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Portfolio Committee on Basic Education

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I would like to thank the Portfolio Committee on Basic Education for the opportunity to present the findings of our report "[Complicit in Exclusion](#)": [South Africa's Failure to Guarantee Inclusive Education for Children with Disabilities](#)", released in August 2015. At the time of the launch we reported that nearly 600,000 children with disabilities were estimated to be out of school across the country. This is a good indicator of the urgent need to focus on the conditions faced by children with disabilities in the country's education system. We therefore commend the committee for hosting this meeting.

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in over 90 countries globally. We have conducted investigations on the right to education in over 30 countries, with a strong body of evidence on the right to inclusive education, and the rights of children with disabilities, in countries such as China, India, Nepal, Russia, and most recently, South Africa.

In 2014, following a consultation with non-governmental organizations, and organizations representing persons with disabilities, we carried out research on the right to inclusive education of children with disabilities in five provinces—Gauteng, Kwazulu-Natal, Limpopo, Northern Cape and Western Cape—documenting disparities in access to education for learners with disabilities in historically disadvantaged provinces, remote or rural areas, as well as provinces with greater resources and services for people with disabilities.

Human Rights Watch acknowledges South Africa's strong constitutional protections on the right to education, its numerous education policies adopted since 1994, as well as the important progress made in relation to its education goals.

We also recognize that the government has adopted various policies to address the needs of children with disabilities in its education system, including through Education White Paper 6 on Special Needs Education, as well as the very recent Screening, Identification, Assessment and Support policy. We would like to acknowledge the Department's Inclusive Education unit's frank assessment of the state of implementation of this policy and the numerous challenges it faces in ensuring a stronger approach to inclusive education throughout most provinces.

My presentation today will be divided into two sections: firstly, a brief outline of human rights standards used in our report to assess South Africa's compliance with its international human rights obligations; secondly, three main findings accompanied by recommendations.

I would like to note that the report outlines further special measures needed to stop the exclusion of children with disabilities from the education system in the short term; as well as laws and policies needed to ensure more children with disabilities access a quality, inclusive education in the medium term. The report also highlights the need for government-wide reforms to build an inclusive education system that will guarantee inclusion and quality in the long run, and will guarantee South Africa's compliance with its international and regional obligations.

International Human Rights Standards

Among other key international treaties outlined in our report, in 2007 South Africa ratified the UN Convention on the Rights of Persons with Disabilities. In doing so it accepted an obligation to ensure no person with a disability is excluded from primary, secondary, higher education and vocational training, and that people with disabilities have access to adult basic education.

Importantly, the government's core obligation focuses on **guaranteeing inclusive quality education**, ensuring the education system is inclusive of all children and that schools reflect the diversity within their communities. Children with disabilities should be provided with support in the general education system so that they can access quality education and learn alongside their peers.

The government also accepted an obligation to ensure schools provide "**reasonable accommodation**", which entails making appropriate modifications and adjustments so that a child with a disability can attend school, on an equal basis with others. The government should ensure that schools give children an adequate level of support and effective individualized measures to facilitate their education, and remove any physical or attitudinal barriers.

In 2015, South Africa also became a party to the International Covenant on Economic, Social and Cultural Rights, adopting a core obligation to provide **free and compulsory primary education, free from any form of discrimination**.

Key Findings

1. Discriminatory and Unequal Access to Education

Our research shows that enrolment decisions in ordinary schools fail to meet the obligation to ensure children access compulsory education at the right age; and schools fail their obligations to allow children with disabilities to enrol in ordinary schools. Many of the children we interviewed were turned down by neighbouring schools in grade 1 on the basis of their disability – a prohibited form of discrimination.

As the mother of an 8-year-old boy from KwaZulu-Natal told us:

We tried to put him in a [mainstream] school but they said they couldn't put him in that school because he has disabilities. The school said that he was naughty. Because of Down Syndrome he isn't like other children so they [said they] can't teach him. At the therapy they promised to phone if there's a space in a special school. I've been waiting since last year.

In a minority of the cases that we investigated, children with disabilities do enrol in their nearby ordinary schools. However, in some of these instances, school officials later tell parents their children can no longer stay in their school, and often request that they enrol their children in special schools. This may be because their teachers cannot deal with them, or cannot or will not accommodate them in large classrooms, or will label children as “naughty” or “slow learners”.

In a few cases, we were informed that education officials or social workers took the decision to move children from a mainstream school to a special school, contrary to state obligations.

Overall, we note that the burden rests with parents to find the right type of school for their child, often with limited or no access to adequate information that would help them make an informed decision. Parents are frequently told to register their children in special schools, regardless of their child's disability or level of support needs. Parents are simply not told that their child has an equal right to study in the same schools as their brothers or sisters.

For example, one mother in Limpopo told us that her 9-year-old child was in the mainstream primary school for three months:

After they explained my child wasn't coping, he stayed with me at home. I registered him in a special school. There was no other school where he would be admitted. I phoned the school and asked if they could make arrangements and was told that I would have to wait until next year. I went to other schools. In another primary school, they said they couldn't accommodate him. They never recommended another school, they first said “no”.

Special schools also turn down many children with different types of disabilities. Many schools adopt an exclusive enrolment policy by types of disabilities. Parents repeatedly told Human Rights Watch that they would visit one special school only to be told that the school does not cater to their child's disability or a child's particular learning needs. This has a particular impact on children with intellectual disabilities, children with autism spectrum disorder, as well as those with complex or multiple disabilities, who are least accommodated in any type of public school.

Many children with disabilities interviewed by Human Rights Watch had waited for up to four years on waiting lists, or continue to be on waiting lists, to access a special school that can cater to their particular disabilities. In rural areas of northern Kwazulu-Natal, parents were told to wait for years on end for their children to be registered in one of the two special schools that cater to their district. These children stay at home, often without any adequate form of stimulation or learning.

These barriers mean many children with disabilities enter schools late, and are often older than compulsory age limits of 7 to 15 years set by the Department of Basic Education (through its policy on Age Requirements for Admission to an Ordinary Public School).

We met with adolescents and young adults who had never been to school, or had only studied a few years, because they enrolled when they were “too old”. As indicated in our report, the Department of Basic Education has not yet released a Government Gazette stipulating ages of enrolment for children with disabilities, which is long overdue.

Moreover, most children interviewed stayed out of school because very basic things like ramps or accessible classrooms or toilets prevented them from being able to go to school or participate actively in their daily activities.

A learner with cerebral palsy from the Western Cape told us:

The stairs are always an issue. The boys who help me are fine. I don't think they mind but there are others who run away when they see that I need help... I feel like I am a burden to the people who help me ... The teachers, not mine, teachers who don't know me, make me feel like I'm just taking up space in the passages and that I waste their time because sometimes I need people out of their class to help me open a door.

Other less resource-related factors also drove children out of ordinary schools: for example, insufficient time for classes or exams for children with intellectual disabilities or those who were not able to write at the same speed as their peers because of a physical disability. In a few cases, children who needed additional support to use the toilet, or those who used diapers, were often not given the support they needed.

Importantly, the lack of appropriate learning materials, such as textbooks, and the availability of quality teaching of languages (South African Sign Language) or script (Braille) affected many children with sensory disabilities. Colleagues from the organization Section 27 will provide further details on these learners.

Human Rights Watch's analysis of existing policies shows that the government has not yet fulfilled its legal obligation to reasonably accommodate children with disabilities or learning needs in education institutions. It should urgently adopt measures to achieve this by ensuring that all public schools accept and enrol children with disabilities and serve their educational requirements without discriminating against them in any way.

To guarantee an inclusive system, the government should have measures in place to ensure schools cannot reject or make a decision to move children from one school to another without firstly taking measures to assess a child's learning needs, adopt individual learning measures to ensure a learner can stay and learn in their neighbouring school, and, only consider further options in consultation with the child, their parents and education staff appointed to assess children. We found a number of examples where this was the case, but it seemed wholly dependent on the principal or school official's willingness to dedicate the necessary support.

We recommend that the Portfolio Committee on Basic Education:

1. Request the Department of Basic Education to present an accurate annual report on numbers of children with disabilities who are in and out of school as of this year.
2. Urge the Department of Basic Education to adopt stronger legal protections for children with disabilities to complement the South African Schools Act. This includes a clear duty to provide reasonable accommodation in public ordinary schools, accompanied by specific provisions that prevent the rejection of learners with disabilities from schools in their neighbourhood. This should apply at all school levels, in transportation and other essential services.
3. Encourage the Department of Basic Education to adopt clear mechanisms to ensure department officials remain in control of enrolment decisions, to challenge unnecessary referrals to special schools and monitor sudden drop outs of learners with disabilities.

2. Discriminatory Fees and Expenses

A second source of discrimination against students with disabilities is the high cost of education. We met children who were not going to school because their parents could not afford to pay school fees, very high transport fees, costs for special types of food, diapers, among others related to their disability. In some cases, children were moved from a non-fee ordinary school to a fee-paying special school. Some parents could not afford to send their child to school unless they received a fee exemption.

Fees

Although the majority of children with disabilities in South Africa are enrolled in special schools, Human Rights Watch found that no special schools are included in the annual “no fee schools” list. But there is no policy or reason why special schools should be left off this list. The majority of children we interviewed went to schools in rural areas or townships where very few if any children would be able to pay for their school expenses.

As a parent of a child with autism in Johannesburg told us:

Most [students at] mainstream schools don't have to pay. But for us, we have to pay school fees. Lots of parents who have children with disabilities can't work—we have to take care of them 24 hours [a day]. Schools write to ask why we haven't paid but they don't understand our situation. The schools are away from our locations. All the [care dependency] grant is going towards the fees, so there's no money for transport.... [A]nd our children have equal rights?

Although parents are able to apply for a fee exemption, the lack of information, the schools' discretion, as well as the onerous procedures to get an exemption for the poorest families who

cannot obtain all the necessary documents, means that many children do not get a fee exemption unless principals waived the fees.

Moreover, children with disabilities in mainstream schools are required to pay for their class assistants for basic mobility and accessibility in their classrooms and around schools. In all cases we examined, schools imposed this discriminatory condition to enrol these children in their schools. On some occasions, this applied to special schools too – two mothers told us they were asked to move a long distance away from their homes to assist their children in schools. Yet schools should not be allowed to impose special or additional financial conditions on children with disabilities.

Transport

Transportation remains one of the most important assistive devices to ensure children with disabilities can get to school on an equal basis. Yet transportation fees are the second biggest financial factor affecting children's access to schools. The majority of families interviewed had to pay transport fees as high as R400 to send their children to schools that were very far away from their homes. Children with physical disabilities typically pay twice to bring their wheelchair.

Some schools allowed students who lived closer to them to use the school transportation, at a cost, but the majority of learners we met had no access to school or government subsidised transportation. In some cases, children in rural areas who are not accepted in nearby schools have no choice but to attend schools that are over 100 kilometres away from their communities.

Removing discriminatory financial barriers will have a significant impact on many families of children with disabilities who otherwise struggle to meet the costs of sending their children to school.

We recommend that the Portfolio Committee on Basic Education:

- 1. Call on the government to comply with its fundamental obligations on the right to education, particularly its obligation to make primary education free and compulsory for all students.**
- 2. Urge the government to adopt strong Norms and Standards for funding of inclusive education to ensure public special schools can qualify as "no fee schools" and do not charge fees. Prohibit all public ordinary schools from imposing financial conditions on children with disabilities that children without disabilities would not incur, such as transportation, which impose undue financial barriers on children who do not access neighbouring schools.**

3. Lack of Quality Education

Poor quality of education affects hundreds of thousands of learners in schools across the country, including children with disabilities. Children are exposed to violence, unqualified teachers, and conditions that are not conducive to quality learning.

Many children with disabilities interviewed by Human Rights Watch could not read or write despite being in school for many years.

The mother of a 14-year-old boy with autism who goes to a special school in Polokwane, told Human Rights Watch that *“they don’t teach them much and they don’t do much at school, so when he’s out he doesn’t miss out. I take him there so that he gets to see the school. The principal isn’t supporting anything autism related”*.

Many children with disabilities enrolled in ordinary and full-service schools feel neglected in their classrooms. In ordinary schools, children with disabilities reported being enrolled in very large classrooms where teachers barely had time to turn their attention to them if they had a question or could not understand. Many children felt left behind by their peers and teachers.

Parents of children in various types of special schools consistently reported that their children were not learning any meaningful basic skills or life skills. Parents reported that their children could not read or write despite being in school for a number of years. In most of the cases we examined, parents felt their teachers had no expectations of how far their children could go. Many parents thought that what was taught in class was not going to support their child once they leave their school. Some learners, particularly adolescents labelled “slow learners”, dropped out of their schools and stayed at home.

Overall, teacher neglect and teacher’s negative attitudes were particularly detrimental for children with disabilities sitting in large classrooms. A number of children reported being left out of classroom activities. In one case, a child with a speech disability was only given drawings, while the rest of his classroom continued with the curriculum. In a number of cases, children sat in their classrooms with no guidance or support to be able to follow the day’s work on an equal basis.

Children reported being called “slow learners” and “naughty”, or were reported for having “behavioural issues” – but in most cases, there was no evidence of individual measures or individual education plans being taken to address a child’s learning barriers – a key component of inclusive education. In contrast, good performing schools and non-governmental organisation-run schools implement such individual plans to support children facing learning barriers.

As the manager of a skills centre for people with intellectual disabilities told us:

If the child fails and fails, the [schools] condone this. Out of sympathy, they let [them] stay and keep on going. They should tackle it head-on rather than waiting. It doesn’t cost much compared to the damage and cost it takes to address this at a later stage.

Tackling classroom size is one of the first steps to ensure children with disabilities, and any children experiencing learning barriers, can meaningfully attend ordinary schools without being left behind. While most special schools adopt a weighting system to ensure teachers only manage a limited number of children with high support needs, classrooms in ordinary schools have no such applicable standards. Yet, the introduction of an equal weighting system would ensure teachers would deal with more manageable class sizes to provide individual attention to any learner experiencing learning barriers and requiring additional support.

We recommend that the Portfolio Committee on Basic Education:

1. Urge the Department of Basic Education to adopt a weighting system in ordinary and full-service schools to ensure teachers are able to dedicate sufficient attention to every learner requiring additional support to overcome learning barriers.
2. Request further information and evidence from the Department of Basic Education on how children with disabilities are supported to follow the curriculum taught in mainstream classrooms, as well as data on the numbers of children with disabilities following and being tested on the same curriculum taught in ordinary schools.

Conclusion

Human Rights Watch recognises the important work carried out by many education officials, school staff and local and national organizations in South Africa to guarantee inclusive education and strive for equal recognition and treatment for children with disabilities in the education system.

However, reaching 600,000 children with disabilities who remain out of school, as well as those who are in school but may not be accessing quality education, requires a shift from small individual measures of best practice to a more system-wide approach, guided by stronger laws to protect the right to education of all children with disabilities.

We hope that the discussion today will lead to an agreement and strengthen the political will to work on a stronger inclusive education policy and to reach consensus on the need for greater legal protections for children with disabilities.