution to “entrenching the judicial enforcement and protection of economic and social rights”.¹²²¹ It has been said that the success of chapter 9 institutions and the entrenchment of a vibrant human rights culture necessitate strong leadership that is genuine, impartial, and reliable.¹²²² However the SAHRC has raised concerns about the “employment equity and work opportunity targets for persons with disabilities”¹²²³ – although a target of 7% is indicated by 2030,¹²²⁴ the lower target of 5% is still a challenge. It can therefore be said that the SAHRC is working towards promotion and protection of human rights through its awareness campaigns, mediation of disability matters and litigation, particularly on the right to equality.

Although the SAHRC receives a lot of complaints relating to disability,¹²²⁵ it appears that there has not been much litigation on matters relating to disability inclusion in the workplace. It is argued that the SAHRC is raising awareness and providing information on challenges faced by persons with disabilities in the workplace but is not taking necessary action to challenge the South African government to comply with international and regional instruments on disability. Consequently, the SAHRC is failing to guarantee that international human rights obligations relating to persons with disabilities are executed in South Africa.

The SAHRC has developed a *Disability Toolkit* which serves as a guide and monitoring framework for private sector employers on the creation of a diverse workforce which is inclusive of persons with disabilities.¹²²⁶ The *Toolkit* underscores the need for inclusive

¹²¹⁹ Horsten note 1218 (above) 187.

¹²²⁰ Thipanyane note 1203 (above) 130.

¹²²¹ Thipanyane note 1203 (above) 131. See for example *South African Human Rights Commission & another v President of the Republic of South Africa & another* 2005 (1) BCLR 1 (CC).

¹²²² Thipanyane note 1194 (above) 138.

¹²²³ SAHRC Research Brief on Disability and Equality in South Africa 2013-2017 15 www.sahrc.org.za accessed on 18 November 2018. In this regard the research brief states: “[A]s a designated employer in terms of the EEA, the public sector set its employment target for persons with disabilities at 2 percent for 2005. More than a decade later, this target has still not been met. In addition, even current statistics from the Commission for Employment Equity may not accurately reflect the position of persons with disabilities in the employment context, since people with ‘invisible disabilities’ (whether psychosocial, neurological, aural or intellectual) may not be aware of or report their disabilities, and will thus not be eligible to benefit from affirmative action measures such as those encompassed by the EEA.”

¹²²⁴ SAHRC Research Brief on Disability and Equality in South Africa 2013-2017 15.

¹²²⁵ note 1192 (above).

¹²²⁶ *Disability Toolkit: A Quick Reference Guide and Monitoring Framework for Employers* 2 <https://www.sahrc.org.za/home/21/files/20170524%20SAHRC%20Disability%20Monitoring%20Framework%20and%20guidelines%20Draft%205.pdf> accessed on 19 January 2019.

workplaces that include participation of persons with disabilities in decisions that affect them as well as in workplace policies.¹²²⁷ Pertinent to this study, the *Toolkit* places the responsibility on the senior leadership of an organisation to establish an inclusive workplace culture.¹²²⁸ In addition, organisations need to develop workplace disability strategies specifically to deal with employment of persons with disabilities “taking into account individual needs, the work environment, workplace needs, legal requirements and responsibilities.”¹²²⁹

Basically, the *Toolkit* does not provide new practical strategies on the implementation of disability related legislation in the workplace -- it merely expands on the existing information which creates awareness rather than provide practical and sound solutions on the inclusion of persons with disabilities in the workplace. This development should, nonetheless, be commended as it is a step in the right direction towards advancing the rights of persons with disabilities in the workplace. The information obtained from the *Toolkit*, when completed by employers, is aimed at building up the data available to the SAHRC in order for it better to monitor workplace inclusion.

The *Toolkit's* deficiency, however, is that it is at most a guide and is not binding on employers. Although the *Toolkit* places the responsibility on senior leaders to create inclusive workplaces, it does not identify the kind of leadership required to achieve inclusivity. Furthermore, it does not provide for any penalties for failure by senior leaders to achieve inclusion of persons with disabilities in the workplace. The monitoring framework for employers in the *Toolkit* does not provide for the opportunity to monitor workplace practices. While the aforesaid framework includes indicators such as reasonable accommodation and the need for disability policies, it is not robust enough to ensure its practical implementation. Consequently, there is a need for genuine and committed leaders who can tackle human rights issues objectively without fear, favour or prejudice.

In the result, it is submitted that the SAHRC has not done enough to advance disability inclusion and transformation in the workplace. Even in its reports, there is not much on what the SAHRC is doing to eliminate disability stereotypes and promote workplace culture and disability inclusion in the workplace. It is not clear how the Commission promotes and protects human rights in the workplace. The contention is that the enforcement mechanisms employed

¹²²⁷ note 1226 (above) 2.

¹²²⁸ note 1226 (above) 42.

¹²²⁹ note 1226 (above) 46.

by the SAHRC are not effective, particularly in ensuring that government complies with a policy of inclusion and employment of persons with disabilities. As the SAHRC has the power to challenge government in a court of law, especially on the achievement of employment equity targets for persons with disabilities in the workplace, its approach could therefore be more robust on matters relating to transformation and disability inclusion in the public sector.

It is argued that there is synergy between transformational leadership and the achievement of human rights in that one cannot exist without the other. Therefore, in order to achieve human rights for persons with disabilities in the workplace, transformational leadership is necessary. In this context, it has been said that the goal of a transformational leader is --

“to ‘transform’ people and organizations in a literal sense: to change them in their hearts and minds, to develop a clear and appealing vision, to confirm the objectives, to adjust the behavior to the beliefs, principles and values or, in a word, to make changes that are real, permanent, essential, and evolving”.¹²³⁰

The values held by transformational leaders have been found to be a key component for the success of the transformational process.¹²³¹ Mwambazambi and Banza assert that transformational leaders always respect human rights principles such as human dignity, worth and good social values.¹²³² Consequently, for the SAHRC to achieve its objective and constitutional mandate on the rights of persons with disabilities, transformational leadership may be necessary to transform the public sector and its leaders.

4.3.2 Commission for Employment Equity

The Commission for Employment Equity (CEE) was established in terms of section 28 of the Employment Equity Act 55 of 1998 (EEA) in order “to advise the Minister of Labour on any matter concerning the EEA, including policy and matters pertaining to the implementation of the EEA.”¹²³³ In addition, the CEE may “make awards recognising achievements by employers in furthering the purpose of the Act.”¹²³⁴ The CEE may conduct “research and report to the minister on any matter relating to the application of the Act, including appropriate and well-researched norms and benchmarks for the setting of numerical goals in various sectors.”¹²³⁵ From a disability perspective, the CEE has produced various recommendation through its

¹²³⁰ S Pasovska & T Miceski ‘The impact of transformational leadership in improvement of the organizational capability’ (2018) 6 (2) *International Journal for Innovation Education and Research* 237.

¹²³¹ Pasovska & Miceski note 1230 (above) 237.

¹²³² Mwambazimba & Banza note 622 (above) 1.

¹²³³ section 30(1) of the EEA.

¹²³⁴ section 30(2)(a) of the EEA.

¹²³⁵ section 30(2)(b) of the EEA.

annual reports. Recently, the CEE presented its *Annual Report 2017-2018*.¹²³⁶ From the outset, the chairperson of the Commission raised concerns about lack of commitment from employers who simply report “just for the sake of compliance”.¹²³⁷ In this context, the report noted that:

“In 2017, 30 employers reported that their total staff compliment were Persons with Disabilities. Upon further investigation, the CEE found that these employers simply repeated the same number of employees in the Table on Workforce Profile for all employees and in the Table on Workforce Profile for Persons with Disabilities only, most probably as a ‘copy and paste’.”¹²³⁸

The report further noted the slow pace of transformation which, among other reasons, was caused by the “lack of commitment from top management of designated employers.”¹²³⁹ In addition, the Commission found that there was “no real political will and commitment to transform” and that there was continuing non-compliance with EEA.¹²⁴⁰ The report underscored the need for committed and ethical leaders and the need thoroughly to engage on how South Africa can produce committed ethical leaders in order to implement transformation legislation effectively.¹²⁴¹ Thus, this report underscored the importance of senior workplace leaders for the effective implementation of transformative legislation in the workplace, which is advocated by this study. Consequently, it can be said that the report of the Commission endorses the importance and relevance of this study as it argues that effective implementation of transformative legislation lies with leadership.

This view is supported by Booysen who asserts that workplace leaders need to show their commitment to employment equity implementation.¹²⁴² Such commitment, according to Booysen, could be achieved through “leadership changes, and moves towards more representivity and inclusion”.¹²⁴³ In addition, Sherwin asserts that there is a need for intensive attempts by leaders to confront challenges faced by persons with disabilities even in the absence of positive policies or enabling systems.¹²⁴⁴ There is therefore a need to develop practical ways to ensure commitment from workplace leaders. Among the challenges identified

¹²³⁶ <http://www.labour.gov.za> accessed on 21 January 2019.

¹²³⁷ Foreword to the Commission for Employment Equity *Annual Report 2017-2018* 2 <http://www.labour.gov.za> accessed on 21 January 2019.

¹²³⁸ note 1236 (above).

¹²³⁹ note 1236 (above) 3.

¹²⁴⁰ note 1236 (above) 3.

¹²⁴¹ note 1236 (above) 3.

¹²⁴² L Booysen ‘Barriers to employment equity implementation and retention of blacks in management in South Africa’ (2007) 31 (1) *South African Journal of Labour Relations* 66.

¹²⁴³ Booysen note 1242 (above) 66.

¹²⁴⁴ J Sherwin ‘Leadership for social inclusion in the lives of people with disabilities’ (2010) 6 *The International Journal of Leadership in Public Service* 87.

in the literature is that the legislative requirements for disability inclusion in the workplace are not sufficiently linked to performance management of leaders, thereby undermining commitment to implementation of disability related legislation in the workplace.¹²⁴⁵

Consequently, this study will recommend that all leaders' key performance indicators relating to employment equity, disability and workplace transformation must carry a higher weighting as an enforcement measure. In addition, achieving equity and commitment requires effective change management strategies. As such this study will recommend a transformational leadership framework that will ensure leadership commitment to implementation of employment equity plans in line with the EEA.

The *Annual Report* noted that “representation of persons with disabilities at top management level had dropped from 1.7% in 2015 to 1.3% in 2017.” The “representation of persons with disabilities in the total workforce remained flat at about 1% for the past three years.”¹²⁴⁶ In addition, “their representation remained low at all six occupational levels.”¹²⁴⁷ The Commission should be commended for continuously conducting analyses and providing sound guidance on how to achieve a fair and just society based on human dignity, equality and freedom; but, without committed transformational leaders, South Africa's public sector will not achieve equality, especially for persons with disabilities in line with the CRPD and other international human rights instruments.

It can be concluded that the aforementioned institutions are diligently working towards the achievement of an inclusive workforce, despite the lack of resources; however they are being let down by the lack of political will and leadership commitment. In addition, as can be seen from the above discussion, most of the international and regional instruments on disability are not hard law as they are not incorporated into South African law. As such, they are not legally binding. These international and regional instruments act as soft measures to ensure compliance with human rights norms. Consequently, it is argued that, being soft law, these instruments lack legal certainty as far as the rights of persons with disabilities are concerned.

This contributes to the lack of effective implementation of international and regional instruments as well as domestic laws on disability. Moreover, the non-binding nature of

¹²⁴⁵ Cole & Van der Walt note 745 (above) 532.

¹²⁴⁶ Commission for Employment Equity *Annual Report 2017-2018* 52 <http://www.labour.gov.za> accessed on 21 January 2019.

¹²⁴⁷ note 1246 (above) 55.

international and regional disability instruments contributes to the lack of effectiveness of the CEE and the SAHRC as these institutions frequently make recommendations on disability inclusion, transformation, human rights and equity in the workplace. In this context, the shortcomings of the international and regional instruments, in particular the CRPD as the main human rights instrument for persons with disabilities, are explored below.

4.4 Shortcomings in Application of International and Regional Law Instruments

The focus of this study is on effective implementation of disability laws in the workplace. The argument is that there are various international and regional instruments that has been enacted to address disparities encountered by persons with disabilities in the workplace, however they are not effectively implemented by member states. While there are awareness campaigns which must be commended, in practice persons with disabilities are not reasonably accommodated. In addition to the lack of monitoring mechanisms, stereotyping is a major challenge hindering transformation. It is argued that although there is a need for additional resources, as indicated above, dealing with stereotypes against persons with disabilities requires an effective strategy on change management to change the mindset and workplace culture thereby addressing the stigma attached to persons with disabilities. In other words, the inclusion of persons with disabilities is largely impacted by mindset. The focus should, therefore, be on mindset strategies to complement legislative disability provisions thereby achieving disability inclusion in the workplace. What is lacking is a leadership that is committed to change and that has a high regard for the CRPD and universal human rights law.

For example, the Ethekwini Municipality has a change management unit which deals with change management processes in the municipality. The Municipality employs psychologists and change management practitioners who can assist with changing the mindset of people in the workplace. The Municipality also has occupational health and human resources units which can be utilised to assist with mindset changes, provided that there is commitment from senior leaders, proper consultation with employees to make them understand the need for change, and a proper plan to effect change. It has been said that workplaces can employ change management either in a knowledge, individual or attitudinal situation.¹²⁴⁸

¹²⁴⁸ K M Konstantinos & V S Moustakis 'Reinvention of the public sector: Total quality management and change management' (2014) 11 (2) *Singidunum Journal of Applied Sciences* 37.

Change management has been viewed as a natural method of dealing with change for both the individual and the organisation.¹²⁴⁹ For change to be successful in the workplace, workplace leaders must actively participate in the process.¹²⁵⁰ As Sherwin asserts, there is a need for leaders to “lead change and innovation” based on theories and practices that are distinct from traditional existing practices in order to guarantee the required level of participation and inclusion of persons with disabilities in the workplace.¹²⁵¹ In other words, there is a need for committed leaders who can transform the status quo of persons with disabilities by developing new practical ideas to ensure effective implementation of international disability instruments. Consequently, leadership commitment is a critical element for the success of workplace transformation.¹²⁵²

It can therefore be said that South Africa requires leaders who ascribe to human rights norms such as human dignity, equality and justice. There is a need for visionary leaders who are committed to change. As Moore et al assert, “leaders who show generalised support for including persons with disabilities combined with a clearer vision of the ideal inclusive organisation will be most capable of creating changes in the organisation that lead to the employment of more persons with disabilities”.¹²⁵³

Therefore, as visionary and supportive leaders who take into consideration individual needs, transformational leadership may be a necessary mechanism to ensure effective implementation of international instruments on disability, such as the CRPD. This study will therefore make the recommendation that municipal leaders be trained on transformational leadership and effective change management processes specifically designed to include persons with disabilities, thereby complying with the CRPD and other relevant international human rights instruments. If South Africa’s public sector can deal with stereotypes and adopt a transformational leadership approach, the issue of non-compliance with laws relating to disability will fall away because such leaders will ensure that the recruitment and selection process is done fairly in line with the EEA and international norms. There is a need for political

¹²⁴⁹ P Mella & C M Colombo ‘The wheels of change in organisations’ (2012) 11 (6) *International Journal of Knowledge, Culture and Change Management* 248.

¹²⁵⁰ S Ajmal, M Z Farooq, N Sajid & S Awan ‘Role of leadership in change management process’ (2012) 5 (2) *Abasyn Journal of Social Science* 112.

¹²⁵¹ Sherwin note 1244 (above) 89.

¹²⁵² Ajmal, Farooq, Sajid & Awan note 1250 (above) 112.

¹²⁵³ M E Moore, A M Konrad & J Hunt ‘Creating a vision boosts the impact of top management support on the employment of managers with disabilities: The case of sport organisations in the USA’ (2010) 29 (6) *Equality, Diversity and Inclusion: An International Journal* 614.

support for including persons with disabilities and dealing with stigma -- political support has been shown to play a crucial role in the successful implementation of disability legislation.¹²⁵⁴

As it can be seen from the above discussion, disability inclusion in the workplace is one of the critical development areas requiring urgent attention. Consequently, this study will recommend that disability be listed as a priority on the Municipality's IDP as this plan drives implementation of municipal programmes identified as critical by the Municipality. This recommendation is not only of relevance to the Ethekwini Municipality, but is of importance to government at all levels as disability equity and transformation are challenges facing the public sector at large. It is argued that such initiatives will be a step in the right direction towards enforcing international instruments on disability.

Having explored international and regional disability human rights instruments, their shortcomings and the institutions driving the implementation of disability laws in the workplace, the following is an account of the pertinent legislative framework in South Africa aimed at addressing disability disparities in the workplace.

4.5 Legislative and Policy Framework on Disability: South African Perspective

Since South Africa is a member state of United Nations and a signatory to various international human rights instruments, its domestic laws must adequately address and protect human rights for all individuals including persons with disabilities. The state must develop measures to protect persons with disabilities in the workplace. In this regard, this section explores the extent of such protection and its practical application to meet international obligations and achieve substantive equality for persons with disabilities in the workplace.

4.5.1 Promotion of Equality and Prevention of Unfair Discrimination Act

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)¹²⁵⁵ was enacted to address issues of discrimination as required by section 9 of the Constitution. The preamble to the Act highlights South Africa's global human rights commitment, under binding international laws, to promote parity and prohibit discriminatory practices. In addition, the Act attempts to accelerate transformation to an egalitarian society that recognises diversity, sympathetic and considerate human relations, guided by the values of parity, justice, fairness, community development, self-worth and liberty.

¹²⁵⁴ Cole & Van der Walt note 745 (above) 532.

¹²⁵⁵ Act 4 of 2000.

In this regard, Cole and Van der Walt assert that PEPUDA attempts to safeguard respect for persons with disabilities and to address unjust workplace norms which discriminate against persons with disabilities.¹²⁵⁶ Thus, the purpose of the Act is to enforce the fundamental principles of the Constitution particularly the promotion of parity, liberty and equal enjoyment of all constitutional rights.¹²⁵⁷ The Act further attempts to provide mechanisms that can be employed to abolish “unfair discrimination and harassment”, particularly on the grounds of, inter alia, disability.¹²⁵⁸ Persons with disabilities must therefore be adequately protected in the workplace against discrimination to safeguard their constitutional rights.¹²⁵⁹ The state is required to develop awareness programmes to promote parity and other fundamental human rights of persons with disabilities.¹²⁶⁰ In addition, the Act authorises the SAHRC and other constitutional institutions to “request information on measures relating to the achievement of equality”, including executive plans and compliance with legislation.¹²⁶¹ People operating in the public sector “or exercising public power” must promote equality by adopting appropriate equality plans and mechanisms for effective promotion of equality as well as by ensuring enforcement and monitoring of such equality plans.¹²⁶²

PEPUDA therefore highlights an employer’s obligation to eradicate inequalities and to encourage organisational inclusiveness as required by international law and the Constitution. It reinforces the notion of equality and human rights as well as the need to eradicate discrimination against persons with disabilities. As discussed above, the SAHRC does not have enough capacity to measure the effectiveness of various employment laws, including PEPUDA. As a result, the promotion of equality for persons with disabilities is compromised. Although, with committed leaders, the objectives of PEPUDA can be achieved. Consequently, PEPUDA remains a relevant tool for realising inclusion of persons with disabilities in the workplace.

¹²⁵⁶ Cole & Van der Walt note 745 (above) 523.

¹²⁵⁷ section 2 of the PEPUDA.

¹²⁵⁸ section 2 of the PEPUDA.

¹²⁵⁹ Section 9 of the PEPUDA states that “no person may unfairly discriminate against any person on the ground of disability, including ... denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society; ... and failing to eliminate obstacles that unfairly limit or restricts person with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons”.

¹²⁶⁰ section 24 of the PEPUDA.

¹²⁶¹ section 25(2) of the PEPUDA.

¹²⁶² section 26(a)-(b) of the PEPUDA.

4.5.2 Employment Equity Act

The Employment Equity Act¹²⁶³ (EEA) was enacted to “achieve equity in the workplace by ... promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and ... implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workplace”.¹²⁶⁴ It was enacted, inter alia, to promote “equality and the exercise of true democracy”, to remove unfair discrimination practices in the workplace and to ensure that the workplace is representative of all individuals.¹²⁶⁵ Ngwena asserts that the EEA advocates for the attainment of constitutional parity in the workplace.¹²⁶⁶ Oosthuizen and Naidoo contend that the EEA was introduced to implement transformation in the workplace.¹²⁶⁷ They point out that, while there is some indication of transformation in the working environment, many employers do no more than ensure legal compliance with the provisions of the EEA, paying lip service to the transformation goals set by the Act.¹²⁶⁸ Consequently, the EEA is not effectively implemented thus hindering transformation in the workplace.

The EEA “must be interpreted ... in compliance with the Constitution; ...taking into account any relevant code of good practice issued in terms of this Act or any other employment law”.¹²⁶⁹ It must further be interpreted “in compliance with the international law obligations of the Republic, in particular those contained in the International Labour Organisation Convention (111) concerning Discrimination in respect of Employment and Occupation”.¹²⁷⁰ In this regard, the EEA obligates employers to take action to safeguard the rights of persons with disabilities in the workplace.¹²⁷¹ It also forbids unfair discrimination in any workplace policies or practices based on disability.¹²⁷²

¹²⁶³ Act 55 of 1998.

¹²⁶⁴ section 2(a)-(b) of the EEA.

¹²⁶⁵ preamble to the EEA.

¹²⁶⁶ C Ngwena ‘Developing juridical method for overcoming status subordination in disablism: The place of transformative epistemologies’ (2014) 30 *South African Journal on Human Rights* 287.

¹²⁶⁷ R M Oosthuizen & V Naidoo ‘Attitudes towards and experience of employment equity’ (2010) 36 (1) *South African Journal of Industrial Psychology* 1.

¹²⁶⁸ Oosthuizen & Naidoo note 1267 (above) 1.

¹²⁶⁹ section 3(a)-(c) of the EEA.

¹²⁷⁰ section 3(d) of the EEA.

¹²⁷¹ Section 5 of the EEA provides that “every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice”.

¹²⁷² section 6 of the EEA.

The EEA mandates designated employers to implement positive measures inclusive of reasonable accommodation for persons with disabilities.¹²⁷³ According to section 1 of the EEA “reasonable accommodation” means “any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment”. Most important for this study, the EEA mandates designated employers to assign senior managers with the responsibility for monitoring and ensuring effective implementation of employment equity plans.¹²⁷⁴ This is an indication that workplace leadership has the responsibility to ensure effective implementation of transformative policies in the workplace. Effective implementation of employment equity policies will without doubt result in disability inclusion in the workplace.

While the EEA mandates senior management to monitor and ensure implementation of the EEA, it is silent about the kind of leadership required to ensure its implementation. As indicated above, employers merely ensure legal compliance with the provisions of the EEA, and show little commitment to realising the objectives of the Act, being the achievement of equity and the elimination of unfair discrimination. It has been said that for employment equity to be successful, there must be effective leadership commitment and accountability from senior, middle and line management.¹²⁷⁵ It has further been said that the leadership model could be a barrier to employment equity in a sense that some leaders do not regard employment equity programmes as a strategic workplace issue.¹²⁷⁶ It is submitted that transformational leadership is a necessary leadership model to implement the EEA and equity programmes successfully as it ascribes to the principles of equity and justice.

The importance of the EEA is that it requires reasonable accommodation of persons with disabilities to safeguard their rights. Workplace leadership has an obligation to safeguard constitutional privileges of employees with disabilities. However, it should be noted that while there is such an obligation, the employer need not accommodate qualified applicants or employees with disabilities if this will impose an unjustified hardship on the business of the

¹²⁷³ section 15(2)(c) of the EEA.

¹²⁷⁴ section 24 of the EEA.

¹²⁷⁵ K Selby & M Sutherland “‘Space creation’: A strategy for achieving employment equity at senior management level’ (2006) 30 (2) *South African Journal of Labour Relations* 47.

¹²⁷⁶ W Esterhuizen & N Martins ‘Organisational justice and employee responses to employment equity’ (2008) 32 (2) *South African Journal of Labour Relations* 69.

employer.¹²⁷⁷ What constitute unjust hardship will vary from case to case, thus, each case has to be determined on its own merits.¹²⁷⁸ It is argued that the defence of unjustifiable hardship is a barrier to reasonable accommodation of persons with disabilities. As indicated above, the Disability Code defines unjustifiable hardship as “action that requires significant or considerable difficulty or expense”.¹²⁷⁹

It appears that this aspect has not been fully explored in the literature. However, it is argued that in practice workplace leaders are quick to shift the blame, relying on this defence to camouflage a lack of commitment by both government leadership and workplace leaders to include persons with disabilities in the workplace. It further appears that there is a lack of understanding of what disability is, which results in workplace leaders utilising the defence of unjustifiable hardship. This justification has also created confusion at international level (as explored in the *Jungelin* case above). In this context, one study discovered that employers are not knowledgeable about the “cost of making reasonable adjustments for disability.”¹²⁸⁰ As a result, “there were circumstances where a person with disability was the best candidate for a job; they were excluded because of an assumption about the cost of disability inclusions to the organisation.”¹²⁸¹ Additionally, among barriers towards reasonable accommodation for persons with disabilities is the lack of understanding of disability.¹²⁸² Consequently, it is submitted that the defence of unjustifiable hardship and lack of understanding of disability contributes towards employers not effectively and reasonably accommodating persons with disabilities.

Similarly, it appears that employers do not understand the concept of reasonable accommodation and what is expected of them when accommodating persons with disabilities. Employers are required to view each disability case in its individual context in order to compensate for the actual limitations of a particular employee and to promote the employment and inclusion of that specific person with a disability. Unfortunately, the EEA does not provide

¹²⁷⁷ item 6.11 of the Disability Code. Item 6.12 defines unjustifiable hardship as “action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business”.

¹²⁷⁸ See *Standard Bank of South Africa v Commission for Conciliation, Mediation & Arbitration & others* note 744 (above) paragraph 99 where the court said that no hard and fast rule can be set as to what constitutes undue hardship. Each case has to be determined on its own facts. Consequently, it is not a hard and fast rule that hiring two people instead of one, hiring an assistant for the disabled employee or creating a post when a vacancy does not exist, will amount to undue hardship.

¹²⁷⁹ item 6.12 of the Disability Code.

¹²⁸⁰ S Darcy, T Taylor & J Green ‘But I can do the job: examining disability employment practice through human rights complaints cases’ (2016) 31(9) *Disability & Society* 1259.

¹²⁸¹ Darcy, Taylor & Green note 1279 (above) 1259.

¹²⁸² Jakovljevic & Buckley note 126 (above) 60.

adequate clarity on how employers should assess each case before resorting to the defence of unjustifiable hardship. In addition, there are no monitoring mechanisms in place to ensure that employers accommodate persons with disabilities in existing positions across occupational levels. It is for these reasons that this study advocates, among others, for the proper adoption of disability legislation in South Africa. This study argues that disability is a human rights issue. Ultimately, persons with disabilities must be accommodated in the workplace, and an employer will, therefore, before resorting to the defence of undue hardship, have to produce substantial evidence to prove that the situation of a particular employee with disabilities cannot be accommodated.

While the idea by the legislature may have been good, taking into consideration that there may be employers who may genuinely not be able to accommodate persons with disabilities, this justification has unintended consequences and is open to abuse by employers. It is submitted that this concept needs to be reviewed in order to ensure that persons with disabilities are not discriminated against in the workplace. Having said that, this justification could be used for its intended purpose in the workplace if workplace leaders have demonstrated commitment and understanding of disability. Thus, this study will recommend a transformational leadership model designed to ensure dynamic commitment from leaders to guarantee disability inclusion and effective implementation of disability policies in the workplace.

The accommodation must be reasonable and the courts have said that an employer must comply with its obligation under the Disability Code to explore how an employee's disability can be accommodated.¹²⁸³ The employer can only escape this obligation if it is shown that the employee demands an accommodation that is not reasonable or if the accommodation, even if reasonable, cannot be provided due to unjustifiable hardship to the employer. The EEA therefore remains, as per Bhabha, a transformational instrument that advocates for equality welfare of persons with disabilities.¹²⁸⁴ In this regard, the South African courts have explored the EEA, particularly on reasonable accommodation for persons with disabilities. In *Standard Bank of South Africa v Commission for Conciliation, Mediation & Arbitration & others*¹²⁸⁵

¹²⁸³ See *Smith v Kit Kat Group (Pty) Ltd* n 811 (above) where the court at paragraph 58 said that “what the respondent needed to do was to have conducted a proper incapacity investigation into what consequences this speech impediment would have on the applicant's ability to discharge his duties. The respondent needed to properly and objectively assess to what extent the applicant's ability to interact with fellow employees or suppliers was impacted upon (the applicant had little dealings with customers). Further, and if there was an impact, it needed to be explored how the applicant could possibly be accommodated”.

¹²⁸⁴ Bhabha note 45 (above) 221.

¹²⁸⁵ note 744 (above) paragraph 78.

(*Standard Bank*) the court said that the EEA emphasises the adaptation referred in the LRA and expatiates on ways of accommodating people with disabilities. In this regard the court found:

“Consequently, if an employer fails reasonably to accommodate an employee with disabilities, the dismissal of that employee is not merely unfair but automatically unfair. An employer who unreasonably refuses to make any accommodation that falls short of unjustified hardship, or refuses to give reasons for not making an accommodation is irrational.”¹²⁸⁶

In *Independent Municipal & Allied Workers Union & another v City of Cape Town*¹²⁸⁷ (*IMAWU*) the court underscores the need for individual consideration in “cases where the employer seeks to differentiate on health grounds in an employment policy or practice.” Referring to the EEA and the need for accommodation to create a diverse workforce, the court held that:

“The purpose of the EEA is to achieve equity in the workplace by, inter alia, promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. The Act provides that it must be interpreted in compliance with the Constitution and so as to give effect to its purpose. Equality lies at the heart of the Constitution and aims to ensure that we achieve a diverse workforce with opportunities for all, including diabetics, to pursue their preferred calling.”¹²⁸⁸

The Labour Appeal Court, in considering an alleged automatically unfair dismissal based on section 187(1)(f) of the LRA, in *New Way Motor & Diesel Engineering v Marsland*¹²⁸⁹ (*Marsland*) held that “arbitrary ground” in section 187(1)(f) must be considered to have the same meaning as an unlisted ground in section 9(3) of the Constitution and in section 6 of the EEA. Consequently, the EEA is an important instrument for persons with disabilities as it endeavours to address historical segregation of persons with disabilities in the workplace due to misconception and stigmatisation by society.

In *National Education Health & Allied Workers Union on behalf of Lucas and Department of Health (Western Cape)*¹²⁹⁰ (*Lucas*) the arbitrator, in dealing with the dismissal of an injured employee under the LRA, adopted a purposive approach. On the basis that the objective of both the LRA and EEA “is to promote procedural and substantive fairness in relation to ‘people with disabilities’ and to encourage employers to keep people with disabilities in employment if these

¹²⁸⁶ *Standard Bank* note 744 (above) paragraph 80.

¹²⁸⁷ note 865 (above) paragraph 112.

¹²⁸⁸ *IMAWU* note 865 (above) paragraph 115.

¹²⁸⁹ note 774 (above) paragraph 24.

¹²⁹⁰ (2004) 25 *ILJ* 2091 (BCA) paragraph 28.

can reasonably be accommodated”,¹²⁹¹ the arbitrator found that “the general concept of fairness requires an employer to consider whether a particular employee is ‘a person with disabilities’ under the EEA in determining if there is sufficient valid and fair reason to terminate employment”.¹²⁹² This pertained even though the employee had not based her claim on her “status of person with a disability” in terms of the EEA.

In addition to the debate on the concept of reasonable accommodation explored above, views have been expressed on the definition of disability for the purpose of affirmative action versus for the purpose of anti-discrimination. One of the challenges is that disability is not defined in the Constitution or the EEA. In this regard, Ngwena argues that the EEA definition of persons with disabilities is too legalistic and does not adequately explore what is expected under the definition of disability.¹²⁹³ He further argues that the elements that constitute the definition require a critical analysis before they can be implemented.¹²⁹⁴ Ngwena continues that “the novelty of disability as a discrimination or affirmative action issue in South African law assures that until an appreciable body of indigenous case law has been developed, courts will essentially be charting a new course when asked to adjudicate on issues at the intersection between disability and equality”.¹²⁹⁵

Ngwena is of the view that for the definition in the EEA to be effective (encompassing both the affirmative action and anti-discrimination concepts), it must take into consideration the social aspect of disability.¹²⁹⁶ He further asserts that for one to understand and properly define and interpret the concept of disability, both the medical and the social model of disability must be used as they both form the basis of disability.¹²⁹⁷ Ultimately, it is argued that the EEA must take into consideration both medical and social models in order to ensure effective protection of persons with disabilities in the workplace.

It can therefore be said that the EEA provides transformative provisions to guarantee inclusion and advancement of persons with disabilities in the workplace. However, compliance remains a challenge. In addition to the SAHRC and the CEE, the EEA gives authority to labour

¹²⁹¹ Lucas note 1290 (above) paragraph 28.

¹²⁹² Lucas note 1290 (above) paragraph 28.

¹²⁹³ C Ngwena ‘Deconstructing the definition of “disability” under the Employment Equity Act: Social deconstruction’ (2006) 22 *South African Journal on Human Rights* 614.

¹²⁹⁴ Ngwena note 1293 (above) 614.

¹²⁹⁵ Ngwena note 1293 (above) 615.

¹²⁹⁶ Ngwena note 1293 (above) 615.

¹²⁹⁷ Ngwena note 575 (above) 117.

inspectors to “promote, monitor and enforce compliance with employment law by... advising employees and employers of their rights and obligations in terms of any employment” law and endeavouring to secure compliance by obtaining undertakings or issuing compliance orders.¹²⁹⁸ It is argued that there are existing institutions, as discussed above that can be utilised to measure implementation of disability policies provided there is substantial commitment from government and enough capacity and resources are allocated to the task. Such action will be a step in the right direction towards realisation of equity in the workplace thereby complying with international and regional instruments on disability.

4.5.3 Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans

As indicated in chapter one, the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans (EE Code) “represents the critical link between the current workforce profile and possible barriers in employment policies and procedures, and the implementation of remedial steps to ultimately result in employment equity in the workplace”.¹²⁹⁹ The plan indicates a designated employer’s employment equity execution agenda.¹³⁰⁰ The EEA has designated employers to design and implement plans that will achieve reasonable advancement towards employment equity in the workplace.¹³⁰¹

Persons with disabilities fall within the designated group in terms of section 1 of the EEA. It is therefore crucial for employers to prioritise disability equity in their employment equity plans. An employment equity plan is critical for persons with disabilities in the workplace. The accommodation of persons with disabilities should begin during the manpower planning process when an organisation is forecasting its future recruitment needs. Those recruitment needs form part of the EE plan which is submitted to the Department of Labour as a commitment by the employer to achieve employment equity in its workplace. If persons with disabilities are included in the EE plan, the employer is obliged to implement the adopted plan as the implementation of the plan is monitored by the Department of Labour and there are penalties for failure to implement such plan. Therefore, workplaces need to include persons with disabilities during that process in order to ensure inclusion of persons with disabilities across occupational levels.

¹²⁹⁸ section 64(1)(a) and (d) of the BCEA.

¹²⁹⁹ item 4.2 of the EE Code.

¹³⁰⁰ item 4.1 of the EE Code.

¹³⁰¹ section 20(1) of the EEA.

Unfortunately, in practice there are no monitoring mechanisms in place to ensure that employers accommodate persons with disabilities in existing positions across occupational levels. In other words, there are no monitoring mechanisms to ensure that persons with disabilities are included during the planning phase. As a result, they are left out of the process. It further appears that the Department of Labour is not robust in holding workplaces accountable for non-compliance with EE plans. Once organisations have provided justification for non-compliance, there is no thorough interrogation by the department of the reasons for those justification. Having said that, the effective implementation of EE plans can only be realised if workplace leaders are committed to the inclusion of persons with disabilities in the workplace. It is therefore important to have committed leadership that can be robust in implementing their plan and not deviate from it so as to ensure transformation in the workplace.

4.5.4 Code of Good Practice on the Employment of Persons with Disabilities

The Code of Good Practice on the Employment of Persons with Disabilities (the Disability Code) is “part of a broader equality agenda for persons with disabilities to have their rights recognised in the labour market where they experience high levels of unemployment and often remain in low status or earn lower than average remuneration”.¹³⁰² The Disability Code is particularly significant as it highlights that disability, being a natural part of human experience, does not take away the rights of individuals to participate and contribute in the employment sector.¹³⁰³ In this regard, the Code highlights the importance of reasonable accommodation of persons with disabilities to ensure that they contribute meaningfully to the country at large. The Code attempts to assure society that persons with disabilities can contribute meaningfully to the economy provided that they are given opportunities and are reasonably accommodated.¹³⁰⁴

The aim of the Code is, inter alia, to safeguard persons with disabilities against any form of discrimination in the workplace and to mandate employers to execute positive measures to redress discrimination.¹³⁰⁵ It further requires employers to protect, respect and promote the rights of persons with disabilities, particularly the right to dignity in relation to work and employment.¹³⁰⁶ The Code mandates employers to uphold the rights of persons with

¹³⁰² item 1 of the Disability Code.

¹³⁰³ item 1 of the Disability Code.

¹³⁰⁴ item 1 of the Disability Code.

¹³⁰⁵ item 2.1 of the Disability Code.

¹³⁰⁶ item 2.5 of the Disability Code.

disabilities.¹³⁰⁷ The implementation of the Code requires an individualistic approach taking into consideration the uniqueness of each individual and the nature of his or her disability.¹³⁰⁸ Among the key guiding principles of the Code are “human rights and respect for inherent dignity; ... [i]ndependence and autonomy of individuals; ... [n]on-discrimination; ... [e]ffective participation and inclusion in society; ... [r]espect for difference and diversity; ... [e]quality of opportunity ... [and] [a]ccessibility”.¹³⁰⁹ Consequently, the Code is founded on the principles of human rights and equality, and to safeguard persons with disabilities against discrimination in the workplace.

The Code requires reasonable accommodation for persons with disabilities. The aspect of reasonable accommodation was extensively dealt with in chapter three. Hence for the purposes of this section, it will only be briefly explored, particularly on the aspects pertinent to reasonable accommodation and effective implementation of disability related legislation. The Code highlights the need for employers reasonably to accommodate the needs of persons with disabilities. In this context, the purpose of reasonable accommodation is to put measures in place to assist individuals who may have any impairment to be able to perform the “essential functions of a job.”¹³¹⁰

Additionally, “[e]mployers must assess and adopt effective measures, both in terms of cost and quality that is consistent with removing the barriers to perform the job and to enjoy equal access to the benefits and opportunities of employment”.¹³¹¹ It should be noted that “[t]he employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business of the employer”.¹³¹² I have dealt with this aspect above under the EEA and the arguments advanced are similarly applicable in this section. The lack of political will and leadership commitment is an obstacle to equal access to the benefits and opportunities of employment despite the fact that the Code obligates the leadership of employers to guarantee its implementation. In this regard, the Code postulates that the “responsibility for overseeing the implementation of the Code must be assigned to one or more of the senior manager(s) and must ... [b]e included in the performance contract of the senior manager(s) [and] [b]e treated seriously and weighted accordingly in the performance

¹³⁰⁷ item 3.1 of the Disability Code.

¹³⁰⁸ item 3.2 of the Disability Code.

¹³⁰⁹ item 4(a), (b), (c), (d), (e), (f) and (g) of the Disability Code.

¹³¹⁰ item 6.1 of the Disability Code.

¹³¹¹ item 6.2 of the Disability Code.

¹³¹² item 6.11 of the Disability Code.

contract of the senior manager(s) concerned”.¹³¹³ Thus, the practical implementation of the Code and the EEA unquestionably lies with the leadership of the employer.

It is argued that there should be an independent review of senior leaders’ and operational managers’ performance contracts in the public sector to ensure that they are adequately weighted when it comes to implementation of the Disability Code. This will ensure commitment from leaders to include persons with disabilities in EE plans thereby achieving equity in the workplace. The challenge, however, is that the Code is merely a guide for employers and employees on promoting equal opportunities and fair treatment for persons with disabilities,¹³¹⁴ “it is neither an authoritative summary of the law, nor does it create additional rights and obligations.”¹³¹⁵ Employers may therefore deviate from the Code which leads to non-compliance with the EEA. Consequently, it is necessary to have committed leadership that fosters comprehensiveness to address inequalities. It is argued that transformational leadership may be utilised to safeguard the rights of persons with disabilities in the workplace.

4.5.5 Labour Relations Act

The Labour Relations Act (LRA)¹³¹⁶ was enacted “to advance economic development, social justice, labour peace and democratisation of the workplace by fulfilling the primary objects of this Act, which are ... to give effect to and regulate the fundamental rights conferred by section 23 of the Constitution ... [and] to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation”.¹³¹⁷ The LRA requires international law to be taken into consideration by any persons interpreting its provisions. It provides that “[a]ny person applying this Act must interpret its provisions ... to give effect to its primary objects; ... in compliance with the Constitution; and ... in compliance with the public international law obligations of the Republic”.¹³¹⁸

The LRA does not define persons with disabilities, nor does it deal with disability at length. It does, however, stipulates in section 187 that a “dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for dismissal is ... that the employer unfairly discriminated against an employee directly or indirectly, on

¹³¹³ item 18 of the Disability Code.

¹³¹⁴ item 2.2 of the Disability Code

¹³¹⁵ item 3.1 of the Disability Code.

¹³¹⁶ Act 66 of 1995.

¹³¹⁷ section 1(a)-(b) of the LRA.

¹³¹⁸ section 3(a), (b) and (c) of the LRA.

any arbitrary ground, including ... disability".¹³¹⁹ The LRA therefore protects employees against discrimination on the grounds of disability in relation to dismissals.¹³²⁰ In addition to automatically unfair dismissals, the LRA also regulates the fairness of dismissals based on incapacity,¹³²¹ the provision being explicated in the provisions dealing with incapacity: ill health or injury in the Code of Good Practice: Dismissal.¹³²² Christianson summarises the provisions governing a dismissal based on incapacity as follows:

“A dismissal for incapacity may be fair if the employer has a valid and fair reason for dismissal and if the required procedures have been followed. This means that the employer must have investigated the extent and nature of the incapacity or injury and all alternatives short of dismissal, including whether or not it is possible to adapt the duties of the employee or to accommodate the employee's disability.”¹³²³

The importance of this provision is that an employer dealing with the dismissal of an employee with a disability in terms of the LRA must follow the provisions in the Code of Good Practice: Dismissal in relation to the accommodation of such employee to ensure that the dismissal is fair. A dismissal of an employee purely because of disability and not the employee's performance will constitute an automatically unfair dismissal which has severe consequences for the employer. Consequently, the LRA safeguards persons with disabilities against unfair dismissal.

4.5.6 Technical Assistance Guidelines on the Employment of Persons with Disabilities

The *Technical Assistance Guidelines on the Employment of Persons with Disabilities (TAG)* are intended to complement the Disability Code published in November 2015 to assist with the practical implementation of aspects of the EEA relating to the employment of persons with disabilities in the workplace. The *TAG* build on the Disability Code “to set out practical guidelines and examples for employers, employees and trade unions on how to promote equality, diversity and fair treatment in employment through the elimination of unfair discrimination.”¹³²⁴ The *TAG* are intended to help employers to understand their obligation to implement positive measures to ensure disability inclusion in the workplace.¹³²⁵

¹³¹⁹ section 187(1)(f) of the LRA.

¹³²⁰ Given that the EEA does not apply where a matter is covered by the LRA, unfairly discriminatory dismissals fall outside the ambit of the EEA and must be dealt with under the LRA.

¹³²¹ section 188(1)(a) of the LRA.

¹³²² item 10 of schedule 8 Code of Good Practice: Dismissal.

¹³²³ M Christianson ‘Incapacity and disability: A retrospective and prospective overview of the past 25 years’ (2004) 25 *Industrial Law Journal* 889.

¹³²⁴ foreword of the *TAG*.

¹³²⁵ Item 2.3.1 of the *TAG* states that the guidelines aim is to assist employer to understand their “obligation to implement non-discrimination and affirmative action measures in respect of persons with disabilities in the

The TAG are designed to be utilised as a practical guide for information and advice purposes to employees, employers, trade unions and organisations specialising in disability affairs on issues of the implementation of the EEA and Disability Code.¹³²⁶ The TAG were issued “in terms of section 54(1)(a) of the Employment Equity Act, No. 55 of 1998 as amended and is based on the Constitutional principle that no one may unfairly discriminate against a person on the grounds of disability -- section 9(3) of the Constitution Act, No. 108 of 1996”.¹³²⁷ The TAG have similar key guiding principles to those in the Disability Code discussed above in line with article 3 on general principles of the UN CRPD. They were developed taking onto consideration various international and national instruments on disability in order to promote and protect human rights.¹³²⁸

The TAG place the responsibility on the senior leadership of an organisation to ensure adequate implementation of the guidelines and to safeguard persons with disabilities in the workplace. They state that “responsibility for overseeing the elimination of unfair discrimination and the implementation of affirmative action measures for the equitable representation of persons with disabilities across all occupational levels must be assigned to one or more senior managers in the workplace”.¹³²⁹ Organisations must “[d]esign and implement a workplace monitoring and evaluation system that includes strategies to address the elimination of unfair discrimination and the under-representation of Persons with Disabilities across all occupational levels in the workplace”.¹³³⁰

Therefore, it can be said that the responsibility to safeguard persons with disabilities in the workplace manifestly lies with organisational leadership. The abovementioned policies and legislation were designed to comply with the international obligation to ensure equality for all, justice and fairness in society. The challenge, however, is that persons with disabilities are still marginalised despite these domestic and international legislative frameworks on disability. It appears that operationally workplace leaders do not have monitoring and evaluation systems that includes strategies to address the elimination of unfair discrimination against persons with disabilities. This lacuna was identified by South Africa in its report to the UN Committee on

workplace” and “[p]ractical ways to move forward that are relevant to their business and that ensure the application of non-discrimination and affirmative action measures for potential and existing employees with disabilities”.

¹³²⁶ item 3.1 of the TAG.

¹³²⁷ item 4.1 of the TAG.

¹³²⁸ In this regard, see item 4.3 of the TAG dealing with international best practice and experience.

¹³²⁹ item 18.1 of the TAG.

¹³³⁰ item 18.2 of the TAG.

Disability explored above. To repeat, it is apparent from the international instruments and legislation discussed above that effective implementation of disability laws requires leadership commitment.

Addressing impediments faced by persons with disabilities requires leaders who ascribe to transformation. The international instruments and domestic laws were designed to guarantee transformation in society, and, for employers to achieve disability equity in the workplace in line with international obligations, transformational leadership may be a solution. Employers needs to adopt a transformational leadership style to address various injustices of the past including disability discrimination in the workplace.

4.5.7 Comparative lessons from other African jurisdictions

South Africa is experiencing the same challenges as other countries in the region in relation to compliance with disability laws. In Namibia, the National Disability Council Act 26 of 2004 (NDCA) establishes a national disability council under section 2 whose function is, among others, to monitor the implementation of the National Policy on Disability and take all necessary steps in order to improve the situation of persons with disabilities in Namibia.¹³³¹ The National Policy on Disability which is a schedule to the NDCA provide strategies for implementation which include legislation, financing the execution of the policy and inclusion of aspects of disability in all relevant policymaking and national planning activities.¹³³² Consequently, there are policies and a legal framework designed to ensure equity and inclusion of persons with disabilities in Namibia; however implementation and monitoring mechanisms, commitment from government on disability inclusion and ambiguous policy strategies hinder effective implementation of the said policy framework.¹³³³ Additionally, the lack of legal accountability for failing to implement disability policies is a major challenge contributing to non-compliance with disability inclusion in Namibia.¹³³⁴

Similarly in Zimbabwe, the Disabled Persons Act 22 of 2001 (DPA) states in its purpose provision that the legislation was enacted to make provision for the welfare and rehabilitation of disabled persons. Section 4 of the DPA establishes National Disability Board whose functions are listed in section 5 and include, among others, “to formulate and develop measures

¹³³¹ s 3(1)(a)(f) of the NDCA.

¹³³² items 4.1, 4.2 & 4.3 of the Policy.

¹³³³ T W Shumba & I Moodley ‘Implementation of disability policy framework in Namibia: A qualitative study’ (2018) 74 (1) *South African Journal of Physiotherapy* 11 doi: 10.4102/sajp. v74i1.400 accessed on 27 January 2019.

¹³³⁴ Shumba & Moodley note 1333 (above) 11.

and policies designed— to achieve equal opportunities for disabled persons by ensuring, so far as possible, that they obtain education and employment, participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services; and to enable disabled persons, so far as possible, to lead independent lives.”¹³³⁵ The board is further expected “to keep measures for the welfare and rehabilitation of disabled persons under constant review and to re-assess and evaluate those measures in the light of experience.”¹³³⁶ While there is specific legislation on disability, there is no administrative infrastructure to measure effective implementation of disability legislation in Zimbabwe.¹³³⁷ Consequently, implementation of the DPA is hindered due to the lack of commitment from government and the Disability Board. Without having to fully explore all other African disability policies and frameworks, it has been said that successful implementation of disability laws in Nigeria, Kenya, Uganda and Zambia has been hampered by lack of political will, inadequate national disability laws and lack of effective monitoring and implementation mechanisms to measure disability inclusion in the workplace.¹³³⁸

Consequently, it can be said that there is a lack of leadership commitment and political will in the continent to accommodate persons with disabilities. As Lord and Stein assert, “until political will is harnessed around disability issues at the national and regional levels, disability issues will remain marginal and without prioritisation”.¹³³⁹ Ultimately the African continent requires committed leaders who will take responsibility for inclusion of persons with disabilities in the workplace. In addition, enforcement and monitoring mechanism must be strengthened to ensure effective implementation of disability laws in the workplace.

4.6 Role of Transformational Leadership on the Legislative and Policy Framework for Persons with Disabilities

The literature on transformational leadership was extensively explored in chapter three. In this regard, this section reviews the literature and examines the role of transformational leadership in achieving the international obligation of the state to accomplish parity in the workplace, particularly for persons with disabilities. It is argued that transformational leadership may play

¹³³⁵ s 5 (1) (b) (i) (ii) of the DPA.

¹³³⁶ s 5 (1) (d) of the DPA.

¹³³⁷ E Mandipa ‘A critical analysis of the legal and institutional frameworks for the realisation of the rights of persons with disabilities in Zimbabwe’ (2013) 1 *African Disability Rights Yearbook* 75.

¹³³⁸ M M M’Carthy & J D Grishow ‘Mental illness, stigma and disability rights in Ghana’ (2017) 5 *African Disability Rights Yearbook* 94.

¹³³⁹ J Lord & M A Stein ‘Prospects and practices for CRPD implementation in Africa’ (2013) 1 *African Disability Rights Yearbook* 112.

a critical role in the implementation of the legislative and policy framework for persons with disabilities.

Sheshi and Kercini assert that transformational leadership was intended to transform individuals and workplaces “to change them in mind and heart, enlarge vision, insight, and understand, clarify purpose, make behavior congruent with beliefs, principles, or values, and bring about changes that are permanent, self-perpetuating and momentum building”.¹³⁴⁰ As explored in the Literature Review, transformational leaders advocate for human rights protection, equality and justice which are required by the legislative framework. Sawitri and Wahyuni assert that transformational leadership emphasises the transformative environment and ascribes to the notions of liberty, fairness, parity, peace and humanism.¹³⁴¹

Transformational leaders are of particular importance to the implementation of and compliance with international law, particularly for persons with disabilities, as they rely on an individualistic approach, among others, to transform individuals and workplaces. Transformational leaders are further relevant for both employers and employees because of their meaningful influence on workplace outcomes.¹³⁴² Transformational leaders do not focus only on workplace needs and growth but also on caring about employee ambitions.¹³⁴³ In other words a transformational leader acknowledges individual diversities in terms of needs and abilities and considers individual needs as part of workplace transformation.

Transformational leaders, according to Choi et al, provide individual consideration by regarding employees as individuals rather than collectively, and recognising the diverse individual necessities, capabilities and needs.¹³⁴⁴ Yaslioglu and Selenay Erden assert that transformational leaders can either be directive or supportive in the sense that they provide direct support to employees’ needs or collective support to employees in line with the organisational mission and goals.¹³⁴⁵ Abdullah and Varatharajoo hold that transformational

¹³⁴⁰ A Sheshi & D Kercini ‘The role of transactional, transformational and participative leadership in performance of SME’s in Albania’ (2017) special edition *Albanian Journal of Agricultural Sciences* 286.

¹³⁴¹ H Sawitri & S Wahyuni ‘Readiness to change in the public sector’ (2018) 19 (1) *International Journal of Business and Society* 260.

¹³⁴² Y Wang, Y Zheng & Y Zhu ‘How transformational leadership influences employee voice behavior: The roles of psychological capital and organizational identification’ (2018) 46 (2) *Social Behavior and Personality: An International Journal* 314.

¹³⁴³ Wang, Zheng & Zhu note 1342 (above) 314.

¹³⁴⁴ S Choi, K Kim & S Kang ‘Effects of transformational and shared leadership styles on employees’ perception of team effectiveness’ (2017) 45 (3) *Social Behavior and Personality: An International Journal* 379.

¹³⁴⁵ M Yaslioglu & N Selenay Erden ‘Transformational leaders in action: Theory has been there, but what about practice?’ (2018) XV (1) *The IUP Journal of Business Strategy* 44.

leaders are individually considerate leaders who take cognisance of the social needs of employees.¹³⁴⁶ It can be concluded that transformational leaders are versatile; and their versatility goes beyond providing strategic direction to being able to connect with employees at all levels to ensure that their individual needs are accommodated.

Wang et al assert that transformational leadership is concerned about transformation and is considered to be fundamental for workplace transformational change.¹³⁴⁷ Pasha et al argue that transformational leaders are adaptive and accommodating which makes them more successful in discovering appropriate strategies to deal with workplace transformation.¹³⁴⁸ They further argue that transformational leaders have the potential to improve affirmative transformation in the workplace as they are champions of change.¹³⁴⁹ Consequently, transformational leaders may be necessary to safeguard and guarantee the rights of persons with disabilities in line with international and domestic laws.

The above discussion on transformational leadership talks to the needs of the various international human rights instruments and domestic laws on disability. For example, the UNCESC and the CRPD obligate the state to take measures to enable persons with disabilities to overcome disadvantages in the workplace. Both international and domestic laws on disability require individualised consideration for persons with disabilities in the workplace. The ILO Code of Practice on Managing Disability requires employers to prioritise disability affairs. It can be concluded that both international and domestic laws emphasise individualised consideration in order reasonably to accommodate persons with disabilities in the workplace.

It is argued that among the characteristics of transformational leaders is individual support for employees. Gyanchandani asserts that the individualistic approach applies when transformational leaders attend to employee needs and attempt to develop the potential capacity of employees.¹³⁵⁰ Tabbasi et al assert that transformational leaders assist individuals to reach their full potential and use their abilities to transform and adapt in the workplace.¹³⁵¹ According

¹³⁴⁶ Q Abdullah & K Varatharajoo 'Transformational leadership and its functionality in arts organization' (2017) 18 *International Journal of Business and Society* 712.

¹³⁴⁷ Wang, Zheng & Zhu note 1342 (above) 314.

¹³⁴⁸ O Pasha, T Poister, B Wright & J Thomas 'Transformational leadership and mission valence of employees: The varying effects by organisational level' (2017) 40 (4) *Public Performance and Management Review* 723.

¹³⁴⁹ Pasha, Poister, Wright & Thomas note 1348 (above) 723.

¹³⁵⁰ R Gyanchandani 'The effect of transformational leadership style on team performance in IT sector' (2017) XI (3) *IUP Journal of Soft Skills* 32.

¹³⁵¹ A Tabassi, K Roufehaei, A Abu Bakar & N Yusof 'Linking team condition and team performance: A transformational leadership approach' (2017) 48 (2) *Project Management Journal* 26.

to Anderson and Sun there is an indication that transformational leadership might be more effective in the government sector (public) than in the commercial sector (private).¹³⁵² Thus, a transformational leader may assist in ensuring that persons with disabilities are reasonably accommodated in the public sector, thereby ensuring compliance with international instruments as well as domestic laws on disability.

4.7 Conclusion

The purpose of international law is to set standards that are binding on state parties to safeguard individual human rights, particularly the right to equality and dignity. State parties must therefore use international law as a guideline when developing their national laws and policies. The international and regional instruments as well as domestic laws discussed above provide wide scope for different interpretations of the rights to human dignity and equality for persons with disabilities in the workplace. It is asserted that compliance with the obligations imposed by international law requires committed and profound leaders who understand that people are unique and who ascribe to the idea of transformation and social justice. The assertion is that leaders in the public sector are expected to be transformational in line with the Constitution and international human rights law.

In summary, the above discussion has demonstrated that disability is a human rights issue. South Africa is party to various international and regional law instruments that require advancement of human rights, equality and freedom at the domestic level. While there is a commitment on paper from the South African government to achieve disability equity in the workplace, the aforesaid instruments are not effectively implemented due mainly to lack of political will and commitment by government and workplace leaders.

Most international and regional human rights instruments are not incorporated into law in South Africa. Consequently, they are not binding on the state. This perpetuates the culture of non-compliance with international laws and non-implementation of domestic laws. There are no or only ineffectual monitoring mechanisms to ensure effective implementation of disability laws in the workplace. Furthermore, there are no mechanisms to measure the effectiveness of EE plans. The institutions designed to strengthen democracy (discussed above) do not have

¹³⁵² M H Anderson & P Y T Sun 'Reviewing leadership styles: Overlaps and the need for a new "full-range" theory' (2017) 19 *International Journal of Management Reviews* 79.

adequate resources to deal with disability inclusion and to measure implementation of disability policies in the workplace.

Labour inspectors are ineffective and fail to be robust when it comes to implementation of disability policies. In addition, South Africa does not have specific legislation governing disability and relies mainly on the provisions of the EEA and other employment related legislation. As a result there is no clarity on how disability inclusion should be achieved in the workplace taking into consideration that there are various types of disabilities which all require specific attention. The confusion on concepts such as disability, reasonable accommodation and what constitute unjustified hardship also adds to non-compliance with disability laws.

It appears that at regional level there is little commitment in neighbouring countries to disability inclusion, which may have an indirect psychological impact on the South African government's commitment to disability equity in the workplace. It is argued that without committed transformational leaders, international law obligations to protect persons with disabilities will not be achieved. All that is required is a change in mindset and genuine commitment to guarantee substantive equality for persons with disabilities in the workplace. Consequently, transformational leadership may be utilised by the national government and in the public sector to strengthen democracy in South Africa and to nurture workplace leaders to achieve the international law obligation of safeguarding and promoting the rights of persons with disabilities in the workplace. Having explored the legislative framework for transformational leadership, the next chapter will provide the narrative of the data obtained from the interviews.

CHAPTER FIVE

NARRATIVE OF THE DATA

5.1 Introduction

This chapter is a narrative of the data obtained from the interviews. A narrative approach refers to various methods of exploring the role of storytelling in interpreting responses from individuals and their social life.¹³⁵³ A narrative analysis has been described as “a collection of analytical approaches to analyse different aspects of the narrative”.¹³⁵⁴ At the heart of this approach is the importance and value of people’s narratives through their lived experiences.¹³⁵⁵ In addition, a narrative approach has been found to be valuable for disability studies.¹³⁵⁶ In this context it has been said that --

“narratives are important because bodily experience is deeply embedded in narrative. Narratives are projected from and inscribed into the body. Indeed, the body is a storyteller, and it is partly through the tales it tells that we may interpret, give meaning to and understand bodies”.¹³⁵⁷

Therefore, narratives are mostly and generally used to outline human experience.¹³⁵⁸ Ordinarily, narrated data is one of the best ways to answers the research question, aims and objectives of the study.¹³⁵⁹ Additionally, in narrative analysis, data is maintained within its recited context.¹³⁶⁰ In other words, the researcher must ensure that the data is narrated as per the participant’s words. Thus, it has been said that “narrative analysis may focus on extracts from interview transcripts, with each provide a short narrative about a related topic or incident in which the researcher is interested”.¹³⁶¹

Generally, there are two approaches used in qualitative narrative analysis, being thematic narrative analysis and structural narrative analysis.¹³⁶² Thematic narrative analysis is a qualitative research method that selects themes from a personal encounter “recorded in spoken

¹³⁵³ G Wong & M Breheny ‘Narrative analysis in health psychology: A guide for analysis’ (2018) 6 (1) *Health, Psychology and Behavioral Medicine* 245 doi: 10.1080/21642850.2018.1515017 accessed on 3 February 2019.

¹³⁵⁴ Saunders, Lewis & Thornhill note 220 (above) 600.

¹³⁵⁵ Wong & Breheny note 1353 (above) 246.

¹³⁵⁶ B Smith & A C Sparkes ‘Narrative and its potential contribution to disability studies’ (2008) 23 (1) *Disability and Society* 18 doi: 10.1080/09687590701725542 accessed on 3 February 2019.

¹³⁵⁷ Smith & Sparkes note 1356 (above) 18.

¹³⁵⁸ M Souto-Manning ‘Critical narrative analysis: The interplay of critical discourse and narrative analysis’ (2014) 27 (2) *International Journal of Qualitative Studies in Education* 162 doi: 10.1080/09518398.2012.737046.

¹³⁵⁹ Quinlan, Babin, Carr, Griffin & Zikmund note 239 (above) 339.

¹³⁶⁰ Saunders, Lewis & Thornhill note 220 (above) 601.

¹³⁶¹ Saunders, Lewis & Thornhill note 220 (above) 601.

¹³⁶² Saunders, Lewis & Thornhill note 220 (above) 601.

words, written text, and author/researcher selection that offers new opportunities and new insights".¹³⁶³ Put differently, it is a technique for classifying, examining and reporting themes in the data.¹³⁶⁴ It has been recognised as a pertinent strategy in narrative analysis.¹³⁶⁵ Thematic narrative analysis identifies logical themes within narratives.¹³⁶⁶ At the heart of such approach is the substance of the narrative rather than the way in which it is organised.¹³⁶⁷ Therefore, it can be said that the focus is on what the narrative is about rather than how it is created.

On the other hand, structural narrative analysis examines the method in which a narrative is measured.¹³⁶⁸ This approach, which was dominant in 1960s and 1970s, provided an initial scrutiny focusing mainly on the plan, how events came about, the role of the storyteller and individual characters as well as the intention of the narrative.¹³⁶⁹ In addition, the structural narrative analysis approach explores the use of language to determine its effect on a listener or audience.¹³⁷⁰ Therefore, structural narrative analysis focuses on how the narrative is constructed and the use of language rather than what it is about.¹³⁷¹

This approach has been criticised for mainly focusing on the construction of the narrative while disregarding the contexts of the transcripts.¹³⁷² It was for this reason that thematic narrative analysis was found to be useful and relevant in this study. It has been said that when reporting interviews, it is crucial for the researcher firstly to outline the research procedure, the relevancy of the research questions and how those questions are applicable to the use of the method.¹³⁷³ In addition, the researcher must not only report what emanated from interviews but also include some discussion and justify the data gathered during the interviews.¹³⁷⁴ Therefore, at this stage,

¹³⁶³ J A Ross & C Green 'Inside the experience of anorexia nervosa: A narrative thematic analysis' (2011) 11 (2) *Counselling and Psychotherapy Research* 114 doi: 10.1080/14733145.2010.486864 accessed on 2 February 2019.

¹³⁶⁴ V Braun & V Clarke 'Using thematic analysis in psychology' (2006) 3 (2) *Qualitative Research in Psychology* 79 doi: 10.1191/1478088706qp0630a accessed on 3 February 2019.

¹³⁶⁵ M Eklund & C Leufstadius 'Adding quality to day centre activities for people with psychiatric disabilities: Staff perceptions of an intervention' (2016) 23 (1) *Scandinavian Journal of Occupational Therapy* 16.

¹³⁶⁶ Saunders, Lewis & Thornhill note 220 (above) 601.

¹³⁶⁷ Saunders, Lewis & Thornhill note 220 (above) 601.

¹³⁶⁸ Saunders, Lewis & Thornhill note 220 (above) 603.

¹³⁶⁹ J Larty & E Hamilton 'Structural approaches to narrative analysis in entrepreneurship research: Exemplars from two researchers' (2011) 29 (3) *International Small Business Journal* 230.

¹³⁷⁰ Saunders, Lewis & Thornhill note 220 (above) 603.

¹³⁷¹ Saunders, Lewis & Thornhill note 220 (above) 603.

¹³⁷² Larty & Hamilton note 1369 (above) 230.

¹³⁷³ Alshenqeeti note 464 (above) 42.

¹³⁷⁴ Alshenqeeti note 464 (above) 42.

responses from the interviews can be directly quoted to provide valuable interpretation on the particular question.¹³⁷⁵

In this context, there were two groups that were interviewed: twelve (12) municipal leaders and five (5) employees with disabilities. These interviews were recorded. The audio recordings were transcribed verbatim. The transcripts were examined using thematic narrative analysis. As discussed above, thematic analysis is generally used in the qualitative research method because of its flexibility as it can be applied in different epistemological situations.¹³⁷⁶ The researcher wanted to gather the substance from the participants on the non-compliance with disability related legislation in the Municipality.

In addition, the researcher wanted to gather an in-depth understanding on why the Municipality is not effectively implementing disability laws. Ultimately, this approach assisted the researcher to discover how participants perceive what is happening in reality and to evaluate participants' narratives about their reality.¹³⁷⁷ Therefore thematic analysis was found to be useful as it developed and revealed a wealth of information about the participants' experiences on disability inclusion and implementation of disability laws in the Municipality.

For ease of reference and to understand the qualitative analysis process fully, the following figure indicates the process followed for the semi-structured interviews conducted with leaders and employees of the Municipality.

¹³⁷⁵ Alshenqeeti note 464 (above) 42.

¹³⁷⁶ D Roberts, P Chamberlain & P Delfabbro 'Women's experiences of the processes associated with the Family Court of Australia in the context of domestic violence: A thematic analysis' (2015) 22 (4) *Psychiatry, Psychology and Law* 603 doi: 10.1080/13218719.2014.960132 accessed on 2 February 2019.

¹³⁷⁷ Smith & Sparkes note 1356 (above) 19.

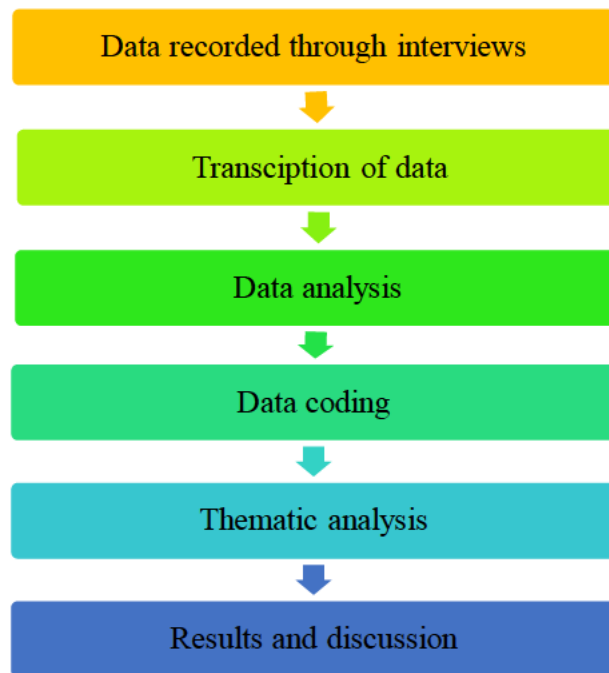


Figure 5.1 Data analysis process

The research question examines the role and effect of transformational leadership on the execution of disability laws in the Ethekwini Municipality. The aim is to analyse the role that can be played by transformational leadership and its impact in ensuring effective practical implementation of legislation relating to disability in the workplace. Among the objectives of this study is to assess senior leaders' levels of awareness of the role they should play as transformational leaders in accommodating persons with disabilities within the Municipality and to identify critical factors affecting the implementation of legislation that relates to aspects of disability within the Municipality. In addition, this study assesses the impact of transformational leadership on the implementation of the laws connected to disability within the Municipality. Therefore, the narrated data explored below mainly answers the aforesaid research question, aims and objectives.

This chapter is a summary report of what participants articulated during the interviews. It is a build-up to the subsequent chapter which will present the results and findings of the study focusing on thematic analysis and linking the results to the literature reviewed in chapter three. In this context, this chapter will identify some relevant quotes that are illustrative of particular themes. Consequently, this chapter is thematically organised as follows: firstly, the narrative of the data from the leaders is considered. Secondly, the narrative of the data from employees

with disabilities is explored. Finally, this chapter will conclude by providing a summary of the information that emanated from the participants.

5.2 Narrative of the Data: Leaders' Perspectives

Various leaders were interviewed based on their role in disability inclusion and transformation in the Municipality. Some of the leaders are more strategic and some are operational in relation to their job description. All leaders appeared to be genuine in their responses, were objective and showed no bias. They were all interested in the topic and willing to assist and share their experiences. The interview data was analysed and emanating from such analysis, different themes relating to non-implementation of disability related legislation in the Municipality were developed.

Leaders were engaged on various questions including their understanding of persons with disabilities. It was important to gauge their understanding of disability as they are entrusted to guarantee inclusion of persons with disabilities in the Municipality. Therefore they should have a broad understanding of what disability is as provided for in the legislation. Leaders shared various views on this concept. For example, L1 defined persons with disabilities as *“people who are abled differently”*. While L10 felt that *“persons with disabilities could be physical or otherwise which will prohibit in the work environment, will prohibit them or be perceived as prohibiting them from undertaking work duties that might be expected of a person for instance who does not have disabilities”*. L4 explained as follows: *“[M]y understanding is that someone who has physical or psychological disability that falls under the definition contained in the Act, something that is somewhere restricts their employment prospects or their day to day ability to function in the society.”* L5 said that *“persons with disabilities are people that have challenges, both physical and mental ... they are not like abled bodied, able minded -- so they are people with disabilities”*.

L3 was of the view that persons with disabilities *“are persons who are incapacitated in relation to the work that they are supposed to be doing”*. Whereas L7 said *“it is those people who has impairment, it may be temporal or permanent impairment of some sort, it may be physical or mental that they are suffering from and that impairment may play a role in how they behave in their normal lives and how they carry themselves including how they carry themselves in the workplace”*.

Judging from the responses, it can therefore be said that there are different interpretations by and some confusion from municipal leaders about the nature of a person with a disability. Most of the leaders appear not to have a broad understanding of persons with disabilities as provided for in the legislation and the Disability Code. Thus, the emerging theme from the aforesaid responses indicates a lack of understanding of the term “persons with disabilities”. In addition, it appears that stereotypical beliefs that persons with disabilities are people who are not able to function in the workplace is a challenge that continues to exist in the workplace, particularly from workplace leaders. A focus on the impairment and not on the ability of the person is noteworthy. This can be traced from some of the responses from the leaders. For instance, L2 articulated as follows: “[M]y understanding of persons with disabilities is that this is a group of people who because of their disabilities cannot be in a position to perform the jobs that are normally performed by an abled persons.” (Emphasis added.)

While L10 said that “persons with disabilities could be physical or otherwise which will prohibit in the work environment, will prohibit them or be perceived as prohibiting them from undertaking work duties that might be expected of a person for instance who does not have disabilities” (emphasis added). L3 for example as quoted above referred to persons with disabilities as “incapacitated” (emphasis added) persons. L3 continued to state that “if you don’t personalise people with disabilities then there seems to be insincerity to have those people in your surroundings”. In summary, leaders gave different views on the definition of persons with disabilities. From those definitions it became apparent that there were different perspectives on what constituted disability. In addition, stigma and stereotypical beliefs emerged as a theme in their responses. The wording highlighted above clearly indicates leaders’ stereotypical beliefs towards persons with disabilities.

It is apparent from the above responses that, for persons with disabilities to be included in the workplace, there must be profound change from both leaders and employees. It was therefore important to gauge the leaders’ understanding of transformational change in the workplace, in particular as it related to persons with disabilities. In this regard L9 said “*transformational change would be an improvement on the status quo on the historical position that people used to find themselves in*”. While L1 was of the view that “*it is about paradigm shift ... change the way you look at things*”. In addition, L1 was of the view that there is a lack of commitment to change from line management. L5 described transformational change as “*going from a current state to a desired state*” and that “*usually the desired state is one that is seen to be better, more*

encompassing and more reflective of our interaction with the environment or the environment itself". L3 described transformational change as: *"means that you are leaving a current state and going into a future state, without the option of reverting to the current state"*.

In addition, when asked about the readiness for change by municipal leaders to include persons with disabilities, L3 was of the view that *"from my experience, it is very small percentage that is ready to accommodate people with disabilities"*. L7 responded to the question as follows: *"transformational change is a paradigm shift, it is when we are moving from existing to the unknown"*. While L7 was of the view that *"to a certain extent"* municipal leaders are ready to change the environment to include persons with disabilities. L2 described transformational change as follows: *"I understand transformational change as a process where the environment is able to accommodate changes in a lot of processes and systems with a view to ensure that the delivery of whatever service is done differently from what it has always been."*

With regard to leaders themselves being ready to change the environment to include persons with disabilities, L2 felt that municipal leaders were *"relatively"* ready, adding that *"if you look at executive from deputy heads up to city manager, there is only one person with disability and for me really that is an indication of how much we care less about transforming the organisation to be able to accept and absorb people with disabilities"*. While L5 said that *"so maybe in some areas they are not ready yet"*. L3's view was that *"it is a very small percentage that is ready to accommodate people with disabilities"*. L4 responded by stating that *"I would say there are certainly aware, they certainly know they have to, but implementation is proving to be difficult and the environment, I would say is not necessary ready or conducive"*. Lastly, L11 replied by saying that *"they want to transform to meet the target, but whether they want to transform as per the legislation I am not sure"*.

Ultimately, emerging from the aforesaid responses is the recognition that changing the status quo is what transformational change entails. In addition, there must be a commitment to change by municipal leaders in order for transformational change to be realised. Most importantly, leaders themselves must be ready to bring about transformation for persons with disabilities. Therefore, it can be said that generally leaders understood transformational change as a way of changing the existing situation in the workplace to a future state that is inclusive of everyone in the workplace, but that in order to be successful there must be commitment to change by senior workplace leaders and leaders themselves must be ready for such change.

Another important aspect explored during interviews with leaders which is linked to transformational change is workplace culture. Workplace culture plays a crucial role especially when it comes to diversity and inclusion of persons with disabilities. Therefore, it was critical to get leaders' perspectives on the impact of transformational change, if any, on the culture and success of the organisation. In this regard, L2 was of the view that *"to be able to transform the organisation you need to change the organisational culture"*. However, L3 said that *"if there is transformational change, the culture is also affected by it"*. While L5 felt that the impact of transformational change on the culture of the organisation is *"tolerance and more embracing"*. L6 was of the view that transformational change *"improves climate"* thereby ensuring *"diversity"* where everyone is embraced. Thus, what dominated in the responses is that transformational change has a direct positive impact on the culture of the organisation.

Leaders further shared their views on various initiatives that are in place to guarantee disability inclusion. In general, leaders shared examples of the various initiatives that have been undertaken but the dilemma remains that such initiatives have not brought positive outcomes especially for persons with disabilities. For example, L2 said the following:

"So we have this programme where we take about 40 students with disabilities who have qualifications in different fields and then we put them into public admin kind of programme which is accredited so that they can get a certificate, but the certificate is not necessarily our ultimate objective, our objective is to expose them to this environment and also expose them to the opportunities that the city has. But as I indicated to you, the problem now is with regards to whether the units within the city are able to absorb these kids, that's the unfortunate part."

L2 said that while there have been some initiatives *"there needs to be synergy between what we need to do administratively and what the politicians see as being important, because they decide where resources go. So if they won't give you a budget for fixing up all your buildings for example to make them disabled friendly, but they want all the budgets to go to let's say RET, then you are going to have a challenge"*. While L10 said that *"there has been a lot of documentation particularly from Corporate HR which is where it needs to come from in terms of the disabilities etc. As I have mentioned I think we need more systems probably more work can be done on the systems"*. L8 said that *"what our senior leadership have done, they formed a Committee, we now have Employment Equity and Skills Development Committee which deals with mainly with persons with disabilities"*. L7 said that *"there are various initiatives that are being put in place. One of the initiatives is the establishment of disability forum ... however the question then would be are they working?"* L11 said that *"we have included in our adverts, we*

have disability workshops, we have disability days ... so I think we are doing something to attract them”.

Consequently, the responses indicate that while there are various initiatives on disability inclusion in the Municipality, such initiatives are not enough and not effective to accommodate persons with disabilities. Leadership commitment and political will emerge as obstacles hindering the positive outcomes that should emanate from disability initiatives developed by the Municipality.

Among the objectives of the study was to assess senior leadership’s level of awareness of the role they should play as transformational leaders in accommodating persons with disabilities within the Municipality. Therefore, it was crucial for the study to investigate municipal leaders’ understanding of transformational leadership and its characteristics. In this context, L2 said that a transformational leader *“must be an agent of change”*. While L1 felt that transformational leaders must be *“approachable and they must be enthusiastic”* adding that they should be *“visionary”*. L3 said that transformational leaders *“must be flexible, insightful and understand people, must keep the global picture in mind at all times”*. L4 was of the view that transformational leaders must have *“a vision that followers need to abide by”*.

L5 described transformational leaders as *“more radical than a normal leader”*, adding that *“they know that we have to get somewhere”*. Whereas L7 said that a transformational leader is *“open-minded, decisive and has got intrinsic motivational aspirations”*. L8 was of the view that a transformational leader is someone who *“embraces change”*. While L12 felt that a transformational leader *“has a good outlook and long term outlook”*. In addition to the aforesaid, leaders expressed their views on transformational leadership and human rights protection in the workplace. For instance, L10 said that a *“transformational leader is an idealist/ideal version of a human rights campaigner”*. L12 said that *“transformational leaders may be better placed to fast track and optimise how you are dealing with human rights and they will go beyond compliance”*. L4 felt that a *“transformational leader has to behave in a way that does not affect human rights”*. While L5 said that *“in my own experience transformational leaders embrace human rights in the constitution. For them it’s a given”*.

Emerging from the responses is the idea that a transformational leader is a visionary leader who ascribes to the promotion and protection of human rights. In addition, it emerged that a transformational leader embraces change in the workplace. It therefore appears that there is a

level of understanding by municipal leaders as to what transformational leadership generally entails.

In addition, leaders shared their views on the connection between transformational leadership, human rights and disability inclusion in the workplace. In this respect, L12 said that *“transformational leaders strive for inclusivity and involvement and creates the space for everyone as they value human potential”*. L5 was of the view that *“part of transforming things is actually transforming and embracing people with disabilities”*. Additionally, L6 said that a transformational leader ensures that the environment is conducive for everyone including persons with disabilities. While L11 said that a *“transformational leader will include fair discrimination to accommodate these individuals”*. L9 said that a transformational leader ensures that *“within job profile of the institution, people with disabilities are accommodated”*.

With regard to human rights and transformational leaders, L5 was of the view that *“transformational leaders embrace human rights in the Constitution”*. L11 said that *“human rights is part and parcel”* of transformational leadership. L12 said that *“transformational leaders may be better placed to fast track and optimise how you are dealing with human rights, and they will go beyond compliance”*. L9 made the following comments regarding the nexus between transformational leaders and human rights protection in the workplace: *“there is strong relationship because the non-transformational leaders are happy with the status quo.”* L8 felt that human rights and transformational leadership *“goes hand in hand”*. Therefore, based on the above responses, it appears that a transformational leader ensures that every employee’s needs are accommodated in the workplace including those of employees with disabilities. It further emerges that transformational leaders encourage and safeguard human rights in the workplace.

Pertinent to this study, the majority of leaders emphasised the need for leaders in the Municipality and the public sector to be transformational leaders. For example, L5 said that *“there should be transformational leadership at local government, it should start at the top. If our leaders are transformed we automatically, we get transformed and taken along with it as well. So leaders in local government should be transformational, but they must focus on getting the basics right at the same time”*. While L2 said that *“you cannot let go of transformational leadership as a leadership style, it has to be part of your ongoing strategy to change environment”*.

L3 felt that *“leadership in any environment should be a transformational leader because we are not living in a static world, we are living in a continuously changing world”*. L7’s sentiments were that leaders in the public sector must be transformational adding that municipal leaders *“are less likely aware that they need to be transformational leaders in a sense that as a leader, you need to have clearly articulated strategies which are your vehicles that will take you to the future”*. While L6 thought that *“there is a need for municipality leaders to be transformative leadership and run it at a strategic level”*. L10 responded as follows: *“[Y]ou have to be, you have to transform.”* Whereas L12 felt that transformational leadership is required both administratively and politically. In this regard L12 said: *“I think we need it more than ever. ... So I think you need transformational leadership on both sides.”* L9 said *“yah, I would say so because it is compulsory for leaders in local government to be developmental in their thinking, so you cannot be developmental unless you are transformative as well”*. While L11 said that *“you have to be, if you are not, get out, it is not for you”*.

Thus, these responses confirmed that transformational leadership must be at the centre if the Municipality wants to transform the environment and to implement disability related laws effectively. In addition, they confirm that transformational leadership is required to achieve disability inclusion in the Municipality. It further appears that transformational leadership will have an influence on leadership and political commitment to parity in the workplace. It can be said that there is general level of awareness from leaders that they should be transformational in order to change the environment to include persons with disabilities. What appears to be lacking is leadership commitment to include persons with disabilities in the Municipality.

At the heart of this thesis is an understanding of the obstacles hindering implementation of disability policies and legislation in the Municipality. Therefore, it was important for the researcher to hear the views of the leaders responsible for developing strategies and implementing disability policies in the Municipality on the challenges to effective implementation of disability laws. Various responses emanated from the leaders. For example, L1 said that *“stereotypes, socialisation ... willingness not there”*. L2 identified *“mindset shift, less will especially from executive [also shared by L8] and poor strategy formulation”* as hindrances to the implementation of disability related provisions. Disability is not a priority issue, instead *“service delivery is what drives Ethekewini Municipality”* according to L3. In addition, *“cultural and social barriers”* were identified by L3 as hindrances to effective implementation of disability policies. L7 said that *“political interference that is being received*

from our leadership impede the process of implementation". While L7, L9 and L12 raised the issue of *budget constraints*. In addition, L12 said that there was "*no policy on disability*" in the Municipality.

Additionally, responses indicated that, while there is awareness about disability inclusion in the Municipality through workshops and seminars, most leaders agreed that such sensitisation is not enough, there is no policy on disability and disability is not prioritised in the Municipality's IDP. It appears that the Municipality relies on its Employment Equity Plan as its policy. For instance, L12 said that "*I'm not sure that we actually have got a policy document on that ... generally for things to be successful you need to have the policy which creates an enabling environment*". With regard to disability being prioritised in the IDP, L1 said that "*I think it's spared, it's not specifically put up there*". While L4 said that "*I would not think so*". L5 said that "*I'm thinking plan five, it covers it but not enough*". L7 was of the view that "*it does make mention of it, when it comes to prioritising, I'm not too sure about that*". L12 responded by saying that "*there is a need to look at the relevancy of IDP to people particularly whether it's inclusive enough*". L12 concluded by saying that "*my gut feel is probably not doing enough*".

Thus, stigma, lack of political will, budget constraints and lack of commitment from municipal leaders emerged as impediments hindering effective implementation of legislation connected to disability in the Ethekwini Municipality. It further emerged that disability is not prioritised in the municipal IDP, which drives the day-to-day implementation of the key important development areas in the Municipality.

Despite the above, leaders generally believed that transformational leadership can influence implementation of workplace policies and strategies. For example, L2 said that a transformational leader "*is visionary and being visionary means that you have strategy at hand, you have a strategy that wants to achieve certain objectives*". While L3 said that "*yes it does ... transformational leaders are visionary leader who take the organisation forward*". Adding to that, L5 said "*definitely, because these transformational leaders will look past what is happening now, they know we have got to change our policies*". While L1 said that "*you are transformational in nature, you are able to accommodate, you are able to implement as well, you get your followers doing willingly, they are not like pushed to do things*". It is therefore evident that the leaders felt that transformational leaders are influential visionary leaders who desire to achieve particular objectives in the workplace. Transformational leaders are able to

balance situations in the workplace. By being visionary, transformational leaders influence implementation of disability policies and strategies. Of interest emerging from the above responses, it appears that the participants shared the view that there is a link between transformational leadership and visionary leadership.

Generally, the leaders were of the view that transformational leaders can develop strategies, including an effective change management plan, to guarantee inclusion of persons with disabilities in the workplace. For example, L5 said that *“they can create platforms for discourse, social cohesion initiatives and have development plans in place -- anything to do with change management”*. L8 said that *“we need to have policies”*. L7 was of the view that *“there must be strategy adopted and accountability for non-alignment with the strategy”*. While L4 said that *“transformational leadership need to have strategy, as priority and as a plan and it must be measured”*. L2 said that *“transformational leadership is linked to change management ... you need to have change management action plan in place”*. L1 said that *“people of Ethekekwini need change management”*.

Therefore, it appears that the leaders believe that transformational leadership can impact on the implementation of disability policies by developing effective change management plans, disability strategies and policies in the Municipality. Further details on the responses from leaders will be broadly dealt with in chapter six. What follows is the narrative of the data from employees with disabilities.

5.3 Narrative of the Data: Employees’ Perspectives

As indicated above, five employees with disabilities were interviewed to gauge their experience as employees working for the Municipality as they are directly affected by the topic under investigation. In addition, the rationale behind their being interviewed was to get their views on disability inclusion, equity and transformation in the Municipality. Furthermore, employees with disabilities were interviewed in order to confirm whether they shared the views expressed by municipal leaders. The interview data was analysed and emanating from such analysis, different themes relating to non-implementation of disability related legislation in the Municipality were developed. Employees with disabilities, having worked for the Municipality, shared their views on whether the environment is conducive to include persons with disabilities.

In this regard, E2 said that *“for me in a personal capacity, yes ... but from my experience of other people that I know with disabilities, very poor”*. While E1 said that *“in terms of buildings, some of the buildings are not friendly”*. E5 view was that *“from my view, I can say they are trying although most of the facilities doesn’t accommodate disabled people”*. E4 responded by saying: *“transformation has been very slow, there have been a lot of ideas passed around over the years but no work has been made of it”*. Adding to that, E3 said that *“it has not yet transformed even though our leaders within the Ethekwini Municipality they do want to cater for people with disabilities”*.

What emerged from these responses is that, while there has been some action to change the environment, the pace has been slow and the environment has not yet fully transformed to include persons with disabilities. This confirms the views shared by the leaders, as narrated above.

In addition, the employees shared their views on municipal leaders’ understanding of transformation and disability. It was important to hear from the employees themselves as they are directly affected by the topic under investigation. It became apparent from the responses that municipal leaders have not fully grasped the concept of disability. E1 said that *“if management can just understand that being disabled doesn’t stop you from excelling in what you are doing”*. E4 said *“no, no I actually think that management should I don’t know, can you workshop them to be more aware?”* adding that *“PWD’s are perceived time wasters”*. E3 was of the view that leaders lacked understanding of inclusion and transformation and that, while they created awareness, *“they want people with disabilities so that they will meet the targets in numbers”*.

Therefore, what emerged from the employees’ responses was that management failed to appreciate the real meaning and lacked an understanding of transformation and disability inclusion – it merely accommodated persons with disabilities because of legislative requirements. The perception was that leaders did not value persons with disabilities as people capable of performing the job. Additionally, stigma and stereotypes surfaced as challenges hindering transformation for persons with disabilities. It is important to reiterate that lack of understanding of persons with disabilities as well as stigma against persons with disabilities also emerged as obstacles during the interviews with the municipal leaders.

Employees further shared their views on whether the Municipality is taking adequate initiatives to support persons with disabilities. Since employees with disabilities are employed by the Municipality, they are in a better position to share their views as they have personally witnessed such initiatives and are ultimately affected by the research topic. In this context, E1 said that *“the only thing I have seen is celebrating the day”*. While E4 acknowledge that there are some initiatives, however *“transformation is not happening fast enough”*. E3 acknowledged that there are initiatives, but stated that there is a *“need to promote more awareness when it comes to supporting people with disabilities”*. E2 was of the view that the Municipality *“have met with disabled people, where they have said send us CV’s, we will make sure that it gets there”*. E5 said that *“with the learnership programme for disabled people, I can say that is the first initiative but that is not enough because that learnership programme does not mean a guaranteed employment”*.

Thus, it is apparent that while there are initiatives by the Municipality to support persons with disabilities, such initiatives are ineffective and more needs to be done to guarantee inclusion of persons with disabilities. Most of the leaders also indicated that, although there were initiatives, the challenge was their effectiveness. Thus, the responses of the employees corresponded with those of the leaders.

As this thesis is centred on the implementation of disability laws and policies in the Municipality, it was important to get the views of employees with disabilities on the effectiveness of municipal policies to accommodate persons with disabilities. E1 responded by asking the question: *“[D]o they have a policy for disabled persons? I haven’t seen one.”* While E5 said that *“except the Employment Equity policy, I don’t know any specific policy”*. E4 responded by asking the question: *“[I]s it effective, I don’t know honestly.”* Whereas E3 said *“no, no I will be honest”*. Finally, E2 said that *“the policy is there but not being practiced”*. It should be noted that E2 was referring to the equity plan when talking about policy. In this context E2 said that *“now I’m saying it is there because when they got the equity plan, the equity plan shows the demographics in terms of race, gender and disability”*.

Therefore, it appears that there is no specific policy dealing with disability in the Municipality. The Municipality relies exclusively on its Employment Equity Plan to deal with disability issues. In addition, the Employment Equity Plan itself is not effective. Therefore, the lack of a comprehensive policy on disability emerges as an impediment to the effective execution of disability related legislation in the workplace.

It was important to hear from the employees their views on what can be done to guarantee implementation of disability policies in the Municipality. In this regard, E1 was of the view that “*accessibility to buildings and giving equal opportunity to persons with disabilities*” were crucial, adding that persons with disabilities “*did not ask for that disability*”. E4 said that “*awareness and making people more aware that there are persons with disabilities that are able to work*”. E3 felt that “*Ethekwini Municipality should go out there to external organisations for people with disabilities where they need to do research on how to accommodate and bring awareness of people with disabilities*”.

Thus, accommodation and awareness about disability inclusion were highlighted as necessary for the effective implementation of disability policies in the Municipality. Further details emanating from interviews from employees will be discussed in chapter six.

5.4 Conclusion

In conclusion, it appears that persons with disabilities continue to face the challenges of stigmatisation and marginalisation and they experience this in different forms. The responses recorded from both the leaders and the employees who participated in this study reveal that there is still much that the leadership of the Municipality has to do to achieve the inclusion of persons with disabilities in all spheres and activities of the workplace. Both sets of participants concurred that the leadership of the Municipality has not demonstrated a robust approach to inclusion of persons with disabilities within the working environment; an approach which is essential to drive the strategy of disability inclusion.

Consequently, the leaders of the Municipality must adopt practical strategies that incorporate change management initiatives to turn around the current non-compliance with legislation enacted to uplift and include persons with disabilities in the workplace. Although both sets of participants acknowledged that there has been some progress in the implementation of strategies to include persons with disabilities, these strategies appear to be tick box procedures undertaken for the sole purpose of formally complying with legislation as opposed to focusing on the fundamental purpose of the legislation, namely the necessities of persons with disabilities. This indicates that the leadership of the Municipality should commit to adopting a transformational leadership approach -- an approach which is based on the premise that persons with disabilities are to be accorded fundamental human rights. In this regard, the next chapter gives a detailed analysis that links the data gathered from the interviews to the literature explored on this topic.

CHAPTER SIX

RESULTS AND DISCUSSION

6.1 Introduction

This chapter presents findings of the study by linking the results to the literature reviewed in chapter three. In this regard, this chapter will discuss the themes that emerged from the interviews as identified in chapter five and relating those themes to the literature reviewed. Ten (10) main themes and seven (7) subthemes were identified as follows:

Table 6.1.1: Themes and subthemes

Theme 1	Inconsistent comprehension of the term “persons with disabilities”
Theme 2	Stereotypical beliefs about persons with disabilities
Theme 3	Medical approach to disability
Theme 4	Challenging the status quo
Theme 5	Leadership commitment (politically and administratively)
Subtheme 5.1	Political interference
Subtheme 5.2	Disability not a priority issue
Subtheme 5.3	Disability as a tick box
Subtheme 5.4	Readiness of leaders to accommodate persons with disabilities
Subtheme 5.5	Lack of disability policy/strategy
Subtheme 5.6	Budget constraints
Theme 6	Human rights and leadership
Theme 7	Visionary leadership
Theme 8	Leaders as change agents
Subtheme 8.1	Change management
Theme 9	Workplace culture and transformational change
Theme 10	Ineffectiveness of municipal disability initiatives

This chapter will, therefore, explore the themes that emerged from the responses by both the leaders and employees as listed in the table above. The chapter concludes by summarising the

key results/findings that emanated from a thematic analysis of both leaders' and employees' responses.

6.2 Theme 1: Inconsistent Comprehension of the Term “Persons with Disabilities”

During the interviews it became apparent that there was no consistent understanding of the meaning of “persons with disabilities” by the leaders of the Municipality. While some leaders were able to identify some elements of the legal definition, others did not. Instead, leaders gave various definitions and were not consistent in their responses. Item 5.3 of the Disability Code defines persons with disabilities as persons “who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment.” Therefore, leaders' understanding of disability should be in line with the elements identified in the definition, namely, “a physical or mental impairment, which is long term and recurring, and substantial limitation on entering into or advancement in employment.”

In this context, L12 said that *“I think there is a legal definition because there are prescripts that deal with this, but it is obviously people who are born with or who in the course of their lives get afflicted with illnesses or injuries which result in them not being able to be as functional as people who are abled, without the environment being responsive to their particular challenges.”* While L1 said persons with disabilities are *“people who are abled differently”*. L5 said that *“persons with disabilities as people that have challenges, both physical and mental, and when I say mental I mean psychological, that I can't say abnormal but I can say challenged, they are not like able bodied, able minded -- so they are people with disabilities”*.

While L7 said that *“my understanding of persons with disabilities it may not be exactly what is reflected in a dictionary, however my general understanding is that it is those people who has impairment, it may be temporal or permanent impairment of some sort, it may be physical or mentally that they are suffering from and that impairment may play a role in how they behave in their normal lives and how they carry themselves including how they carry themselves in the workplace”*. L4 was of the view that *“the organisation itself and from its various management and its employees do not understand the concept of disability and what needs to be done”*.

The critical element of the definition that consistently did not appear from the leaders' responses is that of substantial limitation. It is that limitation that requires reasonable

accommodation of persons with disabilities, hence it is important that all leaders have a full, and not partial, understanding of the definition of persons with disabilities. Failure by the leaders to identify this element of the definition poses a challenge as these leaders are tasked with driving transformation and inclusion of persons with disabilities in the Municipality and ensuring that the environment is conducive for them to enter and advance in the workplace. If leaders do not understand all the critical elements of the definition of persons with disabilities as required in the legislation, this basically means that they are not in a proper position reasonably to accommodate and include them in the Municipality.

The lack of understanding of disability by the leaders was also commented on by the employees with disabilities who participated in this study. In particular, the identified shortcoming in the leaders' comprehension of "substantial limitation" was expressed by E5 who said that, while leaders generally understand disability, "*when it comes to actioning making environment suitable for disabled people I can say the process is too slow*". When asked whether municipal leaders understood disability, E4 responded as follows: "*[N]o, no I actually think that management should I don't know, can you workshop them to make them more aware?*" While E1 said the following with regard to the management's understanding of disability: "*[I]t depends on individual managers, some do, some don't seem to embrace people with disabilities.*" Consequently, it can be said that, while leaders have some understanding of disability in line with the definition in the legislation, what is lacking in their understanding is the critical element of substantial limitation which requires them to make the working environment conducive for persons with disabilities.

While generally there was no consistent definition from the leaders, it is crucial to note some of the responses that were in line with the legislation. For instance, L6 said the following:

"[M]y understanding of persons with disabilities is someone or people, they are limited when they are doing their jobs, when they are functioning. It is either it is caused by the physical limitations, sometimes others are mentally limited, others it is the way when they function, they would need some assistant in terms of their function from the organisation which we call reasonable accommodation."

While L11 said that "*my understanding is that it is a condition, the individual has a condition that has to be recurring, a long term condition and also whether it is a physical or mental condition and they are substantially limited*". L8 said that "*if we are talking about a person who is physically disabled is a person who could perform a certain function in the workplace but through our assistance where we may change the work environment for a person to*

accommodate that person". Of interest L3 defined disability as "*a person who is incapacitated etc in relation to work that they are supposed to be doing*", but continued to say that "*there needs to be a lot of clarification around that within the organisation*". The response from L3 suggested that there was confusion around the concept of disability in the Municipality and that there was consequently a need for clarity on the concept.

There is obvious confusion among leaders as to what disability is. They do not have a sufficiently similar understanding of disability. The question is: how are they going to achieve inclusion and disability equity if they do not have a similar approach to understanding persons with disabilities? It is submitted that the lack of understanding of disability is a major impediment to transformation and inclusion of persons with disabilities in the Municipality. In this regard, Jakovljevic and Buckley explain that "various 'barriers' to the employment and subsequent disability accommodation of persons with disabilities subsist, including misperception about the definitions, labelling and fallacies concerning work attitudes".¹³⁷⁸ While Cole and Van der Walt say the following with regard to complexity and understanding of disability:

"The definition of disability is complex as persons with disabilities are not a homogeneous group; they may have a physical, sensory, intellectual or mental disability. The time of the onset of the disability, whether it was from birth, acquired in childhood, or later life, acquired during further education or while in employment will determine the ability to work or take part in society, or it may have a major impact, requiring considerable support or assistance."¹³⁷⁹

Therefore, disability should be understood from a broader perspective and in line with the legislative provisions. This study found that while municipal leaders acknowledge the need to accommodate persons with disabilities, they do not completely understand all the elements of disability as provided for in the legislation.

Consequently, municipal leaders need to be sensitised through education and training in order to gain a better understanding of disability, thereby ensuring effective accommodation of persons with disabilities in line with the legislation.

6.3 Theme 2: Stereotypical Beliefs about Persons with Disabilities

Unfounded assumptions about persons with disabilities emerged as one of the hindrances to accommodation of persons with disabilities in the Municipality. For example, one of the leaders

¹³⁷⁸ Jakovljevic & Buckley note 126 (above) 60.

¹³⁷⁹ Cole & Van der Walt note 745 (above) 510.

(L2) said that “*this is a group of people who because of their disabilities cannot be in a position to perform the jobs that are normally performed by an abled persons*” (emphasis added). I have already indicated above where a leader (L3) described persons with disabilities as “*a person who is incapacitated*” (emphasis added). Another example is L10 who said persons with disabilities’ conditions “*will prohibit them or perceived as prohibiting them from undertaking work duties*” (emphasis added). The wording used by leaders as highlighted above indicates their personally held stereotypes of persons with a disability. In their minds persons with disabilities cannot work as they are incapacitated and, therefore, they are prohibited from working. Their responses regarding their understanding of disability are deeply troubling – their focus was on impairment and not on the ability or competence of persons with disabilities. Therefore, with that understanding in mind, how are those leaders going to guarantee that persons with disabilities are reasonable accommodated in the Municipality?

This study found that the municipal leaders have unfounded assumptions against persons with disabilities. This could be one of the reasons for the Municipality’s failure to reach the stipulated 2% target of employees with disabilities. It can therefore be said that the senior leaders of the Municipality, despite knowing about the stereotypical views that negatively impact on the provision of reasonable accommodation, are not taking the robust approach essential to influence operational managers and to deal with the stigma attached to persons with disabilities. This could be caused by the fact that they do not take disability seriously and that their understanding of disability is also stereotypical in nature.

The employees who participated in the study also confirmed that operationally employees with disabilities are stigmatised and not afforded the opportunities given to non-disabled persons. In this regard E4 said that “*my view again is that PWD’s are perceived time wasters*”. While E2 said that “*the one lady has got a Bcom degree, she has got multiple sclerosis, so she shakes and her voice quivers. She has been here probably like 9 to 10 years, still not permanent*”. Adding to that, E4 said that “*my view again is that PWD’s are perceived time wasters ... we’ve got PWD’s out there with degrees that have got so much to offer but they are not being utilised*”. E1 was of the view that persons with disabilities are often employed in soft positions and not, for example, in engineering positions “*because people will say engineering is hard core, and they have a name for clerical staff and whatever*”. The view was clearly that persons with disabilities are judged and limited because of the stereotypical myth that they are not able to

function like non-disabled persons, while in fact they have, according to E1, “*ways of overcoming their circumstances*”.

Perhaps it could be that, due to the lack of understanding of disability, leaders end up using their own stereotypical definitions which directly impact on the inclusion of persons with disabilities in the Municipality. This study has found that the prevailing stigma against persons with disabilities in the Municipality has resulted in employees not disclosing their disability status. It emerged during the study that there could be many employees with disabilities in the Municipality but they are scared to disclose their status because the environment is not conducive for persons with disabilities. For instance, L10 said that “*people are not prepared to disclose their disabilities*” adding that there is a need for the Municipality “*to get over that stigma and tell people do not be ashamed, embrace it*”. While L5 said that “*internal people that are disabled don’t want to disclose, for fear of victimisation possibly, of being branded or they would prefer to see themselves as being normal, they don’t want this stigma attached to them*”. L11 was of the view that the Municipality “*have a whole series of individuals who are impaired and these people are disabled. Unfortunately, the individual concerned is not prepared to fill in the form to say that they are disabled*”.

Consequently, it can be said that the Municipality has not transformed the environment and workplace culture to make employees feel comfortable to disclose their personal and social challenges openly including but not limited to persons with disabilities. In this regard, Holness asserts that “*a lack of understanding, ignorance, stigma and prejudice -- particularly due to assumptions about the employees’ abilities and performance in the workplace, can scupper recruitment, appointment, retention and advancement of employees with disabilities*”.¹³⁸⁰ Additionally, Mahomed argues that stigma is reflected in policies, practices and procedures relating to employment of persons with disabilities where employers do not understand essential principles such as reasonable accommodation.¹³⁸¹

This view is shared by Galli et al who define stereotype as “*sets of attributes that are often negative, such as moral or intellectual qualities, that individuals learn to associate with a person who belongs to a certain, often disadvantaged, cultural or social group*”.¹³⁸² They further say that “*immediately, and from early life and thereafter, people perceive individuals with*

¹³⁸⁰ Holness note 3 (above) 510-11.

¹³⁸¹ F Mahomed ‘Stigma on the basis of psychosocial disability: A structural human rights violation’ (2016) 32 (3) *South African Journal on Human Rights* 502.

¹³⁸² Galli, Lenggenhager, Scivoletto, Molinari & Pazzaglia note 577 (above) 1240.

disability as ‘vulnerable’ and of low competence, and, accordingly, treat members of this group differently”.¹³⁸³ Nelissen et al assert that among the critical obstacles confronted by persons with disabilities on their journey to employment are stereotypes and negative attitudes of employers.¹³⁸⁴ The issue of stereotypes is embedded in people’s minds and at times, due to its occurrence over time, leaders unconsciously use such assumptions in their interaction with persons with disabilities.¹³⁸⁵

It can be concluded that as a result of such perceptions and subconscious reactions, persons with disabilities are severely prejudiced not only in the workplace but also in society as a whole. There is, without doubt, a need to change the mindset of employers and employees in the workplace to deal with baseless suppositions about persons with disabilities, and to remove barriers that prevent persons with disabilities from accessing the labour market. Consequently, there is a necessity for an effective change management process to deal with assumptions and stigma attached to persons with disabilities.

There is therefore a need for a leadership model that can be influential in dealing with stigma attached to persons with disabilities. It has been said that transformational leaders are focused on change.¹³⁸⁶ In addition, transformational leadership has been identified as a system of transforming and changing people’s behaviour,¹³⁸⁷ and “transformational leadership results in understanding and change of attitude, beliefs and heart in order to realise set goals in a mutually acceptable and satisfying manner”.¹³⁸⁸ Moynihan et al assert that transformational leadership revolves around the premise that leaders can influence employees’ beliefs and their conduct by appealing to the importance of workplace outcomes.¹³⁸⁹ It follows that transformational leadership may be utilised to deal with unfounded assumptions and stigma attached to persons with disabilities in the Municipality.

6.4 Theme 3: Medical Approach to Disability

Emanating from the discussion and responses from the municipal leaders, it emerged that the medical model understanding of disability that focuses on the impairment rather than the

¹³⁸³ Galli, Lenggenhager, Scivoletto, Molinari & Pazzaglia note 577 (above) 1240.

¹³⁸⁴ Nelissen, Hulsheger, Van Ruitenbeek & Zijlstra note 4 (above) 1613.

¹³⁸⁵ Wang & Dovidio note 582 (above) 123.

¹³⁸⁶ Von Treuer, Karantzas, McCabe, Mellor, Konis, Davison & O’Connor note 589 (above) 2.

¹³⁸⁷ Malik, Javed, & Hassan note 592 (above) 147.

¹³⁸⁸ L Louw, S M Muriithi & S Radloff ‘The relationship between transformational leadership and leadership effectiveness in Kenyan indigenous banks’ (2017) 15 *South African Journal of Human Resource Management* 4 doi: 10.4102/sajhrm.v15i0.935 accessed on 27 February 2019.

¹³⁸⁹ Moynihan, Pandey & Wright note 132 (above) 5.

capability of persons with disabilities continues to exist in the Municipality. Without having to repeat what leaders said, it is apparent that persons with disabilities are viewed as people who are incapable of doing their work due to their condition. The assessment of persons with disabilities by leaders is therefore based on the medical approach rather than on their abilities. Such an assessment violates the right of persons with disabilities to equal opportunities in the workplace.

In this regard, E4 said that *“PWD’s are perceived time wasters, like I employ a person, is he going to be able to full the function and we’ve got PWD’s out there with degrees that have got so much to offer but they are not being utilised. It is like what are you going to cost me instead of how much are you going to contribute to my department”*. While E2 said that *“the one lady has got a Bcom degree, she has got multiple sclerosis, so she shakes you know and her voice quivers ... they still have her as a temporary task 3 worker ... she has been probably like 9 to 10 years ... I asked her why and she said no they don’t give any work, how can I show them what I can do?”* E1 underscored the need for leaders to appreciate that persons with disabilities are capable of performing. In this context E1 said that *“if management can just understand that being disabled doesn’t stop you from excelling in what you are doing”*. This approach by leaders manifestly hinders effective implementation of disability laws in the Municipality. It is argued that leaders should assess persons with disabilities on their capability in order effectively to include them in the Municipality and to encourage and safeguard their human rights, particularly the right to human dignity and equality.

Municipal leaders must change their attitude of focusing on impairment and must consider the capabilities of persons with disabilities thereby safeguarding their human right to equality. In addition, it is argued that municipal leaders must adopt a transformational leadership model as transformational leaders have been found to have *“the ability to assess, diagnose and evaluate employees’ individual needs rather than treating employees as a group”*.¹³⁹⁰ This approach by transformational leaders has been found to *“ensure that the needs of the individuals are identified, addressed and mentorship provided to equip employees with skills to deal with challenging situations”*.¹³⁹¹ Individualised treatment is what the notion of reasonable accommodation requires – not treatment of persons with disabilities as a similar group.

¹³⁹⁰ Louw, Muriithi & Radloff note 782 (above) 3.

¹³⁹¹ Louw, Muriithi & Radloff note 782 (above) 3.

According to Hildenbrand and Sacramento, “among the dimensions of transformational leadership is an individualised consideration which signifies the attention leaders pay to employees’ needs and concerns in the workplace”.¹³⁹² Van Aswegen and Engelbrecht assert that “individualised consideration is reflected when a leader pays special attention to each individual’s needs for realisation or fulfillment of one’s talent and potential, growth and performance”.¹³⁹³ It is therefore argued that transformational leadership may be influential in adopting an approach that considers persons with disabilities on their capabilities and performance and not from a medical perspective. In doing so, transformational leader will not only consider the abilities of persons with disabilities but will also ensure that they have necessary individualised tools to perform their jobs – including the provision of reasonable accommodation where needed.

6.5 Theme 4: Challenging the Status Quo

This theme emerged when the leaders were asked about transformational change in the workplace. Generally, the leaders were of the view that transformational change is about changing the existing state to a better future state in the workplace. Therefore, they understood that it is about changing the status quo to a future workplace environment that takes into consideration the needs of all employees. In general, the leaders gave a positive understanding of what transformational change is. For example, L5 said that “*it is going from a current state to a desired state, and usually the desired state is one that is seen to be better, more encompassing and more reflective of our interaction with the environment or the environment itself*”. Within the disability context L2 said that “*is to make sure that there is access for those people and there is acceptance of these people and you are also able to integrate them within the working environment*”.

While L1 said that, when one talks of transformational change “*you need to change the way you look at things, you need to start looking at things upside down, upside up, you know differently*”, L4 was of the view that “*it’s transforming an organisation moving from one point to another*”. Some (for example L9) went as far as saying that transformational change “*is the improvement of status quo*”. What became clear from the responses is that when one talks of transformational change, it is about changing the existing state which usually is not a conducive or all-encompassing state to a future state which is inclusive of everyone.

¹³⁹² Hildenbrand & Sacramento note 789 (above) 33.

¹³⁹³ Van Aswegen & Engelbrecht note 873 (above) 221.

The question to be answered is whether municipal leaders are ready to accommodate and include persons with disabilities in the Municipality. While there is a level of understanding from the municipal leaders of the need to accommodate persons with disabilities, it appears that they are not ready to accommodate them. Most of the leaders raised the concern that implementation of disability laws remains complicated. Therefore, this concern raises the question whether municipal leaders are ready to accommodate persons with disabilities. For example, L2 said that they are “*relatively ready*” adding that “*I would not expect that an organisation like our Municipality having been around since 2000 would be struggling just to reach 2% of people with disabilities*”. L7 said “*well, to a certain extent, yes*”.

Employees who participated in this study shared the same sentiments on the readiness of the municipal leaders to include and accommodate persons with disabilities. E1 said that “*some they do, some they don’t, but I wish they can be open to people with disabilities*”. While E4 said that “*they are not, sad but true. It is like what are you going to cost me instead of how much are you going to contribute to my department*” (as mentioned earlier). E3 stated that: “*[W]ith regards to leaders, they want to have those targets but with regards to the main focus point of having people with disabilities in terms of accommodation and awareness, they don’t focus on those kind of things ... there is no structured plan to accommodate people with disabilities.*” Thus, for transformational change to materialise, there is a need for a committed and influential leadership to drive transformation in the Municipality. Also, a well thought out and communicated plan or policy has been flagged to be lacking.

Transformational leadership has been described as influential organisational change which encompasses development and execution of the organisational vision.¹³⁹⁴ Van Aswegen and Engelbrecht assert that challenging the status quo is a regular occurrence for the transformational leader.¹³⁹⁵ It has further been said that transformational leaders are always prepared to take risks by adopting new work methods, changing existing procedures and systems in order to ensure an inclusive and diverse work environment.¹³⁹⁶ Transformational leaders have been found to question assumptions, reframe challenges and approach the general state of things in a different way.¹³⁹⁷ In addition, Fitzgerald and Schutte regard transformational leadership as an asset to an organisation due to its effectiveness in adaptation to change.¹³⁹⁸

¹³⁹⁴ Singh note 949 (above) 33.

¹³⁹⁵ Van Aswegen & Engelbrecht note 873 (above) 221.

¹³⁹⁶ Afsar, Badir & Bin Saeed note 805 (above) 1275.

¹³⁹⁷ Van Aswegen & Engelbrecht note 873 (above) 221.

¹³⁹⁸ Fitzgerald & Schutte note 803 (above) 496.

Transformational leaders not only challenge the status quo but also create platforms to explore new ways of doing things and new opportunities to learn.¹³⁹⁹ The responses of the participants in the study suggest that there is a need for transformational leadership in order to change the existing state in the Municipality from one that does not accommodate persons with disabilities to a future state that is inclusive of persons with disabilities.

6.6 Theme 5: Leadership Commitment (Politically and Administratively)

Leadership commitment by both municipal leaders and municipal political leadership emerged as one of the challenges to implementation of disability related legislation in the Municipality. Various responses by the participants indicated that there is a lack of commitment by both leaders and politicians to prioritise disability in the Municipality. L2 summarised the general lack of commitment in the Municipality as follows:

“I believe if you look at documentation you will find a lot of good documents, content is good but because people just cut and paste, take it from there, they don’t even internalise these things in their minds let alone implementation, they don’t even understand what it is. You can take somebody who is dealing with people with disabilities on a daily basis and say give me, what are the objectives of your strategy and that person does not even have a clue that a City have a strategy.”

Moreover, L11 said the following with regard to leadership commitment to implement disability laws: *“I think the Municipality has done enough but whether the leadership is accepting of this that is where the problem is. Everywhere they try to put blocks everywhere. ... So if you have the will you will do it, but if you don’t, you will just say it can’t be done.”*

L1’s response indicated that there was a lack of commitment in the leadership of the Municipality and emphasised the need for commitment from all leaders and politicians and not only from a specific unit in the Municipality. In this context L1 said: *“I think we need to make it an agenda for all levels of leaders, there needs to be an agenda for everyone who is a leader, who is Ethekwini leader.”* L12 made the following comments with regard to leadership commitment: *“I think we’ve got a leadership problem generally, you know that is what I started off saying, and if we had transformational leadership and we had the maturity as a society, we would be able to be much more responsive not just to people with disabilities but to all social issues.”* L4 said that *“we are very reactive and the focus is a very narrow focus”*.

Employees also shared their views about leadership commitment to include persons with disabilities. For instance, E4 said: *“I have been in council 26 years and for the first time it looks*

¹³⁹⁹ J Carmichael, C Collins, P Emsell & J Haydon *Leadership and Management Development* (Oxford University Press 2011) 126.

as though management is buying in to a certain extent. But there is a big but, transformation is not happening fast enough.” While E3 said that “*within the City, only one cluster has a vision for people with disabilities, but other clusters don’t really know what is going on*”. E5 said that commitment from the leadership should be judged based on inclusion of persons with disabilities in the Municipality. In this context, referring to the Municipality’s learnership programme for persons with disabilities, E5 said: “*I would say they are fully committed if they say we have learnership programme for the disabled people and that guarantees the permanent employment.*”

It can therefore be said that there is a lack of leadership commitment in the Municipality to include persons with disabilities although it is the leaders in the Municipality who are obliged to ensure effective governance inclusive of persons with disabilities. This view is supported by Kim and Yoon who say that executives in local government have an obligation to develop strategies that foster effective government culture and provide solutions.¹⁴⁰⁰ In addition, leadership has been identified as a key factor in ensuring inclusivity in the workplace.¹⁴⁰¹ The *Disability Framework for Local Government 2009-2014* places the responsibility on the municipal manager to prioritise disability issues and ensure that they are included in the IDP. In this context, the role of the municipal manager’s office is, among others, “to prioritize disability issues and integrate them in IDPs”, “[i]mplement agreed performance management targets related to disability” and to “[c]oordinate and mainstream disability policies in strategies and structures”.¹⁴⁰²

There is, therefore, an enormous responsibility on the leadership of the Municipality to ensure the inclusion of persons with disabilities. This inclusion should be proactive, not “reactive”. Bosire asserts that there is a growing realisation of the importance of local government in the implementation of international human rights law.¹⁴⁰³ In addition, Mathenjwa argues that the developmental duties of local government demand that it should play a key role in protecting human rights and meeting the basic needs and improving the lives of members of the community.¹⁴⁰⁴ The responses from the leaders clearly indicate the lack of commitment by municipal leaders to include persons with disabilities, and this directly infringes their rights.

¹⁴⁰⁰ Kim & Yoon note 120 (above) 148.

¹⁴⁰¹ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 328.

¹⁴⁰² note 82 (above) item 4.7.

¹⁴⁰³ Bosire note 24 (above) 150.

¹⁴⁰⁴ Mathenjwa note 741 (above) 126.

This could be as a result of stigma and lack of understanding of disability, as explored above. The responses from the leaders relating to leadership commitment are categorised into six (6) subthemes which are considered below.

6.6.1 Political interference/political will

The Municipality's political leadership does not support disability inclusion. Instead, the politicians are said to interfere with plans to include persons with disabilities. This action adversely impacts on the effective implementation of legislation that relates to aspects of disability in the Municipality. In this context L7 said the following;

“[A]n element of interference that is being received from our political leadership, so it does impede the process of implementation in a sense that when there is a position that has been identified, that there is a position that needs to be filled by a persons living with disability, you will find that you then get interference from the political officials to say rather consider this person than the person you had targeted.”

While L12 said: *“I think the administration has not done enough to make sure that the politicians are confident around what we are doing so that we operate on an 80/20 principle.”*

L1 said that the commitment to include persons with disabilities must be an agenda for everyone, including politicians. In this regard L1 said that *“it must not be corporate HR agenda, it must be an agenda for every DCM for every politician here”*. Adding to that, L5 said that *“we need to get our councillors on board as well as our political leadership. We need the political will”*.

Therefore, it appears that politicians are not fully committed to disability inclusion as they occasionally interfere with municipal leaders, particularly on issues pertaining to transformation for persons with disabilities. Without their commitment, it is argued that disability equity and inclusion will not materialise in the Municipality. Disability inclusion is the responsibility of both municipal politicians and leaders. In this regard, the *Disability Framework* underscores the role of municipal mayors in championing disability issues politically and overseeing the promotion and advancement of the rights of people with disabilities.¹⁴⁰⁵ This is an indication that disability issues do not only lie with the administration or municipal manager of the municipality. It further appears that the inclusion of municipal mayors in the *Disability Framework* was to ensure political buy-in on issues of disability in the local government sector. Thus, the political leadership and the mayor are required to advocate for disability parity in the IDP of the Municipality. It follows that political office-bearers have

¹⁴⁰⁵ note 82 (above) item 4.6.

a responsibility to promote and advance the rights of persons with disabilities in the Municipality.

6.6.2 Disability not a priority issue

Another huge obstacle is that disability is not a priority issue in the Municipality for either politicians or leaders. While the Municipality recognises the need to include persons with disabilities, disability is not prioritised in municipal strategies such as the IDP. An IDP is a five-year plan which a local government is required to compile to determine the development needs of the particular municipality. For instance, from its vision statement, the purpose of the Municipality's IDP is to guide the development of the Ethekewini Metropolitan Municipality so that all services are provided in a coordinated way, considering all aspects of people's lives.¹⁴⁰⁶

Thus, although the IDP should include a specific practical strategy to deal with disability inclusion in the Municipality as well as a policy which will be the long-term guiding document in relation to disability matters in the Municipality reviewable in line with changing circumstances, as indicated in chapter one, disability is not listed among the key focus areas in the Municipality's IDP. The focus of the Municipality is mainly on service delivery. This was confirmed by various leaders, including L3 who said: *“Ethekewini Municipality is driven by service delivery and if service is not delivered you can't use the point that we didn't have employment equity correct team aboard, or you have got people with disabilities and we could not deliver that service. The customer wants the service delivered.”*

While L5 said: *“I'm thinking plan five, it covers it but not enough, it could be more. ... I don't it prioritises it enough.”* L7 said that the IDP *“make mention of realising human capital that is ready to take the city to 2030 vision however, now when you are taking only of the elements of persons living with disability, I'm not too sure whether that has been prioritised”*. L12's view was that the IDP has a checklist and of interest is *“whether that checklist deals with people with disabilities? I don't think it does”*. In addition, L12 said that *“if our vision is to be Africa's most liveable city, to what extent is the IDP dealing with inclusion and to what extent is that inclusion dealing with people with disabilities. So my gut feel is it is probably not doing enough that is my gut feel”*.

¹⁴⁰⁶ http://www.durban.gov.za/City_Government/City_Vision/IDP/Pages/default.aspx accessed on 26 March 2019.

Municipalities are under a constitutional obligation to promote and protect the human rights of all citizens including persons with disabilities. The *Disability Framework* places the responsibility on the municipal manager to prioritise disability issues and ensure that they are included in the IDP. The *Disability Framework* states that the role of the municipal manager's office is, among others, "to prioritize disability issues and integrate them in IDPs", "[i]mplement agreed performance management targets related to disability" and to "[c]oordinate and mainstream disability policies in strategies and structures".¹⁴⁰⁷ The *White Paper on Local Government 1998* mandates the "local government to focus its efforts and resources on improving the quality of life of communities, especially those members and groups within communities that are most often marginalised or excluded, such as women, disabled people and very poor people".¹⁴⁰⁸ In addition, "municipalities must adopt inclusive approaches to fostering community participation, including strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalised group in the local community".¹⁴⁰⁹

It can be concluded that the Municipality is not in compliance with the Constitution or the *Disability Framework*. As a result, there is a need for leadership that will prioritise disability as required by the law and the *Disability Framework*. Among the characteristics of a transformational leader is idealised influence and Van Aswegen and Engelbrecht express the following view with regard to the impact of idealised influence in the workplace:

"Idealised influence may lead to the following climate dimensions: Law and code. In this climate, the law and professional standards are put above all other considerations (Victor & Cullen, 1988). The leader will always consider the applicable law whenever a decision has to be made, and can be counted on to do the right thing. The leader demonstrates high ethical and moral standards and thereby becomes a role-model who is respected and trusted by his or her followers."¹⁴¹⁰

It is argued that the Municipality requires transformational leadership to ensure that disability laws and policies are prioritised thereby achieving disability inclusion and equity in the Municipality. L12 supports this by saying: "*I think transformational leadership is required in order to create the space to do the right things.*" Song et al assert that transformational leadership is action orientated which makes it the appropriate leadership model for

¹⁴⁰⁷ note 82 (above) item 4.7.

¹⁴⁰⁸ note 21 (above) item 1 of section B.

¹⁴⁰⁹ note 21 (above) item 1.3 of section B.

¹⁴¹⁰ Van Aswegen & Engelbrecht note 873 (above) 221.

implementation of disability policies and laws in the workplace.¹⁴¹¹ In addition, moral and ethical values are the cornerstone of a transformational leader.¹⁴¹² Such moral values “guide their standards of ethical behaviour with regard to their relationships with others”.¹⁴¹³ Therefore, transformational leadership will ensure that disability is prioritised in all the Municipality’s programmes thereby effectively guaranteeing the implementation of disability laws in the Municipality.

6.6.3 Disability as a tick box

It is the finding of this study that disability inclusion is merely done as a tick box exercise to meet legislative requirements. There is no serious commitment to promote and protect the rights of persons with disabilities and to ensure that they are adequately included in the Municipality. The Municipality’s leadership and executive do not appear to value persons with disability from a capability perspective, they simply want to include them in order to comply with employment equity targets. Perhaps that is the reason why the Municipality relies exclusively on its EE Plan as a strategy to include persons with disabilities, as intimated by the majority of the participants. I have explored this aspect above under disability policy/strategy.

In this context E3 said that *“they want people with disabilities so that they will meet the targets in numbers, they want to have those targets but with regard to the main focus point of having people with disabilities in terms of accommodation and awareness, they don’t focus on those kind of things”*. While L7 said that *“the other issue that we are experiencing, I call it window dressing, we somehow employ a quota system when we are dealing with the issue of transformation. We do not drill down into the issues how it should be implemented but what we are chasing are numbers”*. L11 said that, when it comes to persons with disabilities, workplaces *“look at targets”*, adding that *“are we serious or we just there to meet the target?”*

It follows that the Municipality views disability from a “meeting target point of view” and does not take into consideration the human aspect attached to persons with disabilities. The Municipality is not concerned about the social challenges that employees with disabilities encounter in the workplace. All that matters to the Municipality is simply to recruit employees with disabilities in order to comply with its EE targets. Whether they are treated fairly and whether the working environment is conducive for them is not the Municipality’s concern. This

¹⁴¹¹ Song, Kolb, Lee & Kim note 568 (above) 70.

¹⁴¹² C H Schwepker Jr & D J Good ‘Transformational leadership and its impact on sales force moral judgment’ (2010) XXX (4) *Journal of Personal Selling & Sales Management* 301.

¹⁴¹³ Schwepker & Good note 1412 (above) 301.

view was supported by L7 who said that *“we employ them and we dump them into the environment and mostly what we find is that most of them are unhappy, most of them have distasteful experience with the Municipality”*.

Furthermore, the Municipality recently issued a notice on its intranet website encouraging employees to disclose their disabilities by completing the necessary form in order for the Municipality *“to comply with the Employment Equity Act”*.¹⁴¹⁴ Nothing in the aforesaid notice indicated that such information would be used to create a conducive environment for persons with disabilities nor that those persons were recruited, hired or promoted because they met the affirmative action criteria for the designated group of persons with disabilities. It was merely done for purposes of legislative compliance. It remains to be seen whether that initiative will be successful as it appears that employees are reluctant to disclose their disability status due to stigma attached to persons with disabilities and an environment that is not conducive and inclusive for them.

Consequently, the Municipality is merely dealing with disability as a tick box exercise to comply with legislative requirements. This approach exacerbates discrimination against persons with disabilities as they are not fully embraced and included by the Municipality. Because of the Municipality’s attitude and the lack of commitment by executive leaders, it is not surprising that there is no disability policy and no recruitment and selection strategy to deal with inclusion of persons with disabilities at all occupational levels. As a result of this attitude, the municipal environment, including its facilities, have not transformed to include persons with disabilities.

This study established that the Municipality did not take laws connected to disability seriously until it introduced its EE Plan in 2014. This can be traced from what L1 said: *“[O]ne of the things I had to do in 2014 was to finalise the policy, there was a draft but it was not final.”* (I have already indicated that the EE Plan is regarded as a policy in the Municipality hence L1 in this context refers to EE Plan.) L6 supported L1’s sentiment by stating that *“when this Act was introduced, it was not embraced the way it supposed to be embraced, it was not embraced, it was not implemented the way it was supposed to be implemented. And then came 2014, that is where the Municipality started to be serious about this”*. L4 said: *“I think the biggest step was*

¹⁴¹⁴ www.durban.gov.za accessed on 12 April 2019.

our current plan which is about to expire 2014/2018, the equity plan ... it was a big starting point.”

If the EE Plan was only seriously considered in 2014 by the Municipality, this means that in all the years before then the Municipality was not in compliance with the EEA. This contributed to its non-compliance with disability laws and its failure to meet the 2% target. This is a clear example of the lack of commitment by municipal leaders to include persons with disabilities and it also shows that there have been no monitoring and enforcement mechanisms in place to ensure compliance with disability laws. Consequently, because of the lack of commitment by municipal leaders, it is not surprising that employees with disabilities continue to suffer prejudice in the Municipality.

6.6.4 Readiness of leaders to accommodate persons with disabilities

For the Municipality successfully to include persons with disabilities, meet the 2% target of persons with disabilities and effectively implement disability laws, its executive leaders must be ready to include and accommodate persons with disabilities. It has emerged that municipal leaders are not ready to implement changes to include persons with disabilities. In this regard L4 said that *“I think we are long off from being ready”*, while L6 said that *“it’s a yes and no answer adding that generally there is a long way to go within the Municipality”*. L12 said: *“I think in some respects I would say it is a yes and no answer, I think the need for change, there is much greater awareness than ever before, but unfortunately the focus of that change might not be so much on people with disabilities, it might be more on the economic side of things for example.”*

The executive leaders’ attitude and thinking towards disability clearly need to change in order to accommodate persons with disabilities fully. They appear not to be psychologically ready to include persons with disabilities, and this directly impacts on the practical implementation of disability laws. Perhaps this has been caused by a general lack of commitment by both executive and political leaders of the Municipality; and, if leaders at the executive level are not ready to accommodate persons with disabilities, there will be little or no transformation in the Municipality because those leaders have a direct influence on operational managers and employees.

Readiness for transformation necessitates the change of mindsets and attitudes to inclusion and accommodation of persons with disabilities. There has to be commitment to change, not only

through positive support systems, but also through emotional and psychological alignment. Herold et al argue that change is not only about showing positive attitudes and support for successful implementation in the organisation, it requires mental adaptation to change.¹⁴¹⁵ Furthermore, commitment to change has been found to be “conceptually and empirically distinct from organisational commitment”.¹⁴¹⁶ Transformational leadership encourages “a more adaptive or developmental culture by emphasising employee innovation, problem solving, and empowerment”.¹⁴¹⁷ Developmental culture has been found to be “associated with a focus on the organisation, flexibility, adaptability and readiness, growth and resource acquisition”.¹⁴¹⁸ Therefore, transformational leadership will guarantee readiness for municipal leaders to accommodate persons with disabilities. This readiness will yield positive results throughout the Municipality due to the influence exerted by such a leadership approach.

6.6.5 Lack of disability policy/strategy

The Ethekwini Municipality does not have a comprehensive policy designed to address disability issues. The Municipality relies only on its Employment Equity Plan as the strategic tool to address disability matters. That is a huge restraint on effective implementation of disability laws. This was confirmed by most of the leaders, including L12, who said:

“[T]he third thing it might be around the extent to which there is a comprehensive policy in place, because I am not aware other than some of the prescripts that come nationally and provincially, and the Employment Equity Plan. ... I’m not sure that we actually have got a policy document on that.”

Adding that, “generally for things to be successful you need to have the policy which creates an enabling environment”. E1 said:

“I haven’t seen policy that addresses disability, the only thing that I have seen that addresses persons with disabilities is the Employment Equity Plan, so really I don’t know whether they have a policy or not, we need policy that will address issues that are faced by persons with disabilities.”

E5 said that “except the Employment Equity I know about, I don’t know any specific policy”. E3 also shared the same sentiments and said that “there is no formal policy that caters for people with disabilities”. Consequently, it appears that the Municipality is not committed to

¹⁴¹⁵ Herold, Fedor, Caldwell & Liu note 798 (above) 347.

¹⁴¹⁶ Herold, Fedor, Caldwell & Liu note 798 (above) 347.

¹⁴¹⁷ Moynihan, Pandey & Wright note 845 (above) 7.

¹⁴¹⁸ Moynihan, Pandey & Wright note 845 (above) 7.

include persons with disabilities and to ensure that their issues are taken care of once they are in the workplace.

Disability issues are very broad. They relate not only to employment equity but extend to issues such as access, environment, stigmatisation, etc. Therefore, a specific disability policy is essential and it should include provisions that promote and protect the rights of persons with disabilities and be broad enough to cover issues that include their capability in the workplace. It is submitted that the lack of a specific policy on disability contributes to non-compliance with disability laws. As mentioned above, the Ethekwini Municipality does not have a strategy on inclusion of persons with disabilities, but relies on its Employment Equity Plan as its strategy. It is argued that an employment equity plan is not a strategy, instead, it is simply a plan or legislative requirement on how a municipality proposes to achieve reasonable progress towards employment equity. In this regard, L10 said: *“I think we need more systems probably more work can be done on systems and aligning policy to shortcut appointments, there needs to be HR regulations, the policy within the City that support this.”*

It is submitted that for Municipality to comply with its Employment Equity Plan, it must develop a specific strategy to deal with the recruitment and selection of persons with disabilities which must be adhered to at all times when recruitment is conducted in the Municipality. Such a strategy must complement the disability policy (which broadly deals with disability issues including social issues pertaining to disability in the Municipality). Since the IDP is the principal high-level strategy of the Municipality, it must include disability as a priority issue and must provide for the adoption of a specific policy on disability and a strategy on recruitment and selection of persons with disabilities. By so doing, the Municipality will take the first steps towards inclusion of persons with disabilities and will comply with disability laws.

The Municipality can learn from other metropolitan municipalities like the City of Cape Town which has adopted a vulnerable group policy which includes persons with disabilities.¹⁴¹⁹ Pertinent to this study, the aforesaid policy incorporates provisions from the City’s IDP. Item 3.1 of the policy states that the IDP of the City is built on five Strategic Focus Areas (SFAs), namely: the Opportunity City, the Safe City, the Caring City, the Inclusive City, and the Well-Run City. These key focus areas inform the Policy on Vulnerable Groups of the City. Item 3.1.1 talks of the need to create an enabling environment to meet the needs of vulnerable

¹⁴¹⁹ Policy on Vulnerable Groups <https://www.capetown.gov.za/search?k=vulnerable%20group%20policy> accessed on 26 March 2019.

groups, including persons with disabilities. Item 3.1.3 talks of an “Inclusive City”. Therefore, it can be seen that persons with disabilities are clearly prioritised in the City’s IDP, which is lacking in the Ethekwini Municipality’s IDP. Similarly, the City of Johannesburg (CoJ) has adopted a disability management policy which “presents the City of Johannesburg’s commitment towards implementing the objectives of the Employment Equity Act (EEA) No 55 of 1998 and the Employment Equity Act Code of Good Practice on the Employment of People with Disabilities”.¹⁴²⁰ The adoption of a similar policy and strategy by the Municipality will assist it in achieving the 2% target of persons with disabilities. For the successful adoption of such a policy and strategy, the Municipality requires commitment from its senior executives and political leaders. If the Municipality is serious about disability inclusion, the executive leaders and political leadership will need to take a bold decision on the appropriate leadership approach that is necessary to achieve disability equity in the Municipality. This study recommends a transformational leadership approach -- most leaders who participated in this study readily agreed that, being in the public sector, they had to be transformational in their approach.

Without unnecessarily repeating the literature on transformational leadership, explored above, transformational leaders are influential and committed to the needs of employees and the workplace; they challenge the status quo and are guided by the principles of fairness, equality and justice. The adoption of a transformational leadership approach will therefore ensure that a policy and strategy on disability are drafted and implemented in the Municipality.

The final approval of any appointment process in the Ethekwini Municipality lies with the Municipal Manager.¹⁴²¹ In other words, the Municipal Manager has the final say on whether or not to employ a particular person taking into consideration various issues, including employment equity. The Municipal Manager has the responsibility in terms of the *Disability Framework* “to prioritize disability issues and integrate them in IDPs” and to “mainstream disability policies in strategies and structures”.¹⁴²² The Municipal Manager, being committed to the inclusion of persons with disabilities, can therefore decline to make an appointment if the process has not complied with the EE Plan and disability strategy, and demand that a person with a disability be appointed in line with the Constitution, the EE Plan and the *Disability*

¹⁴²⁰ item 1.1 of the City of Johannesburg -- Disability Management www.joburg.org.za accessed on 26 March 2019.

¹⁴²¹ Recruitment and Selection Policy -- Ethekwini Municipality www.durban.gov.za accessed on 2 March 2019.

¹⁴²² note 82 (above) item 4.7.

Framework. It is this kind of robust approach which is required of the Municipality to promote the inclusion of persons with disabilities in the workforce. This duty can only be discharged by the Municipal Manager if there is no political interference in municipal administration and if the Municipality adopts a transformational leadership approach. As can be seen from the above, the reason for non-inclusion of persons with disabilities in the Municipality and the ineffective implementation of disability laws is the non-existence of a disability strategy and policy and the absence of commitment by municipal leaders. In order to remedy this, the study advocates for the adoption of a transformational leadership approach in the Municipality.

6.6.6 Budget constraints

It transpired from the interviews that there are budget constraints for disability initiatives in the Municipality. This is not surprising as the Municipality does not prioritise disability and there is a lack of commitment by municipal executive leaders and politicians to include persons with disabilities. In addition, disability is not a priority issue in the IDP of the Municipality, and, as noted above, the IDP determines the critical development needs of the Municipality and allocates the Municipality's budget according to those needs. As disability is not prioritised in the IDP, there is no compelling reasons for the formulation of a specific policy or strategy to drive disability initiatives, and consequently, it is not surprising that there is no budget for such initiatives. The lack of budget is, without doubt, a barrier to inclusion and effective implementation of disability laws in the Municipality. In this regard L3 said that *“one of the main barriers could be the budget to reconstruct buildings to accommodate persons with disabilities”*. While L12 said that *“well one I talked about just now is budget. If people with disabilities is not a priority at the same level as other things politically, then you are going to have a challenge”*. L7 was of the view that *“there has been a reluctance to provide resources for instance financial resources”*. Adding to that, L9 said that *“we need to start budgeting to make sure that we can at least provide some of the documents in braille but at the moment the finance is still a huddle”*. L5 said that *“we need budget and we need a new mandate”*.

The Municipality is therefore in need of a leadership approach that can create a balanced strategy that takes into account all the challenges facing the Municipality, including disability. In addition, committed leadership will ensure that adequate budget and resources are allocated to the inclusion of persons with disabilities in the Municipality. Gida and Ortlepp assert that for successful employment and inclusion of persons with disabilities, leadership commitment

is critical.¹⁴²³ They further argue that leadership commitment on its own is not sufficient, leadership must invest in resources and be willing to spend in order to ensure successful inclusion of persons with disabilities.¹⁴²⁴ It has been said that transformational leaders often direct resources to areas that need the most change,¹⁴²⁵ and that transformational leaders develop practical strategies “to get around limitations on funds, staff or equipment by concentrating resources on problem areas that are most in need of change”.¹⁴²⁶ Consequently, transformational leadership will adopt measures that ensure that there are enough resources and budget for the inclusion and reasonable accommodation of persons with disabilities in the Municipality.

6.7 Theme 6: Human Rights and Transformational Leadership

The study found that there is a strong nexus between human rights and transformational leadership. The leaders interviewed in this study generally felt that transformational leaders embrace human rights and that one cannot separate human rights from transformational leadership. This confirms that transformational leaders utilise a human rights approach to disability in the workplace. In this context, L1 said that transformational leaders “*are able to include everybody despite race, gender and disability*”. While L11 said that human rights are “*part and parcel of*” transformational leadership.

L12 said that there is a relationship between transformational leadership and human rights, adding that transformational leadership --

“is not about chasing profit or money, it’s about capitals, you are leading an organisation but to what extent are you changing that society that organisation is located on. To what extent are you responsible citizen as a leader and an organisation, to what extent are you responsive to the realities”.

Adding to that, L12 said that “*transformational leaders may be better placed to fast track and optimise how you are dealing with human rights, and they will go beyond compliance*”.

Transformational leader was described by L10 as “*an idealist/ideal version of a human rights campaigner*”. L7 shared similar sentiments by stating that:

“[W]hen you are a transformational leader you are also required to protect people you are leading, observe their human rights, as a leader you need to embrace the provisions of the

¹⁴²³ Gida & Ortlepp note 878 (above) 140.

¹⁴²⁴ Gida & Ortlepp note 878 (above) 140.

¹⁴²⁵ A J Dubrin *Principles of Leadership* (South Western Cengage Learning 2013) 7 ed 127.

¹⁴²⁶ Dubrin note 1425 (above) 127.

Constitution as well as other pieces of legislation that are born of the Constitution ... and you need to be able to show those characteristics of protecting human rights.”

L5 said that *“in my experience transformational leaders embrace human rights in the Constitution, for them it’s a given. Quite a lot of the transformational leaders have actually focused a lot on human rights and Constitution and empowering the people who they believe have been marginalised”*. Lastly, L2 also believed that transformational leadership and human rights are linked, and went a step further by stating that *“the issue of people with disabilities should be understood within the context of human rights and dignity because they are in the legislation for a particular purpose”*.

Municipal leaders must view disability from a human rights perspective and should adopt a transformational leadership approach as it has emerged that this approach possesses features that are pertinent to protect and promote the human rights of all people, including persons with disabilities. It has been said that disability is fundamentally “a human rights issue”,¹⁴²⁷ and Basson underscores that any stance on disability must address the rights of persons with disabilities and the development of their fundamental rights.¹⁴²⁸ The argument by Basson indicates that at the heart of the human rights model is an emphasis on the needs of individuals. Therefore, workplace leaders must ensure that human rights are protected in the workplace. Mwambazambi and Banda assert that transformational leaders are those leaders who have due regard to the doctrine of individual worth, privileges, communal principles, individual and socio-political change.¹⁴²⁹

Transformational leaders have been found to recognise, accommodate and improve the quality of existing needs of employees.¹⁴³⁰ It has been said that transformational leaders are attentive to the issues of justice, liberty and equality¹⁴³¹ and they always submerge themselves in consideration of the needs of employees.¹⁴³² Consequently, transformational leadership is essential in the fight to eradicate discriminatory practices – it identifies obstacles that unfavourably affect designated employees with the goal of removing these obstacles and achieving human rights protection for persons with disabilities. The study therefore found that transformational leadership is manifestly the appropriate leadership model for the promotion

¹⁴²⁷ Basson note 618 (above) 4.

¹⁴²⁸ Basson note 618 (above) 4.

¹⁴²⁹ Mwambazimba & Banza note 622 (above) 1.

¹⁴³⁰ Mwambazimba & Banza note 622 (above) 1.

¹⁴³¹ Van Aswegen & Engelbrecht note 873 (above) 221.

¹⁴³² Miller, Marchel & Gladding note 721 (above) 222.

and protection of human rights in the Municipality. The advantages of transformational leadership are that it is influential, considers individual circumstances, and is guided by human rights, all attributes that will assist the Municipality to view disability from a human rights point of view while ensuring inclusion of persons with disabilities in the Municipality.

6.8 Theme 7: Visionary Leadership

A transformational leader was identified as a visionary leader by the participants in the study. In this context, L2 said that a “*transformational leader is visionary for starters, is one of the ingredient of a visionary leader*”. While L4 said that as a transformational leader “*you have to have a vision that we as followers need to abide by*”. L7 said that “*a transformational leader is a person that is futuristically thinking*”. L5 was of the view that transformational leaders “*has a helicopter long term view, they know that we have to get somewhere*”, which clearly indicates that the participants recognised that transformational leaders are visionary in their approach. L12 said that “*a transformational leader has a good outlook and a long term outlook, is able to identify the opportunities but also the threats that are likely to be out there and is able to prepare the organisation at an early stage to be responsive to these things*”.

Thus, transformational leaders respond to workplace challenges with a vision of changing the environment to a future better state. Within the disability context, a transformational leader’s vision is to guarantee a future workplace that promotes and protects human rights, including those of persons with disability. In this regard, it has been said that “*transformational leaders are visionary leaders of potentially historical significance who react to a crisis with great vision and great ideas, and possess a willingness to foster grand experiments in solving great problems of the day*”.¹⁴³³ They give special importance or value to new prospects and promote a compelling vision of the future.¹⁴³⁴ The view from Givens is that transformational leaders are guided by a strong sense of purpose.¹⁴³⁵ Nging and Yazdanifard assert that transformational leaders provide the necessary resources that inspire followers to share their vision and that empower them to attain that vision in order to develop their full personal potential.¹⁴³⁶

Therefore, it can be said that by being visionary, a transformational leader is guided by the vision of a future state of the organisation that caters for every employee in the workplace. This characteristic is pertinent to this study as its ultimate goal is to see persons with disabilities

¹⁴³³ Mthethwa note 569 (above) 110.

¹⁴³⁴ Givens note 147 (above) 9.

¹⁴³⁵ Givens note 147 (above) 9.

¹⁴³⁶ Nging & Yazdanifard note 806 (above) 1134.

being accommodated and included in the Municipality through effective implementation of disability laws. It goes without saying that in order to implement changes and to improve the situation of persons with disabilities in the Municipality, transformational leadership will play a critical role. The Municipality's vision is that "by 2030 the Municipality will enjoy the reputation of being Africa's most liveable city, where all citizens live in harmony. This vision will be achieved by growing its economy and meeting people's needs so that all citizens enjoy a high quality of life with equal opportunities, in a city that they are truly proud of".¹⁴³⁷ The importance of this vision is that it underscores the need for meeting people's needs and the promotion of equal opportunities for all citizens, including persons with disabilities.

In order to attain the positive goals set out in its vision statement, the Municipality is encouraged to adopt transformational leadership and place it at the centre of all developmental areas of the Municipality, including disability inclusion. Transformational leadership emerges to be an all-rounder in the sense that it also encapsulates the necessary elements of visionary leadership, and this is confirmed by the literature reviewed above. While the focus of the study was not on visionary leadership, it has become apparent that there is a strong connection between a visionary leader and a transformational leader. In this regard it has been said that "visionary leadership is considered as a type of transformational leadership because it can be used to quickly achieve the task to meet the company standards".¹⁴³⁸ While Dhammika asserts that visionary leadership interaction with employees changes their attitudes which results in workplace transformation.¹⁴³⁹ In addition, visionary leadership has been found to have a positive impact on commitment by workplace employees.¹⁴⁴⁰

Consequently, it has been said that visionary leadership is required when transforming workplace conditions and when the workplace is in need of a new vision.¹⁴⁴¹ It appears that both transformational and visionary leadership have common characteristics which the Municipality can utilise to include persons with disabilities to achieve disability equity.

¹⁴³⁷ http://www.durban.gov.za/City_Government/City_Vision/Pages/default.aspx accessed on 3 March 2019.

¹⁴³⁸ C Nwachukwu, H Chladkova, P Zufan & F Olatunji 'Visionary leadership and its relationship with corporate social performance' (2017) 3 (4) *Imperial Journal of Interdisciplinary Research* 1304 <http://www.onlinejournal.in> accessed on 3 March 2019.

¹⁴³⁹ K Dhammika 'Visionary leadership and organisational commitment: The mediating effect of leader member exchange (LMX)' (2016) 4 (1) *Journal of Management* 2.

¹⁴⁴⁰ Dhammika note 1439 (above) 3.

¹⁴⁴¹ M Anshar 'The impact of visionary leadership, learning organization and innovative behavior to performance of customs and excise functional' (2017) 1 (2) *International Journal of Human Capital Management* 54.

6.9 Theme 8: Leaders as Change Agents

It is the finding of this study that transformational leaders are change agents. This is a critical element pertinent to this study as there is a need for leaders who can advocate for change in the Municipality and guarantee inclusion and promotion of human rights for persons with disabilities. For instance, L2 said that *“if you are a transformational leader, you should be an agent of change”*. While L8 was of the view that a transformational leader is someone who *“embraces change”*. L3 was of the view that *“with transformational change you need transformational leadership and unless that exists then change will never happen”*. For the Municipality to be successful in including persons with disabilities and to deal with all of the challenges that have been identified in this study, it will require leaders who are committed to transform the Municipality by focusing on critical developmental issues affecting persons with disabilities.

Thus, the Municipality will have to adopt a transformational leadership approach to include persons with disabilities in the Municipality. Shanker and Bin Sayeed describe transformational leaders as change agents who tend to nurture the idea of receptivity to the organisational transformation process.¹⁴⁴² Mthethwa argues that, *“to lead the transformation process, undoubtedly, transformational leaders are needed who can inspire the employees, strategise and galvanise the resources to navigate and give effect to the changes needed”*.¹⁴⁴³ Consequently, in order to manage and lead change in relation to the inclusion of persons with disabilities in the Municipality, transformational leadership is essential to initiate and drive the change management process. It is of interest that change management was mentioned frequently in the responses from the leaders, which is explored below.

6.9.1 Change management

As indicated above, change management dominated most responses from leaders with regard to effective implementation of disability laws in the Municipality. In this regard, L1 said that *“people of Ethekewini need change management, we need to do change management even in my own cluster the HR people they needed change management”*. L2’s view was that *“if you want to be successful in implementing any changes within the environment for accessibility and acceptance of people with disabilities, you need to have change management action plan in place”*. While L5 said that what is needed is *“development programs, diversity interventions -*

¹⁴⁴² Shanker & Bin Sayeed note 807 (above) 470.

¹⁴⁴³ Mthethwa note 569 (above) 108.

- *anything to do with change management*". In addition, L11 said that there is a need for *"change management for senior management and for the staff to accept individuals, people with disabilities in the workplace"*.

Therefore, it is a finding of this study that the Ethekwini Municipality requires an effective change management strategy to drive implementation of disability laws and to include persons with disabilities.

The change management process must be driven by the senior leadership of the Municipality in order to ensure that there is buy-in by operational managers and employees to include persons with disabilities. In this regard L5 stated that *"if our leaders are transformed we automatically, we get transformed and taken along with it as well"*. As indicated above, municipal leaders will have to adopt a transformational leadership approach and place it at the centre of all developmental initiatives including the disability change management strategy. Studies emphasise the *"positive relationship between transformational leadership and change management"*.¹⁴⁴⁴

Transformational leadership has been associated with successful organisational or workplace change.¹⁴⁴⁵ Moreover, transformational leaders are influential in sensitising employees on the need for change,¹⁴⁴⁶ and develop the types of workplaces and workplace norms that respond well to effective change.¹⁴⁴⁷ Transformational leadership is closely associated with change management, and is said to have a major impact on the implementation of reforms by promoting an environment imbued with organisational justice.¹⁴⁴⁸ This view was supported by L2 who said that *"transformational leadership is linked to change management"*. Therefore, this study recommends an effective change management framework designed to ensure commitment by executive and political leaders to prioritise and include persons with disabilities in the Municipality.

6.10 Theme 9: Workplace Culture and Transformational Change

One of the critical challenges identified in this study is that stereotypes and stigma are attached to persons with disabilities. This reflects a workplace culture which is not conducive for persons with disabilities. Ultimately, there is a need for transformational change and effective

¹⁴⁴⁴ Eckhaus note 801 (above) 27.

¹⁴⁴⁵ Deschampts note 892 (above) 196.

¹⁴⁴⁶ Dubrin note 1425 (above) 126.

¹⁴⁴⁷ Martin note 746 (above) 271.

¹⁴⁴⁸ Deschampts note 892 (above) 196.

change management. It is the finding of this study that transformational change has a direct impact on workplace culture. In support of this statement, L5 said the following with regard to the impact of transformational change on the workplace culture: *“in terms of culture, it is tolerance. I think the impact of the whole thing with embracing persons with disabilities it has led to a culture of more tolerance”*. While L2 said *“generally, your culture will determine the level of success as an organisation and is a vehicle for transformation”*.

Within the disability context, L2 said that *“one of the cultural changes that will be needed within the organisation would be acceptance of these people and just treating them like everybody else”*. As Gewurtz and Kirsh assert, *“organisational culture can play an important role in the way persons with disabilities are treated in the workplace, the type of work they are assigned, and the opportunities they are given for mentoring, advancement and promotion”*.¹⁴⁴⁹ Ethekwini municipal leaders are therefore required to create an inclusive culture so that persons with disabilities can work in a conducive environment. This view is supported by Barrett and Bourke who say that *“senior managers need to ensure that their commitment to diversity produces appropriate behaviours by being a deeply engrained value in the organisation’s culture”*.¹⁴⁵⁰ Therefore, it is necessary for municipal leaders to have a leadership approach that is better suited to deal with workplace culture which in turn will assist in ensuring effective change management to include persons with disabilities in the Municipality. In this context, Nging and Yazdanifard argue that *“the possession of leadership qualities is very essential for organisational change in order to handle the resistance, confusion, exploration and commitment of management”*.¹⁴⁵¹

In addition, Givens argues that the leadership style and values of a leader shape and influence the culture of the organisation.¹⁴⁵² Nging and Yazdanifard contend that an *“organisation needs to create a transformational culture that is sensitive to individual needs”*.¹⁴⁵³ Transformational leaders have been found to have a deeper understanding of organisational culture which assists in ensuring an effective and smooth organisational change process.¹⁴⁵⁴ Moynihan et al argue that transformational leaders exert influence by shaping the organisational culture.¹⁴⁵⁵ Further, *“transformational leadership encourages a more adaptive or developmental culture by*

¹⁴⁴⁹ Gewurtz & Kirsh note 590 (above) 35.

¹⁴⁵⁰ Barrett & Bourke note 868 (above) 16.

¹⁴⁵¹ Nging & Yazdanifard note 806 (above) 1131-2.

¹⁴⁵² Givens note 832 (above) 8.

¹⁴⁵³ Nging & Yazdanifard note 806 (above) 1133.

¹⁴⁵⁴ Shanker & Bin Sayeed note 807 (above) 472.

¹⁴⁵⁵ Moynihan, Pandey & Wright note 845 (above) 7.

emphasising employee innovation, problem solving, and empowerment”.¹⁴⁵⁶ In order successfully to create an inclusive culture, there must be commitment by the leadership, respect for diversity, and equitable implementation of workplace policies.

It has been contended that a workplace that adopts an inclusive framework goes beyond merely acknowledging diversity and recognises that each individual is unique and has the potential to contribute to the labour market no matter his or her condition.¹⁴⁵⁷ Transformational leaders have been found to believe in inclusiveness and to possess the potential to change the effects of diversity.¹⁴⁵⁸ It can therefore be said that transformational change has a positive impact on workplace culture provided that there is leadership commitment. This study shows that transformational leadership can assist the Municipality successfully to create an inclusive culture that embraces persons with disabilities.

6.11 Theme 10: Ineffectiveness of Municipal Disability Initiatives

The leaders of the Municipality have put in place various initiatives to ensure disability inclusion and the protection of the rights of persons with disabilities. However, this study finds that such initiatives are ineffective. For instance L5 said that “*we have awareness campaigns, we have seminars. We also have videos out there on recruiting, how you go about a recruitment process*”, while L2 indicated that, although there is a programme of graduates with disabilities on a yearly basis, the challenge “*is with regards to whether the units within the City are able to absorb these kids, that’s unfortunate part*”. L7 said that “*there are various initiatives that are being put in place. One of the initiatives is the establishment of disability forum. However, the question then would be are they working?*” L3 said that “*there is PWD committee*”, while L11 confirmed that “*we have disability workshops, we have disability days, we get outside people coming in and we enlighten not only those individuals but senior management to come and attend so that they understand the limitations of these individuals*”. L8 stated that they “*have given platforms to persons with disabilities where they go out and educate our senior leadership, where they will go and speak to them and advise them about the issues that affects them*”. Employees also shared their views on the effectiveness of disability initiatives. For instance, E2 said that “*what I’ve heard now, whether it’s working or not I don’t know, they have asked disabled people to give their CV’s and when jobs come up, there is somebody there who is supposed to alert HR, this is a disabled candidate, give it some priority in shortlisting*”.

¹⁴⁵⁶ Moynihan, Pandey & Wright note 845 (above) 7.

¹⁴⁵⁷ Sabharwal note 8 (above) 200.

¹⁴⁵⁸ Kim note 668 (above) 1259.

While E5 said that “*with the learnership programme for disabled people, I can say that is the first initiative, but that is not enough because that learnership programme does not mean a guarantee employment*”. E1 confided that “*the only thing that I have seen is celebrating the day, you know going to City Hall where they meet and then addressed by a motivational speaker ... but in terms of individual support, I haven’t seen that much*”.

Ultimately, it appears that the Municipality’s focus is on education/awareness without a robust strategy to include persons with disabilities. Most of the initiatives are targeted at creating an awareness of the challenges faced by persons with disabilities, but there is no effective strategy in place on how the Municipality intends to include persons with disabilities. This confirms that municipal leaders are not committed to disability inclusion. Furthermore, there are no initiatives on how municipal leaders should prioritise disability inclusion except through the Employment Equity Plan. While municipal leaders have expressed the need for change management to include persons with disabilities, they have not developed a change management strategy to do so. There are no monitoring and enforcement mechanisms in place to measure and monitor the effectiveness of the initiatives adopted by the Municipality, thus rendering them ineffective.

It is argued that the adoption of a transformational leadership approach will result in the adoption of relevant and robust initiatives that will ensure inclusion of persons with disabilities and effective implementation of disability laws in the Municipality. Transformational leadership has been described as a process in which leaders accomplish noteworthy positive changes in individuals, groups and organisations by using inspiration, vision and skills in encouraging people to go beyond their self-centredness to achieve a greater purpose.¹⁴⁵⁹ Transformational leaders have been found to be creative in adopting new methods and in changing existing procedures and systems in order to ensure an inclusive and diverse work environment.¹⁴⁶⁰ In this context, transformational leadership will ensure that there are effective monitoring, enforcement and evaluation mechanisms in the Municipality to guarantee disability inclusion and the protection of the human rights of persons with disabilities. In addition, transformational leadership has been described as an innovative style of leadership in which leaders promote individual support.¹⁴⁶¹ Therefore, transformational leadership will be able to develop dynamic and relevant initiatives specifically designed to guarantee inclusion of

¹⁴⁵⁹ Warrick note 722 (above) 55.

¹⁴⁶⁰ Afsar, Badir & Bin Saeed note 805 (above) 1275.

¹⁴⁶¹ Imran, Ilyas, Aslam & Ur-Rahman note 712 (above) 234.

persons with disabilities in the Municipality. Having explored the above themes and subthemes, the researcher summarised the results and findings as follows:

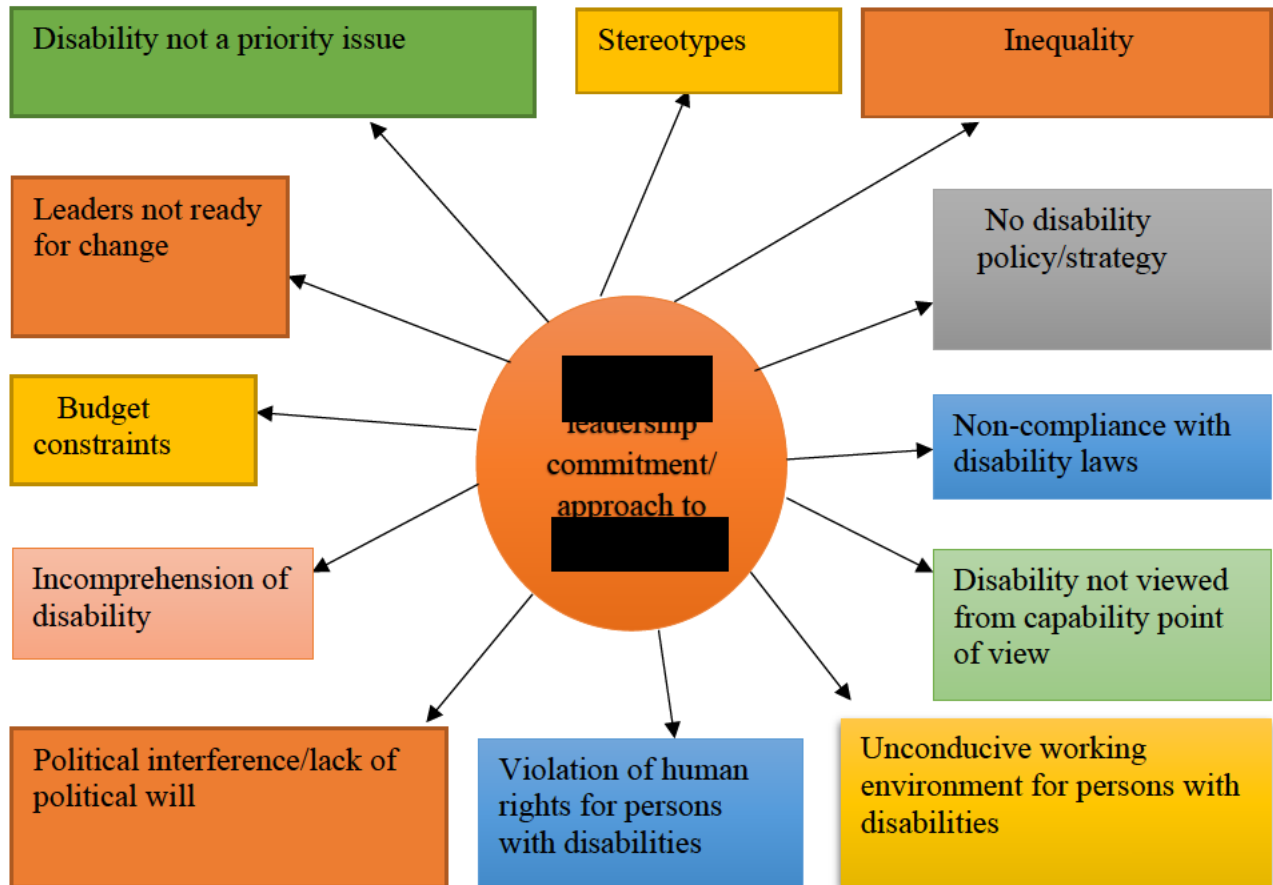


Figure 6.1: Current position regarding persons with disabilities in Ethekekwini Municipality

The assertion is that currently there is an absence of leadership commitment and an inadequate leadership approach to disability inclusion in the Ethekekwini Municipality. As a result, there is, among others, inequality, a violation of human rights of persons with disabilities, non-compliance with disability laws and an intolerable working environment for persons with disabilities. Therefore, the Municipality must adopt an influential leadership approach that will guarantee leadership commitment and political will to include persons with disabilities in the workplace. It is only with such commitment that effective implementation of disability laws will be assured, thereby addressing all the shortcomings identified in this study.

As has been mentioned above, it appears that municipal leaders are more concerned about formal compliance with legislation than disability inclusion. This is reflected in the fact that the only document utilised for disability equity and inclusion is the Municipality's EE Plan, which is a legislative requirement. Furthermore, the Municipality recently issued a notice on its intranet website encouraging employees to disclose their disabilities by completing the necessary form in order for the Municipality "to comply with the Employment Equity Act". It is therefore clear that, while the Municipality conducts seminars and workshops required by the Disability Code, it has not formulated a strategy to include persons with disabilities and to provide practical solutions reasonably to accommodate and include persons with disabilities.

It appears that, although municipal leaders understand that they should be transformational in their day-to-day operations especially on disability issues, they are merely transactional in their approach. It is argued that municipal leaders focus more on employee performance, workplace management and service delivery than challenging the status quo and attending to the needs of persons with disabilities. Put differently, they are not impactful on the environment as their concentration is on day-to-day operations and service delivery. In this regard, L3 said that "*Ethekwini Municipality is driven by service delivery ... the customer wants the service delivered*". While L12 responded as follows when asked about what hinders implementation of disability laws: "*[O]ur approach, because some things like this particular one, you need to identify it as a cross cutting team and you almost need to put in place a dedicated program manager that is able to manage this thing transversely.*"

L12 further said that "*I think we've got a leadership problem generally and if we had transformational leadership and we had the maturity as a society, we would be able to be much more responsive not just to people with disabilities but to all social issues*". In this context, it has been said that transactional leadership is centred on management of the workplace and employee performance.¹⁴⁶² Transactional leadership "supports adherence to practice standards but not necessarily openness to innovation".¹⁴⁶³ Its attention is on "extrinsic motivation for the performance of job tasks".¹⁴⁶⁴ Transactional leaders concentrate on short-term planning,

¹⁴⁶² J A Odumeru & G O Ifeanyi 'Transformational vs transactional leadership theories: Evidence in literature' (2013) 2 (2) *International Review of Management and Business Research* 358.

¹⁴⁶³ G A Aarons 'Transformational and transactional leadership: Association with attitudes toward evidence-based practice' (2006) 57 (8) *NIH Public Access* 1163 www.ncbi.nlm.nih.gov/pmc/articles accessed on 16 April 2019.

¹⁴⁶⁴ Aarons note 1463 (above) 1163.

procedures, rules and control as well as the basic functions of management.¹⁴⁶⁵ The tick box approach to disability, as explored above, clearly indicates the transactional leadership style adopted by the Municipality. Thus, it can be said that municipal leaders are more transactional than transformational in their approach to disability. Emanating from the above identified shortcomings and in line with the objectives of the study, the researcher has developed a transformational leadership framework that municipal leaders are encouraged to utilise to include persons with disabilities and to implement disability laws effectively in the Municipality. The framework is explored in chapter seven.

6.12 Conclusion

This chapter has demonstrated the importance of transformational leadership in the implementation of disability laws in the Municipality. It has further demonstrated that for successful inclusion and implementation of disability related legislation in the Municipality, there must be a commitment from executive and political leaders. The responses from the leaders confirmed that there is a need for a transformational leadership approach in order to achieve disability inclusion and equity in the Municipality. While there is a level of awareness from senior leaders of the Municipality on the role they should play as transformational leaders to accommodate persons with disabilities, they are not in practice applying transformational leadership principles. This is due to, among others, lack of commitment and an absence of a disability strategy and policy. There is no single approach that is communicated to all municipal leaders, politicians, operational managers and employees on the inclusion of persons with disabilities in the Municipality. In addition, there is no emphasis on the adoption of a transformational leadership approach by all senior executives and political leaders of the Municipality.

Consequently, persons with disabilities are not being reasonably accommodated as the Municipality is not effectively implementing disability laws. This results in the infringement of the human rights to dignity and equality of persons with disabilities. In this regard, the next chapter will provide recommendations that can be utilised by municipal leaders to address the critical factors (as identified in this study) hindering the implementation of legislation relating to disability in the Municipality. In particular, the recommendations will focus on practical measures that can be adopted by the Municipality's senior leaders to guarantee effective

¹⁴⁶⁵ S Nikezic, S Puric & J Puric 'Transactional and transformational leadership: Development through changes' (2012) 6 (3) *International Journal of Quality Research* 287.

implementation of disability laws by practically utilising transformational leadership principles thereby promoting and protecting the human rights of persons with disabilities in the workplace.

CHAPTER SEVEN

RECOMMENDATIONS AND CONCLUSION

7.1 Introduction

This chapter presents the key findings, suggestions and the conclusion of the study. The aim of the study was to analyse the role that can be played by transformational leadership and its impact on effective practical implementation of legislation connected to disability in the workplace, with particular reference to the Ethekewini Municipality. This study further aimed to address the rationale behind non-compliance with the said legislation in the Municipality. In this regard, the researcher engaged municipal leaders and employees with disabilities to respond to the research questions and meet the aims and objectives of the study. The study further took a doctrinal approach to exploring the existing provisions relating to reasonable accommodation and inclusion of persons with disabilities, as well as considering the relevant literature on socio-legal and management studies on transformational leadership, human rights and disability inclusion.

Emanating from the above exploration, the researcher analysed the data and identified various shortcomings that hinder effective execution of disability laws in the Municipality. Thus, the recommendations of the study are based on the key findings of the study as explored in chapter six. The recommendations address key findings relating to, inter alia, workplace culture, leadership commitment and approach to disability, non-compliance with disability laws and effective implementation of disability provisions in the Municipality.

This chapter firstly explores the key findings on the importance of transformational leadership on disability inclusion, implementation of disability laws and workplace culture. It then proceeds by making recommendations for the leadership of the Municipality as well as for future studies. Finally, this chapter concludes by exploring whether the research objectives were met, limitations of the study and the implication of the study.

7.2 Key Findings

The following are the key findings of the study:

7.2.1 Importance of transformational leadership on disability inclusion

At the heart of this study was the role and impact of transformational leadership on the implementation of disability laws in the Municipality. The importance of transformational

leadership was established as an essential approach effectively to embrace and include persons with disabilities in the Municipality. The value of transformational leadership was underscored by all leaders who participated in this study; they emphasised that it was an important tool for the Municipality to use to change the environment from one that is not inclusive of persons with disabilities to one that accommodates and includes persons with disabilities.

The leaders who participated in the study emphasised the need for leaders in the Municipality and the public sector at large to be transformational, taking into consideration the Constitution which is transformative in nature. They further emphasised that transformational leaders have the ability to persuade and influence employees and colleagues to achieve a common objective and vision. Some leaders indicated that transformational leadership is required at both the political and administrative levels of the Municipality. Consequently, as Belias and Koustelios assert, the strategic leadership needs to be transformational if its aim is to genuinely serve the workplace.¹⁴⁶⁶

The study concludes that transformational leadership is an important approach to adopt to ensure inclusion of persons with disabilities in the workplace. While the study finds that municipal leaders understand that they should be transformational in their approach, it emerged that they are not implementing the values of transformational leadership. This is due mainly to the lack of commitment by municipal executive leaders. Consequently, this study recommends the adoption of a transformational leadership style in order to guarantee inclusion of persons with disabilities.

7.2.2 Transformational leadership as a tool to implement disability laws

This study established that transformational leadership is required in the Municipality and the public sector to implement disability laws effectively. It found that transformational leadership possesses characteristics that can enforce implementation of disability laws in the Municipality. According to Song et al, transformational leadership is action orientated, which makes it the appropriate type of leadership to advance implementation of disability policies and laws in the workplace.¹⁴⁶⁷ Transformational leadership has been found “to be more realistic than some of the other leadership forms”.¹⁴⁶⁸ It is uncomplicated, easy to implement and has the potential to

¹⁴⁶⁶ Belias & Koustelios note 608 (above) 457.

¹⁴⁶⁷ Song, Kolb, Lee & Kim note 568 (above) 70.

¹⁴⁶⁸ Ghasabeh & Provitera note 1148 (above) 7.

get employees “to be one voice” in the workplace.¹⁴⁶⁹ Thus, transformational leadership has been found to be of value especially when utilised in the workplace.¹⁴⁷⁰

Transformational leaders deal with workplace issues sensibly and realistically based on practical rather than theoretical considerations. The adoption of a transformational leadership approach by municipal leaders will therefore develop practical measures that guarantee implementation of disability laws in the Municipality. It is a key finding of this study that transformational leadership should be utilised to implement disability laws in the Municipality effectively.

7.2.3 Impact of transformational leadership on workplace culture

Another key finding pertinent to this study is the effect of transformational leadership on workplace culture. One of the major factors hindering effective implementation of disability laws in the Municipality is resistance to change which directly talks to the existing culture of the Municipality and the need for an effective change management process. This study has demonstrated that transformational leadership is influential and effective when it comes to creating a positive workplace culture and change management. Consequently, this study’s finding is that transformational leadership will influence the Municipality’s workplace culture to be accommodative and inclusive of persons with disabilities by ensuring that everyone is on board and that disability policies are effectively implemented.

Emanating from the above discussion and taking into consideration the objectives of the study, the researcher developed two transformational leadership models to secure inclusion of persons with disabilities in the Municipality. The first model illustrates how the Municipality can develop transformational leaders to implement in practice the initiatives required to include persons with disabilities. The second model illustrates how transformational leadership influences the organisation towards inclusion of persons with disabilities. I now explore the first model.

7.2.4 Developing transformational leadership in the Municipality

Among the key findings of this study is the positive role that transformational leadership can play in the implementation of disability laws in the Municipality. The study finds that municipal leaders are not utilising transformational leadership principles although they

¹⁴⁶⁹ Ghasabeh & Provitera note 1148 (above) 7.

¹⁴⁷⁰ Ghasabeh & Provitera note 1148 (above) 7.

understand that they should be transformational in performing their duties, especially as they are guided by the Constitution which is transformative in nature. Consequently, there is a need to develop a transformational leadership approach in the Municipality. The following is the recommended model for developing transformational leadership to implement disability initiatives in the Municipality:

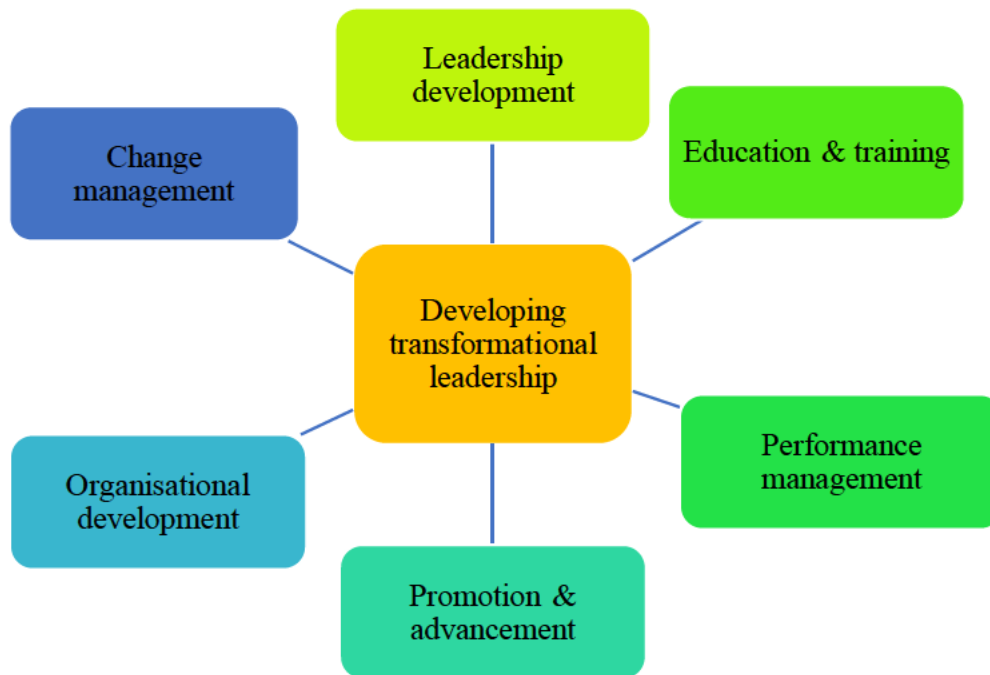


Figure 7.1: Developing transformational leadership practically to implement disability initiatives in Ethekewini Municipality

The above recommended model focuses on the development and implementation of transformational leadership in the Municipality. It emerged during the interviews with municipal leaders that the EE Plan, adopted in 2014 by the Municipality, was implemented without facilitating any form of training or undertaking a change management process. In the absence of training and change management leaders were expected to adopt and implement the EE Plan without proper guidelines, and this has led to the non-inclusion of persons with disabilities. It is submitted that before leaders can adopt any strategy or policy and be committed to the inclusion of persons with disabilities, municipal leaders must be prepared through a transformational leadership approach. In addition, the environment must be ready and conducive to include persons with disabilities. Currently, municipal leaders, while they do have some understanding of what transformational leadership is and its importance to disability

inclusion, are not in practice applying the principles of transformational leadership to disability inclusion. Disability is not a priority issue and there are not enough resources to allocate to the proper accommodation of persons with disabilities in the Municipality. As this study has demonstrated, transformational leaders are influential and challenge the status quo, and it is these particular qualities that will enable leaders to challenge the status quo and bring about change.

It is contended that municipal leaders including political leaders require the aforementioned qualities in order to drive disability initiatives and effectively to implement legislation governing disability in the workplace. As it will be seen from the recommendations below, the Municipality should first develop a transformational leadership approach through education and training and leadership development for all municipal and political leaders. Such initiatives will ensure leadership understanding of disability and a commitment to disability inclusion. The Human Resources Department and the Skills Development and Organisational Development Unit can be tasked to assist in developing a transformational leadership approach for municipal leaders.

Once that is achieved, leaders will have to focus on organisational development by developing a workplace culture that is inclusive of persons with disabilities. In so doing, municipal leaders will have to create a robust and influential change management framework to address all the shortcomings identified in this study and the negative attitude to persons with disabilities. In addition, the Municipality must set substantial key performance indicators (KPIs) relating to the inclusion and promotion of persons with disabilities. The above model forms part of the recommendations which are explored below. Ultimately, it is submitted that the Municipality will first need to develop and adopt a transformational leadership approach and be committed to it. Municipal leaders should be practically and psychologically ready to include persons with disabilities through this transformational leadership approach. It is essential that a single clearly defined leadership approach on disability inclusion must be communicated to all municipal leaders; this will ensure a common understanding and approach to disability affairs and demonstrate the Municipality's commitment to disability inclusion and the promotion of the human rights of persons with disabilities.

7.2.5 Influence of transformational leadership on disability inclusion

Once the environment is ready to include persons with disabilities in the Municipality, leaders should then formulate a disability policy and strategy to drive inclusion of persons with

disabilities. By that time, it will be easy to influence the idea of strategy and policy formulation as all leaders will be leading through a transformational leadership approach. Furthermore, transformational leadership will be instrumental in ensuring that there are sufficient budget and resources to drive disability initiatives in the Municipality. The following is a recommended transformational leadership model that demonstrates how transformational leadership influences the organisation towards inclusion of persons with disability:

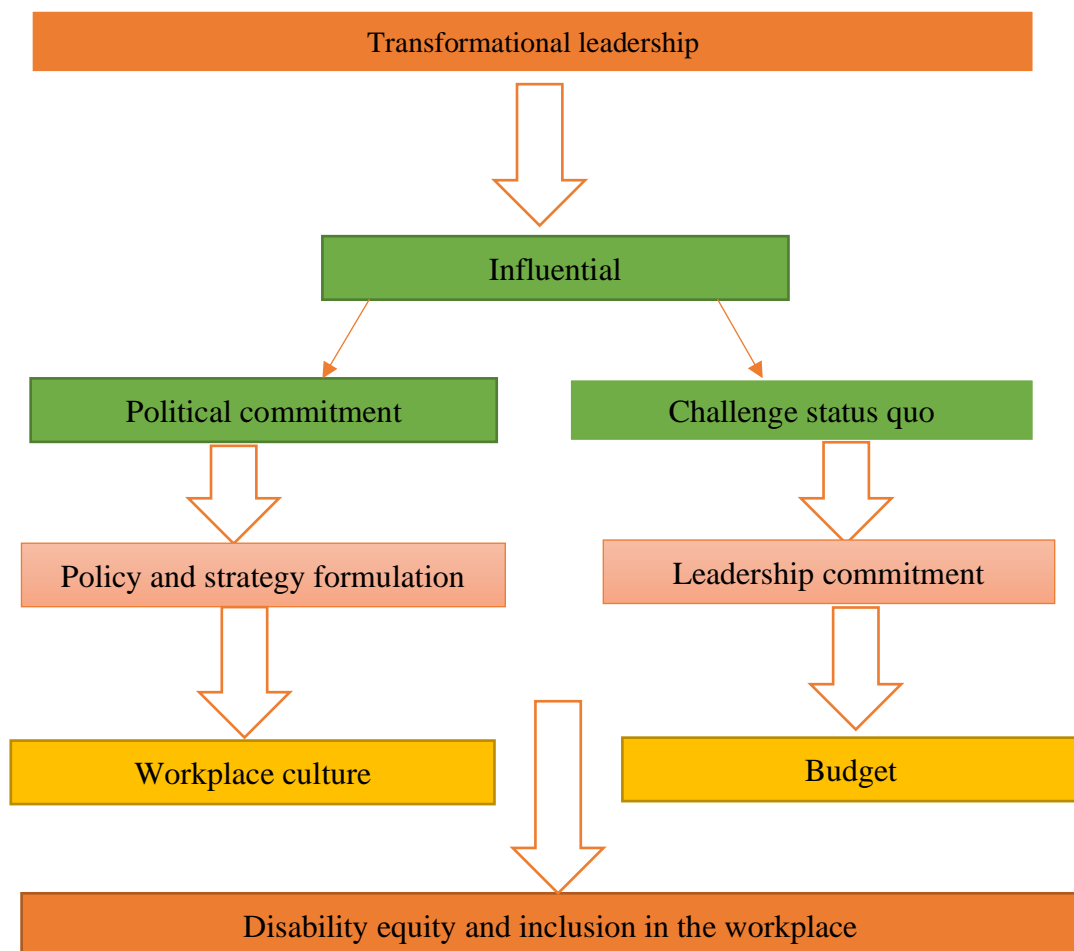


Figure 7.2: Transformational leadership model designed to include persons with disabilities in Ethekewini Municipality

The above recommended transformational model places transformational leadership at the centre of all issues relating to disability inclusion in the Municipality. The rationale behind placing transformational leadership at the centre is that transformational leaders possess critical attributes necessary to ensure inclusion of persons with disabilities in the Municipality. As explored in the literature and throughout the chapters, transformational leaders are influential, visionary and committed leaders who challenge the status quo. Transformational leaders have

the ability to motivate employees to commit to a new vision and potentials through effective communication skills.¹⁴⁷¹ They are the champions of workplace transformation, particularly if the change will improve the status quo.¹⁴⁷² Additionally, they “are more strategic in their approach”.¹⁴⁷³ These attributes of a transformational leader will ensure that critical barriers that hinder inclusion of persons with disabilities in the Municipality are eradicated.

In particular, transformational leadership will inspire leaders, politicians and employees of the Municipality to overcome the stigma and existing stereotypes in relation to persons with disabilities. Therefore, by adopting a transformational leadership approach both executive and political leaders will be committed to include persons with disabilities in the Municipality. Transformational leadership will develop an influential change management strategy designed to include persons with disabilities in all occupational levels in the Municipality and to ensure that the environment and culture are conducive for them. It has been established in this study that transformational leaders promote human rights. Therefore, transformational leadership will also ensure that the rights of persons with disabilities (particularly the right to human dignity and equality) are promoted and protected in the Municipality.

Most importantly, as change agents, transformational leaders will make sure that a strategy is developed and a disability policy is adopted to include persons with disabilities in the Municipality and will secure their effective implementation through enforcement, monitoring and evaluation mechanisms. Furthermore, transformational leadership will utilise a strategic approach to prioritise disability in the Municipality by ensuring that there is a budget which is adequate to fund reasonable accommodation measures for persons with disabilities. By so doing, transformational leadership will guarantee effective implementation of disability laws, thereby achieving equality for persons with disabilities in the Municipality.

The transformational leadership model identifies five factors that are critical for inclusion of persons with disabilities. The ultimate goal is to achieve disability equity and disability inclusion in the Municipality, and in order to do so an influential leadership model that ascribes to values such as fairness, equality and justice is essential. In addition, leaders of the Municipality must be committed to transformation and inclusion of persons with disabilities. The leadership and political commitment as identified in the model requires both executive

¹⁴⁷¹ Achua & Lussier note 550 (above) 311.

¹⁴⁷² Achua & Lussier note 550 (above) 313.

¹⁴⁷³ Achua & Lussier note 550 (above) 323.

leaders and political leaders to be devoted to the development of practical strategies that will guarantee inclusion of persons with disabilities in the Municipality. In other words, they must devise a specific strategy to deal with recruitment and selection of persons with disabilities, and their advancement in and retention by the Municipality.

The concept of disability inclusion embraces the fair treatment of persons with disability by fully including them in the workplace, considering their needs, and creating structures, systems and processes that make them feel valued and included. Thus, leaders should develop practical measures to remove barriers that prevent persons with disabilities from being included and advancing in the Municipality. They must go beyond legislative requirements by devising measures that accommodate persons with disabilities on the basis of their capabilities. This requires leaders to adopt an individualistic approach to disability matters. By so doing, municipal leaders will achieve disability equity in the Municipality in line with the Constitution and disability laws.

There is a relationship between each factor identified in the recommended model. For instance, without influential transformational leadership, there will be no commitment from the executive and political leadership of the Municipality to include persons with disabilities. Importantly, leadership has been identified as a key factor in ensuring inclusivity in the workplace.¹⁴⁷⁴ In this context, an inclusive leader has been characterised as “one who visibly champions diversity and initiatives linked to it, seeks out and values employees’ contributions, demonstrates a collaborative leadership style, has the ability to manage conflict, embodies merit-based decision-making, possesses cultural competency, and creates a sense of collective identity”.¹⁴⁷⁵

It is clear, therefore, that, without executive and political leadership commitment, persons with disabilities will not be included in the Municipality because there will be no leadership dedication to develop practical measures to ensure reasonable accommodation of persons with disabilities. Thus, disability laws will not be effectively implemented. Finally, without disability inclusion, the Municipality will not achieve disability equity as required by the Constitution and the EEA. From the above it is apparent that there is a nexus between the factors identified in the recommended model and, for successful implementation, all of the

¹⁴⁷⁴ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 328.

¹⁴⁷⁵ Vohra, Chari, Mathur, Sudarshan, Verma, Mathur, Thakur, Chopra, Srivastava, Gupta, Dasmahapatra, Fonia & Gandhi note 731 (above) 328.

factors must be taken into consideration in order to guarantee inclusion of persons with disabilities.

Ultimately, the identified attributes of transformational leadership are required to change the current status quo in relation to persons with disabilities in the Municipality. Transformational leadership will foster commitment by leaders and politicians, thereby overcoming one of the principal obstacles to inclusion of persons with disabilities in the Municipality. It is for these reason that the model recommends the adoption of transformational leadership by the Municipality.

Leadership commitment will ensure that disability is prioritised in all municipal development initiatives as well as the IDP, thereby promoting and protecting the human rights of persons with disabilities and achieving equality in the workplace. Additionally, the commitment to and prioritisation of disability in the Municipality will result in a better understanding by leaders of what disability is, while the adoption of a policy on disability will address various social issues such as stigma attached to persons with disabilities. The disability strategy will guarantee inclusion of persons with disabilities in all occupational levels of the Municipality thereby achieving equity in line with the EE Plan and the EEA.

It is clear from the responses of the leaders that they recognise that transformational leaders are visionary leaders who work towards the future of the workplace, and as change agents, they have influence on workplace policies and strategies. Consequently, transformational leaders can influence workplace culture and strategy and can have an impact on understanding and acknowledging the capabilities and potential of persons with disabilities. Transformational leadership can develop meaningful disability initiatives and mechanism for enforcement, monitoring and evaluation to guarantee inclusion of persons with disabilities. Thus, the practice of viewing disability as a tick box process will come to an end as transformational leaders are genuine change agents who always strive for fairness and justice in the workplace. It is important to note that the leaders themselves support the view that transformational leaders are influential. For example, L1 said that *“as a transformational leader you persuade, you influence”*. While L3 said that *“transformational leaders has the ability to get everybody to achieve a common objective and vision. A transformational leader inspires followers”*.

Adding to that, L5 said that transformational leaders *“see things on the horizon or around us that we don’t necessarily see ourselves and inspire people to want to do these things and to*

change the way we do things". L12 said that transformational leaders "*have got a very strong sense of justice and they will make sure that you are responding to all these baseline issues*". This view is supported by Ciurea et al who argue that transformational leadership is highly persuasive particularly when it comes to transforming and upholding workplace systems and customs.¹⁴⁷⁶ They further assert that transformational leadership installs consciously or sometimes unconsciously humanistic principles and objectives which lead to transformation and the development of other people.¹⁴⁷⁷

Transformational leadership has been described as a process by which leaders accomplish noteworthy positive changes in individuals, groups and organisations by using inspiration, vision and skills in encouraging people to go beyond their self-centredness to achieve a greater purpose.¹⁴⁷⁸ Moreover, transformational leaders are influential in sensitising employees on the necessity for workplace transformation.¹⁴⁷⁹ Transformational leadership can therefore ensure that there is effective change management to alter the culture of the Municipality from one that is not inclusive to one that accommodates persons with disabilities.

Transformational leadership can influence policies to improve the accountability of all municipal leaders when implementing disability policies. Transformational leaders are entrusted to carry out workplace strategic plans for implementing transformation through a variety of activities that will enable an organisation to fulfil its objectives.¹⁴⁸⁰ Transformational leadership has been globally accepted as a form of leadership that is far more successful than other forms of leadership.¹⁴⁸¹ Consequently, the transformational leadership model, being influential, will guarantee that disability equity (as a challenge not only in the Municipality but also in the public sector at large) is afforded a high percentage in the KPAs of all leaders of the Municipality.

It is submitted that all that is required is a leadership model that can influence decision making by the Municipality to guarantee inclusion of persons with disabilities in the workplace. It is further submitted that transformational leadership will ensure that there is a balance between the political agenda and the administrative agenda as both political leaders and executive leaders have a responsibility to secure the inclusion of persons with disability. Consequently,

¹⁴⁷⁶ Ciurea, Avram & Mohan note 670 (above) 23.

¹⁴⁷⁷ Ciurea, Avram & Mohan note 670 (above) 23.

¹⁴⁷⁸ Warrick note 722 (above) 55.

¹⁴⁷⁹ Dubrin note 1425 (above) 126.

¹⁴⁸⁰ Imran, Ilyas, Aslam & Ur-Rahman note 712 (above) 234.

¹⁴⁸¹ Imran, Ilyas, Aslam & Ur-Rahman note 712 (above) 234.

the Municipality, through the transformational leadership model, will be able accommodate and include persons with disabilities thereby achieving disability equity in the workplace as required by the legislation and international instruments on disability.

The focus of this study was to analyse the role of transformational leadership in the implementation of disability laws and the inclusion of persons with disabilities in the Ethekewini Municipality. It is submitted that the objectives of the study, which were to assess senior leaders' levels of awareness of the role they should play as transformational leaders in accommodating persons with disabilities within the Municipality; to identify the critical factors affecting the implementation of disability related legislation within the Municipality; to assess the impact of transformational leadership on the implementation of the said legislation; and ultimately to recommend a transformational leadership model/framework that accommodates persons in the Municipality, have been met. As indicated above, the majority of the leaders engaged in this study underscored the need for leaders in the Municipality and public sector at large to be transformational. They further identified critical characteristics of a transformational leader which were linked to the existing literature on transformational leadership. There was therefore a level of awareness by municipal leaders that they have a specific role to play in disability inclusion and that they have to be transformational in their approach.

The study found that leaders do have some understanding of what a transformational leader is and that they should be transformational in their approach; however, in practice municipal leaders are not utilising a transformational leadership approach because of the various factors identified above. They are more transactional in the conduct of their day-to-day operations, and, as a result, the Municipality is failing its constitutional mandate of substantive equality, particularly for persons with disabilities. The Municipality has viewed disability from a formal equality perspective. Its overreliance on the EE Plan as a transformation tool for persons with disabilities indicates that the Municipality merely considers persons with disabilities because it is required to do so by the law. In other words, disability inclusion is simply undertaken as a tick box exercise to comply with legislative requirements. However, in order to achieve substantive equality in the Municipality, leaders need to understand individual differences, and must go beyond legislative compliance and actively strive for inclusion to achieve workplace diversity.

This study has explored at length in chapter three and throughout the other chapters the impact of transformational leadership on the implementation of disability related legislation in the workplace. The study has further identified critical factors affecting the implementation of the legislation relating to aspects of disability in the Municipality. Such factors were categorised into ten (10) themes and seven (7) subthemes as explored above. Emanating from those themes, the researcher has developed a transformational leadership framework that the Municipality should adopt to accomplish the inclusion of persons with disabilities and the effective implementation of disability laws. The recommended model places transformational leadership at the centre of the strategy because it has been shown that this leadership style is eminently suitable for achieving disability inclusion, leadership commitment, political buy-in and effective implementation of disability laws in the Municipality.

This study has found that at the heart of non-implementation of disability laws is a lack of political will and leadership commitment. Only by adopting a transformational leadership approach, will commitment on both executive and political levels be assured.

7.3 Recommendations for the Leaders

As discussed above, the Municipality must firstly adopt a transformational leadership approach and place it at the centre of all developmental activities relating to inclusion of persons with disabilities. This study has discussed at length the benefits of transformational leadership and its relevance in this regard. Once a transformational leadership approach is adopted and developed, both the executive and political leadership must be thoroughly trained on transformational leadership in order to ensure their commitment to the inclusion of persons with disabilities. (The aspect of education and training is explored below.) Thereafter, municipal leaders must implement the following recommendations to guarantee the effective implementation of disability laws in the Municipality.

7.3.1 Change management

The findings of the study require the leaders of the Municipality to engage in a robust change management process to guarantee inclusion of persons with disabilities across all occupational levels. The Human Resources (HR) and Organisational Development and Change Management (ODCM) Departments of the Municipality must develop a vigorous change management process aimed at tackling the challenges faced by the Municipality regarding persons with disabilities. It is submitted that the HR and ODCM Departments are the custodians of people management with the primary focus on ensuring that the Municipality functions efficiently

across departments and occupational categories. Consequently, these departments have an obligation to safeguard the interests of all employees regardless of their race, gender, sexual orientation or disability.

The Municipality requires a change management process that will result in drastic changes in attitudes, unfounded perceptions, stereotypes and bias against persons with disabilities. The primary focus of the change management process must be on cultivating a factual awareness of disability and how the Municipality can strive to become inclusive of persons with disabilities. Change management is a consultative process. Therefore, in order to avoid change resistance, the change management process must include vigorous communication across the Municipality informing employees and giving a clear direction on the strategy of the Municipality to include persons with disabilities. This communication must involve a consultative approach with the senior leaders, as drivers of the change, demonstrating why persons with disabilities must be included, how they will be included, the departments that will be involved and their role, and how the change will affect other employees. This process encourages participation of all employees and their acceptance of the strategy adopted by the Municipality to include persons with disabilities.

In addition, consultation with employees with disabilities is essential in the formulation of the objectives and content of the change management approach. The change management process must also include the political leadership of the Municipality as it has emerged that there is a lack of political will. Moreover, political leaders, in particular the Mayor, have a responsibility in terms of the *Disability Framework for Local Government 2009-2014* to promote inclusion of persons with disabilities in the Municipality. The adoption of a transformational leadership approach by the Municipality will ensure effective change management and leadership commitment as transformational leadership seeks to change a workplace by influencing employees “to buy into a new vision and new possibilities”.¹⁴⁸² Transformational leadership also has the “ability to (1) challenge status quo and make convincing case for change, (2) inspire a shared vision for the future, (3) provide effective leadership during transition, and (4) institutionalized the change”.¹⁴⁸³ It is submitted that through an effective change management process conducted in conjunction with all employees, politicians and operational managers, through transformational leadership principles, the Municipality will effectively implement

¹⁴⁸² Achua & Lussier note 550 (above) 311.

¹⁴⁸³ Achua & Lussier note 550 (above) 314.

legislation governing disability thereby achieving more than the 2% target of persons with disabilities in the Municipality.

7.3.2 Education and training on disability and transformational leadership

Once the change management process has been shared across the organisation with all employees, the HR and ODCM Departments need to ensure that all leaders are trained on disability. Understanding disability was identified in this study as a key challenge hindering the inclusion of persons with disabilities in the Municipality. It emerged that the leaders who participated in the study had different understandings of disability, and this has undeniably hindered transformation for persons with disabilities. The Municipality should have a uniform understanding of and approach to disability to avoid confusion and ambiguity.

The understanding of disability must conform to legislative requirements and be understood from a human rights perspective as this study has demonstrated that disability is a human rights issue. The HR and ODCM Departments must partner with the Ethekewini Municipal Academy (EMA), an in-house skills and development unit, to train leaders on disability. The training must include both the political and executive leadership of the Municipality. The facilitators of the training must include experts from various disability and human rights organisations which specialise in the effective management of persons with disabilities in the workplace and representatives of employees with disabilities employed by the Municipality.

Transformational leadership has been identified in this study as the most appropriate leadership style that can assist the Municipality to devise strategic plans to achieve the inclusion of persons with disabilities. Municipal leaders must therefore receive training on transformational leadership, especially on how to implement principles of transformational leadership for the benefit of persons with disabilities and the Municipality. Evidence has shown that transformational leadership can be taught.¹⁴⁸⁴ Kelloway and Barling assert that in organisations where transformational leadership was taught, there has been major transformational change.¹⁴⁸⁵

All the departments must work together to put in place training programmes that will educate leaders on their role to transform the Municipality. In particular, both executive and political leaders of the Municipality must be trained on the impact of transformational leadership on the

¹⁴⁸⁴ E K Kelloway & J Barling 'What we have learned about developing transformational leaders' (2000) 21 (7) *Leadership & Organization Development Journal* 356.

¹⁴⁸⁵ Kelloway & Barling note 1484 (above) 356.

inclusion and accommodation of persons with disabilities. This training can be facilitated internally (through the EMA, or the HR or ODCM Departments) and/or externally by the EMA or external service providers that have the necessary expertise to influence and transform the mindsets and attitudes of leaders to the inclusion of persons with disabilities. The Municipality employs psychologists who can also be utilised, particularly on psychological alignment to change.

In addition, the City Integrity and Investigation Unit (CIIU) through its outreach programme can assist with training on a human rights approach to disability because part of its mandate is to promote, protect and cultivate a human rights culture in the Municipality. This training will assist in sensitising leaders to uphold the human rights of employees, including the rights of persons with disabilities. Consequently, the EMA, HR Department, CIIU and ODCM Department must identify training courses that are practical and measurable to achieve the strategic objectives of the Municipality regarding persons with disabilities. The training initiatives must also be extended to all employees across the Municipality to create uniformity on the inclusion of and the promotion of human rights for persons with disabilities.

7.3.3 Leadership development

The education and training explored above need to be supplemented by a specific on-going leadership development programme designed to deal with each leader responsible for inclusion of persons with disabilities and implementation of disability policies and strategies in the Municipality. The senior leadership of the Municipality must therefore adopt a leadership development programme to ensure that leaders have the competence to handle the needs of persons with disabilities. Leadership development will advance leaders' individual capacity effectively to include persons with disabilities in the workplace. The critical outcome of leadership development is to ensure that leaders are emotionally and psychologically ready to employ and nurture persons with disabilities. The leadership development programme can be done through individual coaching with the specific aim of equipping municipal leaders to support and lead persons with disabilities by prioritising their individual needs, something that cannot be achieved only with training.

Coaching can also assist municipal leaders to lead persons with disabilities by ensuring that leaders are trained to recognise their capabilities and competencies. Municipal leaders need to be equipped to view persons with disabilities as capable employees who must be treated equally and equitably throughout the Municipality. Each leader must be provided with the skills

necessary to accept others regardless of their own perceptions, hence the need for a leadership development programme (coaching) which should be conducted on a continuous basis to take leaders through a journey of understanding to an acceptance of the importance of including persons with disabilities in the Municipality. It has been said that “coaching is an important leadership competency”.¹⁴⁸⁶ Coaching by its nature assists in increasing strengths and minimising weaknesses through continuous feedback.¹⁴⁸⁷

Coaching is critical for leaders in the Municipality. They must be assigned a coach who will monitor and constantly meet with them to ensure that they are fully trained on disability inclusion while monitoring whether they are implementing disability laws and including persons with disabilities in the process. The coaching process will advance disability commitment by all leaders of the Municipality. The Municipality has access to industrial psychologists who are trained to assess the working circumstances of employees and to develop leaders to ensure the enhancement of working conditions of all employees. Industrial psychologists should meet regularly with leaders to train them and to monitor and evaluate their psychological readiness to integrate persons with disabilities in the Municipality.

7.3.4 Strategy formulation for the inclusion of persons with disabilities

The study identified that the leaders in the Municipality experience challenges with non-compliance with disability laws and implementation of the targets outlined in the Municipality’s Employment Equity Plan. It appeared that the EE Plan is used purely as a tick box exercise to avoid fines by the Department of Labour. It further emerged that municipal leaders rely on the EE Plan as a strategy, despite the fact that the EE Plan is not a strategy but a legislative requirement that requires the Municipality to meet prescribed targets in the workplace. Therefore, the Municipality does not have a disability strategy specifically designed to recruit and select persons with disabilities. In order to meet the targets in line with the EEA, it is imperative for the Municipality to draw up a disability strategy that details how the legislative requirements relating to disability will be realised by the Municipality.

The leaders of the Municipality must be equipped to formulate strategies to include persons with disabilities which must cover recruitment and selection, training and development, talent management and succession planning. As Kim and Yoon assert, executives in local government have an obligation to create strategies that foster effective government culture and

¹⁴⁸⁶ Achua & Lussier note 550 (above) 190.

¹⁴⁸⁷ Achua & Lussier note 550 (above) 190.

to provide solutions.¹⁴⁸⁸ Consequently, the strategy formulated by the leaders of the Municipality must ensure that each department has positions for persons with disabilities across all occupational levels. The strategy must be clear on the time frames for compliance, specifying when positions will be filled, and each position must include an individual training plan aligned to the development of the particular person with disabilities appointed to that position.

The strategy must include a procedure for the Municipality to manage the talent of persons with disabilities through succession planning. The strategy must demonstrate how the succession plan will allow persons with disabilities to progress from one occupational level to another within the Municipality. As Nxumalo asserts, the responsibility on the employer to safeguard and advance the occupation of persons with disabilities necessitates giving them apposite preferential treatment thereby achieving the objectives of inclusivity and parity in society.¹⁴⁸⁹ In this way, the Municipality can create a robust and inclusive strategy to include and promote involvement of persons with disabilities, thereby achieving equality in line with disability laws. The adoption and implementation of the strategy through a transformational leadership approach will guarantee the achievement of targets for persons with disabilities in the Municipality.

7.3.5 Disability policy

It is recommended that the Municipality adopt a disability policy. This is crucial if the Municipality is serious about the inclusion of persons with disabilities. Such a policy should cover social issues pertaining to persons with disabilities, such as access and a safe working environment. The promotion of human rights of persons with disabilities must feature prominently in the policy. The policy must also deal with stigma attached to persons with disabilities and proposals to ameliorate the consequences thereof. Accessible communication, physical environment, reasonable accommodation, mental illness and various other issues relating to disabilities must be adequately covered in the policy. It is recommended that the municipal leadership must set up a committee, inclusive of employees with disabilities and the HR Department, CIU and ODCM Department, to develop a disability policy for the Municipality. The Municipality must involve an expert or experts in the field of disability to assist with policy formulation.

¹⁴⁸⁸ Kim & Yoon note 120 (above) 148.

¹⁴⁸⁹ Nxumalo note 694 (above) 1529.

The adoption of a disability policy will demonstrate the commitment of municipal leaders to include and accommodate persons with disabilities. The policy will further assist in reinforcing and clarifying the required standards expected of leaders, managers and employees when handling disability inclusion and disability affairs. The policy will impose a consistent approach across the Municipality to matters of disability, including a much-needed understanding of disability, which has emerged as a factor hindering transformation. Once the policy is adopted, employees and leaders must be educated on the policy. It must also be made easily accessible on notice-boards and other municipal media platforms and be included in welcome packs for new employees in order to promote a culture that is inclusive of persons with disabilities.

7.3.6 Organisational development

Organisational development relates to the values, tactics and methods utilised by workplaces to manage change.¹⁴⁹⁰ Organisational development encourages transformation that assists workplaces to align people and processes to changes that create a conducive environment.¹⁴⁹¹ It can therefore be said that organisational development is the heart of an organisation because of its ability to assist leaders to make employees understand why change occurs. The Municipality requires organisational development to make leaders and employees understand the importance of including persons with disabilities in all components of the Municipality.

It is recommended that the senior leadership of the Municipality should create a culture that promotes inclusivity of persons with disabilities which can be achieved through raising awareness on issues affecting them. The ODCM Department can assist by developing a structured approach to manage change that will influence the development of conditions favourable for persons with disabilities in the Municipality.

The leaders of the Municipality who participated in this study identified budget constraints as one of the factors hindering transformation. Thus, robust organisational development promoted by the ODCM and HR Departments will assist the Municipality to take a strong stance on the allocation of sufficient funds from the budget to prioritise the enhancement of working conditions for persons with disabilities. The Municipality should continuously communicate

¹⁴⁹⁰ M B Banutu-Gomez & S M Banutu-Gomez 'Organisational change and development' (2016) 12 (22) *European Scientific Journal* 57 doi: 10.19044/esj.2016.v12n22p56 accessed on 16 March 2019.

¹⁴⁹¹ Banutu-Gomez & Banutu-Gomez note 1490 (above) 57.

its obligation to uphold human rights by sharing its achievements on the strategies mentioned above.

In addition, the Municipality should promote human rights during the on-boarding and induction process so that all employees are made aware of the Municipality's stance on the inclusion of persons with disabilities. For instance, during on-boarding, all new employees must be issued with the disability policy and any human rights policies, and the Municipality must ensure that the disability policy is part of the on-boarding presentation so that everyone understands its position regarding persons with disabilities. The Code of Good Practice on the Employment of Persons with Disabilities must be included in the welcome pack and be communicated to all employees in the Municipality. These platforms can be utilised as part of developing the Municipality to manage change, thereby achieving disability equity and inclusion of persons with disabilities.

7.3.7 Performance management

In order for the Municipality to drive and implement a robust strategy, the leaders must take responsibility and accountability for executing disability strategy, policies and laws. The key performance areas of leaders who occupy positions which have a direct influence on recruitment and selection, such as Deputy City Managers, Heads of Departments, Deputy Heads of Departments, Senior Managers, etc, should include substantial performance weighting for disability inclusion, which must have an impact on the leaders' overall performance. The targets set for these leaders must be cascaded to operational managers. The HR Department must ensure that performance improvement plans are established specifically to deal with this. It is important to note that some leaders who were interviewed identified the need to intensify KPIs, especially when assessing compliance with disability issues.

It is recommended that the Municipality create a disability section within the HR Department to deal exclusively with disability affairs in the Municipality. A disability section will assist in monitoring the progress of each department's strategic plan on a monthly basis so that challenges are identified timeously and addressed as they surface. This section will also work with other units identified above to guarantee inclusion of and full involvement by persons with disabilities in the Municipality.

7.3.8 Promotion and advancement

The Municipality must develop reward and recognition programs for persons with disabilities. This can be achieved through consultation with employees on what they consider to be recognition and how they wish to be rewarded so that this approach promotes inclusivity. The Municipality must partner with other departments of state to develop strategies that showcase the talents of persons with disabilities. It must conduct research and benchmarking with other institutions on rewards and recognition for persons with disabilities. These recognition programmes must be given publicity within the Municipality equal to the attention given to other employee recognition programmes. In this way the Municipality will display its commitment to creating a workforce that is all-encompassing, including persons with disabilities. The Municipality through its HR and ODCM Departments must send out quarterly climate surveys to engage persons with disabilities on their perceptions of the reward and recognition programmes. The results of these surveys can be used to make improvements to the programmes.

7.3.9 Continuous improvement

It is recommended that the Municipality should strive to ensure that there is continuous improvement in its strategies to attract, utilise and retain persons with disabilities within the Municipality. The climate surveys, which should be conducted with all employees of the Municipality on a quarterly basis, can assist the Municipality continually to improve on various aspects through the evaluation of current strategies and the use of data gathered to enhance and refine its strategies. The surveys can further assist the Municipality to measure whether the above recommendations are effectively implemented. The disability committee of the Municipality must be evaluated on a quarterly basis to gauge whether the resolutions taken in its meetings are effectively implemented and to measure its efficacy. In addition, there should be monitoring, evaluation and enforcement mechanisms in the HR Department (disability unit) to ensure that the policies and strategies developed to include persons with disabilities are implemented. Having said the above, it is also imperative that the Municipality constantly demonstrates a robust stance on the adoption of a human rights approach to include persons with disabilities.

7.4 Recommendations for Future Studies

Among the findings of the study was that workplace leaders continue to focus on impairment and not the ability or potential of persons with disabilities. Therefore, future studies can focus

more on transformational leadership and the capability approach to disability. This study was conducted using qualitative research methodology; however, a follow-up mixed-method approach could be used to determine senior leaders' and operational (junior) managers' understanding of persons with disabilities in the workplace. Such a study could also include employees with disabilities to determine their perspective on the capability approach and transformational leadership. This study has developed a new research interpretation (transformational leadership within the law context) which reveals the need for further development in future studies.

7.5 Answering the Research Objectives

The outcome of the study indicate that the researcher successfully answered the research objectives. As indicated in chapter six, the findings demonstrate that transformational leadership can have an immense positive impact on the implementation of disability laws in the workplace. It was established that municipal leaders are aware that they should be transformational leaders, although it emerged that they are not utilising a transformational leadership approach especially when dealing with disability affairs. The study uncovered the factors that hinder successful execution of disability laws in the Municipality and made necessary recommendations to address the identified shortcomings. A transformational leadership model/framework that accommodates persons with disabilities in the Municipality was recommended. Consequently, the findings of the study have successfully answered the research objectives.

7.6 Contribution/significance of the Study

The study has made a significant contribution to the research literature on transformational leadership and disability inclusion in the workplace. It appears that earlier literature had not explored transformational leadership within the context of implementation of disability laws in the workplace. It further appears that previous studies had not examined transformational leadership and its role towards inclusion of persons with disabilities. This study can therefore be used as a reference by public sector employers on how to implement disability laws in the workplace effectively. This study will be beneficial in the public sector which has struggled since 1994 to include persons with disabilities and to reach the 2% target of persons with disabilities. It is submitted that this study has potential applicability to other metropolitan municipalities as it appears that disability inclusion is a challenge facing all public institutions.

Recently, the Commission for Employment Equity (CEE) presented its *Annual Report 2017-2018*.¹⁴⁹² The report noted that “representation of persons with disabilities at top management level” had dropped from 1.7% in 2015 to 1.3% in 2017. The representation of persons with disabilities in the total workforce remained flat at about 1% and their representation remained low in all occupational levels.¹⁴⁹³ During his opening remarks at the presidential working group on disability, the President of South Africa expressed his disappointment about the percentage of persons with disabilities in the public service, which was 0.9% as of December 2017.¹⁴⁹⁴

As indicated in chapter four and pertinent to this study, the chairperson of the CEE raised concerns about lack of commitment by employers who simply report “just for the sake of compliance”.¹⁴⁹⁵ In this context, the report noted that:

“In 2017, 30 employers reported that their total staff complement were Persons with Disabilities. Upon further investigation, the CEE found that these employers simply repeated the same number of employees in the Table on Workforce Profile for all employees and in the Table on Workforce Profile for Persons with Disabilities only, most probably as a ‘copy and paste’.”¹⁴⁹⁶

The report further noted the slow pace of transformation which, among other reasons, was caused by the lack of commitment from top management of designated employers.¹⁴⁹⁷ In addition, the commission found that there was no real political will and commitment to transform and that there was continuing non-compliance with the EEA.¹⁴⁹⁸ The report underscored the need for committed and ethical leaders and the need thoroughly to engage on how South Africa can produce committed ethical leaders in order to implement transformation legislation effectively.¹⁴⁹⁹ This study found that among the obstacles hindering effective implementation of disability laws is the insufficient political buy-in and leadership commitment in the Municipality. It is submitted that the recommendations of this study on methods to enhance political will and leadership commitment can be utilised in the public sector generally as it faces similar challenges to those faced by the Municipality.

¹⁴⁹² <http://www.labour.gov.za> accessed on 19 March 2019.

¹⁴⁹³ note 1492 (above) 55.

¹⁴⁹⁴ <http://www.thepresidency.gov.za/speeches/opening-remarks-president-cyril-ramaphosa-presidential-working-group-disability%2C-union> accessed on 20 March 2019.

¹⁴⁹⁵ note 1492 (above) 2.

¹⁴⁹⁶ note 1492 (above) 2.

¹⁴⁹⁷ note 1492 (above) 3.

¹⁴⁹⁸ note 1492 (above) 3.

¹⁴⁹⁹ note 1492 (above) 3.

This study further established the effect of transformational leadership on leadership commitment and protection of human rights, in particular for persons with disabilities. The study has provided practical interventions that the Municipality and other public sector employers can adopt with relative ease to implement disability laws in line with international disability standards, the national and local government disability framework and domestic laws.

7.7 Limitations of the Study

As indicated in chapter two, this study is multidisciplinary in nature and necessitated a review of literature encompassing both leadership and the law. There was limited literature which explored transformational leadership within the disability context in the workplace. Similarly, there was limited literature that explored law from a leadership perspective. As a result, the extent of the study was limited. Despite such limitations the researcher was able to identify elements from the existing literature that dealt generally with transformational leadership which are crucial for realising the goal of inclusion of persons with disabilities in the workplace. This minimised the effect of the limitation and ensured the validity and trustworthiness of the study.

7.8 Conclusion

It is submitted that the implementation of the suggested recommendations and the adoption of a transformational leadership approach will assist the Municipality, and the public sector generally, to include and reasonably accommodate persons with disabilities in line with existing international and regional instruments and domestic laws. This study established that transformational leaders have a tremendous impact on workplace culture, strategy and policy implementation and that such a leadership approach is very influential.

In summary, this study provided a historical background relating to persons with disabilities and the fact that they have been considered primarily from a medical perspective and not from a human rights point of view. The endorsement of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) brought about a paradigm shift in the acknowledgment of equal rights and recognition of persons with disabilities. The CRPD requires member states to adopt appropriate measures to include persons with disabilities. The question is whether the adoption of the CRPD has brought significant changes for persons with disabilities in South Africa's workplaces, particularly in the public sector. It is argued in this study that the status quo unfortunately remains.

In South Africa there is a variety of legislation relating to inclusion of persons with disabilities in the workplace. In addition, in 1994 the South African government committed to a 2% target of persons with disabilities within the workplace. However, statistics show that to date persons with disabilities continue to be underrepresented in the public sector, clearly because the existing legislation is not effectively implemented in the workplace.

This study explored doctrinal (legal) research and empirical research in order to understand the impediments to effective implementation of disability laws in the workplace. Furthermore, a socio-legal approach was utilised as a theoretical approach linking the doctrinal and empirical research methodologies. Thereafter, the theory of transformational leadership and a human rights approach were explored in order to understand the role of transformational leadership in the inclusion and promotion of human rights for persons with disabilities. Pertinent legislation and the policy framework for transformational leadership were examined with reference to the international and regional law obligations resting on the state to include persons with disabilities in the workplace. In addition, interviews were conducted with both executive leaders and employees with disabilities in the Municipality. As a consequence, the study found that, while leaders do have some understanding of what a transformational leader is and that they should be transformational in their approach, in practice they are not utilising a transformational leadership approach due to several identified factors. As a result, it is apparent that the Municipality is failing in its constitutional and international mandate of substantive equality, particularly for persons with disabilities. The lack of robust disability inclusion initiatives and a questionable understanding of disability were further confirmed by employees with disabilities who participated in this study.

In addressing the aforesaid challenges, the researcher has developed two models that can be utilised by the Municipality to ensure disability inclusion. The first model deals with the development of leaders to be transformational while the second model demonstrates the influence of transformational leadership on disability inclusion and equity in the Municipality.

Placing transformational leadership at the centre of all disability initiatives will guarantee leadership commitment to disability inclusion, resulting in effective implementation of disability laws and achieving disability equity in the workplace. Consequently, it is advocated that the Municipality should utilise transformational leadership as a tool effectively to implement legislation governing disability in the workplace.



23 January 2018

Mr Lincani Goodman Nxumalo (200308838)
School of Law
Howard College Campus

Dear Mr Nxumalo,

Protocol reference number: HSS/2267/017D

Project Title: Transformational Leadership as a tool to effectively implement the legislation governing disability in the workplace: The case of eThekweni Metropolitan Municipality

Full Approval – Expedited Application

In response to your application received 20 November 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully



.....
Dr Shenuka Singh (Chair)

/ms

Cc Supervisors: Dr Emmanuel Mutambara and Mrs Willene Holness
Cc Academic Leader Research: Professor Shannon Bosch
Cc School Administrator: Mr Pradeep Ramsewak

Humanities & Social Sciences Research Ethics Committee

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UNIVERSITY OF
KWAZULU-NATAL
INYUVESI
YAKWAZULU-NATALI

October 30, 2017

To Whom It May Concern:

Name: Lindani Nxumalo

Student No: 200308838

Dissertation Topic: "Transformational Leadership as a Tool to effectively implement legislation governing disability in the workplace: The case of EThekweni Metropolitan Municipality"

We confirm that the above student is registered at the University of KwaZulu-Natal for the PhD Degree in the School of Law, College of Law and Management Studies. It is a requirement of the PhD Degree that the student undertakes a detailed research that includes the collection of data from employees and management of the Municipality

Typically, this study will be a "practical problem solving" exercise, and necessitates data gathering through questionnaires or personal interviews and will approximately take one (3) year to complete. The study seeks to address the following objectives:

Your assistance in providing assistance will be of great importance.

If you are agreeable to the above, could you please append your signature and date stamp signifying the Municipality's consent to provide such assistance

.....(Signature and date)

Thank you for your assistance in this regard.

Yours sincerely

Dr Emmanuel Mutambara (Supervisor)....

...Signature

Handwritten signature

School of Law, University of KwaZulu-Natal
Durban, South Africa
Tel: 031 260 8129
Email: Mutambarae@ukzn.ac.za

Handwritten date: 01/11/2017



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Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville

Study Information Sheet

UNIVERSITY OF KWAZULU-NATAL

PhD-Law research Project**Researcher:** Lindani Nxumalo 0833398752**Supervisor:** Dr Emmanuel Mutambara 031 260 8129**Co-Supervisor:** Ms Willene Holness 031 260 1406**Research Office:** Ms Mariette Snyman 031 260 8350

Dear Participant,

I am Lindani Nxumalo, a PhD student at the School of Law of the University of KwaZulu-Natal. You are invited to participate in a research project entitled '**Transformational leadership as a tool to effectively implement the legislation governing disability in the workplace: The case of eThekweni Metropolitan Municipality**'.

The aim of the study is to examine the role that can be played by transformational leadership on organisational culture, decisions and the implementation of disability laws in eThekweni municipality. Through your participation, I hope to understand how transformational leadership impacts on organisation and employees, how transformational leadership influences organisational effectiveness and culture, and what role can be played by transformational leadership on the implementation of disability laws in the workplace. The results of the focus group are intended to contribute to my finding of the impact of transformational leadership on the implementation of disability laws particularly in dealing with equal participation of employees with disabilities in the workplace as well as organisational culture.

Your participation in this project is voluntary. You may refuse to participate or withdraw from the project at any time with no negative consequence. There will be no monetary gain from participating in this survey/focus group. Confidentiality and anonymity of records identifying you as a participant will be maintained by the School of Law, UKZN. The interviews should take you about **45 minutes** to complete. I hope you will take the time to participate in this study.

If answering the questions makes you think that your rights were infringed, you may consider obtaining legal advice. If you want information on your rights, you can ask the researcher to put you in contact with the Legal Resources Centre (LRC). The LRC is a law clinic that works free of charge on issues relating to rights violations, including on the basis of disability.

Their contact details are:

Legal Resources Centre, t. 031 301 7572, N240 Diakonia Centre, 20 Diakonia Avenue,

Durban, sharita@lrc.org.za Contact person: Mrs Sharita Samuel.

You may also approach the CCMA t 031 362 2300, 275 Anton Lembede Street, Durban.

This study has been approved by the University of KwaZulu-Natal's Human and Social Sciences Research Ethics Committee. The Protocol number is (insert).....The Ethics Committee is committed to ensure no one is harmed as part of the research.

If you have questions about your rights as a research participant or any complaints, you can contact: Dr Shenuka Singh t. 031 260 8350, snymanm@ukzn.ac.za

If you have any questions or concerns about participating in this study, you may contact me or my supervisor at the numbers listed below.

You will be given a copy of the informed consent form to keep.

Sincerely,

Researcher's signature _____ Date _____

This page is to be retained by participant

Informed Consent Form

UNIVERSITY OF KWAZULU-NATAL

PhD-Law research Project of Researcher: Lindani Nxumalo 0833398752
Supervisors: Dr Emmanuel Mutambara 031 260 8129; Ms Willene Holness 031 260 1406
Research Office: Ms Mariette Snyman 031 260 8350

I, (insert full names)
 volunteer to participate in research conducted by Mr Lindani Nxumalo, a Doctorate of Philosophy candidate of the University of KwaZulu-Natal. The title of the project is ‘**Transformational leadership as a tool to effectively implement the legislation governing disability in the workplace: The case of eThekweni Metropolitan Municipality**’. I further indicate that:

1. My participation in this research is voluntary. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time without penalty. If I decline to participate or withdraw from the study, no one will be told.
2. Participation involves answering questions in an interview with Mr Nxumalo. The interview is based on five (5) questions and should take no longer that 45 minutes to answer.
3. I hereby consent/do not consent to have this interview recorded.
4. I understand that the researcher will not identify me by name in any reports or publications using information obtained from this interview, and that my confidentiality as a participant in this study will remain secure. Subsequent uses of records and data will be subject to standard data use policies which protect the anonymity of individuals and institutions.
5. Employees from my workplace will not have access to my answers from the interviews. This precaution will prevent my individual comments from having any negative repercussions.
6. I understand that this research study has been reviewed and approved by the UKZN Ethics Committee at the University of KwaZulu-Natal. For research problems or questions regarding subjects, the Ethics Committee may be contacted through Dr Shenuka Singh t. 031 260 8350, snymanm@ukzn.ac.za.
7. I have read and understand the explanation provided to me.
8. I voluntarily agree to participate in this study.
9. I have been given a copy of this consent form.

.....

SIGNATURE OF PARTICIPANT **DATE**

This page is to be retained by researcher

Interview Questions

The following key questions were used to investigate the research problem for the leaders:

1. What is your understanding of the term disability or persons with disabilities?
2. What is your understanding of transformational change within the working environment?
3. What do you think is the impact of transformational change on organisational culture and success?
4. How would you describe the characteristics of a transformational leader?
5. In your own understanding is there a relationship between transformational leadership and disability in the workplace? Please elaborate.
6. What hinders the implementation of disability policies/legislation in the workplace (specifically with the eThekweni Municipality as employer)?
7. Do you think that transformational leadership influences the implementation of organisational policies and strategies? Please elaborate.
8. How can transformational leadership impact on the implementation of disability policy and legislation by the Ethekwini Municipality?

The following questions were used to investigate the research problem for the existing employees with disabilities:

1. Based on your own experience with Ethekwini Municipality, how has the environment transformed to integrate persons with disabilities?
2. What is your view of management's understanding of transformation and disability?
3. What initiatives have been taken by the management of Ethekwini Municipality to support persons with disabilities?
4. Do you think Ethekwini Municipality's policies are effective to accommodate persons with disabilities? Please elaborate.
5. What can be done to ensure effective implementation of disability policies in Ethekwini Municipality?

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