



**Submission by Human Rights Watch to the United Nations Committee on the Rights of
Persons with Disabilities concerning South Africa**
9th pre-sessional working group

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Human Rights Watch is an independent, international human rights organization that monitors, reports, and conducts advocacy on human rights in more than 90 countries globally. Our focus areas include the right to education, particularly access to quality, inclusive education, and the rights of persons with disabilities.

This submission relates to Articles 3, 4, 5, 7, 9, 16, and 24 of the Convention on the Rights of Persons with Disabilities, and focuses on access to quality, inclusive, free education for children with disabilities in South Africa. It proposes issues and questions that Committee members may wish to raise with the government.

Background

In August 2015, Human Rights Watch released our report “[Complicit in Exclusion”: South Africa’s Failure to Guarantee Inclusive Education for Children with Disabilities](#),” documenting barriers to inclusive, quality education for children with disabilities in South Africa. Many of the barriers we documented persist today, although Human Rights Watch acknowledges that the government has progressed in some critical areas detailed in this submission.¹

Major barriers faced by children with disabilities include very long referrals to special schools and lengthy waiting lists, school fees and additional school-related costs, a lack of reasonable accommodation, and transportation issues. Parents and families also lack

¹ Human Rights Watch, “*Complicit in Exclusion”: South Africa’s Failure to Guarantee Inclusive Education for Children with Disabilities*,” August 2015, <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>; Alternate Report Coalition – Child Rights South Africa, “Complementary Report to The African Committee of Experts on The Rights and Welfare of the Child, A Response to South Africa’s Second Country Report to The African Committee of Experts On The Rights And Welfare Of The Child On The African Charter On The Rights And Welfare Of The Child,” July 2017; United Nations Committee on the Rights of the Child, “Concluding observations on the second periodic report of South Africa,” CRC/C/ZAF/CO/2, October 27, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZAF%2fCO%2f2&Lang=en (accessed November 21, 2017).

access to adequate information about their children’s disabilities, the necessary support services to assess the best interests of their children, or the best type of education for them. Consequently, across the country, hundreds of thousands of children with disabilities are excluded from inclusive schools, and are needlessly placed in special schools. Special schools are exclusively for children with disabilities, where they are segregated from other children and their communities. They are intended to accommodate children with high levels of support and needs; many existed prior to the government adopting an inclusive education policy.

South Africa’s constitution protects the right to a basic education, and protects individuals from any discrimination, including on the grounds of race and disability,² but the government has not adopted legislation that guarantees and/or protects the right to inclusive education for children with disabilities. Despite the government’s international and domestic obligations, many children with disabilities do not have equal access to inclusive primary or secondary education and face multiple forms of discrimination and barriers. To date, children with disabilities pay school fees and additional fees that children without disabilities are not required to pay.

In 2001, the government adopted “Education White Paper 6: Special Needs Education,” a national policy to provide inclusive education for all children with disabilities within 20 years,³ but key aspects of the policy have yet to be implemented. For instance, the government allocates resources for learners with disabilities for special schools, to the detriment of inclusive education. Human Rights Watch’s research shows that the government will not meet its inclusive education targets by 2021, due to fundamental gaps in the implementation of this policy.

In December 2015, the government adopted “White Paper on the Rights of Persons with Disabilities,” South Africa’s national policy concerning the rights of people with disabilities, which integrates obligations of the Convention on the Rights of Persons with Disabilities, including the right to inclusive education.⁴

There is also a lack of disaggregated and transparent data concerning current numbers of children with disabilities who remain out of school. In 2013, the government estimated that

² Constitution of the Republic of South Africa, Act No.108 of 1996, <http://www.gov.za/sites/www.gov.za/files/images/a108-96.pdf>, s.29(1)(a) and 2(a).

³ Department of Basic Education, “Education White Paper 6: Special Needs Education, Building an inclusive education and training system,” July 2001, <http://www.education.gov.za/LinkClick.aspx?fileticket=gVFccZLi/tl=> (accessed August 5, 2015)

⁴ Government of South Africa, “White Paper on the Rights of Persons with Disabilities,” December 9, 2015, https://www.gov.za/sites/www.gov.za/files/39792_gon230.pdf (accessed January 19, 2018).

more than half-a-million children with disabilities remained out of school.⁵ Human Rights Watch notes that various government departments have agreed to improve data collection on children with disabilities. However, to date, the government has not published accurate or reliable data that shows how many children remain out of school or on waiting lists for public schools.⁶

Access to Quality, Inclusive Education (Articles 3, 4, 5, 7, 9, 16, 24)

Discrimination Accessing Compulsory Education

Basic education is compulsory in South Africa: all children should be in school by the age of compulsory education, mandated as 5 to 6 years for grade R or pre-school, and 7 to 15 years for basic education.⁷ In 1996, the Schools Act directed the Minister of Basic Education to publish a government gazette with the compulsory age requirements for “learners with special education needs.” As of January 2018, this document had not been published.

Many children with disabilities face discrimination when accessing all types of public schools. Evidence gathered by Human Rights Watch suggests that a lack of governmental oversight of waiting lists and placements leaves school officials with the last word on enrolling learners, further delaying children’s entry into schools beyond the age of compulsory education. Many mainstream schools deny children with intellectual and/or developmental disabilities a place in mainstream schools in their neighborhoods or communities. Human Rights Watch found that social workers, district education officials, and health workers most often refer children to special schools based on their disabilities. The referrals system, overcrowding, and special schools operating at maximum capacity means children can wait for up to four years at care centers or at home for placement in a

⁵ Government of South Africa, Initial Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities, 2008 – 2012, approved by Cabinet on 17 April 2013, http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/ZAF/CRPD_C_ZAF_1_7020_E.doc (accessed November 17, 2017), paras. 204-206.

⁶ “South Africa: Little Progress for Youth With Disabilities, Government Should Keep Promise to Open School Doors,” Human Rights Watch news release, August 19, 2016, <https://www.hrw.org/news/2016/08/19/south-africa-little-progress-youth-disabilities>; Alternate Report Coalition – Child Rights South Africa, “Complementary Report to The African Committee of Experts on The Rights and Welfare of the Child, A Response to South Africa’s Second Country Report to The African Committee of Experts On The Rights And Welfare Of The Child On The African Charter On The Rights And Welfare Of The Child,” July 2017, para. 69; Committee on the Rights of the Child, “Concluding observations on the second periodic report of South Africa,” CRC/C/ZAF/CO/2, October 27, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZAF%2fCO%2f2&Lang=en (accessed November 21, 2017), paras 43-44; Department of Basic Education, “Progress Report on Inclusive Education and Special Needs Education Portfolio Committee on Basic Education Meeting,” 30 May 2017; Parliamentary Monitoring Group, “Inclusive Education and Special Education: DBE Progress Report; with Deputy Minister, Meeting Summary,” May 30, 2017, <https://pmg.org.za/committee-meeting/24505/> (accessed January 19, 2018).

⁷ South African Schools Act, 1996, Department of Basic Education, Act No 84 of 1996, <http://www.education.gov.za/LinkClick.aspx?fileticket=alolZ6UsZ5U%3D&tabid=185&mid=1828>, s. 3 (1); Department of Education, “Age Requirements for Admission to an Ordinary Public School,” Government Notice No. 2433 of 1998.

special school.⁸ The Department of Basic Education's statistics for 2017 indicate that 11, 461 children with disabilities are on school waiting lists.⁹

When children are placed on long waiting lists or turned down by special schools, parents face the burden of having to find alternatives for their children, including special schools further away from their homes or communities. Consequently, they are not always able to register children in the most adequate school. Travelling to schools to register children can be a very costly activity for many parents who already struggle to pay for basic needs. (For more information on school fees and school-related costs, see "Lack of access to free quality education" below).¹⁰

Discriminatory Fees and School-Related Costs

South Africa's legislation does not guarantee the right to free education to all children. The high cost of education, including school fees and other school-related costs, continues to be a significant barrier keeping children with disabilities out of school.¹¹ Public schools are not automatically free of charge. While many are "no fee" schools, no special schools fall into that category. Fees in special schools typically range from R350-R750 (US\$32-\$68) per term.¹² In many cases, parents reported not having access to fee waivers. Most children with disabilities and their parents and caregivers have to pay additional costs, such as uniforms, food, transport, personal assistants to help them, and boarding costs if schools are located far from homes. Many, if not most families, are not able to pay these costs, which leads to children staying at home.¹³

⁸ Human Rights Watch, "*Complicit in Exclusion*;" "South Africa: Little Progress for Youth With Disabilities."

⁹ Parliamentary Monitoring Group, "Inclusive Education and Special Education: DBE Progress Report; with Deputy Minister, Meeting Summary."

¹⁰ South African Human Rights Commission, "SAHRC Holds Conference On Rights Of Children With Disabilities," October 11, 2017, <https://www.sahrc.org.za/index.php/sahrc-media/news/item/932-sahrc-holds-conference-on-rights-of-children-with-disabilities> (accessed November 6, 2017).

¹¹ Elin Martínez, "South Africa Needs a Global Reminder About Education Obligations, Human Rights Council Members Should Ask South Africa About Children With Disabilities," Human Rights Watch dispatch, May 9, 2017, <https://www.hrw.org/news/2017/05/09/south-africa-needs-global-reminder-about-education-obligations>; Helen Griffiths, "Free Primary Education Still Out of Reach in South Africa, Hefty Fees and Additional Costs Discriminate Against Children with Disabilities," Human Rights Watch dispatch, April 13, 2017, <https://www.hrw.org/news/2017/04/13/free-primary-education-still-out-reach-south-africa>. In addition, South Africa has ratified the International Covenant of Economic, Social and Cultural Rights (ICESCR) but made a reservation to "give progressive effect to the right to education[...] within the framework of its National Education Policy and available resources." The government does not appear to have a detailed plan of action for the implementation of free and compulsory primary education as required within two years of the entry into force of ICESCR. United Nations Treaty Collection, "International Covenant on Economic, Social and Cultural Rights," https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en (accessed November 6, 2017).

¹² According to Stats SA, average monthly earnings paid to employees in the formal non-agricultural sector were R19 608 (US\$ 1,652.71) in August 2017. Stats SA, "Key findings: Po277 - Quarterly Employment Statistics (QES), September 2017," September 2017, http://www.statssa.gov.za/?page_id=1856&PPN=Po277&SCH=6973 (accessed January 31, 2018).

¹³ *Ibid.*; Human Rights Watch, *Complicit in Exclusion*."

In 2017, senior government officials indicated their intention to review school fees for children with disabilities, but did not adopt any policy changes at the beginning of the school year in January 2018.¹⁴

Lack of Quality Education and of Reasonable Accommodation

Once in school, many children with disabilities do not have access to the same curriculum as children without disabilities nor to the necessary appropriate materials they require, including assistive devices and services in Braille or sign language. Many students in mainstream schools face discriminatory physical and attitudinal barriers they need to overcome in order to receive an education. We acknowledge progress made by the Department of Basic Education with regards to the progressive provision of resources for learners who are blind or have low vision. Furthermore, we note that the Screening, Identification, Assessment and Support (SIAS) policy is being progressively implemented with a view to full implementation by 2019.¹⁵ However, our findings indicate that insufficient resources, due in part to a lack of adequate financing allocated to inclusive education by regional governments, and qualified personnel mean the policy is not being implemented consistently everywhere, particularly in rural areas and under-resourced townships.¹⁶

Children with disabilities are significantly affected by a lack of teacher training and awareness about inclusive education methodologies and the diversity of disabilities, a dearth of understanding and practical training about children's needs according to their disabilities, and an absence of incentives for teachers to instruct children with disabilities. Many children with disabilities drop out of education due to a combination of negative attitudes, teacher neglect, and absence of targeted and adapted learning in classrooms.

In many cases, Human Rights Watch met children who were moved up or down different grades by teachers and school officials, often without any proof that they had learned sufficient skills and content to proceed or evidence that they needed to repeat a grade. Some children had also repeated the same grade for more than two or three years, without any attention given to their particular needs and strengths. Many children with disabilities were not able to read or write despite being in school for many years.

Many students in special schools for children with sensory disabilities (children who are deaf, hard of hearing, blind, or have low vision) do not have access to the same subjects or

¹⁴ Parliamentary Monitoring Group, "Inclusive Education and Special Education: DBE Progress Report; with Deputy Minister, Meeting Summary."

¹⁵ Department of Basic Education, "Policy on Screening, Identification, Assessment and Support (SIAS)," December 2014, <http://www.naptosa.org.za/index.php/doc-manager/oo-general/367-sias-final-19-december-2014/file> (accessed January 4, 2018).

¹⁶ Human Rights Watch, *Complicit in Exclusion*;" "South Africa: Little Progress for Youth With Disabilities."

appropriate learning materials as children in mainstream schools.¹⁷ Human Rights Watch also found that physical facilities at public schools were not always accessible, for example, schools lacked ramps to access classrooms or toilets. This means that children who used wheelchairs or had other mobility issues need to be carried by someone, often a personal assistant they must pay for or rely on other students to carry or assist them.

National Resources for Inclusive Education

Allocation of resources for inclusive education remains a concern. The majority of the limited budget for students with disabilities continues to be allocated to special schools rather than to inclusive education.¹⁸ Most mainstream schools do not have additional budget lines to provide reasonable accommodation to students with disabilities.

In 2015, the government communicated its intention to publish Draft National Norms And Standards For Resource Distribution For An Inclusive Education System, which have a binding effect on the national and provincial governments once they are adopted.¹⁹ In September 2017, Minister of Basic Education, Mrs. Angie Motshekga, announced the proposal of new National Guidelines for Resourcing an Inclusive Education System,²⁰ which only provide guidance but have no binding effect on governmental institutions. These Guidelines have not yet been shared with civil society.

Violence, Abuse, and Neglect in Schools

Students are exposed to violence and abuse in many of South Africa's schools, but children with disabilities are more vulnerable to such unlawful and abusive behaviour. Human Rights Watch documented, and was made aware of, numerous cases of physical violence, and neglect of children and young adults with disabilities in mainstream, full-service, and special schools.²¹ These included serious cases of physical violence by teachers and students against children with autism—at times to discipline them—bullying from teachers

¹⁷ Human Rights Watch, "South Africa: Little Progress for Youth With Disabilities;" Committee on the Rights of the Child, "Concluding observations on the second periodic report of South Africa," CRC/C/ZAF/CO/2, October 27, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZAF%2fCO%2f2&Lang=en (accessed November 21, 2017), paras 43-44.

¹⁸ Human Rights Watch, "South Africa: Little Progress for Youth With Disabilities;" Department of Basic Education, "Progress Report on Inclusive Education and Special Needs Education, Portfolio Committee on Basic Education Meeting," 30 May 2017.

¹⁹ Department of Basic Education, "Draft National Norms And Standards For Resource Distribution For An Inclusive Education System," June 2015, <http://www.saou.co.za/wp-content/uploads/2011/04/Draft-norms-2015.pdf> (accessed January 22, 2018).

²⁰ Department of Basic Education, "Statement by Minister of Basic Education, Mrs. Angie Motshekga on the occasion of the post-CEM Media Briefing," September 15, 2017, <https://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/5986/ItemID/5472/Default.aspx> (accessed November 8, 2017).

²¹ Full service schools were introduced as a new form of 'neighborhood' mainstream schools, promoted as schools that would be adapted or built to accommodate children with disabilities and provide children with specialized services and attention in a mainstream environment. According to governmental policy, every district should have at least one full-service school. To cater to children with disabilities, these schools would receive support and expertise from special schools. Special schools are

and peers, and various instances of neglect of children with disabilities living in boarding schools. Children with disabilities are often exposed to bullying, physical abuse, and derogatory language on buses, in taxis, and pick-up trucks.²²

Despite existing constitutional protections from maltreatment, neglect, abuse or degradation, as well as a clear ban on corporal punishment and psychological abuse in schools since 1996, there is no legally enforceable national protocol to tackle corporal punishment and sexual abuse in public schools.²³ A pervasive culture of silence remains in schools, leading to insufficient accountability for perpetrators of sexual assault or violence against learners, particularly girls.²⁴

Lack of Preparation for Life After Basic Education

The consequences of a lack of inclusive quality learning are particularly visible when adolescents and young adults with disabilities leave school. Most of the adolescents and young adults with disabilities interviewed by Human Rights Watch left school without the knowledge and tools needed to live an independent, engaged life within their communities.

While a comparatively small number of children with disabilities, predominantly students with sensory disabilities, successfully pass the national secondary school certificate, or matric, many adolescents and young adults with disabilities stay at home after finishing compulsory education; many lack basic life skills. Their progression into skills-based work, employment, or further education is affected by the type and quality of education available in the special schools they attend.

National statistics show that the majority of persons with disabilities do not attend higher or tertiary education. Students who live in urban areas and who have mild to moderate physical disabilities, have low vision or are blind, have higher chances of graduating from secondary education and proceeding on to university, compared with students with other disabilities outside major urban areas. Students who are deaf or hard of hearing, defined as “severe difficulty in hearing,” have lower rates of attainment of higher education.

²² Human Rights Watch, *Complicit in Exclusion*,” Elin Martinez, “South African Girl with Disability Abused on School Bus, Students With Disabilities Unsafe on the Way to School, in Classroom,” Human Rights Watch dispatch, September 25, 2017, <https://www.hrw.org/news/2017/09/25/south-african-girl-disability-abused-school-bus>.

²³ South African Schools Act, 1996, Department of Basic Education, Act No 84 of 1996, <http://www.education.gov.za/LinkClick.aspx?fileticket=alolZ6UsZ5U%3D&tabid=185&mid=1828>, s. 10.

²⁴ Human Rights Watch, *Complicit in Exclusion*,” UN Committee on the Rights of the Child, “Concluding observations on the second periodic report of South Africa,” CRC/C/ZAF/CO/2, October 27, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZAF%2fCO%2f2&Lang=en (accessed November 21, 2017), paras. 59-60.

In contrast, Human Rights Watch found that children with multiple disabilities, intellectual disabilities, and autism had minimal to no chances of proceeding beyond basic education. Adolescents and young adults with these disabilities who had not finished compulsory education faced limited opportunities to resume basic education or gain practical skills.²⁵

Human Rights Watch recommends to the Committee that it ask the government of South Africa:

- How does the government ensure that it produces and publishes adequate data on school enrolments and retention, disaggregated by age, grade, gender, and disability?
- How does the government ensure families of children with disabilities have adequate information on how to access basic services for their children?
- What binding measures has the government taken to ensure provincial governments respect and fulfill the right to inclusive education of children with disabilities? Is the government planning on adopting legislation to provide specific protections to children with disabilities and guarantee inclusive education?
- What steps has the government taken to allocate adequate financing for inclusive education, and to ensure provincial governments allocate adequate funding for inclusive education?
- Why do schools charge fees for children with disabilities? What measures has the government adopted to ensure children with disabilities have access to inclusive education, on an equal basis with children without disabilities, particularly in rural and remote areas?
- What concrete measures has the government taken to enrol in the education system children with disabilities who are currently out of any school?
- What steps has the government taken to improve the quality of education in mainstream and special schools?
- What steps have been taken to ensure reasonable accommodation to allow children with disabilities to access education without discrimination?
- What steps has the government taken to ensure school officials who discriminate against children with disabilities are held accountable?
- What steps has the government taken to address violence and abuse in schools, including investigating and prosecuting perpetrators, where appropriate?
- What steps has the government taken to adopt a national protocol against corporal punishment and sexual abuse in public schools?
- How does the government ensure investigations of abuse of children or young people with disabilities are adequately conducted, and in full respect of their legal capacity?
- What programs, if any, are available for children with disabilities who do not complete basic education within the legal age limits?

²⁵ Human Rights Watch, *Complicit in Exclusion*.

- What programs are in place to provide adequate support and equal education opportunities for children with disabilities after they finish basic education?

Human Rights Watch recommends the Committee call upon to the government of South Africa to:

- Publish accurate and transparent data on the number of children with disabilities who are out of school, those who are on waiting lists for special schools, and those who have dropped out.
- Ensure access to free and compulsory primary education and to secondary education, including developing a detailed plan of action for the immediate realization of free compulsory primary education, in line with its constitutional duties and responsibilities under international human rights law.
- Adopt a strong and well-resourced framework for funding of inclusive education to ensure all provincial governments allocate adequate levels of funding for inclusion, public special schools are adequately funded, and ensure they qualify as “no fee schools.” Prohibit all public ordinary schools from imposing financial conditions on children with disabilities that children without disabilities would not incur, such as transportation and reasonable accommodations in classrooms.
- 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 students with disabilities from schools in their neighborhood. This should apply at all school levels, in transportation, and other essential services.
- Adopt a national protocol against corporal punishment and sexual abuse in public schools.
- Ensure students with disabilities have access to adequate support and equal education opportunities after they finish basic education.
- Ensure young people with disabilities have access to meaningful employment opportunities, including technical and vocational opportunities.