HUMAN RIGHTS WATCH

"Complicit in Exclusion"

South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities

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Printed in the United States of America
ISBN: 978-1-6231-32644
Cover design by Rafael Jimenez

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AUGUST 2015

978-1-6231-32644

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Map

ZIMBABWE
NAMIBIA
BOTSWANA
MOZAMBIQUE
LIMPOPO
Polokwane
Tzaneen
MPUMALANGA
Pretoria
Johannesburg
GAUTENG
SWAZILAND
NORTH WEST
Kwa-Ngwanase
FREE STATE
KWAZULU-NATAL
Kimberley
NORTHERN CAPE
LESOTHO
Durban
SOUTH AFRICA
EASTERN CAPE
WESTERN CAPE
Cape Town
Worcester
Provinces where Human Rights Watch conducted research

Glossary

Autism spectrum disorder: A lifelong, complex condition that occurs due to disordered brain growth, structure and development. Autism is believed to stem from a genetic predisposition triggered by environmental factors and affects four to five times more boys than girls. Since a person can manifest their autism in a vast number of ways, this condition is now often referred to as "Autism Spectrum Disorders."

Cerebral palsy: A condition that affects movement, posture, and coordination. These problems may be seen at or around birth and mean part of the brain is either not working properly or has not developed normally. This may be due to problems during the first weeks of development in the womb (such as an infection) or the result of a difficult or premature birth. Sometimes there is no obvious cause.

Developmental disability: An umbrella term that refers to any disability starting before the age of 22 and continuing indefinitely (likely lifelong). It limits one or more major life activities such as self-care, language, learning, mobility, self-direction, independent living, or economic self-sufficiency. While this includes intellectual disabilities such as Down Syndrome, it also includes conditions that do not necessarily have a cognitive impairment component, such as cerebral palsy, autism, epilepsy, and other seizure disorders.

Epilepsy: The most common neurological condition, impacting on the body's nervous system, characterized by unusual electrical activity in the brain, causing unprovoked seizures and sudden, uncontrolled movements. Epilepsy, however, is not a psychological disorder, disease, or illness, and not all cases of epilepsy are lifelong. About 80 percent of people can effectively control their seizures with medication and a healthy lifestyle.

Fetal alcohol syndrome disorder: A group of conditions that can occur in a person whose mother drank alcohol during pregnancy. Fetal alcohol syndrome causes brain damage and growth problems. These effects can include physical problems, behavior and learning problems, or an intellectual disability. Often, a person with this disorder has a combination of these problems.

Intellectual disability: Characterized by significant limitations in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior, covering a range of everyday social and practical skills. “Intellectual disability” forms a subset of “developmental disability,” but the boundaries are often blurred as many individuals fall into both categories to differing degrees and for different reasons.

Learning disability: Difficulties in learning specific skills, such as reading, language, or math. They affect people's ability to either interpret what they see and hear, or to link information. Children with learning disabilities may also have trouble paying attention and getting along with peers. Learning disabilities are not related to intelligence or educational opportunity.

Public school: South Africa’s Schools Act regulates public schools and lists three types: public ordinary schools, referred to as “mainstream schools” in the report, schools for students with special education needs, referred to as “special schools” in the report, and schools focused on music and the creative arts, among others. Public schools are not automatically free of charge. School-governing bodies and provincial governments have discretion to charge fees.

Severe and profound disability: A range of intellectual functioning extending from partial self-maintenance under close supervision and limited self-protection skills in a controlled environment, to limited self-care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care. Children with an intelligence quotient (IQ) of less than 35 are considered to be severely (IQ levels of 20-35) or profoundly (IQ levels of less than 20) intellectually disabled.

Summary

> Schools are complicit in [the] exclusion. There isn't really a culture of accessibility institutionalized in the school because we [people with disabilities] have to make it work.
> —Edward Ndopu, activist, Johannesburg, November 2014

> I can't imagine him at age 15 unable to write his name. He's supposed to have [a] life, to be independent. That is why I fought for education for him. I hope one day he will be a doctor…. He is able to do [many] things.
> —Maria Mashimbaye, mother of an 11-year-old boy with spina bifida, Johannesburg, October 2014

All children, including those with disabilities, have a right to free and compulsory primary education, and to secondary education and further education or training. All people with disabilities have the right to continue learning and to learn and progress on an equal basis with all people.

South Africa was one of the first countries to ratify the Convention on the Rights of Persons with Disabilities (CRPD) in 2007, and is a party to five key international human rights treaties and two African treaties protecting and guaranteeing children economic and social rights. Since 1996, the government has also introduced strong constitutional protections and legal and policy measures to safeguard every child's right to education free from discrimination.

In 2015, the government declared it had reached universal enrollment in primary education and achieved the United Nations Millennium Development Goal on education, requiring it to ensure that all girls and boys were in school and had completed a full course of primary education by that year.

This report casts doubt on that assertion.

Building on two previous investigations carried out by Human Rights Watch in 2001 and 2004—*Scared at School: Sexual Violence against Girls in South African Schools* and

Forgotten Schools: Right to Basic Education for Children on Farms in South Africa—the report finds that progress on paper for children with disabilities has not translated into equal opportunities or protections on the ground.

It questions whether the government of South Africa has prioritized children with disabilities' access to a quality, inclusive education—as it committed to do 13 years ago in its "Education White Paper 6"—and highlights numerous forms of discrimination and obstacles that children with disabilities face in trying to access such education that fosters inclusion, not segregation or integration.

Moreover, evidence in this report suggests the government has not reached "universal" education because it has left over half a million children with disabilities out of school, and hundreds of thousands of children with disabilities, who are presently in school, behind.

Key Findings

Among this report's key findings:

- **Discrimination accessing education:** children with disabilities continue to face discrimination when accessing all types of public schools. Schools often decide whether they are willing or able to accommodate students with particular disabilities or needs. In many cases, children with intellectual disabilities, multiple disabilities, and autism or fetal alcohol syndromes are particularly disadvantaged. In most cases, schools make the ultimate decision—often arbitrary and unchecked—as to who can enroll.
- **Discrimination due to a lack of reasonable accommodation in school:** many students in mainstream schools face discriminatory physical and attitudinal barriers they need to overcome in order to receive an education. Many students in special schools for children with sensory disabilities do not have access to the same subjects as children in mainstream schools, jeopardizing their access to a full curriculum.
- **Discriminatory fees and expenses:** children with disabilities who attend special schools pay school fees that children without disabilities do not, and many who attend mainstream schools are asked to pay for their own class assistants as a condition of

staying in mainstream classes. Additionally, parents often pay burdensome transport and boarding costs if special schools are far from families and communities, and, in some cases, they must also pay for special food and diapers.

- **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 practices.
- **Lack of quality education:** children with disabilities in many public schools receive low quality education in poor learning environments. They continue to be 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.
- **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. While a small number of children with disabilities successfully pass the 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.

Segregation and lack of inclusion permeates all levels of South Africa's education system and reflect fundamental breaches of the Convention on the Rights of Persons with Disabilities. Barriers to inclusive education begin in the very early stages of children's lives because children are classified according to their disabilities.

Several factors underpin these problems, including undercounting children with disabilities in governmental data, inadequate funding for inclusive education, and lack of adequate information and support services for parents, families, and children with disabilities. For example, Human Rights Watch found many parents faced uncertainty and navigated a complex system without information about their children's disabilities, abilities, or the best type of education for them. In many cases, nongovernmental organizations (NGOs) plug considerable gaps in the delivery of public services for children who have been left out of the education system.

Necessary Steps

Inclusive education focuses on ensuring the whole school environment is designed to foster inclusion, not segregation or integration. It benefits all children. Children with disabilities should be guaranteed equality in the entire process of their education, including by having meaningful choices and opportunities to be accommodated in mainstream schools if they choose, and to receive quality education on an equal basis with, and alongside, children without disabilities.

The government has accepted that progress has been slower than expected when it comes to implementing its policy on inclusive education—particularly for the poorest students with disabilities and children with multiple disabilities and high support needs—in large part because it has not been a key national priority, and provincial departments have not distinguished between "special needs education" and "inclusive education."

The government should take immediate steps to turn its inclusive education policy commitments into legally binding obligations. These include ensuring:

- It honors a policy of inclusive education by making sure that children with disabilities have an equal opportunity and option to go to mainstream schools that are accessible, free of violence, and receive a quality education that addresses and accommodates their needs.
- All students with disabilities can complete basic education, at a minimum.
- All students with disabilities have equal opportunities to continue learning or enter vocational education and training.
- Adequate consultation with children and their families to determine a school placement that will maximize their academic and social development, consistent with the goal of full inclusion.

The government's approach and shift towards a truly inclusive education system should also be both short and longer term.

Improving the quality of education in mainstream schools is a short-term imperative and a means to ensure all students benefit from education. In the short-term, the government should also improve the quality of education in special schools to ensure the current

generation of children who want and need their services can benefit from education on an equal basis with students in mainstream schools.

The government should also immediately commence a transparent and frank process to review "Education White Paper 6" to ensure its education system is better able to respond to the needs of hundreds of thousands of children with disabilities.

In the medium to longer term, the government should ensure that students with disabilities can transition from special to mainstream and full-service schools. This should entail shifting investments now so that schools can accommodate children with disabilities, and teachers and support staff are adequately trained, empowered, and supported to teach children with disabilities in mainstream schools.

Creating new special schools for current and new generations of students with disabilities will not solve South Africa's current challenges and may even exacerbate many violations of the right to education of children with disabilities outlined in this report. The government should now move beyond statements of commitment to real, inclusive implementation.

Key Recommendations

To the Government and National Assembly of South Africa

Guarantee Right to Inclusive Quality Education for Children and Adults with Disabilities

- Affirm commitments to guarantee the right to inclusive education for all children with disabilities;
- Require all public schools, as defined in the Schools Act, to ensure reasonable accommodation for all children with severe learning difficulties and multiple disabilities;
- Establish and define short-term goals and timeframes to ensure students with disabilities can transition from "special needs education" or special schools to inclusive mainstream schools;
- Amend the Schools Act to bring it fully in line with the country's international obligations with the effect of explicitly making primary education in all public schools free and compulsory for all children, ensuring meaningful access to quality education for children with disabilities and enforcing the right to access Adult Basic Education and skills programs for people with disabilities who have not completed basic education;
- Collect and regularly publish lists of children with disabilities on waiting lists, those waiting to be referred to special schools, as well as out-of-school children with disabilities, in order to provide an accurate account of the status of enrollments;
- Ensure schools have taken all necessary steps to provide individual learning support and remedial education to leaners with disabilities who are lagging behind.

Comply with Existing National Laws and Political Commitments

- Deliver a government gazette, an official government communiqué, with compulsory school-going ages for children with disabilities, adapting it to accommodate students who enter school late, as well as reasonable accommodations;
- Publish Norms and Standards for funding of inclusive education to ensure public special schools can qualify as "no fee schools" and do not charge fees, and prohibit all

public ordinary schools from imposing financial conditions on children with disabilities that children without disabilities would not incur;

- Finalize and publish the "National Learners Transport Policy," guaranteeing inclusion and subsidized transportation for students with disabilities.

Adopt Stronger Policies and Laws on Inclusive Education

- Begin a transparent process to review "Education White Paper 6"—the government's inclusive education policy—with a view to adopting a new policy on inclusive education to replace the existing policy;
- Translate "Education White Paper 6" into a comprehensive law binding national and provincial governments, ensuring it is in line with the United Nations Convention on the Rights of Persons with Disabilities.

Increase Accountability in the Education System

- Invest necessary resources in improving data systems to ensure schools of all types account for numbers of children with disabilities in school, grade levels, progression and drop-outs;
- Urgently set up a centralized register of waiting lists and children waiting to be placed and improve data collection of out-of-school children in institutions or centers managed by the Department of Social Development. Ensure such lists are available to parents and civil society organizations upon request.

Allocate Resources and Safeguards to Guarantee Inclusive Education

- Deliver a national conditional grant to implement inclusive education goals and pay for non-personnel funding, including accessible infrastructure, assistive devices, and material resources to reasonably accommodate all children, among others;
- Develop an adequately resourced implementation plan to ensure all public ordinary schools accommodate children with high levels of support needs in line with the commitments made in "Education White Paper 6";
- Mobilize inclusive education funding into mainstream and full-service schools to meet the milestones laid out in "Education White Paper 6," and invest existing resources to more effectively promote inclusion and enhance quality in mainstream schools.

Methodology

This report is based on research conducted in October and November 2014 in Gauteng, KwaZulu-Natal, Limpopo, Northern Cape, and Western Cape provinces. Human Rights Watch selected these provinces to document disparities in access to education for students with disabilities in historically disadvantaged provinces, remote or rural provinces, as well as provinces with greater resources and greater provision of services for people with disabilities. We documented cases in townships and both urban and remote, rural settings.

Researchers conducted 135 interviews in person and by phone. Evidence used in this report is based on interviews with 70 parents on the experiences of 55 children with disabilities and 15 young adults with disabilities.

Disabilities included physical, sensory (blind, low-vision, deaf, or hard of hearing), intellectual disabilities, including cerebral palsy and Down Syndrome, autism spectrum disorder, and fetal alcohol syndrome disorders. Eight children had multiple disabilities. Nine children had epilepsy. Ten children and young adults were specifically referred to as "slow learners," a term used to label persons with intellectual or learning disabilities.

Whenever possible, Human Rights Watch spoke directly with children and young adults, except where they had disabilities that impeded their ability to participate comfortably or they had not learned sign language. Seven separate interviews were conducted with children ranging from 9 to 17 years old. Sixteen young adults ranging from 18 to 30 years old were also interviewed, separately or with their parents.

Interviews took place in English, or were translated into English by members of organizations of persons with disabilities or other nongovernmental organizations (NGOs). In each case, Human Rights Watch explained the purpose of the interview, how it would be used and distributed, and sought the participant's permission to include their experiences and recommendations in this report.

Participants were told they could discontinue the interview at any time or decline to answer any question. Some parents received a small reimbursement for travel expenses if they traveled long and costly distances to meet researchers.

Human Rights Watch took great care to interview children, young adults, and their families in an appropriate and sensitive manner. Interviewees are identified by their real names, or first names in the case of children, except when they requested otherwise. Foreign national parents, concerned about the impact on their immigration status, requested anonymity.

Human Rights Watch also interviewed 18 representatives of NGOs, including members of organizations of persons with disabilities, and education, human rights, and advocacy organizations and self-advocates; 10 experts and practitioners, including teachers, social workers, educational psychologists, doctors, occupational therapists, assistants, and caregivers who have direct experience with children with disabilities; 12 service providers ranging from NGOs providing an essential service to a social enterprise selling affordable wheelchairs to the government; as well as leading academics and journalists involved in education or disability rights. Some parents have a dual role as parents of children or young adults with disabilities and as former or current teachers, or education experts in NGOs, service providers, or schools.

Human Rights Watch visited four government special schools, two nongovernmental special schools, six formal and informal day care centers (or *crèches*) and one skills center for adults with intellectual disabilities. Interviews took place inside and outside schools with 14 school staff members and social workers from nongovernmental schools, government special and mainstream schools, care and stimulation centers, skills centers/protective workshops, and informal stimulation centers and crèches. We requested but were not granted permission to visit five additional special, or special boarding, schools. We also interviewed representatives of the National Professional Teachers Organization of South Africa. South Africa's Democratic Teachers Union did not respond to numerous requests for an interview or comment.

Human Rights Watch interviewed six government officials at the National Department of Basic Education, and communicated by email and telephone with various provincial education officials. The Disability Rights Unit was in the process of moving from the now defunct Ministry of Women, Children and People with Disabilities to the Department of

Social Development during the research. A senior representative of this Unit declined a meeting with Human Rights Watch due to the transfer of this unit's functions and the absence of internal protocols. We interviewed two commissioners at South Africa's Human Rights Commission and consulted a number of international disability experts during research and writing.

We also reviewed case studies, National Assembly archives and briefings, government documents, statements and progress reports, government submissions to United Nations (UN) bodies, UN reports, NGO reports, academic articles, newspaper articles, and South African case law on the right to education, among others. Four NGOs shared data, case studies, and evaluations based on their programs and outreach activities with children with disabilities.

The exchange rate at the time of the research was approximately US$1 = R11 South African Rand; this rate has been used for conversions in the text, which have generally been rounded to the nearest dollar.

I. Overview: Inclusive Education

After the formal end of apartheid in 1994, South Africa's government faced an urgent need to focus on the right to education of millions of children who had faced racism, exclusion, and discrimination accessing education, as well as children who had been subjected to an inferior quality education.[1] Children with disabilities were recognized as deserving particularly urgent attention.[2]

In the more than two decades since, the government has adopted steps to democratize education by guaranteeing an equal right to basic education in law, policy, and practice. Its constitution protects the right to a basic education,[3] and protects individuals from any discrimination, including on the grounds of race and disability.[4]

Schools Act, 1996

The 1996 Schools Act guides the government's obligations related to basic education and stipulates the compulsory nature of basic education for all students aged 7 to 15. All children should be in school by 5 to 6 years old for grade R or pre-school.[5]

All public schools must admit students and "serve their educational requirements without unfairly discriminating in any way."[6] All of South Africa's nine provinces must also "ensure that there are enough school places so that every child who lives in his or her province can attend school."[7] The government must undertake "all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons."[8]

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[1] Department of Social Development, Department of Women, Children and People with Disabilities and United Nations Children's Fund (UNICEF), "Children with Disabilities in South Africa: A Situation Analysis: 2001-2011," 2012, http://www.unicef.org/southafrica/SAF_resources_sitandisability.pdf (accessed August 5, 2015); Gerison Lansdown, "Disabled Children in South Africa: Progress in Implementing the Convention on the Rights of the Child," Rights for Disabled Children, (2002), http://www.daa.org.uk/uploads/pdf/SA%20Childrens%20report%20.pdf (accessed August 5, 2015).

[2] Dana Donahue and Juan Bornman, "The challenges of realizing inclusive education in South Africa," *South African Journal of Education*, vol. 34 (2) (2014), pp. 2-4.

[3] 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).

[4] Ibid., s.9(3).

[5] South African Schools Act, 1996, *Department of Basic Education*, Act No 84 of 1996, http://www.education.gov.za/LinkClick.aspx?fileticket=aIolZ6UsZ5U%3D&tabid=185&mid=1828, s. 3 (1).

[6] Ibid., s. 5(1).

[7] Ibid., s. 3(3).

[8] Ibid., s. 12(5).

When determining the admission of a learner with disabilities in a public school, education officials must take into account "the rights and wishes of learners with special education needs,"[9] as well as "the rights and wishes of the parents of such learner."[10] The Schools Act also mandates that people with disabilities and experts on "special education needs of learners" be represented in governing bodies of ordinary public schools.[11]

Education White Paper 6, 2001

In 2001, the government gave itself 20 years to realize the right to inclusive education across the country, via a national policy known as "Education White Paper 6: Special Needs Education."[12]

At the time, the government estimated that more than 280,000 children and youth with disabilities were not in school, although most nongovernmental accounts put the number much higher.[13] It pledged to run awareness and enrollment campaigns to boost enrollment of out-of-school children and youth with disabilities of school-going age.[14]

The policy recognizes that "all children and youth can learn" and outlines key steps to ensure educational opportunities for students who experience or have experienced learning and development barriers, or who have dropped out of learning because of "the inability of the education and training system to accommodate their learning needs."[15]

Although the white paper's subtitle indicates a focus on "Special Needs Education," the government's policy made an attempt to move away from a special education and disability-focused model to a system that focused primarily on securing access to education for all children and respecting the importance of inclusion, thereby placing children in three types of "public ordinary schools," according to their level of needs.

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[9] Ibid., s. 23.

[10] South African Schools Act, s. 5(6).

[11] Admission Policy for Ordinary Public Schools, *Department of Education*, General Notice 2432 of 1998, http://www.education.gov.za/LinkClick.aspx?fileticket=12uDPCW6hsg=, s. 23(5), s. 24(1) – (4).

[12] 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/tI= (accessed August 5, 2015).

[13] Department of Basic Education, "Education White Paper 6," p. 9: "The submissions suggested that many disabled children are outside of any learning institution… policy should target approximately 400,000 disabled [sic] children who receive no education and training," p. 54.

[14] Ibid., p. 8, para. 14.

[15] Ibid., p. 6, para. 9.

Contradictorily, the policy retained a strong focus on special needs education. To address parents' and special needs practitioners' concerns, the government clarified it would strengthen, rather than abolish, special schools for children needing more support.[16] The policy reinforced that:

> Following the completion of our audit of special schools, we will develop investment plans to improve the quality of education across all of them… learners with severe disabilities will be accommodated in these vastly improved special schools, as part of an inclusive system.[17]

On paper, all government schools would offer children the same curriculum, while guaranteeing individual learners adequate assessments and support to ensure their "maximum participation in the education system as a whole."[18] The three types of public schools are:

- Mainstream:[19] Meant to accommodate students with mild to moderate disabilities who require limited support, where the priority should focus on multi-level classroom instructions to respond to individual learner needs.[20] "Education White Paper 6" assumes that mainstream schools would be unable to provide for students requiring intense levels of support, who would need to be accommodated in special schools.[21] In 2013, 76,993 students with disabilities were registered in 3,884 mainstream schools.[22]
- Full-service: 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. In 2014, 793 schools were

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[16] Department of Basic Education, "Education White Paper 6," p. 3.

[17] Ibid.

[18] Department of Basic Education, "Guidelines for Inclusive Learning Programmes," June 2005, p. 6.

[19] Officially referred to as 'ordinary schools' in the South African Schools Act. See Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education, An Overview for the Period: 2013-2015," May 2015, pp. 10-11, 26-27.

[20] Department of Basic Education, "Education White Paper 6," p. 18.

[21] Department of Basic Education, "Education White Paper 6," p. 21.

[22] Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education, An Overview for the Period 2013-2015," May 2015, pp. 13-14.

designated as full-service schools, with 24,724 "learners with special needs" enrolled.[23]

- Special schools: Meant to accommodate children with high levels of support and needs; many existed prior to the government adopting an inclusive education policy. According to the government's policy, most of these schools would turn into "resource centers" to provide assistance and expertise to full-service schools.[24] In 2012, the government reported strengthening 295 special schools, converting 98 special schools into resource centers, and building 25 new special schools.[25] In 2014, 117,477 students, out of the 231,521[26] enrolled in public schools, were enrolled in 453 special schools.[27]

Within the special schools model, the government introduced a weighting system to respond to the diversity of disabilities in a classroom. The government introduced a method to calculate a maximum student-to-teacher ratio per classroom, weighted according to the type of disability.[28] To date, there is no equivalent weighting in mainstream schools. This means mainstream schools do not have applicable regulations to adjust their student-to-teacher ratio to accommodate children with disabilities' needs in larger classrooms.[29]

In 2015, the Department of Basic Education admitted it faces very significant challenges in implementing an inclusive education system, particularly ensuring provincial governments comply with Education White Paper 6. In its progress report, released in May 2015, the

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[23] Ibid., pp. 14-17.

[24] Department of Basic Education, "Education White Paper 6," p. 47.

[25] Department of Basic Education, "Progress in the Implementation of Inclusive Education," presentation to the Portfolio Committee on Basic Education, September 9, 2014.

[26] The Department of Basic Education provides two separate enrollment figures in its progress report: 320,399 of "7 to 15 year old children with disabilities attended education institutions" in 2013, and 231,521 of "total number of learners with disabilities enrolled in school (Ord. and SNE)." Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education, An Overview for the Period 2013-2015," May 2015, p. 20.

[27] Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education, An Overview for the Period 2013-2015," May 2015, pp. 20-22. The Department of Social Development reported 111, 598 learners were enrolled in 444 special schools in 2014. See Department of Social Development, "Draft First Periodic Country Report on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)," Notice 445 of 2015, p. 38.

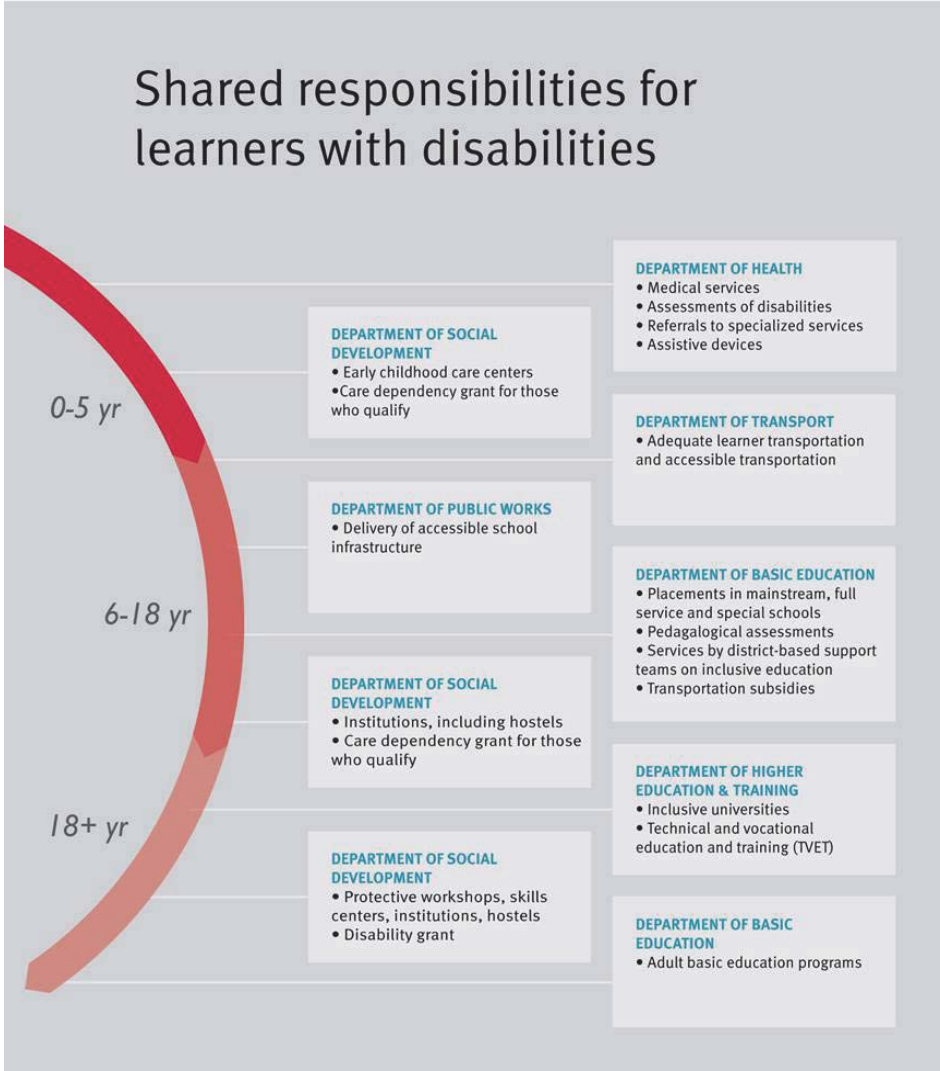
[28] According to the weighting system, specific disabilities carry a weight of 1: number of ordinary children. If classes respect the 30-40 children/classroom allocation, this requires smaller classrooms per teacher. Children with autism spectrum disorder have the highest weight, with schools required to follow a 1:6 allocation.

[29] Campaign to Promote the Right to Education of Children with Disabilities, 2011, "Factsheet 6: Systemic barriers to inclusive education."

Department of Basic Education advised the government to take "urgent and radical steps" to ensure it is able to reach some of the policy's milestones by 2019.[30]

Inter-Departmental Obligations

While the Department of Basic Education is responsible for delivering inclusive education in schools, other departments play a key role in implementing this policy.



[30] Department of Basic Education, "Progress Report on Inclusive Education and Special Schools," presentation to Portfolio Committee on Basic Education, June 23, 2015.

Western Cape Ruling, 2010

In 2011, disability associations representing children with severe and profound intellectual disabilities[31] in the Western Cape brought a case against the national and provincial Department of Basic Education for failing to accommodate these children in public schools. Members of the Western Cape Forum for Intellectual Disability had advocated for the right to education of over 1,000 children in their care for over 13 years, to no avail.[32]

The presiding judge of the High Court of the Western Cape, the superior judicial body in the province, concluded that the government was "infringing the rights of the affected children" by failing to provide them with a basic education and "by not admitting the children concerned to special or other schools…."[33]

Moreover, the judge declared that the Western Cape's Department of Basic Education had failed to "take reasonable measures to make provision for the educational needs of severely and profoundly intellectually disabled children in the Western Cape," thus breaching their constitutional rights to a basic education, protection from neglect or degradation, equality, and human dignity.[34]

The court directed South Africa's government to ensure that every child with severe or profound intellectual disabilities in Western Cape "has affordable access to a basic education of an adequate quality."[35]

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[31] The Mental Health Care Act (Act No. 17 of 2002) defines "severe and profound intellectual disability" as a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self-care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care," as used in Department of Basic Education, "Report on Actions Taken by the Department of Basic Education to Develop a Framework for the Provision of Services to Children with Severe and Profound Intellectual Disability," July 31, 2012, http://www.saaled.org.za/R2ECWD/docs/Report_on_Services_to_Children_With_SPID_DBE_31_July_2012_(2).pdf (accessed June 9, 2015).

[32] Western Cape Forum for Intellectual Disability, "Annual Report 2013-2014: Support through Collaboration and Response to Identified Needs"; Human Rights Watch interview with Tessa Wood, director, and Fatima Shaboodien, chairperson, Western Cape Forum for Intellectual Disability, Cape Town, October 2014.

[33] Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Government of the Province of the Western Cape, (2011 (5) SA 87 (WCC)) [2010] ZAWCHC 544; 18678/2007 (11 November 2010).

[34] Ibid., p. 31,para. 52.1.

[35] Ibid.

II. International Standards

a. Right to Free and Compulsory Primary Education

International human rights law makes clear that all children have a right to free, compulsory primary education, free from discrimination.[36]

South Africa has ratified six key human rights treaties applicable to children, education, and persons with disabilities.[37] The government has agreed to respect and fulfill international and regional obligations to provide free, compulsory primary education available to all children,[38] ensure different forms of secondary education are available and accessible to every child, and take appropriate measures, such as the progressive introduction of free education[39] and offering financial assistance in case of need.[40]

In January 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into effect in April 2015. Upon ratification, South Africa included a declaration that the government "will give progressive effect to the right to education … within the framework of its National Education Policy and available resources."[41]

According to leading South African human rights organizations, such a declaration represents a "worrying discrepancy," particularly as it contradicts current practice and

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[36] United Nations Economic and Social Council, "Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33," E/CN.4/1999/49, 13 January 1999, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/101/34/PDF/G9910134.pdf?OpenElement (accessed August 5, 2015).

[37] UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (no. 49) at 167, U.N. Doc. A/44/49 (1989, entered into force September 2, 1990, art.6, in 1995; UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981 in 1995; African Charter on Human and People's Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, in 1996; African Charter on the Rights and Welfare of the Child, adopted July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, in 2000; UN Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006 G.A. RES/61/106, entered into force May 3, 2008, in 2007; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976 in 2015.

[38] CRC, art. 28(1)(a), ICESCR, art. 13(2)(a), African Charter on the Rights and Welfare of the Child (African Charter), art. 11(3)(a).

[39] ICESCR, art. 13(2)(b).

[40] CRC, art. 28(1)(b); African Charter, art. 11(3)(b).

[41] United Nations Treaty Database, "South Africa," undated, https://treaties.un.org/doc/Publication/UNTS/No%20Volume/14531/A-14531-South%20Africa-08000002803ff711.pdf (accessed July 10, 2015).

national interpretation and jurisprudence of key international obligations on the right to education; notably the obligation to guarantee the right to free and compulsory primary education to all children. [42]

In particular, the government's declaration is incompatible with binding decisions by South Africa's Constitutional Court, which has previously ruled that there is an immediate obligation to fulfill this right, and that education is not subject to the progressive realization provisions associated with some other economic and social rights protected under the Constitution.[43]

As a party to the ICESCR, South Africa must submit an action plan on how it will guarantee free and compulsory primary education to all children.[44]

b. Right to Access Inclusive, Quality Education

Inclusive education is an evolving educational approach, widely interpreted across countries.[45] The United Nations Educational, Scientific and Cultural Organization (UNESCO) defines inclusive education as:

> A process of addressing and responding to the diversity of needs of all learners through inclusive practices in learning, cultures and communities and reducing exclusion within and from education. It involves changes and modifications in content approaches structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children.[46]

At root, inclusive education focuses on the importance of ensuring that "the whole environment … [is] designed in a way that fosters inclusion and guarantees their [children

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[42] Joint statement by Section 27 et al., "South Africa Government's Declaration on Education Clause Mars the Welcome Ratification of the International Covenant on Economic, Social and Cultural Rights," Johannesburg, January 21,2015.

[43] Constitution of the Republic of South Africa, s. 29(1); Governing Body of Juna Masjid Primary School and Another v Essay N.O. 2011 (8) BCLR 761 (CC).

[44] ICESCR, art. 14.

[45] United Nations Human Rights Council, "Thematic Study on the right of persons with disabilities to education," Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, December 18, 2013.

[46] United Nations Educational, Scientific and Cultural Organization (UNESCO), "Guidelines for Inclusion: Ensuring Access for All," 2005, http://unesdoc.unesco.org/images/0014/001402/140224e.pdf (accessed June 5, 2015).

with disabilities] equality in the entire process of their education."[47] This includes the right to access quality learning, which focuses and builds children's abilities, and for children to be provided with the level of support and effective individualized measures required to "facilitate their effective education."[48]

Moreover, inclusive education takes into account the mutual benefits of bringing together all children. "The most powerful experience is that peers become disability advocates," Edward Ndopu, an activist, told Human Rights Watch, "They become champions of accessibility and inclusion in the classroom."[49]

The Convention on the Rights of Persons with Disabilities (CRPD) promotes "the goal of full inclusion"[50] while at the same time considering "the best interests of the child."[51] The Office of the High Commissioner for Human Rights, the United Nations human rights agency, states that:

> The right of persons with disabilities to receive education in mainstream schools is included in article 24 (2) (a), which states that no student can be rejected from general education on the basis of disability. As an anti-discrimination measure, the "no-rejection clause" has immediate effect and is reinforced by reasonable accommodation52 … forbidding the denial of admission into mainstream schools and guaranteeing continuity in education. Impairment based assessment to assign schools should be discontinued and support needs for effective participation in mainstream schools assessed…. The legal framework for education should require every measure possible to avoid exclusion.[53]

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[47] UN Committee on the Rights of Persons with Disabilities, General Comment No. 2 (2014), art. 9: Accessibility, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement (accessed August 5, 2015), para. 39.

[48] CRPD, art. 24(2)(d), (e).

[49] Human Rights Watch interview with Edward Ndopu, youth coordinator, Amnesty International, Johannesburg, November 2014.

[50] CRPD, art. 24(2)(e).

[51] CRPD, art. 7(2).

[52] See Section IV, "Discrimination due to Lack of Reasonable Accommodation in Schools" for further details on the application of this concept.

[53] Ibid. p. 9.

c. Right to Education on an Equal Basis

International law provides that persons with disabilities should access inclusive education on "an equal basis with others in the communities where they live," and governments must provide reasonable accommodation of the individual's requirements, as well as "effective individualized support measures in environments that maximize academic and social development."[54] The government must ensure that children are not excluded from the education system on the basis of their disability.[55]

The Convention against Discrimination in Education, to which the government is bound since 2000, provides strong obligations on the government to eliminate any form of discrimination, whether in law, policy or practice, which could affect the realization of the right to education.[56]

According to the UN Committee on the Rights of the Child, "Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs."[57] Under the Convention Against Discrimination in Education, states must "ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent."[58]

Moreover, the CRPD specifies that persons with disabilities have the right to access education "on an equal basis with others in the communities in which they live."[59] Children should also enjoy "active participation in the community," according to the Convention on the Rights of the Child (CRC).[60]

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[54] CRPD, art. 24(2)(a)-(e).

[55] CRPD, art. 24(1).

[56] Convention against Discrimination in Education, UN Educational, Scientific and Cultural Organization (1960), adopted December 14, 1960, entered into force May 22, 1962.

[57] UN Committee on the Rights of the Child, "General Comment No 1 Article 29(1): The Aims of Education," (2001) CRC/GC/2001/1, 17 April 2001, http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx (accessed August 5, 2015), p. 5.

[58] UNESCO Convention against Discrimination in Education (1960), art. 4(b).

[59] CRPD, art. 24(2)(b).

[60] CRC, art. 23(1).

While the Schools Act guarantees the right of children to access schools within their province,[61] the government's inclusive education strategy set out to "expand provision and access to disabled learners within neighborhood schools alongside their non-disabled peers."[62]

To ensure governments understand the difference between meaningful 'inclusion' over simply 'integrating' children with disabilities in an education system,[63] the UN Committee on the Rights of Persons with Disabilities recommends that "the entire process of inclusive education" is accessible, including buildings, information and communication; "the whole environment of students with disabilities must be designed in a way that fosters inclusion and guarantees their equality in the entire process of their education."[64]

d. Duty to Ensure Reasonable Accommodation

The CRPD places an onus on governments to ensure that "reasonable accommodation of the individual's requirements is provided" and that "persons with disabilities receive the support required, within the general education system, to facilitate their effective education."[65]

The CRPD defines "reasonable accommodation" as any "means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms."[66]

According to the UN Committee on the Rights of Persons with Disabilities, a government's duty to provide reasonable accommodation is "enforceable from the moment an individual with an impairment needs it in a given situation … in order to enjoy her or his rights on an equal basis in a particular context."[67]

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[61] South African Schools Act, chapter. 2, s. 3(3).

[62] Department of Basic Education, "Education White Paper 6", p. 30, para. 2.2.3.3.

[63] Gauthier de Beco, "The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Question," *Netherlands Quarterly of Human Rights*, Vol. 32(3), 263-287, (2014), p. 275.

[64] UN Committee on the Rights of Persons with Disabilities, "General Comment No. 2: Article 9: Accessibility," April 2014, para. 39.

[65] CRPD, arts. 24(c) and (d) respectively.

[66] CRPD, art 2.

[67] UN Committee on the Rights of Persons with Disabilities, "General Comment No. 2," para. 26.

In assessing "available resources" to guarantee "reasonable accommodation," governments should recognize that inclusive education is a necessary investment in education systems and does not have to be costly or involve extensive changes to infrastructure.[68]

"Education White Paper 6" refers to broad approaches to accommodate learners' needs and sets out ways the government should accommodate children and young people with disabilities. Schools "are encouraged to make the necessary arrangements, as far as practically possible, to make their facilities accessible to such learners [with special education needs]."[69]

In 2014, the government finalized the "National Uniform Minimum Norms and Standards for Public School Infrastructure," applicable to all mainstream schools.[70] These outline the requirements for schools to function properly and to progressively provide high quality infrastructure. While some measures need to be put in place urgently, other crucial standards exclusively applicable to learners with disabilities are subject to a progressive approach. For example, while the government outlined the need to comply with "universal design measures" for schools catering to learners with disabilities, provisions must only be complied with by 2030.[71]

Since ratifying the CRPD in 2007, South Africa has not adopted a clear, binding definition of "reasonable accommodation" in its education guidelines.[72] Embedding this key principle in South African law and policy would assist in increasing the understanding by education officials at national, provincial and district level of their obligation to accommodate the needs and requirements of children with disabilities within the education system, and would create legally binding measures to ensure compliance at the school level.

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[68] United Nations Human Rights Council, "Thematic Study on the right of persons with disabilities to education," Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, December 18, 2013.

[69] Department of Basic Education, "Admissions Policy for Ordinary Public Schools," General Notice No. 2432 of 1998, para. 22.

[70] The 2013 regulations refer to "universal design" to "address the diversity of learners with functional limitations."Department of Basic Education, "Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure," November 29, 2013, http://www.education.gov.za/LinkClick.aspx?fileticket=fJ%2BPEDF6AmU%3D&tabid=188&mid=1756.

[71] Human Rights Watch interview with Lisa Draga, attorney, Equal Education Law Centre, Cape Town, October 2014; Human Rights Watch interview with Legal and Policy team, Section 27, Johannesburg, October 2014.

[72] Human Rights Watch interview with Lindiwe Mokate, basic education and children's rights commissioner, and Advocate Bokankatla Joseph Malatji, disability rights commissioner, South African Human Rights Commission, Johannesburg, January 2015; Human Rights Watch interview with Legal and Policy team, Section 27, Johannesburg, October 2014.

III. Discriminatory Fees and Expenses

> When my daughter turned six, I cried for her. Puseletso is the only child who hasn't been to school…. Her brothers go to school nearby. But most schools for my daughter are very far. I don't want my child to go to a school far from me.
> —Dimakatso, mother of an 8-year-old girl with an intellectual disability, Johannesburg, October 2014

Among the factors that impede the ability of children with disabilities to access education are prohibitive costs associated, in particular, with school fees, transport, and special assistants.

Fees

> The only one school that can offer a placement [for my son] is the one I can't pay for.
> —Reneilwe, mother of a 10-year-old boy with autism, Limpopo, October 2014

Primary education is not automatically free in South Africa.

In 2000, the UN Committee on the Rights of the Child, which oversees the implementation of the Convention on the Rights of the Child to which South Africa acceded in 1995, expressed concern that South Africa did not guarantee free primary education, and recommended that the government "take effective measures to ensure that primary education is available free to all."[73]

In addition to breaching the government's international obligation to guarantee primary education free of charge for all children, the current fee-based system particularly discriminates against children with disabilities who attend public special schools. This results in many children with disabilities paying school fees[74] that many

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[73] UN Committee on the Rights of the Child, "Concluding Observations of the Committee on the Rights of the Child," South Africa, UN Doc. CRC/C15/Add.122 (2000), para. 34.

[74] "School fees" are defined as "any form of contribution of a monetary nature made or paid by a person or body in relation to the attendance or participation by a *learner* in any programme of a *public* school," South African Schools Act, Act No. 24 of 2005: Education Laws Amendment Act, 2005, http://www.gov.za/sites/www.gov.za/files/a24-05_0.pdf, ch. 1 and s. 1(b).

children without disabilities do not, in addition to additional costs, such as uniforms, food, and transport.[75]

The Schools Act mandates that the state fund public schools on an equitable basis.[76] The government in turn requires that the governing bodies of public schools, made up of teachers, parents, and other community representatives, adopt a resolution for a school to charge fees, and supplement a school's funding "by charging school fees and doing other reasonable forms of fund-raising."[77]

Public schools may be classified as "no-fee" schools, a status granted to public schools by provincial governments, which means that those schools should not charge fees. Today, around 80 percent of schools benefit from a "no-fee" policy across the country,[78] and approximately 60 percent of the current school population accesses "no-fee" schools.[79]

Human Rights Watch found that no special schools are currently listed in any "no-fee" schools list produced by the government.[80]

The "no-fee" designation is based on the "economic level of the community around the school," and on a quintile system from poorest to richest, whereby the lowest three quintiles do not pay fees in designated public schools.[81]

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[75] Human Rights Watch interview with the mother of an 11-year-old with cerebral palsy, Orange Farm, Johannesburg, October 2014; Human Rights Watch interview with Maria Mashimbaye, the mother of an 11-year-old boy with spina bifida, Orange Farm, Johannesburg, October 2014.

[76] South African Schools Act, s. 34.

[77] Department of Basic Education, "School Fees and Exemption – No Fee Schools", undated, http://www.education.gov.za/Parents/NoFeeSchools/tabid/408/Default.aspx (accessed March 29, 2015).

[78] South African Human Rights Commission, "Charter of Children's Basic Education Rights" (2012), p. 40.

[79] Nontobeko Mtshali, "A little more money for no-fee schools", *IOL news*, January 20, 2015, http://www.iol.co.za/news/south-africa/gauteng/a-little-more-money-for-no-fee-schools-1.1806803#.VRwRevnF98E (accessed March 31, 2015).

[80] Human Rights Watch reviewed "No Fee Schools" lists in December 2014. None of the special schools visited or mentioned in Human Rights Watch interviews appear in the lists. Human Rights Watch extended this search to find 'special schools;' none were listed. Department of Basic Education, "School Fees and Exemption – No Fee Schools", undated, http://www.education.gov.za/Parents/NoFeeSchools/tabid/408/Default.aspx (accessed March 29, 2015).

[81] Department of Education, "National Norms and Standards for School Funding," General Notice 2363, October 12, 1998, http://www.education.gov.za/LinkClick.aspx?fileticket=ZYYtOiXHTeE%3D&tabid=188&mid=498 (accessed August 5, 2015); Department of Basic Education, "Amended National Norms and Standards for School Funding," January 16, 2015, http://www.gov.za/sites/www.gov.za/files/38397_gon17.pdf (accessed August 5, 2015).

Although a significantly high number of students in special schools come from townships and predominantly poor areas of towns,[82] many public special schools in urban areas are located in wealthier suburbs previously inaccessible to the majority of children under apartheid.[83] The income level of surrounding communities and locations means many special schools fail the "needs" or "poverty" test used to assess a school's access to recurrent public funding or to qualify as a "no-fee" school.[84]

School fees in special schools visited by Human Rights Watch ranged from R350-R750 (US$32-$68) per each of the year's four terms. Some parents calculated paying as much as R5,000 ($454) per year in school fees alone. One parent in Cape Town described fees of R380 ($35) per month as "expensive," while another in Zwelethemba township, Worcester, said fees of R200 ($18) per month were "difficult to pay."[85] Parents with children who are referred to special schools which are far away from their families also pay for boarding or housing fees and transport for their children to travel long distances to school.[86]

The father of an 8-year-old boy with autism in Johannesburg struggles to pay the fees at his son's special school in Johannesburg:

> 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. Schools write to ask why we

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[82] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Focus group discussion with members of the "Campaign to Promote the Right to Education for Children with Disabilities," Cape Town, October 2014.

[83] This is particularly the case in Gauteng and Western Cape provinces where special schools were traditionally set up to cater for white children with disabilities. Within Gauteng Province, many full-service schools are mainly in the outskirts of the city and the majority are Afrikaans speaking. Based on: Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch interview with Jean Elphick, manager, Afrika Tikkun, Johannesburg, October 2014; Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Afrika Tikkun and Centre for Applied Legal Studies, "Submission to Portfolio Committee and Select Committee on Women, Children and People with Disabilities," July 21, 2012.

[84] Provincial Departments of Education are guided by a "Resource Targeting Table" to define needs-based allocations, "National Norms and Standards for school funding," pp. 27-28. See Department of Basic Education, "Amended National Norms and Standards for School Funding," Government Gazette no. 38397, 16 January 2015.

[85] Human Rights Watch interview with director, Vukuhambe Day Care Centre, Zwelethemba, Worcester, Western Cape, November 2014.

[86] Human Rights Watch interview with the parents of Phelele, a 9-year-old boy with a sensory disability, village near Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with the mother of Akani, a 9-year-old boy with Down Syndrome, village near Tzaneen, Limpopo province, October 2014; Human Rights Watch interview with the mother of Xolani, a 24-year-old girl with paralysis, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, December 2014.

> 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… and our children have equal rights?[87]

Albertina Sisulu Resource Centre, a public special school in Soweto, charges R300 ($27) per year for fees, according to the school's principal. However, out of 250 students, only 75 can afford to pay the fees.[88] The principal said the money supplements funding from the government's National School Nutrition Programme[89] and is used to buy groceries so that all students can eat the same food.[90]

Human Rights Watch also visited informal centers set up by parents from the most socially disadvantaged backgrounds to respond to the education needs of children not accommodated in formal care centers or special schools. Centers in Cape Town and Kimberley charged R250 ($23),[91] and R150 ($14)[92] per month respectively—an economically significant fee for single-parent households, as well as for parents who are unemployed or earn very low wages, whose living is often dependent on their child's care dependency grant.

The "National Norms and Standards for School Funding," the government's guiding policy on school fees, and accompanying regulations, includes fee exemptions for families that cannot afford education.[93] However, some parents were unaware of such exemptions, had only partial information about them, or said they were not always easy to obtain because schools often required documents, such as affidavits from a police station, that were

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[87] Human Rights Watch interview with the father of an 8-year-old boy with autism, focus group discussion with parents with children with disabilities, Johannesburg, October 2014.

[88] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014.

[89] South Africa's National School Nutrition Programme is a "large government sponsored programme reaching over 8 million learners in primary and secondary schools" which largely focuses on school feeding programs to enhance children's experience in schools – Department of Basic Education, "National School Nutrition Program," undated, http://www.education.gov.za/TheDBE/DBEStructure/SocialandSchoolEnrichment/NationalSchoolNutritionProgramme/tabid/131/Default.aspx (accessed April 9, 2015).

[90] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October, 2014.

[91] Human Rights Watch focus group discussion, Disabled Children's Action Group Western Cape, Cape Town, October 2014.

[92] Human Rights Watch meeting with Same Mongale, Thlabologo school manager, Kimberley, Northern Cape, November 2014.

[93] Parents should qualify for full exemptions when "the combined annual gross income of the parents is less than 10 times the annual school fees per learner, "National Norms and Standards for school funding", pp. 34-35; Department of Education, "Exemption of parents from the payment of School Fees Regulation 1998", Government Gazette Notice no. 1293 of 1998, http://www.education.gov.za/LinkClick.aspx?fileticket=LK2dmusQOjs%3D&tabid=188&mid=498.

difficult for foreign national parents to obtain.[94] In some cases, schools waived fees based on parents' individual circumstances.[95]

Despite having a fee waiver, Maria Mashimbaye, whose 11-year-old son attends a special school, struggles with additional costs:

> I was [paying] R400 ($43) per month [for nappies] plus R150 ($14) for school fees. The school had a lot of food he was allergic to so they also asked me to prepare his food. I spoke to the school and said, 'The grant doesn't cover all this. My husband doesn't support me.' So they waived the fees. Still, now I pay R400 for transport plus R400 for nappies. But he is outgrowing kid nappies and adult nappies are even more expensive.[96]

Although government policy on school fee exemptions states that children who are beneficiaries of a child dependency grant, a social development grant given to families with children with severe disabilities who are in need of full-time support and special care, are automatically exempt from paying fees,[97] six parents reported paying for school fees and additional expenses with their grant.[98] One of them was the mother of Akani, a 9-year-old boy with Down Syndrome, who now attends a special school with boarding facilities 100 kilometers from his home, who was not offered a fee waiver: "The [care dependency] grant is R1350 ($145) per month – when I checked, money [from the grant] will be able to maintain his school fees. He needs to pay R750 ($68) per term."[99]

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[94] Human Rights Watch focus group discussion with parents of children with disabilities, Johannesburg, October 2014; Human Rights Watch focus group discussion with members of Sidinga Uthando, Orange Farm, May 2015.

[95] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Johannesburg, October 2014; Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind and Visually Impaired, Pretoria, November 2014.

[96] Human Rights Watch interview with Maria Mashimbaye, the mother of a 10-year-old boy with spina bifida, Johannesburg, October 2014.

[97] Department of Education, "Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools", 18 October 2006, s. 1(c).

[98] The grant currently amounts to 1,410R ($128) per month. Government of South Africa, "Care dependency grant", http://www.gov.za/services/child-care-social-benefits/care-dependency-grant (accessed April 9, 2015).

[99] Human Rights Watch interview with the mother of Akani, a 9-year-old boy with Down Syndrome, village near Tzaneen, Limpopo province, October 2014.

Transport

Adequate transportation is crucial in enabling children with disabilities to go to school.[100]

Human Rights Watch met children who had to travel 30 to 100 kilometers to access the nearest school that would accommodate them.[101] The lack of inclusion or discrimination in nearby mainstream schools means some children with disabilities have no choice but to move to neighboring provinces and travel to bigger cities if they have been referred to special schools.[102]

Human Rights Watch found that transport fees represented an additional barrier for children with disabilities across the country and none of the students interviewed received government support or financial subsidies to get to schools.

Transport fees ranged from R150 ($14) to R580 ($53) per month in urban areas. However, in the remote and rural areas of KwaZulu-Natal and Limpopo provinces, there was no transport for schools that were up to 100 kilometers away. Parents in this position had to pay for one-way trips that cost around R150 ($14) to R300 ($27).

The CRPD protects the right to personal mobility of persons with disabilities, including their access to school.[103] The UN Committee on the Rights of the Child has urged states to:

> Set out appropriate policies and procedures to make public transportation safe [and] easily accessible to children with disabilities, and free of charge,

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[100] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014; Human Rights Watch interview with Zelda Mycroft, chief executive officer, Chaeli Cottage, Cape Town, October 2014; Human Rights Watch Interview with Fatima Shaboodien, principal, DeHeide Centre, Cape Town, October 2014.

[101] Human Rights Watch interview with the mother of a 16-year-old boy with an intellectual disability, Zama-Zama, KwaZulu-Natal, November 2014; Cases shared by Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch interview with the mother of a 9-year-old boy with Down syndrome, village near Tzaneen, Limpopo, October 2014; Human Rights Watch focus group discussion with members of Sidinga Uthando, Orange Farm, May 2015.

[102] Human Rights Watch interview with the mother of a 9-year-old boy with Down syndrome, village near Tzaneen, Limpopo, October 2014; Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Human Rights Watch interview with Karin Swartz, principal, Prinshof School for the Blind, November 2014; Campaign to Promote the Right to Education for Children with Disabilities, "Factsheet 7: Out-of-School Children," (2011); Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Legal Resources Centre, "Submissions for the General Day of Discussion on the Right to Education For Persons With Disabilities," March 20, 2015, p. 5.

[103] CRPD, art. 9(1)(a) and art. 20.

> whenever possible, taking into account the financial resources of the parents or others caring for the child.[104]

The Department of Basic Education and Department of Transport have not yet adopted a national learner transport policy, which has been in draft form or under discussion since 2009.[105] The absence of such a policy has left many gaps in the provision of adequate transportation for children with disabilities at the provincial level, where there is limited accommodation of students with disabilities in provincial policy and practice.[106] This results in unequal access to transportation or transport subsidies.[107]

While some special schools that Human Rights Watch visited organize transport for students,[108] parents have to pay a monthly fee for transport. Albertina Sisulu Resource Centre, for example, charges R300 ($27) per month. Bernard Lushozi, the school principal, said that if a parent had a child who was qualified to use the bus but could not afford to pay for it, they could "come twice a week to clean or supervise sports and help in the school."[109]

Where schools have insufficient transportation or only cover a certain distance from the school, parents pay private drivers to take their children to school. In several cases, parents said it was difficult to cover such costs. For example, Mpotse Mofokeng said she could not afford to pay to send Katlego, her 7-year-old son, to a special school in Johannesburg approximately 30 kilometers from their township:

> One boarding school said they could take him, but not to board. They could only board children with physical disabilities. So, he didn't go… I could not

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[104] UN Committee on the Rights of the Child, "General Comment 9, Children with Disabilities," (2006), CRC/C/GC/9, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/405ba882cb9eb3a0c12572f100506ac4/$FILE/G0740702.pdf (accessed August 5, 2015), para. 39. See also CRC, art. 23(3).

[105] This draft policy was open for consultation while Human Rights Watch conducted its research mission. Notice 1004 of 2014, 13 November 2014, draft policy, http://www.gov.za/sites/www.gov.za/files/38207_gen1004.pdf (accessed August 5, 2015).

[106] Human Rights Watch interview with Lindiwe Mokate, basic education and children's rights commissioner, and Advocate Bokankatla Joseph Malatji, disability rights commissioner, South African Human Rights Commission, Johannesburg, January 2015.

[107] Human Rights Watch telephone interview with Patricia Martin, Advocacy Aid, Cape Town, October 2014; Human Rights Watch interview with Lisa Draga, attorney, Equal Education Law Centre, Cape Town, October 2014.

[108] Albertina Sisulu Resource Centre, Soweto; Prinshof School for the Blind and Visually Impaired, Pretoria; Boitumelo Special School, Kimberley.

[109] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014. Such measures are permitted in the Department of Basic Education's "Norms and Standards on School Funding," p. 34, para. 139.

afford transport. There was no direct transport and it was at least one hour's trip, one way.[110]

Ten parents said they could not pay private drivers. A father told Human Rights Watch that "the school can understand [when you don't pay] but if you don't pay for [private] transport, then they're not going to take your child. Schools should provide transport."[111]

Moreover, private drivers often charged children with disabilities and parents an extra or double fee, particularly for transporting assistive devices such as wheelchairs or strollers.[112] Human Rights Watch also heard experiences of private taxi or "cabbie" drivers refusing to stop whenever they saw a child or a person in a wheelchair.[113] "Some drivers don't want to stop to put a wheelchair in the back so children don't even have access to transport," Brian Tigere, a social worker in Polokwane, said.[114]

Bongiwe, a 17-year-old girl with severe physical disabilities in Kwa-Ngwanase (Manguzi), uses a wheelchair. A private driver charged her R260 ($24) per month—an amount he doubled to pick her up by her doorstep rather than by the nearby tarmac road that she could only get to if her mother carried her.[115]

Bongiwe's mother hired several drivers throughout the school year; none fulfilled their jobs consistently. One driver was consistently late and often dropped Bongiwe last, after assembly time. Bongiwe's mom complained numerous times, because "when she's late the children are in the assembly. No one can help her into the school. There are no ramps in the school so she can't get in." Bongiwe's last driver stopped picking her up altogether, causing her to drop out of school in the

[110] Human Rights Watch interview with the mother of a 7-year-old boy with an intellectual disability, Orange Farm, Johannesburg, October 2014.

[111] The father of the boy with autism wished to remain anonymous. Human Rights Watch focus group discussion with parents of children with disabilities, Johannesburg, October 2014.

[112] Human Rights Watch telephone interview with the mother of a 15-year-old with cerebral palsy, Cape Town, November 2014.

[113] Human Rights Watch interview with Section 27 team, Johannesburg, October 2014; Human Rights Watch interviews with members of Siphilisa Isizwe DPO, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[114] Human Rights Watch interview with Brian Tigere, social worker, APD Limpopo, Polokwane, October 2014;

[115] Human Rights Watch interview with Bongiwe, a 17-year-old girl with physical disabilities, village near Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

middle of the 2014-2015 academic year. Although her principal was told about the situation, the school took no further action to support Bongiwe: "I feel pain because I can't take my exams like everyone else … I have lost a year."[116]

Special Assistants

A number of NGOs and experts told Human Rights Watch that, throughout the country, parents of children with disabilities are asked to hire and pay for private special care assistants as a pre-condition to enroll in a mainstream classroom.[117] Three children with physical disabilities interviewed by Human Rights Watch who attended mainstream and full-service schools also said they were asked to hire and pay for private special or class assistants as a pre-condition to enroll in their schools.[118] In one case, the mother of a 10-year-old boy with cerebral palsy was told she would have to move to the special school 100 kilometers away from their village to help her son eat and move around school.[119]

Privately hired class assistants often help children move around schools. They may carry children around because schools have inadequate access for wheelchairs or lack ramps, help them to use textbooks or materials in class, feed them, or take them to the toilet.[120]

Such conditions in schools discriminate against children with disabilities, who would otherwise not be able to participate and learn on an equal basis with all children in mainstream environments. The UN Committee on the Rights of the Child recommends that governments provide personal assistance, among other necessary tools, so that

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[116] Ibid.

[117] Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch telephone interview with former teacher at a special school for blind children in Cape Town, October 2014; Human Rights Watch interview with Sandra Ambrose, national coordinator, Disabled Children's Action Group, Cape Town, October 2014.

[118] Ibid.

[119] Human Rights Watch interview with the parents of a 10-year-old boy with cerebral palsy, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[120] Human Rights Watch interview with Makhosi, a 23-year-old woman with severe physical disabilities, village near Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Edward Ndopu, youth coordinator, Amnesty International, Johannesburg, November 2014; Human Rights Watch interview with Michaela Mycroft, activist and 2011 Children's Peace Prize Winner, Cape Town, October 2014.

children can fully exercise their right to education.[121] Currently, the Department of Basic Education or school-governing bodies are not required to pay for private facilitators or class assistants.[122]

Amanda, an 8-year-old girl with a physical and a mild intellectual disability from Zama-Zama, KwaZulu-Natal province, sits on her mother's knee outside her house. Amanda was left with no school to attend after the nearby mainstream school refused her admission and the special school further away from home was too far to get to.

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[121] UN Committee on the Rights of the Child, General Comment 9, para. 65, p. 18.

[122] Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch telephone interview with Vanessa dos Santos, president, Down Syndrome International, Johannesburg, formerly President of Down Syndrome South Africa, December 2014.

IV. Discrimination in Access to Education

> We don't mainstream, we are dumping [children].
> —Basie Jahnig, principal, Boitumelo Special School, Kimberley, November 2014[123]

> If the children are old and out of school, it's not their fault, it's the government's fault.
> —Kululiwe, member of Siphilisa Isizwe disability organization, Kwa-Ngwanase, November 2014[124]

Several factors impede the ability of children with disabilities to access education at an appropriate age, including problematic referrals and too-long waiting lists.

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.[125] 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."[126] As of May 2015, this document had not been published.[127]

Human Rights Watch found that many children with disabilities are denied an education because of their disability, or the needs and support they may need to learn on an equal basis in schools.

Sandile, a 10-year-old boy who is deaf and has partial sight, has never been to school. His mother, Nomsa, said she had never tried to register him in the mainstream school nearby, where his twin sister is enrolled. "I wish it could be like that but because he's blind he can't go to that school," she said. Instead, doctors first referred him to a special school in

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[123] Human Rights Watch interview with Basie Jahnig, principal, Boitumelo special school, Kimberley, November 2014.

[124] Human Rights Watch interview with Margaret Masinga and Kululiwe, Siphilisa Isizwe DPO, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[125] Department of Education, "Age Requirements for Admission to an Ordinary Public School," Government Notice No. 2433 of 1998.

[126] South African Schools Act, s. 3 (2).

[127] Human Rights Watch requested further information from the national Department of Basic Education to clarify the status of this pending government gazette but received no responses to its information requests. See Annex.

Durban but told them to wait. Sandile was later placed on a waiting list for a special school for children with intellectual and physical disabilities that many children in Kwa-Ngwanase are referred to, but "they don't accept the blind kids," said Nomsa.[128]

Many children with disabilities who do access the education system do so when they are much older than students without disabilities. Thirteen children, ranging from 8 to 16 years old, and four young adults with disabilities interviewed by Human Rights Watch had not entered school at the age stipulated in South African law, as a result of long waiting lists and referrals to different special schools. Eight children with disabilities, ranging from 7 years to 15 years old, were registered in day care centers or crèches, waiting for school placements.

Problematic Referrals

The way that school officials make referrals and decisions about enrollment—specifically, failing to include children with disabilities in mainstream settings in the early years of education, and referring those who are already in mainstream schools to special schools—often compromises the experiences of children and young adults with disabilities, and their lifelong education opportunities.

Academic research and reports by national NGOs have confirmed the widespread practice of placing children with disabilities in special schools, based on an assessment of their disability rather than on their abilities and the level of need and support needed to ensure they can learn in a local mainstream school.[129]

Human Rights Watch found that 10 of the 70 children interviewed who attended mainstream or full-service schools, were waiting for a referral to a special school because their current schools could or would no longer accommodate them.

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[128] Human Rights Watch interview with the mother of a 10-year-old boy with multiple disabilities, KwaMakhanya, KwaZulu-Natal, November 2014.

[129] Legal Resources Centre, "Submissions for the General Day of Discussion on the Right to Education for Persons with Disabilities," 20 March 2015; The African Child Policy Forum, "Children with disabilities in South Africa: The hidden reality", Addis Ababa: 2011; Dana Donohue and Juan Bornman, "The challenges of realising inclusive education in South Africa", South African Journal of Education, vol. 34(2), (2014); Gerison Lansdown, "Disabled Children in South Africa: Progress in Implementing the Convention on the Rights of the Child," Rights for Disabled Children, (2002), http://www.daa.org.uk/uploads/pdf/SA%20Childrens%20report%20.pdf (accessed August 5, 2015).

Such practices contradict the government's broader aim of achieving inclusive education by ensuring children with disabilities can attend nearby mainstream schools, while being guaranteed adequate support through reasonable accommodations.[130]

The UN Committee on the Rights of Persons with Disabilities has repeatedly called on states party to the CRPD to end the segregation of children with disabilities, and to "take necessary steps to ensure that pupils who attend special schools are enrolled in inclusive schools,"[131] "establish and define goals and timeframes to ensure students with disabilities transition from special needs education to inclusive schools,"[132] and "reallocate resources from the special education system to promote inclusive education in mainstream schools."[133]

Historically, children with intellectual or multiple disabilities, and children with autism spectrum disorder, have not been able to access public schools of any type, because of the limited availability of schools tailored to their needs, as well as discriminatory attitudes about the value of education for children with their needs.[134]

Members of the Campaign to Promote the Right to Education for Children with Disabilities, as well as service providers and experts across the country, told Human Rights Watch that, while some progress has been made at a provincial level to address the issue,[135] children

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[130] Human Rights Watch telephone interview with WonderBoy Qaji, chairperson, Disabled Youth South Africa, October 2014; Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, October 2014.

[131] United Nations, Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of Argentina as approved by the Committee at its eighth session (17-28 September 2012), CRPD/C/ARG/CO/1, para. 38.

[132] Translated by Human Rights Watch from the official Spanish version. United Nations, Committee on the Rights of Persons with Disabilities, "Observaciones finales sobre el informe inicial de República Dominicana," CRPD/C/DOM/CO/1, para.46 (b).

[133] United Nations, Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report of China, adopted by the Committee at its eighth session (September 17-28, 2012), CRPD/C/CHN/CO/1, para. 36.

[134] Human Rights Watch interview with Tessa Wood, director, and Fatima Shaboodien, chairperson, Western Cape Forum for Intellectual Disability, Cape Town, October 2014; Legal Resources Centre, "Submissions for the General Day of Discussion on the Right to Education For Persons With Disabilities," March 20, 2015, p. 8. In 2012, 3085 "learners with severe intellectual disability" were attending ordinary schools versus 27,837 learners who were enrolled in special schools. Department of Social Development, "Draft First Periodic Country Report on the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)," Notice 445 of 2015, May 18, 2015, pp. 36-37.

[135] A number of nongovernmental organizations and associations based in the Western Cape acknowledged progress made by the Department of Social Development in enrolling children with high support needs in special schools and care centers in the Western Cape province, particularly as a result of a 2011 High Court decision against the Department of Basic Education. Human Rights Watch interview with Tessa Wood, director, and Fatima Shaboodien, chairperson, Western Cape Forum for Intellectual Disability, Cape Town, October 2014.

with "severe and profound" disabilities across the country are still affected in their access to any public school.[136]

Sipho, 14, who has epilepsy and an intellectual disability, sits with his aunt outside their house in Orange Farm township, Johannesburg. Sipho had to drop out of his first special school after having epileptic fits and was refused admission by second special school. He was finally able to attend a third special school after a two-year wait with the help of a local NGO. © 2015 Elin Martínez/Human Rights Watch

Arbitrary and Unchecked School Decision-Making

> There is a problem with gate-keeping in schools. Schools are not admitting children in the first place to avoid predictable drop-outs.
>
> —Henry Hendricks, general secretary, NAPTOSA, January 2015[137]

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[136] Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Human Rights Watch interview with Tessa Wood, director, and Fatima Shaboodien, chairperson, Western Cape Forum for Intellectual Disability, Cape Town, October 2014.; Human Rights Watch focus group discussion with members of Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Human Rights Watch interview with Brian Tigere, social worker, APD Limpopo, Polokwane, October 2014.

[137] Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

Robyn Beere, director of Inclusive Education South Africa, an organization that provides support and advice on inclusive education to parents of children with disabilities, warned that the government needs to think carefully about what type of school children with disabilities are placed in, particularly closely examining and vetting referrals to special schools, for "[they] are fundamentally changing a child's life and placing limitations on the child."[138]

Mainstream Schools

At a special needs day care center in Zwelethemba, near Worcester, only two out of nineteen children proceeded on to a mainstream school in 2013, according to the center's director.[139] One was a girl with Down Syndrome. The center's director, told Human Rights Watch:

> We noticed she was very bright. The educational psychologist said she should be at the mainstream school. She went there [from the early childhood center], but she would often leave the classroom and wander around the class. She was then sent [by the mainstream school] to a special school.[140]

Inclusive education experts strongly believe that children with Down Syndrome, as many other children with disabilities, thrive and benefit the most when they learn in mainstream environments and should be accommodated in mainstream schools with the right level of support.[141] Various practitioners pointed out many cases where schools have done this successfully.[142]

Yet, inclusive education organizations following and monitoring individual children's cases told Human Rights Watch that a large number of children with Down Syndrome continue to be referred to special schools, especially in rural areas.[143]

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[138] Human Rights Watch interview with Robyn Beere, director, Inclusive Education Western Cape, Cape Town, October 2014.

[139] Human Rights Watch interview with director, Vukuhambe Day Care Centre, Zwelethemba, Worcester, Western Cape, November 2014.

[140] Ibid.

[141] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch telephone interview with Vanessa dos Santos, president, Down Syndrome International, December 2014.

[142] Ibid.

[143] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014; Human Rights Watch interview with Difference Motseo, officer, Down Syndrome Limpopo, October 2014.

In Kwa-Ngwanase, Thandi told Human Rights Watch that Qinisela, her 8-year-old son with Down Syndrome, has never been in school. She said:

> 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.[144]

Similarly, the mother of Akani, a 9-year-old boy with Down Syndrome, who now attends a boarding special school, said:

> He was in that [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.'[145]

As a consequence of exclusion, small nongovernmental schools are being established to enroll children with various types of disabilities who were often turned down in public schools.[146]

In the Western Cape alone, between 70 and 80 out of 1,000 babies are born with fetal alcohol syndrome.[147] Yet, according to practitioners, because fetal alcohol syndrome is not a visible disability and mainstream schools do not address the particular learning and

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[144] Human Rights Watch interview with the mother of an 8-year-old boy with Down Syndrome, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[145] Human Rights Watch interview with the mother of a 9-year-old boy with Down Syndrome, Tzaneen, Limpopo, October 2014.

[146] Human Rights Watch interview with Bronwen Jones, director, Johannesburg School for Blind, Low Vision and Multiply Disabled Children, Johannesburg, October 2014; Human Rights Watch interview with Zelda Mycroft, chief executive officer, Chaeli Cottage, Cape Town, October 2014; Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014.

[147] World Health Organization, "Fetal alcohol syndrome: dashed hopes, damaged lives," (2011), http://www.who.int/bulletin/volumes/89/6/11-020611/en/ (accessed on April 22, 2014).

behavioral challenges faced by many children with the syndrome, children drop out of mainstream schools or become absent for long periods.[148]

Human Rights Watch visited the Home of Hope school, outside Cape Town, which focused on children with fetal alcohol syndrome disorder living in foster care who had dropped out or been forced out of mainstream schools due to behavioral and learning issues.[149] Children with this syndrome often manifest deep behavioral issues.[150]

Aisling Foley, an education manager at Home of Hope, told Human Rights Watch that it is difficult to find adequate placements for children with this syndrome who have dropped out of school because they do not meet the necessary intelligence quotient (IQ) levels to enter special schools and are often not accepted in mainstream schools due to behavioral issues.[151]

Human Rights Watch met Anne-Marie, a 15-year-old girl with fetal alcohol syndrome disorder manifested in an intellectual disability. According to her teacher at Home of Hope, she was deemed uneducable in her previous mainstream school and dropped out. Through individualized learning geared at her level of need, teachers have been able to ensure she is able to reach a basic level of understanding and gain basic skills.[152]

But experts maintain that most mainstream schools will not give children with fetal alcohol syndrome the same level of dedicated attention and they will drop out as a result.[153]

Parents of children with autism and NGOs supporting their families told Human Rights Watch that there is not enough specialized attention in all types of public schools.[154]

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[148] Kirstie Rendall-Mkosi, et al., "Fetal Alcohol Spectrum Disorder in South Africa: Situational and Gap Analysis," March 2008, http://www.unicef.org/southafrica/SAF_resources_fetalalcohol.pdf (accessed June 10, 2015); Aisling Foley, "FASD: Finding Hope," Home of Hope, 2011, http://www.homeofhope.co.za/uploads/files/FASDbyAislingFoley1.pdf (accessed June 10, 2015).

[149] Human Rights Watch interview with Aisling Foley, education manager, and Lyn Thyjsee, educational psychologist, Home of Hope school, Cape Town, October 2014.

[150] Ibid.

[151] World Health Organization, "Fetal alcohol syndrome: dashed hopes, damaged lives," (2011), http://www.who.int/bulletin/volumes/89/6/11-020611/en/ (accessed April 22, 2014); Human Rights Watch visit to Home of Hope and Amathemba Center, Cape Town, October 2014.

[152] Ibid.

[153] Human Rights Watch interview with Professor Leslie Swartz, Stellenbosch University, Cape Town, October 2014; Email exchanges with Elize Oosthuizen, Kambro Foundation, Fraserburg, Northern Cape, December 4, 2014, February 10 and February 24, 2015.

Autism experts told Human Rights Watch that "highly functioning" children with autism, such as children with Asperger's Syndrome, currently do not receive adequate support in mainstream schools but could be accommodated with the right level of support and dedicated attention to avoid them being left unaccompanied, which increases the risk of bullying and anxiety. [155]

Children with physical disabilities also face exclusion in mainstream schools.[156] Edward Ndopu, an activist with skeletal muscular atrophy, who studied in mainstream schools, told Human Rights Watch that "schools are complicit in [the] exclusion. There isn't really a culture of accessibility institutionalized in the school because *we* have to make it work." Being the only learner in a wheelchair requiring special assistance in a mainstream environment meant that he "was there but operating on someone else's standards."[157]

Special Schools

Although the Schools Act prohibits schools from using assessments to prevent a student enrolling,[158] Human Rights Watch was regularly told that some special schools carry out their own assessments prior to admitting children conditionally.[159]

Human Rights Watch read email exchanges between the father of a 10-year-old boy with autism and a special school and resource center that caters to children with intellectual disabilities. Only after considerable discussions with the Western Cape Department of Basic Education[160] did the school agree to assess the child, who had been on a waiting list

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[154] Human Rights Watch interview with Sandra Klooper, director, Autism South Africa, Johannesburg, October 2014; Human Rights Watch interview with Ruth Blood, Autism South Africa, Northern Cape, Kimberley, November 2014; Human Rights Watch interview with Mary Moeketsi, Autism South Africa Limpopo, Johannesburg, October 2014.

[155] Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Human Rights Watch interview with Naomi Crous, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

[156] The government reported that 4,004 children with physical disabilities were enrolled in special schools in 2012, while 4616 were enrolled in ordinary schools, Department of Social Development, "Draft First Periodic Country Report on the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)," Notice 445 of 2015, May 18, 2015, pp. 36-37.

[157] Human Rights Watch interview with Edward Ndopu, youth coordinator, Amnesty International, Johannesburg, November 2014.

[158] South Africa's Schools Act prohibits public schools from administering any test related to the admission of a learner to a public school, ch. 2, s. 5(2).

[159] Campaign to Promote the Right to Education of Children with Disabilities, "Factsheet 6: Systemic barriers to inclusive education." A representative of Inclusive Education South Africa, an NGO that provides support to parents seeking placements for children with disabilities, told Human Rights Watch that the practice of granting conditional placements based on assessments is very common.

[160] Human Rights Watch telephone interview with Caroline Taylor, client support liaison and information, Inclusive Education South Africa, November 2014.

for two years. School officials informed the father that his son could join the school for a six-month observation period, but did not guarantee him a full-time place in the school.[161]

Children with autism spectrum disorder are most often misplaced or excluded from schools due to misunderstanding regarding their needs and behaviors.[162] Despite rising numbers of children diagnosed with autism in South Africa every year,[163] the government reported in 2012 that only 2,753 such children were enrolled in special schools, and 1,209 enrolled in mainstream schools.[164]

Nerina Nel, from the Children's ~~Dis~~ABILITY Training Centre, a nongovernmental organization focused on building capacity of teachers working with children with autism spectrum disorder, told Human Rights Watch: "It is typical that special schools don't take children with autism or they're kicked out. A child gets a place, but a week later, parents are called back and asked to take the child back."[165]

Lebohang, a 13-year-old boy with autism was given little choice but to leave his special school. His mother told Human Rights Watch:

> The principal asked me to choose between leaving him in the [special] school and pay for whatever he had damaged at school or take him out. I don't work so I can't pay for things, so I took him out. In the school they didn't know about autism. Now the school says they don't want autistic children. They made an example out of him.[166]

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[161] Human Rights Watch telephone interview with the father of a 10-year-old boy with autism, Cape Town, October 2014; Emails on file with Human Rights Watch shared on November 11, 2014 and December 12, 2014.

[162] Human Rights Watch interview with Nerina Nel, director, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014; Human Rights Watch interview with Sandra Klooper, director, Autism South Africa, Johannesburg, October 2014; Sasha Wales Smith, "Autistic children struggle to get an education," *Health E-News, The South African Health News Service*, August 23, 2010, http://www.health-e.org.za/2010/08/23/autistic-children-struggle-to-get-and-education/ (accessed June 10, 2015).

[163] In 2012, Autism South Africa estimated that 7,665 children with autism will be born in South Africa every year. Autism South Africa, "Introduction to Autism and the Core Impairments," undated, http://www.dsd.gov.za/index.php?option=com_docman&task=doc_download&gid=242&Itemid=39 (accessed June 11, 2015).

[164] Department of Social Development, "Draft First Periodic Country Report on the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)," Notice 445 of 2015, May 18. 2015, pp. 36-37.

[165] Human Rights Watch interview with Nerina Nel, director, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

[166] Human Rights Watch interview with the mother of a 13-year-old boy with autism, Johannesburg, October 2014.

Similarly, while the government has officially acknowledged the major challenges experienced by incontinent children when accessing education,[167] children who cannot use or access toilets independently, or those who use diapers, often face very significant, discriminatory, barriers when accessing special schools.[168]

One principal told Human Rights Watch that her special school cannot take students with toilet needs because they cannot provide teachers or assistants to handle them.[169] Such decisions and limitations at a school level left children like Lesley, a 10-year-old boy with spina bifida and whose legs are paralyzed, out of school for over three years. Lesley was turned down by four out of nine special schools because of his toilet requirements.[170]

Waiting Lists

The government's admissions policy states that a referral of a learner with special needs "should be handled as a matter of urgency to facilitate the admission of a learner as soon as possible to ensure that the learner is not prejudiced in receiving appropriate education."[171]

In 2015, the government estimated that 5,552 learners with disabilities were on waiting lists.[172]

Evidence gathered by Human Rights Watch suggests that a lack of governmental oversight of waiting lists and placements leaves schools with the last word on enrolling students, further delaying children's entry into schools beyond the age of compulsory enrollment.

Human Rights Watch met 21 children of varying ages and disabilities who were not in school, but waiting for a placement in a special school. Long waiting lists mean that admission can be delayed year after year. "They showed me three [registration] books full of names and said there are really no chances; but they asked me to go back in January,"

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[167] Department of Women, Children and People with Disabilities, "Baseline Country Report to the UN Convention on the Rights of Persons with Disabilities," (2008-2012), 2013, para. 240.

[168] Human Rights Watch focus group discussion hosted by the Disabled Children Action Group Western Cape, testimony from mother of an 8-year-old blind girl in Cape Town and the mother of a 10-year-old girl with cerebral palsy, Cape Town, October 2014.

[169] Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind and Visually Impaired, Pretoria, October 2014.

[170] Human Rights Watch interview with Maria Mashimbaye, the mother of a 10-year-old with spina bifida, Johannesburg, October 2014.

[171] Department of Education, "Admission Policy for Ordinary Public Schools," para. 24.

[172] Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education, An Overview for the Period: 2013-2015," May 2015, p. 22.

said Marrieta, the mother of Bulelani, a 7-year-old boy with speech and physical disabilities who was out of school at time of writing.[173]

Nonkululeko, mother of Nkosiyazi, a 12-year-old boy with cerebral palsy, who is waiting for a referral to a special school, said she had "given up" trying. "Therapists, doctors called the school," she said. "They said he's on a waiting list and when I go to ask [the school] they say it's full. 2013, 2014. They [doctors] never talk about it anymore." Her son has repeated Grade 3 three times at the district's only full-service school.[174]

Government policy on admissions states that students can only be removed from an attendance list once a transfer to another school has come into effect.[175] Matilda described what happened after a special school told her it would accept her daughter, a 10-year-old with an intellectual disability and epilepsy, who has been out of school for over two years.

> I had bought the school uniform and everything. Then they told me my daughter had to wait. When I went to re-register her in the full-service school she was in originally, they said that she was already registered in the special school and they couldn't take her back.[176]

Nongovernmental representatives told Human Rights Watch that it is hard for NGOs to get up-to-date or transparent information from many special schools.[177] "Schools duck and dive when you ask them for the waiting list," Mary Moeketsi, an autism expert, said. "Some don't want to show it."[178]

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[173] Human Rights Watch interview with the mother of a 7-year-old with speech and physical disabilities, Mahlungulu, KwaZulu-Natal, November 2014.

[174] Human Rights Watch interview with the mother of a 12-year-old boy with cerebral palsy, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[175] The Department of Basic Education's "Admission Policy for Ordinary Public Schools" states that schools can remove a learner from a school's admission register when the learner "applies for a transfer to another school and the transfer is effected." para. 12 (b).

[176] Human Rights Watch interview with the mother of a 10-year-old with an intellectual disability and epilepsy, Kwa-Ngwanase (Manguzi), Kwazulu-Natal, November 2014.

[177] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Campaign to Promote the Right to Education for Children with Disabilities, "Factsheet 6: Systemic Barriers to Inclusive Education" (2011).

[178] Human Rights Watch interview with Mary Moeketsi, Autism South Africa Limpopo, Johannesburg, October 2014.

Jean Elphick, program manager at Afrika Tikkun, an NGO providing assistance and empowerment programs for mothers of children with disabilities, said that some waiting lists in special schools around Johannesburg are 200 to 400 students long.[179] Two special centers and special school managers or principals told Human Rights Watch they no longer tell parents there is a waiting list. If they have reached maximum intake capacity, they ensure parents turn to other centers to seek placements for their children.[180]

Marie Schoeman, chief education specialist at the government's inclusive education unit, believes the new "Screening, Identification, Assessment and Support" policy, published in December 2014, would help to alleviate delays in placements and waiting lists by ensuring young children go through an adequate screening to assess the most adequate learning environment for them.[181]

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[179] For example, six out of the 32 schools contacted by Afrika Tikkun in 2014 had some spaces. Program data shared with Human Rights Watch showed that schools replied: "full, try again next year," "space for hearing impairments only," "spaces in some classes" "girls without nappies." Human Rights Watch interview with Jean Elphick, program manager, Afrika Tikkun, Johannesburg, October 2014.

[180] Human Rights Watch interview with Fatima Shaboodien, director, De Heide Centre, Cape Town, October 2014.

[181] Human Rights Watch interview with Marie Schoeman, chief education specialist, Department of Basic Education, Pretoria, November 2014.

V. Discrimination due to Lack of Reasonable Accommodation in School

> It is about tackling the fundamental issues: not just things that need improvement. We come up with a complete lack of [basic] implementation.
> —Commissioner Lindiwe Mokate, South African Human Rights Commission, February 2015

Children with disabilities also face discrimination due to a lack of support in their schools. This also includes a lack of appropriate learning materials and subjects.

Evidence gathered by Human Rights Watch and nongovernmental organizations working with children with disabilities, as well as investigations carried out by the South African Human Rights Commission, suggest the government has not provided sufficient reasonable accommodation—or support—to ensure children with disabilities can access education on an equal basis as other children.

Lack of reasonable accommodation impacts children with various types of disabilities attending all types of public schools.[182] Many of the physical and attitudinal barriers documented fail to respect accessibility requirements in the CRPD.[183]

These students confronted the challenges of having no ramps to access classrooms or toilets.[184] Makhosi, a 23-year-old woman with severe physical disabilities, said: "I still have the same problems with access and ramps. I need to be carried everywhere …

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[182] Human Rights Watch interview with Legal and Policy team, Section 27, Johannesburg, October 2014; Human Rights Watch interview with Jean Elphick, program manager, Afrika Tikkun, Johannesburg, October 2014; Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa; Human Rights Watch interviews with Disabled Children's Action Group Western Cape and Northern Cape Chapters, October and December 2014; Human Rights Watch interview with Lindiwe Mokate, basic education and child rights commissioner, and Advocate Bokankatla Joseph Malatji, disability rights commissioner, South Africa Human Rights Commission, Johannesburg, January 2015.

[183] UN Committee on the Rights of Persons with Disabilities, "General Comment No. 2: Article 9: Accessibility," April 2014, para. 39; See op. cit. section II (c) "Right to Education on an Equal Basis."

[184] Human Rights Watch interview with Bongiwe, a 17-year-old girl with physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Michaela Mycroft, a 21-year-old woman with cerebral palsy, Cape Town, October 2014.

there were no ramps to go to the toilet. I wasn't happy at school and wanted to move."[185]

The lack of reasonable accommodation also translated into children being treated differently when they needed extra time to reach their often inaccessible classrooms[186] or take exams.[187] Michaela wrote:

> 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.[188]

Makhosi shared that her "first problem was when we were writing exams … I was not finishing the exam on time because I write slowly … the teachers don't give me enough time, they aren't patient with me. The school said I should write to Pretoria to ask for more time for my exams for the next academic year."[189]

Lack of Appropriate Learning Material and Subjects

The CRPD states that people who are deaf, hard of hearing, blind, or have low vision have the right to access "the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development."[190]

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[185] Human Rights Watch interview with Makhosi Ntombikayise, a 23-year-old woman with severe physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[186] Human Rights Watch interview with Bongiwe, a 17-year-old girl with physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Michaela Mycroft, a 21-year-old woman with cerebral palsy, Cape Town, October 2014; Human Rights Watch interview with mother of Xolani, a 24-year-old woman with paralysis, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[187] Human Rights Watch interview with Makhosi Ntombikayise, a 23-year-old woman with severe physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[188] Copies of Michaela Mycroft's reflections and letters provided to Human Rights Watch; Michaela Mycroft, "This is Me," http://www.chaelz-thisisme.blogspot.co.uk/ (accessed July 8, 2015).

[189] Human Rights Watch interview with Makhosi Ntombikayise, a 23-year-old woman with severe physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[190] CRPD, art. 24(3)(c).

Advocate Bokankatla Joseph Malatji, disabilities commissioner at South Africa's Human Rights Commission, told Human Rights Watch that children with sensory disabilities face exclusion across the education system due to the lack of materials in Braille and sign language in mainstream and special schools.[191]

Despite President Jakob Zuma's official announcement that sign language would become an official language in South Africa's schools,[192] children who are deaf or hard of hearing face barriers learning sign language, particularly given the limited availability of specialized centers that teach sign language,[193] and the lack of teachers who can teach sign language to an adequate standard.[194] Phelele, 9, from Manguzi, was only taught sign language by his speech therapist, outside school. His parents told Human Rights Watch that teachers were not trained to sign in his mainstream school.[195]

In addition, serious systemic and administrative failures continue to mean there is a lack of appropriate textbooks for children who are blind or have low vision.[196] Cathy Donaldson, president of Blind SA, told Human Rights Watch that many children have been waiting for textbooks for the last three academic years due to delays in printing.[197] The government reported in 2015 that it has slowly increased the provision of Braille textbooks and sign language in schools.[198]

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[191] Human Rights Watch interview with Advocate Bokankatla Joseph Malatji, disability rights commissioner, South African Human Rights Commission, Johannesburg, January 2015.

[192] State of the Nation Address by His Excellency Jacob Zuma, President of the Republic of South Africa on the occasion of the Joint Sitting of Parliament, Cape Town, 13 February 2014. South African Sign Language (SASL) is protected by the Constitution of the Republic of South Africa, under art. 6(5)(a)(iii).

[193] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for children with Disabilities, Cape Town, October 2014.

[194] Human Rights Watch interview with Legal and Policy team, Section 27, Johannesburg, October 2014. In September 2014 – with four months to go before the full roll-out in schools across the country—the National Department of Basic Education informed Parliament that "92 teachers of the total number of 1,232 teachers in Schools for the Deaf are qualified in SASL. 859 teachers have received in-service SASL training. The number of teachers who are able to use SASL is not known." Question 1776 (NW214tE) by Ms H S Boshoff (DA). Date of Publication of Internal Question Paper: 26/09/2014.

[195] Human Rights Watch interview with the parents of Phelele, a 9-year-old boy with a speech disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[196] Human Rights Watch telephone interview with Nikki Stein, advocate, Section 27, January 2015; Human Rights Watch interview with Cathy Donaldson, president, Blind SA, Johannesburg, October 2014; Section 27, "Submission on the Right to Education for Persons with Disabilities in South Africa to the Committee on the Rights of Persons with Disabilities," March 2015, pp. 8-9.

[197] Ibid., Blind SA, "Reflections, Blind SA Annual Report and Financial Statements," (2014), p. 37.

[198] Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education. An Overview for the Period 2013-2015," May 2015.

To cover this gap, teachers at Prinshof School for the Blind and Visually Impaired translate textbooks and classroom materials into Braille every evening of term. Yet, according to the school, Prinshof has the resources and staff to compensate for the lack of textbooks compared to other blind schools across the country.[199] Schools may incur enormous expense to buy their own materials.

Karin Swarz, Prinshof's principal, told Human Rights Watch that the Braille master copy of one textbook is R24,000 ($2,170). According to the principal, the school bears the financial brunt of purchasing the original material, despite it being a clear obligation for the Department of Basic Education to ensure students who are blind have the necessary materials in order to learn the curriculum.[200]

Cathy Donaldson, the president of Blind SA, said other schools may not be able to cover the gap, resulting in students not using appropriate material[201] Moreover, translating textbooks takes time and resources—particularly where ordinary textbooks contain visuals that are hard to adapt for children with visual impairments.

Human Rights Watch was told that the government's shift to a new "highly visual" curriculum in 2012, known as the "Curriculum Policy Assessment Statements," made it more complex to 'translate' this into appropriate material for students who are blind or have low vision.[202]

Karin Swarz, for example, told Human Rights Watch that her school is one of the few special schools for children who are blind or have low vision which teaches mathematics, yet faces very significant challenges to do so.[203]

Tim Fish-Hodgson, a researcher at Section 27, a leading national litigation public interest law center, told Human Rights Watch that the lack of resources and appropriate material in many special schools have led them to phase out mathematics, literacy and application,

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[199] Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind, Visually Impaired, Pretoria, November 2014.

[200] Ibid.

[201] Human Rights Watch interview with Cathy Donaldson, president, Blind SA, Johannesburg, October 2014.

[202] Ibid.; Department of Basic Education, "National Curriculum Statements Grades R-12," undated, http://www.education.gov.za/Curriculum/NCSGradesR12/tabid/419/Default.aspx (accessed April 1, 2015).

[203] Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind, Visually Impaired, Pretoria, November 2014.

for older students.[204] This may stop children who are blind or have low vision from studying mathematics, geography, sciences, business, economics or history.[205]

Mnqobi, a 12-year-old boy with a physical disability, stands next to his mother near his home in Kwa-Ngwanase, KwaZulu-Natal province. © 2014 Elin Martínez/Human Rights Watch

[204] Human Rights Watch telephone interview with Tim Fish-Hodgson, researcher, Section 27, March 2015.
[205] Ibid.

VI. Violence, Abuse, and Neglect in Schools

> For his safety, I decided to take him out of the boarding school.
>
> —Lala, mother of a 14-year-old boy with autism, Limpopo, October 2014[206]

Every child has a constitutional right to be protected from maltreatment, neglect, abuse, or degradation.[207] Corporal punishment and psychological abuse in schools has been banned since 1996, and any person found guilty of an offence can be charged for assault.[208]

A pervasive culture of silence remains in schools, leading to insufficient accountability for perpetrators of sexual assault or violence against students.[209] The Centre for Justice and Crime Prevention found that close to 40 percent of sexual assaults went unreported by students in 2012.[210] Of those reported, educators or administrators took action in 61.9 percent of instances of sexual assault, leaving over a third with no response despite educators or officials indicating knowledge about correct procedures.[211]

There is a notable absence of a legally enforceable national protocol to tackle corporal punishment and sexual abuse in all public ordinary schools.[212] Human Rights Watch

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[206] Human Rights Watch interview with Lala, the mother of a 14-year-old boy with autism, Polokwane, Limpopo, October 2014.

[207] Constitution of the Republic of South Africa, s. 28(1)(d).

[208] Government of South Africa, National Education Policy Act (1996), Act No. 27 of 1996, http://www.education.gov.za/LinkClick.aspx?fileticket=l73mPb%2Fja4c%3D&tabid=185&mid=1828 (accessed August 5, 2015), s. 4 (1)(n); and South African Schools' Act, s. 10(1) and (2). See also Cosmas Maphosa and Almon Shumba, "Educator's disciplinary capabilities after the banning of corporal punishment in South African schools," *South African Journal of Education*, vol. 30, (2010), pp. 387-399.

[209] Centre for Applied Legal Studies, University of the Witwatersrand School of Law Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, "Sexual Violence by Educators in South African Schools: Gaps in Accountability," May 2014, http://resourcecentre.savethechildren.se/sites/default/files/documents/south_africa-sexual_violence_by_educators_in_south_african_schools-_gaps_in_accountability_may_2014.pdf (accessed August 5, 2015).

[210] Patrick Burton and Lezanne Leoschut, "School Violence in South Africa: Results of the 2012 National School Violence Study," Centre for Justice and Crime Prevention, 2012, http://www.cjcp.org.za/uploads/2/7/8/4/27845461/monograph12-school-violence-in-south_africa.pdf (accessed August 5, 2015), p. 41.

[211] Ibid, pp. 42-43. Looking further back at data from 2005-2006, the Institute for Security Studies determined that National Prosecuting Authority "only prosecuted 14 percent of cases, declined to prosecute 60 percent, and referred the rest back to the police for further investigation." Jean Redpath, "Failing to Prosecute? Assessing the state of the National Prosecuting Authority in South Africa," Institute for Security Studies, 2012, in Centre for Applied Legal Studies et al, "Sexual Violence by Educators in South African Schools: Gaps in Accountability," May 2014, , http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1005&context=avon_clarke (accessed August 5, 2015).

[212] Faranaaz Veriava, "Promoting effective enforcement of the prohibition against corporal punishment in South African schools," paper commissioned by the Centre for Child Law, University of Pretoria, January 2014, pp. 49-50; Centre for Applied

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.[213]

The mother of a 12-year-old boy with autism told Human Rights Watch that she removed her son from his special school after two serious incidents of violence by teachers. Her son had begun to experience regular epileptic fits after numerous incidents in the school.

> One day, he came back home. He had damage to his head and scars on his back… The head teacher said one of the teachers was holding [him] down on the floor. [Someone else said] one of the teachers was beating him. [Then] I was told one of the teachers was holding and beating [him] with a stick. They didn't want to give me the name of the teacher. [My son] didn't want to go to school after that. One Monday, I forced him to go to school. On Wednesday, I came home and saw [him] on the bed. He was having an [epileptic] fit. I said that was it.[214]

One father in Johannesburg told Human Rights Watch:

> One day my child had something on this face. It was as if he had been hit with something from the tree. I went to the principal and showed him. He said it wasn't the teacher. The teacher assistant then acknowledged that she had hit him. I said I hoped it was the last time.[215]

One father near Kwa-Ngwanase told Human Rights Watch that his son Phelele sometimes comes back with bruises from school. The father spoke with the teacher, who promised to do something to stop this, but his son continues to be beaten up by

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Legal Studies et al., "Sexual Violence by Educators in South African Schools: Gaps in Accountability," May 2014, http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1005&context=avon_clarke (accessed August 5, 2015).

[213] Human Rights Watch interview with staff member at Childline Gauteng, Johannesburg, October 2014; Human Rights Watch interview with Childline Limpopo team, Polokwane, Limpopo, October 2014; Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015; Afrika Tikkun and Centre for Applied Legal Studies, "Submission to Portfolio Committee and Select Committee on Women, Children and People With disabilities, July 21, 2012.

[214] Human Rights Watch interview with the mother of a 12-year-old child with autism who wished to remain anonymous, Human Rights Watch focus group discussion with parents with children with disabilities, Johannesburg, October 2014.

[215] Human Rights Watch interview with father of 8-year-old boy with autism, Human Rights Watch focus group discussion with parents with children with disabilities, Johannesburg, October 2014.

other students at school.[216] In another case in Kwa-Ngwanase, Zigi, a 12-year-old boy with an intellectual disability who attends a full-service school, often returns home saying other children eat his food and that he is not happy in that school.[217]

Similarly, instances of neglect make parents worry about general care in their children's special schools. In the case of Tiego, a 14-year-old boy with autism in Polokwane, his mother Lala, told Human Rights Watch:

> He was initially in the boarding school for three years. I went to the school one night, without [giving] notice. When I got there, it was winter time, he didn't have clothes on. He didn't have his pajamas on. He seemed to have a cold. He was making noises, and tittering as if ill. But I had been given a list of things to buy for him! [Then] [I found] his clothes were up in his suitcase. The thought that my son was being treated that way was not acceptable. I removed him from the boarding school and put him into the day facility.[218]

Maria Mashimbaye, the mother of an 11-year-old boy with spina bifida who requires assistance with toilet needs, told Human Rights Watch her son has had infections because they do not change his nappies regularly.[219]

Similarly, Makhosi, 23, told Human Rights Watch that her helper at her boarding special school in Durban, whom she depended on to take her everywhere, often would ignore her if she wanted to go to the toilet or when she required help with other basic needs: "If I wanted to go to the toilet, the helper would ignore me if I needed anything. It was always the same person assigned to help me. I spoke to the principal but he did not take action."[220]

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[216] Human Rights Watch interview with the parents of Phelele, a 9-year-old boy with a speech disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[217] Human Rights Watch interview with the mother of a 12-year-old with an intellectual disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[218] Human Rights Watch interview with Lala, the mother of a 14-year-old boy with autism, Polokwane, Limpopo, October 2014.

[219] Human Rights Watch interview with Maria Mashimbaye, the mother of a 11-year-old with spina bifida, Johannesburg, October 2014.

[220] Human Rights Watch interview with Makhosi Ntombikayise, a 23-year-old woman with severe physical disabilities, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

VII. Lack of Quality Education

> Quality of education? He just goes there and plays, cleans, washes dishes. He can't even write his name.
> —Mother of an 11-year-old boy with cerebral palsy, Johannesburg, October 2014[221]

> I'm a pretty average student… I feel that a student that does not excel in sport at school or have great academic skills is made to feel as if they're at the school to make up the numbers. I don't believe there is much of a feeling of appreciation or acceptance of people who don't add value in terms of "As" or sporting achievements.
> —Extract from Michaela's open letter to her school, July 24, 2011[222]

Poor quality education affects hundreds of thousands of students across South Africa.[223]

According to the UN special rapporteur on the right to education, an international expert appointed by the UN Human Rights Council, quality education means "a minimum level of student acquisition of knowledge, values, skills and competencies … adequate school infrastructure, facilities and environment … a well-qualified teaching force … and a school that is open to the participation of all, particularly students, their parents and the community."[224]

The national debate on the state of quality in education has long identified a need to build adequate school infrastructure and invest in teaching resources to improve quality education in economically deprived areas of the country.[225] Learning environments across

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[221] Human Rights Watch interview with mother of an 11-year-old boy with cerebral palsy, Johannesburg, October 2014.

[222] Michaela Mycroft, "This is Me," http://www.chaelz-thisisme.blogspot.co.uk/ (accessed July 8, 2015).

[223] Nicholas Spaull, "South Africa's Education Crisis: The quality of education in South Africa 1994-2011", Report Commissioned by the Centre for Development and Enterprise, October 2013; News 24, "SA has worst maths, science education in world," June 02, 2014, http://www.news24.com/SouthAfrica/News/SA-has-worst-maths-science-education-in-world-20140602 (accessed June 13, 2015); BBC Online, "South Africa anger at 'worst maths and science' ranking," June 3, 2014, http://www.bbc.co.uk/news/world-africa-27683189 (accessed June 13, 2015).

[224] UN Human Rights Council, "Report of the Special Rapporteur on the right to education, Kishore Singh: Normative action for quality education," 2 May 2012, A/HRC/20/21, p. 7, para. 21. See also Right to Education Project, "Quality Education," http://www.right-to-education.org/issue-page/education-quality (accessed April 7, 2015).

[225] Stephen Taylor et al., "Low quality education as a poverty trap in South Africa," Research paper, University of Stellenbosch; Equal Education, "School Infrastructure: Overview and History," http://www.equaleducation.org.za/page/school-infrastructure (accessed April 12, 2015).

the country continue to be affected, among other things, by the high incidence of violence and sexual violence in schools,[226] the lack of adequate sanitation facilities,[227] and the lack of appropriate learning materials.[228]

In addition to these conditions, children with disabilities are affected by a number of factors, including a dearth of teaching knowledge, training, skills; lack of motivation; and an absence of individualized planning and learning.

Human Rights Watch was alerted to the lack of attention to the quality of teaching oriented at children with disabilities, the absence of training and skills to teach children with disabilities, and an entrenched attitude, within schools and by teachers, that children with disabilities cannot learn to the same standard as students without disabilities.[229]

Ongoing negative practices in mainstream schools need to be urgently addressed by school officials to ensure these schools can accommodate children with disabilities successfully.

Lack of Teacher Knowledge, Training, Skills

Teachers are key stakeholders in any inclusive education system, but many do not have basic knowledge or understanding of disabilities or how to teach children with diverse abilities. A number of NGOs providing teacher training in public schools told Human Rights Watch that teachers are not sufficiently qualified and equipped to teach children with disabilities, particularly in mainstream and full-service schools.[230]

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[226] Human Rights Watch telephone interview with Faranaaz Veriava, Section 27, September 2014; Centre for Applied Legal Studies et al., "Sexual Violence by Educators in South African Schools: Gaps in Accountability," May 2014; Nareadi Phasha and Doris Nyokangi, "School-Based Sexual Violence Among Female Learners with Mild Intellectual Disability in South Africa," *Violence Against Women,* March 2012, 18: pp. 309 -321, accessed August 5, 2015, doi: 10.1177/1077801212444578.

[227] Human Rights Watch telephone interview with Brad Brockman, secretary general, Equal Education, September 2014; Zintle Swana, "South Africa: Primary School Kids Sent Home Because of Lack of Toilets and Sewage Smell," *All Africa*, January 29, 2015, http://allafrica.com/stories/201501291311.html (accessed April 12, 2015); Mtshana Mvlisi, "School toilets in shocking state," *Health-E News, The South African Health News Service*, May 2, 2013 http://www.health-e.org.za/2013/05/02/school-toilets-in-shocking-state/(accessed April 12, 2015).

[228] Human Rights Watch telephone interview with Nikki Stein, education advocate, Section 27, September 2014; Mail & Guardian, "Limpopo textbooks," undated, http://mg.co.za/tag/limpopo-textbooks (accessed April 12, 2015).

[229] Human Rights Watch interview with Professor Nareadi Pasha, University of South Africa, Pretoria, November 2014; Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Human Rights Watch interview with Shona Mcdonald, chief executive officer, Shonaquip/Uhambo Foundation, Cape Town, October 2014; Human Rights Watch interview with Zelda Mycroft, chief executive officer, Chaeli Cottage, Cape Town, October 2014.

[230] Human Rights Watch interview with Naomi Crous, specialist, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014; Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interviews with various representatives of Autism SA in Gauteng, Limpopo and Northern Cape, October and November 2014.

Ruth Blood, a former teacher and now an Autism South Africa representative in Kimberley, told Human Rights Watch that "It is useless trying to fit children who need [high levels of] support in mainstream schools when teachers who are supposed to take care of them … don't know how to do it."[231]

According to Henry Hendricks, general secretary of the National Professional's Teachers Organization of South Africa, the country's second largest teachers' union whose members teach in many special schools, "Teacher training is the single most important resource, but teachers [for learners with disabilities] don't get the resources or the training."[232]

The shortage of trained teachers is also accompanied by the lack of support staff to provide services to students with disabilities: "There aren't enough support staff such as occupational therapists, speech therapists… they are not there," said Hendricks.[233]

The UN special rapporteur on education states that "It should be obligatory for State authorities to deploy only qualified and trained teachers in schools."[234] The CRPD requires governments to take "appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education."[235]

Human Rights Watch documented various ways in which schools are not providing the basic foundations of quality for children with disabilities, affecting the government's compliance with the obligation to guarantee quality education in schools.

Parents reported that their children would sit in class in mainstream schools, and in some cases, full-service schools, but they felt that teachers did not encourage or facilitate their real inclusion in class exercises or pay enough attention to ensure their children followed what was happening in class.

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[231] Human Rights Watch interview with Ruth Blood, Autism South Africa Northern Cape, Kimberley, Northern Cape, November 2014.

[232] Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

[233] Ibid.

[234] Human Rights Council, "Report of the Special Rapporteur on the right to education, Kishore Singh: Normative action for quality education," 2 May 2012, A/HRC/20/21, p. 14, para. 63.

[235] CRPD, art. 24(4).

Many children interviewed by Human Rights Watch could not read or write despite being in school for many years.[236] A mother told Human Rights Watch "The teacher knows that he can't read … but doesn't [do] anything."[237] Lala, 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."[238]

Parents and NGOs expressed significant concern that schools and teachers had low expectations of children with disabilities and often assumed they were not going to learn, resulting in irregularities in what the children did on a daily basis.[239] Zelda Mycroft, the mother of 21-year-old Children's Peace Prize winner Michaela Mycroft, who has cerebral palsy and a degenerative neuropathy[240] and went to mainstream and special schools, told Human Rights Watch that what struck her most is that "special schools pandered towards [her] disabilities. The mainstream school challenged her ability. What she did [there] wasn't framed by her impairment."[241]

Human Rights Watch heard various examples where children with disabilities attended school but teachers did not engage them in classroom activities.[242] Phelele, a 9-year-old boy who cannot speak and attends a full-service school, only sat in class with no engagement in daily classwork. According to his parents, he only draws throughout the day, with no apparent connection to the day's lessons, while the teacher focuses on getting on with the general curriculum.[243]

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[236] Human Rights Watch interview with the mother of a 15-year-old boy with intellectual disabilities, village near Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Elisabeth, assistant social worker, Zweletemba, Worcester, Western Cape, November 2014.

[237] Human Rights Watch interview with the mother of a 15-year-old boy with an intellectual disability, village near Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[238] Human Rights Watch interview with Lala, the mother of a 14-year-old boy with autism, Polokwane, Limpopo, October 2014.

[239] Human Rights Watch interview with the mother of a 12-year-old with an intellectual disability, Kwa-Ngwanase (Manguzi) , KwaZulu-Natal, November 2014.

[240] A condition that develops as a result of damage to the peripheral nervous system. A neuropathy indicates nerve disease or damage. National Institute of Neurological Disorders and Stroke, "Peripheral Neuropathy Fact Sheet," undated, http://www.ninds.nih.gov/disorders/peripheralneuropathy/detail_peripheralneuropathy.htm, (accessed June 5, 2015).

[241] Human Rights Watch interview with Zelda Mycroft, chief executive officer, Chaeli Cottage, Cape Town, October 2014.

[242] Human Rights Watch interview with the father of an 8-year-old with Down Syndrome, village near Tzaneen, Limpopo, October 2014; Human Rights Watch interview with the mother of an 8-year-old with Down Syndrome, village near Tzaneen, Limpopo, October 2014; Human Rights Watch interview with director, Vukuhambe Day Care Centre, Zwelethemba, Worcester, Western Cape, December 2014.

[243] Human Rights Watch interview with the parents of a 9-year-old boy with a speech disability, Kwa-Ngwanase, (Manguzi), KwaZulu-Natal, November 2014.

A teacher's misunderstanding and lack of practical skills to realize inclusive education in a classroom is a serious barrier for children who need specific support.[244] According to Henry Hendricks of the National Professional Teachers Organization of South Africa, insufficient and inadequate training of teachers leads to a "tendency to label children who are acting out and labeling them for poor performance."[245]

Many parents, children, and NGO staff referred to labels used by teachers and school officials to highlight children with disabilities who may not be progressing in the same way in a classroom. On many occasions, children were labeled "slow learners,"[246] a term frequently, but not exclusively, used by parents and practitioners to refer to children with intellectual or learning disabilities. Human Rights Watch repeatedly heard references to terms such as "not cooperative" or "naughty" to refer to behavior in class.[247]

Enelani, an 8-year-old boy with Down Syndrome from a village near Tzaneen, Limpopo province, shows off two medals awarded at a sports competition. © 2014 Elin Martínez/Human Rights Watch

The father of Enelani, an 8-year-old boy with Down Syndrome, said:

> He attended [the primary school in the village] for three days.

[244] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Difference Motseo, officer, Down Syndrome Limpopo, Tzaneen, October 2014.

[245] Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

[246] In one case, a social worker informed a 14-year-old's aunt that he could not go to a special school because "children there are only slow learners and they don't take children with a profound disability." Human Rights Watch interview with the aunt of a 14- year-old boy with intellectual disabilities and epilepsy, Johannesburg, October 2014.

[247] Human Rights Watch interview with Mambo Malinga, specialist, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014; Human Rights Watch interview with the father of an 8-year-old with Down Syndrome, village near Tzaneen, Limpopo, October 2014; Human Rights Watch interview with the mother of an 8-year-old with Down Syndrome, village near Tzaneen, Limpopo, October 2014.

> After three days they called up saying he wasn't normal, he wasn't cooperative at all. He stayed with us for four months, then we found the other [mainstream] school. It was the second school we tried. He's doing very well, but he's slow – they call them 'slow learners,' but he is learning. It takes time.[248]

Mambo Malinga, who trains teachers on autism, said: "They [the children] are very frequently labeled as naughty and having emotional problems or intellectual disabilities. Wherever we go, people don't have the knowledge. I never encountered someone who has the knowledge on autistic children."[249] In some cases, labeling leads "children to internalize that they're bad. They are treated as if they're stupid because their teachers have not been able to deal with them," said Santie Terreblanche from Cape Mental Health.[250]

The combination of negative actions may drive many children who function lower to feel pushed out or neglected by teachers.[251]

A number of older students interviewed told Human Rights Watch they had dropped out of mainstream schools, in part due to believing they were "slow learners." Pinkie, a 15-year-old girl, dropped out of school in 2013, after her teachers repeatedly labeled her a "slow learner." She told Human Rights Watch that she also faced a hard time with her peers.[252]

Lack of understanding of disabilities may also lead teachers to use the wrong teaching methods.[253] Renée Rossouw, from Sign Language Education and Development, a member of the Campaign to Promote the Right to Education for Children with Disabilities, told

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[248] Human Rights Watch interview with the father of an 8-year-old with Down Syndrome, village near Tzaneen, Limpopo, October 2014.

[249] Human Rights Watch interview with Mambo Malinga, specialist, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

[250] Human Rights Watch interview with Santie Terreblanche, deputy director, Cape Mental Health, Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014.

[251] Human Rights Watch interview with Santie Terreblanche, deputy director, Cape Mental Health, Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

[252] Human Rights Watch interview with Pinkie, a 15-year-old girl with learning disabilities, Kimberley, Northern Cape, November 2014.

[253] Human Rights Watch interview with Naomi Crous, specialist, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

Human Rights Watch: "Some teachers might tell you, 'We shout at these [deaf or hard of hearing] children and they just don't listen.'"[254]

Education experts, many of whom are former teachers, expressed concern about the limited availability of university programs and pre- and in-service teacher training focused on inclusive education, based on their knowledge of recent graduates who were sent to special schools without adequate knowledge or practice.[255]

As of the 2015 academic year, the University of South Africa in Pretoria was the only university with a department of inclusive education, while three other universities offer inclusive education modules or postgraduate programs, one university offers modules in special needs education, and six universities offer no relevant core modules as part of their education studies programs. Candidates of the National Professional Diploma are only required to take one short module on inclusive education during the second year of their studies.[256]

Marie Schoeman, chief education specialist at the Department of Basic Education's inclusive education unit, told Human Rights Watch that "teachers tend to teach to the average and those children that are under-delivering tend to be left out."[257] Henry Hendricks of the National Professional Teachers Organization of South Africa also agreed with this appraisal: "Teachers teach what is comfortable to them. Easy cases are resolved, but those needing instrumentalizing are not."[258]

Teachers in mainstream schools have to teach over 40 children in one classroom, including children with disabilities. In such large classrooms, teachers resort to the classic model of rote learning and teaching at the front of a classroom, with their backs to the children, which is "incompatible with children with moderate to high level of needs and support, particularly

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[254] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014.

[255] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Human Rights Watch interview with Professor Nareadi Pasha, University of South Africa, Pretoria, November 2014.

[256] Based on Human Rights Watch research of undergraduate and postgraduate handbooks of 11 universities across different provinces conducted in December 2014.

[257] Human Rights Watch interview with Marie Schoeman, chief education specialist, Inclusive Education Unit, National Department of Basic Education, Pretoria, November 2014.

[258] Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

when teachers do not observe the children to assess their pace or level of learning," according to Nerina Nel, director at the Children's ~~Dis~~ABILITY Training Centre.[259]

The failure to introduce the current weighting system for children with disabilities, currently applicable in special schools, in mainstream schools,[260] poses a significant challenge in the successful implementation of inclusive, quality education. Yet, its introduction would ensure teachers deal with manageable class sizes so that they can provide individual attention to any learner experiencing learning barriers and requiring additional support.[261]

Lack of Teacher Motivation, Incentives

A number of organizations told Human Rights Watch that changes in teachers' attitudes would go a long way in helping children feel included in classrooms. The challenge, according to staff at the Children's ~~Dis~~ABILITY Training Centre, is to motivate teachers.[262]

According to Hanlie Swanepoel, a district education therapist in Pretoria, teachers need to be urgently taught about multi-level teaching to deal with diversity in classrooms with a wide variety of disabilities, particularly to deal with multiple abilities and behaviors.[263]

Moreover, they have to be given practical skills. For example, teachers teaching children with Down Syndrome do not need to feel overly burdened when accommodating children in their classrooms.[264] According to Vanessa dos Santos, president of Down Syndrome International, "[With the right] attitude towards that child, any good teacher should be able to manage," particularly if a teacher promotes an inclusive 'buddying system' to ensure other students engage and work closely with children with Down Syndrome.[265]

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[259] Human Rights Watch interview with Nerina Nel, director, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

[260] For example, one child with autism spectrum disorder is equal to six children without disabilities.

[261] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014; Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014.

[262] Human Rights Watch interview with Naomi Crous, specialist, Children's ~~Dis~~ABILITY Training Centre, Johannesburg, October 2014.

[263] Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, December 2014.

[264] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014.

[265] Human Rights Watch telephone interview with Vanessa dos Santos, president, Down Syndrome International, December 2014.

Part of the problem is a lack of incentive to teach children with disabilities. Under current performance arrangements, "mainstream schools are evaluated based on how many children have passed *matric* [secondary school exam]. It's not in their interest to take on children with disabilities who could lower their performance," according to Santie Terreblanche from Cape Mental Health, a member of the Campaign to Promote the Right to Education for Children with Disabilities.[266]

Members of the campaign feel the lack of incentives for inclusion discourages teachers who must spend extra class time focusing on children with disabilities. They believe schools and teachers would be more inclusive if the government rewarded inclusion in classrooms in the same way it prioritizes good academic assessments.[267]

This was also confirmed by officials at the Department of Basic Education, who told Human Rights Watch that schools are penalized for bad performance, which may lead to exclusion.[268] According to Marie Schoeman, this is the case "particularly where children with some types of disabilities are subjected to standard assessments that do not accommodate their particular requirements."[269]

To respond to this gap, the Department of Basic Education is designing a curriculum and accreditation that is appropriate for multiple levels of disabilities, to accommodate and scaffold the official school curriculum to cater for different levels of learning, and provide official accreditation on this basis.[270] The government has given itself over five years to roll out this curriculum and train all teachers.[271]

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[266] Human Rights Watch interview with Santie Terreblanche, deputy director, Cape Mental Health, Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014.

[267] Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014 and May 2015.

[268] Human Rights Watch interview with Moses Simelane, chief director, and Marie Schoeman, chief education specialist, National Department of Basic Education, November 2014.

[269] Ibid.

[270] Ibid.

[271] Department of Basic Education, "Progress Report on Inclusive Education and Special Schools," presentation to the Portfolio Committee on Basic Education, 23 June 23, 2015, pp. 60-61.

Lack of Individualized Learning and Planning

Focus on the individual students' needs and on effective individualized support measures is a key component of inclusive education guaranteed in the CRPD.[272]

When parents told Human Rights Watch that their children were labeled or referred to as "slow learners" in schools, they were asked if something was done differently to address how to support their children. There were few instances of individualized attention, and no consistency according to the type of public school.

At Prinshof School for the Blind and Visually Impaired, for example, individual education plans are discussed with a range of experts in the school, parents, and others, particularly to discuss the child's medium of instruction and path.[273] The NGO Home of Hope School carries out a rigorous annual assessment for all students. Once it is over, an individual education plan is developed, looking at individual and classroom therapy. The school organizes a feedback session with foster parents, social workers who work at home and at school, the child's teacher and the educational psychologist. The school then does five-year projections to shape the type of curriculum.

According to the UN Office of the High Commissioner for Human Rights, "Individualized attention should be considered a central feature of inclusive education."[274] Individual education support plans (IESPs) aim to enable "each student to live, study and act autonomously, with adequate support, taking into account individual capacities."[275]

At the NGO Home of Hope School, the focus on individual education plans for children with fetal alcohol syndrome who have dropped out of schools has meant that up to five children studying at the school have gone back into mainstream schools, and children with high support needs have gained basic knowledge and skills.[276] Lyn Thyisee, the school's educational psychologist, attributes this success to the school's ability to take a long-term

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[272] CRPD, art. 24(2) (e).

[273] Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind and Visually Impaired, Pretoria, November 2014.

[274] United Nations Human Rights Council, "Thematic Study on the right of persons with disabilities to education," Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, December 18, 2013,, para. 46, p. 12.

[275] Ibid.

[276] Human Rights Watch interview with Lyn Thyjsee, educational psychologist, Home of Hope School, Cape Town, October 2014.

view on a learner's education path, look at how to address a child's learning barriers within a classroom setting, and make the necessary accommodations to ensure the child learns.[277]

In order to be successful, the development of individual education plans must involve teachers, other professionals, parents and the student.[278] However, most parents interviewed were not aware of an individual education plan or their children following any specific curriculum adapted to their needs. A mother who was actively engaged in her son's school matters told Human Rights Watch that her son did not have an individual education plan at this special school. Although she often wrote to her son's teachers, she did not hear back and did not feel she had an opportunity to work with the teachers.[279]

Sabelo, a 16-year-old boy with mild intellectual disabilities who attends a full-service school, told us: "They laugh at me in school … they call me names. I don't like the school because I can't make it."[280] His sister-in-law told us: "The teachers don't treat him well because he doesn't cope very well, [the teachers] think he's being deliberately slow, but [they're not] giving him individual attention."[281]

In some cases, children were referred to hospitals for assessments,[282] moved to a lower grade or referred to a special school as a result of being "slow learners." In at least two cases, parents took it upon themselves to find an alternative school.[283] Other children were simply left in schools and proceeded on to other grades without any dedicated learning support or clear progress.

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[277] Ibid.

[278] United Nations Human Rights Council, "Thematic Study on the right of persons with disabilities to education," Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, December 18, 2013, para. 47, p. 12.

[279] Human Rights Watch interview with Lala, the mother of a 14-year-old boy with autism, Polokwane, Limpopo, October 2014.

[280] Human Rights Watch interview with Sabelo, a 16-year-old boy with an intellectual disability, village near Zama-Zama, KwaZulu-Natal, November 2014.

[281] Human Rights Watch interview with the sister-in-law of Sabelo, a 16-year-old boy with an intellectual disability, village near Zama-Zama, KwaZulu-Natal, November 2014.

[282] Human Rights Watch interview with the father of an 8-year-old girl with a learning disability, Zama-Zama, KwaZulu-Natal, December 2014.

[283] Human Rights Watch interview with the grandmother of a 10-year-old boy, Zama-Zama, KwaZulu-Natal, December 2014; Human Rights Watch interview with the father of an 8-year-old boy with Down Syndrome, village near Tzaneen, Limpopo, October 2014.

Inappropriate Grade Transition

Human Rights Watch met children who were moved up or down different grades by teachers and school officials, often without any proof offered to parents that they had learned sufficient skills and content to proceed or evidence that they needed to repeat a grade.[284] Human Rights Watch also met children who had repeated the same grade for more than two or three years, without any attention given to their particular needs.[285]

The Department of Basic Education's guidelines on Inclusive Education allow students to spend a maximum of one extra year per phase or grade, unless granted an additional year by the head of education of the province.[286] However, the guidelines clarify that "the decision[s] whether they should be retained longer in a certain phase have to be clearly outlined and must be based on a support programme which will be addressing their needs. Clear developmental and incremental curriculum outcomes must be outlined so as to ensure that they will not simply be left without the relevant support, doing more of the same work."[287]

According to Henry Hendricks, general secretary of the National Professional Teachers Organization of South Africa, "The practice of passing children is acknowledged. There are primary schools that would never fail a child."[288]

Elize Oosthuizen, a retired teacher living in Fraserburg, Northern Cape province, told Human Rights Watch about her own experience of working with children who were predominantly affected by fetal alcohol syndrome:

> We have the appalling situation in the education system of our country, that a significant percentage of learners are 'travelers'… they travel from grade to grade, unable to read or write, let alone master any subject content.

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[284] Human Rights Watch interview with Sabelo, a 16-year-old boy with an intellectual disability, and his sister-in law, village near Zama-Zama, KwaZulu-Natal, November 2014.

[285] Human Rights Watch interview with the parents of a 9-year-old boy with a speech disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

[286] Department of Basic Education, "Guidelines for Inclusive Learning Programmes," pp. 41-42.

[287] Ibid.

[288] Human Rights Watch interview with Henry Hendricks, general secretary, National Professional Teachers Organization of South Africa, Pretoria, January 2015.

> Although teachers are required to pay extra attention to these children, it is practically impossible in a class situation.[289]

Members of the Campaign to Promote the Right to Education for Children with Disabilities told Human Rights Watch that children who function lower are pushed out, and those who stay in classrooms are trained to get to that level.[290] According to Oosthuizen, children with fetal alcohol syndrome are seldom doing something "at their level."[291]

For example, children with fetal alcohol syndrome may appear to cope in the system through grades 1 to 3, "but some may use 'clown strategies' [inappropriate or disruptive behavior] to hide that they can't cope," according to Aisling Foley of the NGO Home of Hope School.[292]

Reakgona Adult Centre for people with intellectual disabilities receives adults with intellectual disabilities who are above 18 years old, many of whom did not complete a basic education program. Thabo Phiri, the center's manager, told Human Rights Watch:

> If the child fails and fails, the [schools] condone this. Out of sympathy, they let [him] 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.[293]

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[289] Human Rights Watch email exchange with Elize Oosthuizen, Kambro Association, Northern Cape, October 31, 2014.

[290] Human Rights Watch focus Group Discussion with members of the Campaign to Promote the Right to Education for Children with Disabilities, Cape Town, October 2014.

[291] Human Rights Watch email exchange with Elize Oosthuizen, Kambro Association, Northern Cape, February 24, 2015.

[292] Human Rights Watch interview with Aisling Foley, education manager, Home of Hope School, Cape Town, October 2014.

[293] Human Rights Watch Interview with Thabo Phiri, manager, Reakgona Adult Centre for people with intellectual disabilities, Seshego, Limpopo, October 2014.

VIII. Lack of Preparation for Life After Basic Education

> Getting young people to read and write for school, for leisure, and even in the world of work, is a critical aspect of the development of the social fabric of our country. It must occupy all our minds.
> —Minister Angie Motshekga, 2015 Basic Education Budget Vote Speech[294]

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.

The UN Committee on the Rights of the Child underlines that "the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs." Governments need to ensure that "no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life."[295]

Eight young adults interviewed by Human Rights Watch had completed compulsory basic education, and in the case of two young adults, secondary and higher education. Five young adults had no clear progression after attending special schools. One young adult who had not completed compulsory education was enrolled in an adult skills center. Two of the young adults interviewed graduated from mainstream schools and went on to university. One told Human Rights Watch: "There's something deeply flawed when you are deemed to have a privilege because you have finished school."[296]

National statistics show that the majority of people 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

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[294] Department of Basic Education, "Basic Education Budget Vote Speech for the 2015/16 Financial Year Delivered by the Minister of Basic Education, Mrs AM Motshekga MP, at the National Council of Provinces, Cape Town on June 9, 2015," p. 8.

[295] UN Committee on the Rights of the Child, "General Comment No 1 article 29(1): The Aims of Education," (2001) CRC/GC/2001/1, April 17, 2001, http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx (accessed August 5, 2015) p. 4, para. 9.

[296] Human Rights Watch interview with Edward Ndopu, youth coordinator, Amnesty International, Johannesburg, November 2014.

education and proceeding on to university, compared with students with other disabilities outside major urban areas. [297] Students who are deaf or hard of hearing, defined as having "severe difficulty in hearing," have lower rates of attainment of higher education.[298]

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 because of barriers and discrimination identified earlier in this report, faced limited opportunities to resume basic education or gain practical skills.

Lack of Progression and Transition after Compulsory Education

Ancella Ramjas, Down Syndrome South Africa's director, told Human Rights Watch that only one child with Down Syndrome passed his secondary school exams or "*matric*" in Pretoria in 2014. In his case, the progression to higher levels of education is made more challenging because there is no course that provides for someone with his learning needs, except at one university in the Western Cape. [299]

Reakgona Adult Centre for people with intellectual disabilities who are 18 years old and above was "established to create an exit [into] integration," a place for them to learn essential skills and then go back to the community. Families have also identified it as a place where their relatives can be safe.

The center has a high demand for placements: every year it turns down between 100 to 200 students, either because of age limitations or because it is at capacity.[300] Thabo Phiri, the manager, told Human Rights Watch that the situation reflected that fact there are limited choices for adults with disabilities who are not independent.[301] According to Phiri, the lack of options leads to a very high cost of dependence for young adults with intellectual disabilities:

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[297] Statistics South Africa, "Census 2011: Profile of persons with disabilities in South Africa," Report 03-01-59, 2011, p. xii, pp. 80 -90, http://beta2.statssa.gov.za/publications/Report-03-01-59/Report-03-01-592011.pdf (accessed April 14, 2015).

[298] Ibid., p. 89.

[299] Human Rights Watch interview with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014.

[300] Human Rights Watch interview with Thabo Phiri, manager, Reakgona Adult Centre for people with intellectual disabilities, Seshego, Limpopo, October 2014.

[301] Ibid.

> [We have] 144 students, all classed as disabled and all from the age of 18. 144 multiplied [by the adult disability grant of] R1,300 [$112] is [more or less] equal to R187,000 [$16,178] per month in Reakgona alone.[302]

Uncertain Future

Human Rights Watch asked a number of adolescents and young adults with disabilities who were out of school about their future prospects. Both Sibusiso, a 19-year-old man in Kwa-Ngwanase who did not attend school, and Reet, a 21-year-old man in Kimberley who studied at a special school for people with intellectual disabilities, wanted to work with cars or become mechanics.[303] Similarly, an 18-year-old man in Orange Farm township told Human Rights Watch that he wanted to be trained for a job, "and get a job like those people who have finished their *matric*."[304]

When Human Rights Watch met them, they all remained at home, without work. Their parents strongly believed that their children had not gained the skills needed to seek a job or become independent before dropping out or finishing basic education.

Reet's mother told Human Rights Watch:

> My child—he can't do anything—he just wants to play with cars. It seems he didn't learn much…. He can't read and he can't write, he can't even write his name but he dropped out of the school…. My child is just roaming around the location [township]. I want a place where they can identify his talent.[305]

Margaret Masinga, a representative of a local organization for persons with disabilities in Kwa-Ngwanase, told Human Rights Watch: "The government needs to do something to ensure everyone in the community knows we want to have a future just like everyone else."[306]

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[302] Ibid.

[303] Human Rights Watch interview with the mother of a 19-year-old man with an intellectual disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with mother of a 21-year-old man with an intellectual disability, Kimberley, Northern Cape, November 2014.

[304] Human Rights Watch interview with an 18-year-old man deemed a "slow learner," Orange Farm, Johannesburg, October 2014.

[305] Human Rights Watch interview with the mother of a 21-year-old man with an intellectual disability, Kimberley, Northern Cape, November 2014.

[306] Human Rights Watch interview with Margaret Masinga and Kululiwe, Siphilisa Isizwe DPO, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014.

Yet, the lack of inclusion and attention to needs and support throughout the earlier stages of education means that by the time children with disabilities have completed the compulsory years of education, they have "no self-esteem at that stage…. no initiative or energy."[307] Professor Lorna Jacklin, a doctor who regularly treats children with disabilities in Johannesburg, said, "Children can see their years are leading up to nothing."[308]

Basie Jahnig, Boitumelo Special School's principal, told Human Rights Watch that, "Sometimes we teach them skills, at a certain time we say goodbye to them and then they go home and sit there."[309]

Sandra Klooper, director of Autism South Africa, also warned: "As the teenage years strike, depression kicks in. Children [with autism] withdraw into themselves. There are five mothers all with young male adults in their twenties. Their sons have no motivation and sit at home and watch TV. Further education opportunities are not geared at higher functioning autistic children.[310]

Lack of Access to Basic Adult Education

The CRPD states that governments "shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination."[311]

Human Rights Watch interviewed two adolescents and five young adults with disabilities who had not finished compulsory education and had no access to adult basic education programs that would allow them to complete their education, in line with the government's commitments to provide universal access to education for adults, particularly "youth with special needs and disadvantaged learners with special learners needs."[312]

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[307] Human Rights Watch interview with Professor Lorna Jacklin MD, head of Children's Clinic, CM Johannesburg Hospital, Johannesburg, October 2014.

[308] Ibid.

[309] Human Rights Watch interview with Basie Jahnig, principal, Boitumelo special school, Kimberley, Northern Cape, November 2014.

[310] Human Rights Watch interview with Sandra Klooper, director, Autism South Africa, Johannesburg, October 2014.

[311] CRPD, art. 24 (5).

[312] Department of Basic Education, "Policy Document on Adult Basic Education and Training," undated, http://www.education.gov.za/LinkClick.aspx?fileticket=QO4sU11vOCk%3D& (accessed April 10, 2015).

Sandile Ndlazi, 24, has cerebral palsy and had never attended school. He depends on his mother to teach him basic syllables with basic learning tools provided at Manguzi Hospital. In his case, one special school did not accept him because he was considered too old to enter the school aged 12. His mother did not contact other schools because "the therapists [at the hospital] told me I had to teach him at home." Sandile's mother said that she believed he would have been able to catch up on his education had he entered school at the appropriate time. "Now he's too old and can't catch up easily," she said.[313]

Thabo Phiri, manager of Reakgona Adult Centre, told Human Rights Watch that most young adults referred to the center should not be in skills centers in the first place.[314]

> The system gives up on them quickly, families do the same.... Once [children] are in an institution like this, there's labeling ... people assume they're dumb and stupid.[315]

He added that he was "convinced that many of [the] students would have been able to do much more if provided with real support and interventions at the right time. Sometimes I tell parents, 'Honestly speaking, your child doesn't belong here.'"[316]

According to both Phiri and Brian Tigere, a social worker at a center for people with intellectual disabilities in Polokwane, many young adults with intellectual disabilities with whom they work have progressed through the education system without gaining basic skills or completing basic education and would benefit from learning basic numeracy and literacy skills appropriate to their development and needs.[317]

In their experience, people with intellectual disabilities fall into a systemic gap because basic education components are not taught in stimulation or skills centers, managed by the Department of Social Development.[318]

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[313] Human Rights Watch interview with the mother of Sandile, a 24-year-old man with cerebral palsy, Lulwane, KwaZulu-Natal, November 2014.

[314] Human Rights Watch interview with Thabo Phiri, manager, Reakgona Adult Centre for people with intellectual disabilities, Seshego, Limpopo, October 2014.

[315] Ibid.

[316] Ibid.

[317] Ibid.

[318] Ibid.; Human Rights Watch interview with Brian Tigere, social worker, APD Limpopo, Polokwane, Limpopo, October 2014.

Guided by its obligations in the International Covenant on Economic, Social and Cultural Rights, the government should ensure that "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."[319]

Limited Employment Options

Two special schools visited by Human Rights Watch employ their own graduates to create work opportunities for students with intellectual disabilities. Albertina Sisulu's principal employs some of the schools' graduates to "show [communities] examples that they're employable."[320] At Boitumelo special school, a number of female students become class assistants and male students help in building and school maintenance.[321]

Overall, despite small efforts by school principals, special schools for children visited by Human Rights Watch do not have clear progression to vocational training or work placements. At Albertina Sisulu, most students over 18 are referred to protective workshops, practical skills centers set up for people with intellectual disabilities.[322] Students at Prinshof's separate section for children with multiple and intellectual disabilities can only go to grade 7; students who are blind or have low vision enrolled in the "mainstream" section of this special school finish at grade 12.[323]

The school team will often interview parents of students with intellectual disabilities and tell them they must make provision for them, opting to send them to either care centers or protective or sheltered workshops, managed by the Department of Social Development.[324]

Many adolescents and young adults with disabilities may stay at home, without practical skills or a sense of empowerment—despite attending school for years.[325] Cape Mental

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[319] ICESCR, art. 13(2)(d).

[320] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014.

[321] Human Rights Watch interview with Basie Jahnig, principal, Boitumelo Special School, Kimberley, November 2014.

[322] Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014.

[323] Human Rights Watch interview with Karin Swarz, principal, Prinshof School for the Blind and Visually Impaired, Pretoria, November 2014.

[324] Ibid.

[325] Human Rights Watch interview with director, Vukuhambe Day Care Centre, Zwelethemba, Worcester, Western Cape, November 2014.

Health, an organization focused on supporting and enabling services for adults with psychosocial and intellectual disabilities in the Western Cape, states: "Their exit opportunities post-LSEN [Learner with Special Education Needs] school consist therefore of mainly of two options: stay at home or attend a protective workshop for life."[326]

Protective workshops are described as "safe, disability-friendly environments providing opportunities for people with disabilities from the local community to develop and improve their skills and to earn an income through the products they make to supplement their disability grants."[327] Such workshops are often deemed incompatible with the CRPD, due to their potential excluding and limiting effect on the right to work of people with intellectual disabilities[328] and are considered "liable of not promoting full inclusion in society,"[329] denying people with disabilities the "right to free choice of employment, to just and favorable conditions of work."[330]

The UN Committee on the Rights of Persons with Disabilities has, on several occasions, recommended "the phasing out or elimination of sheltered workshops and the promotion of employment of people with disabilities in the open labour market."[331]

Sandra Klooper, Autism South Africa's director, told Human Rights Watch that even in sheltered employment, "People with moderate support needs are not really accommodated in shops … some have behaviors that scare everybody … some of them are at the back of shops and supermarkets in the packing area." Klooper believes this requires a change in attitudes to ensure people with disabilities are accommodated in mainstream job markets.[332]

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[326] Cape Mental Health, "UN CRPD Submission: Inclusive Education," undated, http://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2015/CapeMentalHealth.doc (June 13, 2015).

[327] Disability Workshop Development Enterprise, "What is a Protective Workshop?," undated, http://www.dwde.co.za/what-is-a-protective-workshop/ (accessed June 13, 2015).

[328] Sabrina Ferraina, "Analysis of the Legal Meaning of Article 27 of the UN CRPD: Key Challenges for Adapted Work Settings," Cornell University ILR School, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1559&context=gladnetcollect (accessed August 5, 2015) March 14, 2002, p. 5.

[329] Ibid., p. 18.

[330] Ibid., pp. 25-26; CRPD, art. 27.

[331] International Disability Alliance et al, "IDA submission on draft General Comment on Article 7, ICESCR: The right to just and favourable conditions of work of persons with disabilities," May 2015, http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2015/IDA.docx (accessed June 13, 2015), p. 3.

[332] Human Rights Watch interview with Sandra Klooper, director, Autism South Africa, Johannesburg, October 2014.

While some adolescents and young adults with disabilities may be employed at the community level,[333] their entry into the open employment market is more challenging.

Hanlie Swanepoel, an education therapist, told Human Rights Watch that "skills training is not that close to home…. Traineeships need to take longer because it takes longer for [students with intellectual disabilities] to learn."[334]

A representative of a national recruiting company focused on supporting companies to recruit persons with disabilities, who spoke confidentially with Human Rights Watch, said the level of education that most individuals with disabilities receive in rural areas and townships falls short of what South African corporations want. Many prospective candidates with disabilities lack an acceptable level of English literacy, or proficiency in subjects such as mathematics, science, and technology that are needed to work in certain industries. Applicants who are blind or have low vision, she noted, often lack mathematics skills.[335]

Human Rights Watch found job advertisements for persons with disabilities that often required a minimum level of *matric*, and, in some cases, candidates needed to prove they had reached grade 12 and studied mathematics.[336] The absence of accreditation or school diplomas means many adolescents and young adults with disabilities who attend special schools do not receive an official document to show they have finished compulsory education at a special school.[337]

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[333] Human Rights Watch interview with the mother of a 19-year-old man with an intellectual disability, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Mika, a 27–year-old man with an intellectual disability, Disabled Children's Action Group, Cape Town, October 2014.

[334] Human Rights Watch interview with Hanlie Swanepoel, education therapist, Pretoria, November 2014.

[335] Human Rights Watch telephone interview with the representative of a recruiting company in Western Cape, names withheld upon request, March 2015.

[336] Job Access, "Creative Learnership," http://www.jobaccess.co.za/info_jobid_443/creative_learnership.html (accessed March 24, 2015); Disability Workshop Development Enterprise, "Cashier Job available for Candidate with Disability Only", March 20, 2015 https://www.placementpartner.co.za/wi/vacancy/?id=dwde&VacRef=CPT000013% (accessed March 24, 2015).

[337] Human Rights Watch interview with the mother of a 15-year-old girl with cerebral palsy, focus group discussion hosted by Disabled Children's Action Group, Cape Town, October 2014; Human Rights Watch interview with Bernard Lushozi, principal, Albertina Sisulu Resource Centre, Soweto, Johannesburg, October 2014; Cape Mental Health, "UN CRPD Submission: Inclusive Education," undated, http://www.ohchr.org/Documents/HRBodies/CRPD/DGD/2015/CapeMentalHealth.doc (accessed June 13, 2015).

IX. Other Factors Limiting Inclusive Education

Data Inconsistencies

Governmental and nongovernmental data provide very different views of how many children with disabilities are out of school across the country.[338] Nongovernmental organizations and service providers interviewed by Human Rights Watch strongly believed the government's inability or unwillingness to release valuable data creates greater invisibility for children with disabilities and undermines the scale of the challenges, impacting resources available to fully implement inclusive education.[339]

Human Rights Watch's research and the estimates of several organizations and experts focused on children with disabilities suggest that most currently available figures dramatically underestimate the number of children with disabilities who are out of school. A progress report on Education White Paper 6 published by the Department of Basic Education in May 2015 is a testimony to the wide variances and data discrepancies. Two different sections of this progress report carefully note that tackling access to education for 597,953 children with disabilities who could be out of school, and up to 829,474 children with disabilities who are of school-going age, would be more efficient and cost-effective if the government invested in and prioritized inclusive education, rather than building more special schools.[340]

The Campaign to Promote the Right to Education of Children with Disabilities, among other groups, maintains that the number of children with disabilities out of school is above 500,000, based on previous baselines provided by the National Census and the Department of Social Development.[341]

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[338] Data analysed includes United Nations Children's Fund (UNICEF), Department of Social Development and Department of Basic Education, "Situation Analysis 2011"; data provided by the Campaign to Promote the Right to Education for Children with Disabilities; Statistics South Africa, "Census 2011: Profile of persons with disabilities in South Africa," Report 03-01-59, 2011, p. xii, pp. 80 -90, http://beta2.statssa.gov.za/publications/Report-03-01-59/Report-03-01-592011.pdf (accessed April 14, 2015); Department of Women, Children and People with Disabilities, "Baseline Country Report to the UN Convention on the Rights of Persons with Disabilities (2008-2012)," 2013.

[339] Human Rights Watch interview with Robyn Beere, director, Inclusive Education South Africa, Cape Town, October 2014; Human Rights Watch focus group discussion with members of the Campaign to Promote the Right to Education of Children with Disabilities, Cape Town, October 2014; Human Rights Watch interview with Section 27 team, Johannesburg, October 2014.

[340] Department of Basic Education, "Report on the Implementation of Education White Paper 6 on Inclusive Education. An Overview for the Period 2013 – 2015," May 2015,"p. 19, Table 19, p. 69. In May 2015, in response to a letter and meeting with Human Rights Watch, the Department of Basic Education responded that only 30,000 children with disabilities were out of school. See Annex II.

[341] Aarti Narsee, "Disabled kids let down by school system," *Times Live*, September 25, 2014, http://www.timeslive.co.za/thetimes/2014/disabled-kids-let-down-by-school-system (accessed on January 8, 2015); Human Rights

Regrettably, despite enormous disparities in data, and more than half a million children with disabilities reported to be out of school, a few months before this progress report was presented to the National Assembly, the Minister of Basic Education also declared South Africa had reached the global development goal of reaching universal primary enrollment by 2015.[342] The Minister of Education's 2015 budget speech further reassured South Africa's National Assembly that the Department "will build on our successes in attaining the Millennium Developmental Goals (MDGs) for access, participation, and gender equity."[343]

It is imperative that the government, including the National Assembly's Portfolio Committee on Basic Education that oversees the government's reporting on basic education priorities, knows how many children with disabilities are accessing schooling, how many remain or drop out of the education system, and how many children of compulsory school-going age are waiting for school placements.

Inadequate Funding

> The government is going to be building more special schools. There's a demand for it. There is pressure because of [the numbers of] out of school children… Funding should not be going to exclusion and contradicting "[Education] White Paper 6".
>
> —Vanessa dos Santos, president, Down Syndrome International, December 2014 [344]

Watch focus group discussion with members of the Campaign to Promote the Right to Education of Children with Disabilities, Cape Town, October 2014. Human Rights Watch interview with Section 27 team, Johannesburg, October 2014; Human Rights Watch telephone interview with Patricia Martin, director, Advocacy Aid, October 2014; Patricia Martin, "Children's Rights to Basic Education: A Review of South Africa's Laws and Policies, " pp. 136-137 in P. Proudlock (ed), "South Africa's Progress in Realising Children's Rights: A Law Review (2014); Section 27, "Submission on the Right to Education for Persons with Disabilities in South Africa to the Committee on the Rights of Persons with Disabilities," March 2015, http://www.ci.org.za/depts/ci/pubs/pdf/researchreports/2014/Realising_childrens_rights_law_review_2014.pdf (accessed August 5, 2015), p. 6.

[342] Department of Basic Education, "Education for All (EFA), 2014 Country Progress Report," (2014), http://www.education.gov.za/LinkClick.aspx?fileticket=m%2B%2F6vJCM%2FhU%3D&tabid=358&mid=1261 (accessed August 5, 2015) p. 30.

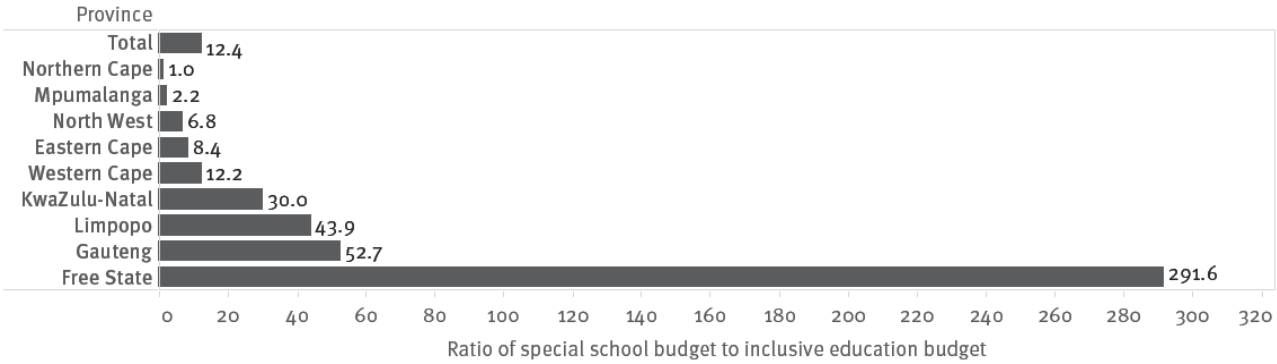
[343] South African Government, "Minister Angie Motshekga: Basic Education Dept Budget Vote 2015/16. Theme: "Repositioning Basic Education Sector for Accelerated Quality, Equity and Efficiency," 6 May 2015, http://www.gov.za/speeches/minister-angie-motshekga-basic-education-dept-budget-vote-201516-6-may-2015-0000 (accessed May 18, 2015).

[344] Human Rights Watch telephone interview with Vanessa dos Santos, president, Down Syndrome International, December 2014.

The right to inclusive quality education cannot be realized without sound policy and an efficient budget aimed at funding the measures needed to build inclusive education.[345]

Human Rights Watch found that the budget for special schools in the 2014-2015 academic year was 12 times larger than the budget for inclusive education.[346] Similar analysis of investment in previous years indicates that greater resources have consistently gone into special school budgets[347] with the consequence of "seriously compromising" the government's inclusive education program, according to the government's own appraisal.[348]

Special school budget is 12 times larger than the inclusive education budget



Data source: Department of Basic Education, 2014, "Progress Report on Inclusive Education and Special School, Portfolio Committee on Basic Education," 23 June 2015; "Progress in the Implementation of Inclusive Education," Portfolio Committee on Basic Education, 9 September 2014.

The UN Committee on Economic, Social and Cultural Rights, the UN expert body overseeing the implementation of international obligations related to these rights, has indicated that taking "positive action to reduce structural disadvantages to achieve the objectives of full

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[345] United Nations Human Rights Council, "Thematic Study on the right of persons with disabilities to education," Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/25/29, December 18, 2013, para. 49, p. 13.

[346] In its 2015 Progress Report, the Department of Basic Education notes the Northern Cape province has only provided Programme 4 [special schools] funding in 2014/2015; which could make this ratio higher. Department of Basic Education, "Progress Report on Inclusive Education and Special Schools," presentation to the Portfolio Committee on Basic Education, June 23, 2015.

[347] The government's report to the UN Committee on the Rights of Persons with Disabilities states that "In the 2012/2013 financial year only USD 57.8 million of the USD 68,750 million budget for inclusive education by provincial government departments was allocated for the expansion of inclusive education. The balance was for special school financing," Department of Women, Children and People with Disabilities, "Baseline Country Report to the UN Convention on the Rights of Persons with Disabilities (2008-2012)," 2013, para. 243.

[348] Ibid., para. 228.

participation and equality … almost invariably means that additional resources will need to be made available for this purpose."[349]

"Education White Paper 6" was initially launched with the understanding that the national government would allocate a national conditional grant by 2006, used to spur the implementation of national delivery of public services, to support the implementation of this policy.[350] The national government has failed to allocate the grant despite this timeframe.[351]

Budget data presented to the National Assembly's Portfolio Committee on Basic Education, and in the minister of finance's budget report for 2014-2015, shows wide disparities between the budgets allocated for inclusive education and special schools.[352] Furthermore, independent analysis of the overall annual provincial budget votes shows that students with disabilities may only account for a maximum of 3 percent of total provincial spending in education.[353] Within this already limited investment, special school budgets absorb the majority of provincial resources dedicated to students with disabilities.[354]

The Department of Basic Education's September 2014 and June 2015 progress reports on implementation of its inclusive education policy suggest that investment in inclusive education continues to be low compared to provincial resources invested in special needs education,[355] describing "poor budgeting for the expansion of inclusive education."[356] Moreover, investment in inclusive or general education for children with disabilities continues to be low or erratic in provinces most affected by historical underinvestment.[357]

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[349] UN Committee on Economic, Social and Cultural Rights, "General Comment 5, Persons with Disabilities (1994)," E/1995/22), para. 9.

[350] Department of Basic Education, "Education White Paper 6," Section 4.4.12, p. 51.

[351] Debbie Budlender, "Budgeting for Realising the Right to Basic Education for Children with Disabilities in South Africa," unpublished independent study due to be released in July-August 2015.

[352] Ibid.; National Treasury, Republic of South Africa, "Budget Review 2014," February 26, 2014 http://www.treasury.gov.za/documents/national%20budget/2014/review/FullReview.pdf (accessed January 7, 2015).

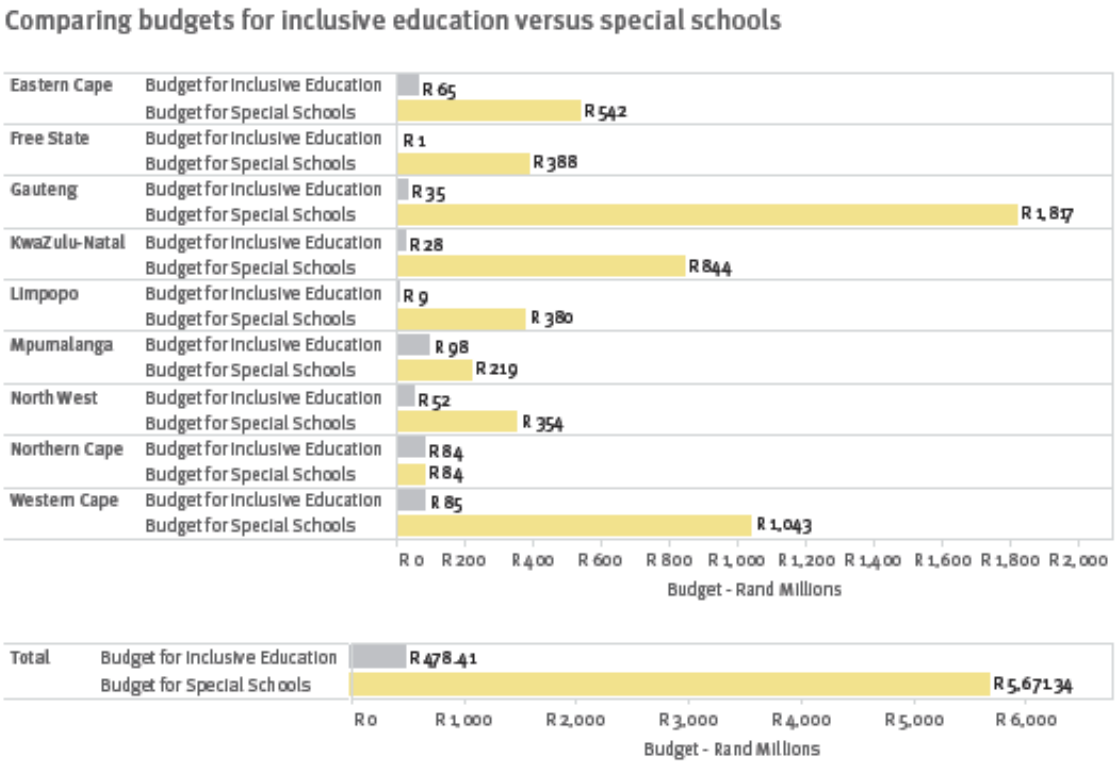
[353] Debbie Budlender, "Budgeting for Realising the Right to Basic Education for Children with Disabilities in South Africa," unpublished independent study due to be released in August 2015.

[354] Ibid.; Human Rights Watch interview with Legal and Policy team, Section 27, Johannesburg, May 2015.

[355] Department of Basic Education, "Progress in the Implementation of Inclusive Education," presentation by Mr HM Mweli to Portfolio Committee on Basic Education, September 9, 2014.

[356] Department of Basic Education, "Progress Report on Inclusive Education and Special Schools," presentation to the Portfolio Committee on Basic Education, June 23, 2015.

[357] Department of Basic Education "Progress Report on the Implementation of Education White Paper 6: 2001-2012," presentation to the Portfolio Committee on Basic Education, November 6, 2012, slides 75-76; Debbie Budlender, "Budgeting for Realising the Right to Basic Education for Children with Disabilities in South Africa," unpublished independent study due to be released in August 2015.



In 2014, five out of nine provinces had not yet allocated a budget for expanding inclusive education, even though the Department of Basic Education deemed it "is very critical in mainstreaming support for learners experiencing barriers to learning especially in full-service schools."[358] According to the department, the provinces of Mpumalanga, Gauteng, Eastern Cape, and Limpopo have never appropriated funding for inclusive education, "resulting in serious backlogs in the implementation of the policy."[359]

There has been a gradual nationwide increase in budgets for special schools in all provinces and the number of new special schools is steadily increasing.[360] According to the government's progress report, the average cost of building a new special school amounted to R100 million ($9 million) in 2012. Investments in 25 new special schools that had been or were being built in 2012 amounted to R787 million ($71 million). In contrast, upgrading

[358] Ibid.; Department of Basic Education, "Progress Report on the Implementation of Education White Paper 6: 2001-2012," presentation to the Portfolio Committee on Basic Education, November 6, 2012, slide 75.
[359] Ibid., slide 67.
[360] Ibid.

infrastructure of 202 full-service schools, to accommodate students with physical disabilities, cost an estimated R821 million ($74 million).[361]

In 2015, the Department of Basic Education advised that:

> If the current trend of building new special schools to accommodate learners with disabilities continues, 3,500 new special schools will have to be built … Because this is not feasible, a radically different approach needs to be followed to meet the needs of children and youth with disabilities in an inclusive education system.[362]

The Department of Basic Education notes that special schools will only be able to cater to 250 to 300 students per special school.[363]

Creating new special schools will not solve South Africa's current challenges. Indeed, evidence gathered by Human Rights Watch suggests that a continued focus on building more special schools may only solve a simple access requirement for a few more hundred children on an annual basis, and could exacerbate many violations outlined in this report.

In line with its international obligations and guidance provided by the UN Committee on the Rights of Persons with Disabilities,[364] South Africa should ensure its priorities for spending on the special school system urgently shift to investment that guarantees inclusion. The government should accelerate progress to comply with "universal design" measures and provide for individual accommodation measures where they are needed.[365] This will ensure mainstream and full-service schools can accommodate the vast majority of children with disabilities on an equal basis.

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[361] Department of Basic Education, "Progress Report on the Implementation of Education White Paper 6: 2001-2012," presentation to the Portfolio Committee on Basic Education, November 6, 2012, slides 36, 37, 53, 54.

[362] Department of Basic Education, "Report on the Implementation of Education, White Paper 6 on Inclusive Education. An Overview for the Period: 2013-2015," May 2015, p. 70.

[363] Ibid., p. 19.

[364] Op cit., p. 33.

[365] United Nations Human Rights Council, "Thematic study on the right of persons with disabilities to education, Report of the Office of the United Nations High Commissioner for Human Rights," A/HRC/25/29, December 18, 2013.

Lack of Adequate Information and Support Services

The Schools Act states that the placement of a "learner with special education needs" must take into account the parents' rights and wishes.[366] The Children's Act requires that "in all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied."[367]

This brings it in line with South Africa's international, regional, and constitutional obligations, which emphasize the need for governments to guarantee the "best interests of the child" in all actions related to children,[368] where parents must ensure it is their "basic concern at all times."[369]

However, parents consistently said they faced multiple difficulties while navigating a complex education system, in addition to grappling with their child's disability. According to many organizations working with parents and children with disabilities on a daily basis, parents seldom have effective access to the right level of information or necessary support services to assess the best interests of their children.[370]

The Children's Act requires due consideration to be given to providing the "child and the child's caregiver with the necessary support services."[371] The UN Committee on the Rights of the Child indicates that support to parents should include:

> The education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities … material support in the form of special allowances as well as consumable supplies and necessary equipment … deemed necessary for the child with a disability to live a

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[366] South African Schools Act 1996, ch.2, s. 5.

[367] South African Children's Act 2005, s. 9 ('Best interests of children is paramount.')

[368] Constitution of the Republic of South Africa, art. 28(2); CRC, art. 3.

[369] African Charter, art. 20(1)(a).

[370] Human Rights Watch interview with Jean Elphick, program manager, Afrika Tikkun, Johannesburg, October 2014; Human Rights Watch interview with Childline Limpopo team, Polokwane, Limpopo, October 2014; Human Rights Watch telephone interview with Caroline Taylor, client support liaison and information, Inclusive Education South Africa, December 2014.

[371] South African Children's Act 2005, s. 11(1)(d).

> dignified, self-reliant lifestyle, and be fully included in the family and community.[372]

Jean Elphick, a program manager at Afrika Tikkun, told Human Rights Watch:

> Parents don't know what the system is so they go [to government agencies and schools] and will be turned away and they don't know what their rights are. Often [their] first, second, third encounters are very negative and no one shows them what to do with this child. For parents with no income, using public transport, struggling to communicate in professional language, what chance do they have to navigate the system? If they do, they are extremely lucky, extremely persistent, and they don't give up despite being [thrown] around for eight years. [373]

While South Africa's Constitution protects the right of access to information,[374] a representative of Inclusive Education South Africa, told Human Rights Watch:

> Open access to information is not a right that is made available.... Quite a lot of blaming of parents [by government officials and schools] goes on...[375]

The government's inclusive education policy relies on professional multi-disciplinary district based teams being set up in every district to support special schools and other public ordinary schools in the inclusion of students with disabilities.[376] These teams should include social workers, therapists, educational psychologists and district officials.

However, the government has acknowledged that not all support teams in full-service schools or special schools are fully functional, particularly in rural areas.[377] When Human

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[372] UN Committee on the Rights of the Child, "General Comment 9 (2006)," para. 41, p. 11.

[373] Human Rights Watch interview with Jean Elphick, program manager, Afrika Tikkun, Johannesburg, October 24, 2014.

[374] Constitution of the Republic of South Africa, s. 32(1).

[375] Human Rights Watch telephone interview with Caroline Taylor, client support liaison and information, Inclusive Education South Africa, December 2014.

[376] Department of Education, "Conceptual and Operational Guidelines for the Implementation of Inclusive Education: Special Schools as Resource Centres," Directorate: Inclusive Education, June 2005.

[377] Parliamentary Question 1270 by Ms H S Boshoff (DA), Date of Publication of Internal Question Paper: 02/09/2014, Reply received October 2014 and accompanying attachment 'Number of learners with disabilities admitted to ordinary schools in 2013.'

Rights Watch asked about multi-disciplinary teams in two of the rural areas it visited, none of the nongovernmental representatives interviewed were able to identify a particular team or official who fulfilled these responsibilities.[378]

In the absence of such teams, NGOs provide an essential bridge between the education and care system and parents, breaking down information barriers by providing relevant phone numbers or encouraging parents to reach out to people they know in governmental multi-disciplinary teams.[379] Some institutions have tried to create online directories with relevant information on disability-focused services, but this information may not be accessible to many parents with low literacy and those who live outside major cities.[380]

In many cases, medical officials also plug the information and referral holes.

Rural clinics and hospitals are often the only point of support for many parents of children with disabilities living in rural areas, except where local disabled people's organizations or local parent support groups provide services or visits.[381]

Human Rights Watch found that medical advice mostly focused on ensuring parents understood children's disabilities and development issues from a medical perspective. However, in several cases, medical staff advised parents on the type of school their children should attend, which invariably meant special schools.

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[378] Human Rights Watch interview with members of Siphilisa Isizwe DPO, Kwa-Ngwanase (Manguzi), KwaZulu-Natal, November 2014; Human Rights Watch interview with Difference Motseo, officer, Down Syndrome Limpopo, October 2014.

[379] Human Rights Watch telephone interview with Caroline Taylor, client support liaison and information, Inclusive Education South Africa, November 2014; Human Rights Watch interview with Sandra Ambrose, national coordinator, Disabled Children's Action Group, Cape Town, October 2014; Human Rights Watch telephone interview with WonderBoy Qaji, chairperson, Disabled Youth South Africa, November 2014; Human Rights Watch interview with Professor Nareadi Pasha, Chair of Inclusive Education, University of South Africa, Pretoria, November 2014.

[380] For example, see "Disability Allsorts: A Directory of Organisations and Resources for People with Disabilities in South Africa," compiled by Ilse Langenhoven and Keith Richmond, University of South Africa http://www.unisa.ac.za/contents/management/arcswid/docs/Disability_directory_allsorts09.pdf (accessed September 2014); Child Care Information Centre, "Directory of Services 2011 for children with special needs in the Cape Town area", http://www.specialneedsdirectory.org.za/ (accessed April 1, 2015). Its website states, "The Directory of Services for Children with Special Needs is an extremely useful book is published by the Child Care Information Centre at Red Cross Children's Hospital. It includes information on government and non-government services relating to health, educational and social needs, and anyone working with children will find it a great resource. It costs R60 per copy, with a reduction for bulk orders of 10 or more."

[381] Human Rights Watch interview with Difference Motseo, officer, Down Syndrome SA Limpopo; Human Rights Watch interview with representatives of the Disabled Children Action Group (DICAG) chapter in Northern Cape, Kimberley, November 2014.

Poverty, illiteracy, and a lack of alternative sources of information mean parents will often accept the decision of a doctor, perceived to be the person who knows best.[382] "To question a doctor's decision would be to doubt their authority. So if a doctor has recommended a special school then that is it," said Caroline Taylor, client support liaison manager of Inclusive Education South Africa.[383]

Professor Lorna Jacklin, a doctor in Johannesburg, told Human Rights Watch that she often recommends schools for the children she treats. This requires planning as accurately as possible when she refers the children she treats to special schools: "We are planning their education, we give parents the best options … it's damaging to place children in the wrong environment."[384] This doctor regularly visits or asks for reports on special schools and seeks information on which disabilities are catered for in schools in order to make an accurate and informed choice on school placements.[385]

However, in Kwa-Ngwanase, which has only one hospital, medical and therapist advice recommended that most children with disabilities interviewed be placed in two special schools. One of the schools had a reported intake of 260 learners,[386] with a waiting list of 180 students.[387] Despite a reported wave of new enrollments at the second special school in the 2015 school year, nongovernmental representatives told Human Rights Watch that both schools continue to have very long waiting lists and do not guarantee a school placement to many children as a result of such lists.[388]

The government's policy on inclusive education recognizes that "community-based clinics are in the best position to conduct an initial assessment [of children's disabilities] and

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[382] Human Rights Watch interviews with Ancella Ramjas, director, Down Syndrome South Africa, Pretoria, October 2014; Human Rights Watch interview with Jean Elphick, program manager, Afrika Tikkun, Johannesburg, October 2014.

[383] Human Rights Watch telephone interview with Caroline Taylor, client support liaison and information, Inclusive Education South Africa, December 2014.

[384] Human Rights Watch interview with Professor Lorna Jacklin MD, head of Children's Clinic, CM Johannesburg Hospital, Johannesburg, October 2014.

[385] Ibid.

[386] Khulani Special School – Strive for Success, "About School: The Future," undated, http://khulanischool.co.za/?page_id=29 (accessed May 18, 2015).

[387] Extract from "Speaking notes for MEC for Education in Kwa-Zulu Natal, Mr Senzo Mchunu on the occasion of the official handover of project and sod-turning event at Khulani Special School in Umkhanyakude," 08 June 2012.

[388] Human Rights Watch interview with members of Siphilisa Isizwe DPO, Kwa-Ngwanase (Manguzi), November 2014 ; Human Rights Watch interview with legal and policy team, Section 27, Johannesburg, May 2015; Section 27, "Submission on the Right to Education for Persons with Disabilities in South Africa to the Committee on the Rights of Persons with Disabilities", March 2015, p. 7.

plan a suitable course of action in conjunction with parents and personnel from various social services such as education." The policy further states that it is essential that links are established "between community-based clinics and other service providers and the education and training system" to ensure such services continue throughout learning.[389]

To build inclusive education in remote areas, the government should ensure that all medical and therapy staff who have contact with children with disabilities are aware of the government's inclusive education policy. Moreover, in line with its own objectives, the government should ensure multi-disciplinary teams are set up and are well-resourced in areas where services have not been prioritized and where large numbers of children with disabilities remain out of school.[390]

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[389] Department of Basic Education, "Education White Paper 6," p. 33.

[390] Department of Basic Education, "Progress Report on the Implementation of Education White Paper 6: 2001-2012," presentation to the Portfolio Committee on Basic Education, November 6, 2012, slides 59-61.

Recommendations

Guarantee Right to Inclusive Quality Education for Children and Adults with Disabilities

To National and Provincial Departments of Basic Education

- Address the urgent needs of children with disabilities and:
    - Require all public schools, as defined in the Schools Act, to provide reasonable accommodation for all children with "severe learning difficulties" and multiple disabilities;
    - Establish and define short-term goals and timeframes to ensure students with disabilities can transition from "special needs education" or special schools to inclusive schools;
    - Carefully vet any decisions taken by mainstream schools to refer children with disabilities to special schools and, prior to considering referrals, require mainstream schools and Heads of Department to:
        - Prove that they have provided a minimum, acceptable level of additional, individualized learning or remedial support to reasonably accommodate children with disabilities; and,
        - Lead an adequate consultation with children and their families to determine the most appropriate placement for children that would maximize their academic and social development.
- Urgently provide Braille textbooks, increase availability of South African Sign Language, as well as materials and assistive technologies for children who are deaf, hard of hearing, blind or have low vision;
- Adequately train all teachers deployed to schools where deaf or hard of hearing students are accommodated in South African Sign Language to address the gap in access to quality teaching in South African Sign Language;
- Take special measures to remove barriers—financial or attitudinal—to ensure children who are deaf, hard of hearing, blind, or have low vision, acquire essential language skills in the foundational phase;

- Make the "weighting system," whereby children with different disabilities are weighted in relation to students without disabilities to calculate adequate student-to-teacher ratios, applicable in mainstream schools and full-service schools;
- Increase pre-service, in-service, and continuous trainings and mentoring of teachers and education assistants teaching in primary and secondary schools, as well as district and provincial education officers, on inclusive education and practical skills to include children with disabilities in public ordinary schools;
- Together with the Department of Social Development and police services, strengthen child protection mechanisms in ordinary public schools and schools with boarding facilities and introduce protocols to ensure greater protection for children with disabilities at risk of physical and sexual abuse and neglect. Ensure that parents are informed about these protocols when they are introduced;
- Together with the Department of Social Development, review the mandate of centers for people with intellectual disabilities to introduce Adult Basic Education modules to enable adults with disabilities to complete basic education and gain basic skills.
- Create a cross-departmental Action Plan with representatives from the Departments of Higher Education and Training, Social Development, Labour and the Premier's Office, to develop a thorough school-to-work transition plan and policy to guarantee students with disabilities gain adequate skills, graduate and enter the employment market, in line with the Department of Social Development led National Action Plan on disabilities.

To the Department of Health

- Together with the Department of Basic Education, finalize guidelines for medical staff and therapists on how to provide guidance on schools' placements for children with disabilities, in line with "Education White Paper 6" and the United Nations Convention on the Rights of Persons with Disabilities obligation to maximize the academic and social development of the child;
- Organize information sessions at a district level to ensure medical professionals at children's and provincial clinics are aware of such guidelines and fully understand inclusive education principles.

To the Departments of Social Development, Basic Education and Health

- Produce and implement a joint inclusive education plan from early years to lifelong learning for children with disabilities that acknowledges the important links between early childhood care and development, basic education, higher education, and skills training and the roles of every department.

To the Department of Higher Education and Training and Basic Education

- Work closely with higher education institutions to increase the availability of modules on inclusive education for undergraduates, and design compulsory pre- and in-service teacher trainings on inclusive education, vetted by inclusive education experts.

To Members of the Executive Council

- Affirm commitments to guarantee the right to inclusive education of all children with disabilities;
- Ensure schools have taken all necessary steps to provide individual learning support and remedial education to leaners with disabilities who are lagging behind;
- Collect and regularly publish lists of children with disabilities on waiting lists, those waiting to be referred to special schools, as well as out-of-school children with disabilities, in order to provide an accurate account of the status of enrollments.

To the National Assembly of South Africa

- Amend the Schools Act to bring it fully in line with South Africa's international obligations with the effect of:
    - Explicitly making primary education in all public schools free and compulsory for all children;
    - Ensuring meaningful access to quality education for children with disabilities;
    - Enforcing the right to access Adult Basic Education and skills programs for people with disabilities who have not completed basic education.

Comply with Existing National Laws and Political Commitments

To the Minister of Basic Education

- Deliver a government gazette, an official government communiqué, with compulsory school-going ages for children with disabilities, adapting it to accommodate students who enter school late, as well as reasonable accommodations;
- Publish Norms and Standards for funding of inclusive education to ensure public special schools can qualify as "no fee" schools and do not charge fees and prohibit all public ordinary schools from imposing financial conditions on children with disabilities that children without disabilities would not incur;
- Finalize and publish the "National Learners Transport Policy," guaranteeing inclusion and subsidized transportation for students with disabilities.

Adopt Stronger Policies and Laws on Inclusive Education

To the Minister of Basic Education

- Begin a transparent and frank process to review "Education White Paper 6"—the government's inclusive education policy—with a view to adopting a new policy on inclusive education to replace the existing policy, guarantee quality and inclusion in all learning environments, and ensure the government complies with Article 24 of the Convention on the Rights of Persons with Disabilities.
    - Require all public ordinary schools to provide reasonable accommodation for all children with severe and multiple disabilities;
    - Require mainstream schools and Heads of Departments to prove that they have provided a minimum, acceptable level of additional, individualized learning or remedial support to reasonably accommodate children with disabilities, before moving a learner to a special school as a "last resort";
    - Require school principals and school governing bodies to include costs associated with reasonable accommodation of students with disabilities in mainstream and full-service schools, including education assistants and class facilitators, in annual school budgets;
    - Guarantee quality and inclusion in all learning environments;

- Make reporting on Individual Education Support Plans mandatory in mainstream and special schools and ensure teachers receive adequate training on how to design, implement and monitor such plans;
- Make the "weighting system," whereby children with different disabilities are weighted in relation to students without disabilities to calculate adequate teacher-to-student ratios, applicable in mainstream schools and full-service schools;
- Include the right to access Adult Basic Education and skills programs for people with disabilities who have not completed basic education;
- Introduce performance incentives for teachers and insert qualitative performance objectives for all schools, based on successful inclusion of children with disabilities;
- Include an adequately resourced implementation plan to ensure all schools are equipped and capacitated to accommodate children with high levels of support needs in line with the commitments made in "Education White Paper 6".

To the National Assembly of South Africa

- Translate "Education White Paper 6," the government's inclusive education policy, into a comprehensive law binding national and provincial governments, ensuring it is fully in line with the Convention on the Rights of Persons with Disabilities. This law should include:
    - An explicit "non-discrimination" clause, to comply with the United Nations Convention on the Rights of Persons with Disabilities, which makes it clear that any child with disabilities, regardless of the level of need and support, is entitled to their right to education, including early childhood, primary, secondary and higher education or vocational training;
    - An explicit "no rejection clause" requiring mainstream schools to provide reasonable accommodation for all students with disabilities and guaranteeing children with disabilities can continue to learn in school beyond compulsory age limits;
    - An explicit reference prohibiting schools from discriminating in admission policies and practices;

- A definition of "reasonable accommodation" and thresholds for its application at all school levels, in transportation and other essential services;
- An obligation for district teams and relevant education officials to provide parents with full access to information on enrolment criteria, admissions processes and other administrative requirements, in line with "Education White Paper 6";
- A mandatory and transparent monitoring and evaluation system to be run by the national Department of Basic Education to hold national and provincial departments to account for progress made towards inclusive education policies and this law.

Increase Accountability in the Education System

To National and Provincial Departments of Basic Education

- Invest necessary resources in improving data systems to ensure schools of all types account for numbers of children with disabilities in school; grade levels, progression and drop-outs;
- Urgently set up a centralized register of waiting lists and children waiting to be placed and improve data collection of out-of-school children in institutions or centers managed by the Department of Social Development. Ensure such lists are available to parents and civil society organizations upon request;
- Collect and regularly publish lists of children with disabilities on waiting lists, those waiting to be referred to special schools, as well as out-of-school children, in order to provide an accurate account of the status of enrollments;
- Ensure schools have taken all necessary steps to provide individual learning support and remedial education to students with disabilities who are lagging behind;
- Introduce performance incentives for teachers and insert qualitative performance objectives for all schools, based on successful inclusion of children with disabilities;
- Make reporting on Individual Education Support Plans mandatory in all public ordinary schools and ensure teachers receive adequate training on how to design, implement and monitor such plans;

- Ensure school principals and school governing bodies take action to adequately investigate all allegations of physical and emotional abuse, violence, and sexual violence in schools perpetrated against children with disabilities by educators and school staff, as well as by their peers;
- Require all schools to immediately refer cases of physical and sexual abuse against children with disabilities to the police and other relevant institutions for adequate investigation and prosecution;
    - Ensure education officials consult stakeholders, including parents of children with disabilities and children themselves, regularly to better understand and meet the needs of students with disabilities.

To National and Provincial Departments of Social Development

- Improve data collection in stimulation centers, crèches, and primary and secondary public ordinary schools, to provide accurate and transparent statistics on the number of children with disabilities in school.

To the Departments of Social Development, Basic Education and Health

- Together with provincial departments, introduce joint information packages and adequately resourced one-stop services within health clinics to advise parents on their rights and the rights of their children, which also clearly outline steps to take to discuss their children's needs and abilities and their right to inclusive education with designated teams;
- Develop a national protocol to deal with cases of sexual and physical violence against children or young people with disabilities in schools to work with police services to ensure adequate investigations in schools.

To the Portfolio Committee on Basic Education

- Closely examine provincial budget allocations and enforce requirements to equalize funding for "inclusive education" in all provinces, but particularly in Eastern Cape, Limpopo, Mpumalanga, Northern Cape, and Gauteng;
- Request an annual report on numbers of children with disabilities who are in and out-of-school with a full breakdown by type of school or institution, disability, age, and gender;

- Request a biannual update on progress made towards reaching the 2021 deadline of the government's inclusive education policy, "Education White Paper 6."

To the South African Human Rights Commission

- Carry out regular investigations into allegations of discrimination and unequal access to education of children with disabilities.

To the Department of Justice

- Mandate that the South African Human Rights Commission lead an independent monitoring mechanism of the UN Convention on the Rights of Persons with Disabilities to ensure there is a transparent mechanism in place to assess governmental performance in its obligations.

To Statistics South Africa

- Include children and young adults who are registered in social or foster care institutions supervised by the Department of Social Development and boarding or hostel facilities in special and public ordinary schools supervised by the Department of Basic Education in data collections.

Allocate Resources and Safeguards to Guarantee Inclusive Education

To the Minister of Finance

- Deliver a national conditional grant to implement inclusive education goals and pay for non-personnel funding, including accessible infrastructure, assistive devices, and material resources to reasonably accommodate all children, among others.

To Members of the Executive Council

- Develop an adequately resourced implementation plan to ensure all public ordinary schools accommodate children with high levels of support needs in line with the commitments made in "Education White Paper 6";
- Mobilize inclusive education funding into mainstream and full-service schools to meet the milestones laid out in "Education White Paper 6," and invest existing resources to

more effectively and efficiently promote inclusion and enhance quality in mainstream schools.

- In the short-term, ensure existing special schools improve the quality of learning environments for children with disabilities choosing to remain in such schools, and ensure children attending special schools are provided with adequate teaching and Individual Education Support Plans to prepare them for, and facilitate, their transition into mainstream schools;
- Make reporting on Individual Education Support Plans mandatory in all public ordinary schools and ensure teachers receive adequate training on how to design, implement and monitor such plans;
- Urgently invest funding in multi-disciplinary District Support Teams to provide adequate assessment and full access to information to parents on their children's right to education and short and long-term education options.

Increase Global Accountability for the Right to Education for Children with Disabilities

To the UN Secretary General and Director General of United Nations Educational, Scientific and Cultural Organization (UNESCO)

- Request a response from South Africa, a UN Global Education First Initiative Champion State, on the status of its commitment to achieve universal primary education and progressive realization of secondary education for all children, with special attention to children with disabilities in South Africa;
- Beyond 2015, require that all UN Global Education First Initiative "Member State Champions" provide accountability on the status of the right to education for all children in their territories, including children with disabilities, in order to build good examples of accountability on the right to education.

To the UN Special Rapporteur on Education and the UN Special Rapporteur on the Rights of Persons with Disabilities

- Request an invitation to carry out a mission to South Africa to evaluate the government of South Africa's implementation of its international human rights obligations on the right to education and the rights of persons with disabilities.

Acknowledgments

This report was researched and written by Elin Martínez, a researcher in the children's rights division at Human Rights Watch. Research for this report was also conducted by Dewa Mavhinga, Southern Africa senior researcher, and Zama Coursen-Neff, children's rights executive director. Enrollment and budget data used in this report was analyzed by Brian Root, quantitative analyst. Ainhoa Barrenechea provided research assistance.

This report was edited by Bede Sheppard, children's rights deputy director. Aisling Reidy, senior legal and policy advisor, Danielle Haas, senior editor, and Babatunde Olugbaji, deputy program director, provided legal and program reviews. Shantha Rau Barriga, disability rights director, and Agnes Odhiambo, women's rights senior researcher, provided expert reviews. Production and editorial assistance was provided by Helen Griffiths, children's rights associate; Grace Choi, publications director, and Sophia Dalal, publications intern; Kathy Mills, publications specialist; and Fitzroy Hepkins, administrative manager.

Human Rights Watch is grateful to all the children, young adults, parents, caregivers, teachers, principals, education officials, disability advocates, and practitioners who shared their experiences and expert input for this report. We are particularly grateful to Jean Elphick of Afrika Tikkun and the mothers of Sidinga Uthando self-help group, for sharing their experiences of fighting for their children's right to education; as well as to Margaret Masinga and Kululiwe, of Siphilisa Isizwe DPO.

We would like to thank the many organizations and activists who assisted our research. In particular, we would like to thank: Tim Fish Hodgson, Nikki Stein, Zakaria Suleiman and Faranaaz Veriava of Section 27; Robyn Beere and Caroline Taylor of Inclusive Education South Africa; Sandra Ambrose of Disabled Children's Action Group; Nafisa Baboo of Light for the World International; Vanessa dos Santos, Ancella Ramjas and Difference Motseo of Downs Syndrome International/South Africa; Sandra Klooper and Mary Moeketsi of Autism SA; Shona Mcdonald of Shonaquip; Charlotte McClain-Nhlapo of the World Bank; Professor Leslie Swartz of the University of Stellenbosch; Professor Ann Skelton of the University of Pretoria; and Samantha Warehouse, Keathelia Sapto and all the members of the Campaign to Promote the Right to Education of Children with Disabilities.

Annex 1: Letters Sent to the Government of South Africa

February 19, 2015

Mr. S G Padayachee
Acting Director General
Department of Basic Education
Private Bag X5885
Pretoria 0001, South Africa
Padayachee.s@dbe.gov.za
dgoffice@dbe.gov.za
Dyer.c@dbe.gov.za

Re: Human Rights Watch research on barriers to education faced by children with disabilities

Dear Mr. Padayachee,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in more than 90 countries globally.

Human Rights Watch conducted research on the right to education of children with disabilities in South Africa in October and November 2014.

In November 12, 2014, Human Rights Watch met with senior members of your Department's Inclusive Education Unit, Dr. Moses Simelane and Ms. Marie Schoeman. Human Rights Watch acknowledges the positive outcomes of this meeting and thanks the Inclusive Education Unit for sharing relevant information on the Department's activities and progress made to implement "Education White Paper 6" and support the roll-out of inclusive education across South Africa's education system.

While we note that the Inclusive Education Unit has been largely made responsible for the implementation of "Education White Paper 6", we understand this to be one of the many governmental units which hold responsibility for the right to education of children with disabilities across the country.

We therefore write to you to further clarify a number of system-wide issues for which an official government response would be appreciated. We do so in an effort to ensure Human Rights Watch takes into consideration the perspectives of governmental Departments in its final report.

We would be pleased to include your Department's response to our questions, as well as any additional information you may wish to share, in the report. In order to include your response, we request you to provide an answer by March 22, 2015.

Questions:

Pertaining to commitments in law and policy:

- In compliance with Chapter 2 (3)(2) of South Africa's Schools Act, has the Minister of Basic Education taken steps in 2014 or 2015 to "determine the ages of compulsory attendance for learners with special education needs"?
- In line with "Education White Paper 6", has the Department of Basic Education customized the "National Norms and Standards for School Funding" to adjust the funding policy for learners "with special education needs"?[391]

Pertaining to overall monitoring and evaluation:

- Is the Department of Basic Education able to share an up-to-date statistic that reflects the numbers of learners with disabilities who were in school in the 2013 and 2014 academic years, as well as new enrolments in 2015?
- How does the government account for a discrepancy between the 223,123 learners with disabilities reported to be in school in 2010392 and the 80,702 learners with disabilities reported to Parliament, based on the 2013 Annual Schools Survey[393]?
- How does the government account for a sudden drop in the number of children with disabilities who were out of school in 2011 – amounting to 480,036 according to the government's first report to the UN Committee on the Rights of Persons with Disabilities[394]—to 30,000 children in 2014 as reported by the Department of Basic Education's spokesperson?[395]

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[391] Education White Paper 6, par. 2.2.1.7, pg. 28; National Norms and Standards for School Funding, par. 4

[392] Baseline Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa (2008-2012), par. 206

[393] Parliamentary Question 1270 by Ms H S Boshoff (DA), Date of Publication of Internal Question Paper: 02/09/2014, Reply received October 2014 and accompanying attachment 'Number of learners with disabilities admitted to ordinary schools in 2013'

[394] Baseline Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with disabilities in South Africa (2008-2012), par. 205

[395] http://www.timeslive.co.za/thetimes/2014/09/29/disabled-kids-let-down-by-school-system

- Can the Department of Basic Education provide official statistics on the numbers of special schools scheduled to be built or budgeted for in the coming years?
- Is the Department of Basic Education able to share official up-to-date statistics on waiting lists for special schools?

Pertaining to learners with disabilities:

- Has the "Screening, Identification, Assessment, and Support National Strategy" been launched and implemented in accordance with the 2014 timeframe stipulated by the Department of Basic Education?
- How does the Department of Basic Education track school placements for out-of-school learners with disabilities, including those accessing education for the first time, as well as those who have not entered the school at the age of compulsory education applicable to learners in ordinary schools?
- What incentives are given to mainstream and full-service schools to ensure they admit learners with disabilities?
- What type of child protection mechanisms and child safeguarding measures are in place in boarding schools and school hostels to prevent learner abuse and neglect?

I thank you in advance for your response.

Sincerely yours,

Elin Martinez
Researcher, Children's Rights Division
Human Rights Watch

CC. Dr. Moses Simelane, Director, Inclusive Education

Ms. Marie Schoeman, Chief Education Specialist: Inclusive Education

June 12, 2015

Ms. Simmi Pillay
Acting Chief Director, Governance and Compliance
Department of Social Development
Private Bag X901 Pretoria 001
Email: DisabilityRights@dsd.gov.za Fax: +27 86 263 7659

Re: Public Comments on the Draft First Periodic Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities

Dear Ms. Pillay,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in more than 90 countries globally, including South Africa.

We appreciate the opportunity extended by the government of South Africa for institutions and organizations to submit public comments prior to the finalization of its first report to the Committee on the Rights of Persons with Disabilities.

Human Rights Watch recently conducted research on the right to education of children with disabilities in South Africa, including interviewing 135 children with disabilities, parents, school officials and numerous experts, service providers and advocates on the right to education of children with disabilities. It is on the basis of the findings of our research that we submit this input for consideration in the revisions of Section E, "Article 24; Education," of the current draft report.

We thank you for taking into consideration Human Rights Watch's comments.

Please do not hesitate to contact us for any further information.

Sincerely yours,

Daniel Bekele

Daniel Bekele
Executive Director
Africa Division

Details of Institution making the submission:

Organisation	Human Rights Watch
Name of Person doing Submission	Daniel Bekele
Designation/Position	Executive Director, Africa division
Email address	-
Cell Number/Landline	-

Legislative Framework [Par. 84 – 87]

As outlined in paragraph 83 of the draft report, "new and vigorous strategies are required to accelerate and strengthen the implementation of policy." Human Rights Watch notes that "Education White Paper 6: Special Needs Education, Building an inclusive education and training system" has been in existence since 2001. The slow pace of implementation of the policy and the limited progress made on a number of milestones outlined in this policy, has resulted in many children with disabilities not having equal access to basic education in line with South Africa's Constitutional provisions on the right to basic education.[396]

Due to various delays and shortcomings in implementation reported by the Department of Basic Education,[397] the timeframe of implementation of the "Education White Paper 6" has been inconsistent with South Africa's international human rights obligation to ensure the realization of the right to primary education of all children.[398] Moreover, Human Rights Watch notes that the interpretation of this policy at provincial level has resulted in many children with disabilities, requiring different levels of dedicated support and needs, being placed in special schools. The continuous emphasis on a special schools model jeopardizes the goal of "Education White Paper 6" of achieving meaningful inclusion of children in inclusive education settings.

Human Rights Watch welcomes the adoption of the Department of Basic Education's Norms and Standards on School Infrastructure, published in 2014, which provides details of the government's plans to guarantee 'universal design' standards to "address the diversity of learners with functional limitations."[399] Paragraph 87 of the draft report omits the deadline for compliance with such standards, which is currently set to be met by 2030. While such an extended timeframe allows the government to progressively adapt all ordinary public schools, it could prevent the effective and equal access to inclusive schools for thousands

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[396] Constitution of the Republic of South Africa, No. 108 of 1996, s. 29 (1) (a) and 2 (a).

[397] Department of Basic Education, "Progress in the Implementation of Inclusive Education," Portfolio Committee on Basic Education, presentation by Mr H M Mweli, Acting DDG: Curriculum Policy, Monitoring and Support, 9 September 2014.

[398] See also United Nations Committee on Economic, Social and Cultural Rights, "General Comment No. 13, The Right to Education (article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, pars. 43- 45.

[399] Department of Basic Education, "Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure," 29 November 2013.

of children with disabilities who should be accommodated in ordinary or full-service schools in line with the aspirations of "Education White Paper 6," and in compliance with article 24 of the Convention on the Rights of Persons with Disabilities (CRPD).

Paragraphs 84 to 86 of the government's draft report provide aspirational activities and reviews which were scheduled to be met or to take place in 2014. Since the consultation for the final submission of the report is taking place in 2015, it would be pertinent for the government to provide an accurate picture of the status of such reviews in 2015.

In line with comments in paragraph 84, the Department of Basic Education has not yet implemented the following policies mandated by South Africa's Schools Act or other relevant national policies, which have a significant impact on children with disabilities:
A Government Gazette with compulsory school going ages for children with disabilities (or 'children with special education needs'), taking into account late entry into school and reasonable accommodations for children with disabilities who fall outside the compulsory age range of 7-15 years (Schools Act, 1996, Chapter 2, Section 3 (2)), is now 19 years overdue;

The Norms and Standards for funding of inclusive education to accompany the implementation of "Education White Paper 6" (Norms and Standards for School Funding, 2006, Section 1(4)), is now 9 years overdue;

The "National Learners Transport Policy," guaranteeing inclusion and subsidized transportation for learners with disabilities, reflecting the additional financial burden imposed on children with disabilities who must travel long distances, as well as those with moderate and severe physical disabilities, for whom adequate transport is essential but represents a significant expense, which reportedly has been in draft form and discussions since 2009.

Human Rights Watch also notes the continued absence of a legal definition of 'reasonable accommodation' in existing education guidelines adopted since the ratification of the CRPD in 2007. Embedding this key principle in South African law and policy would assist in increasing understanding by education officials at national, provincial and district level, of the needs and requirements of children with disabilities within the education system, and would create legally binding measures to ensure compliance at the school level.

Implementation of Inclusive Education [Pars. 88 – 97]

Human Rights Watch acknowledges governmental efforts to improve the situation of children with disabilities as well as the various initiatives the government has undertaken

to support its long-term inclusive education goals, outlined in this section of the draft report. While this section provides details on current training, resourcing, and curriculum-related activities which are underway, it provides no specificity to explain the extent, scale, and provincial or nation-wide reach of the activities. This would provide the Committee on the Rights of Persons with Disabilities with a more accurate picture of the scale of its implementation, and clarify the number of children with disabilities who would be potentially affected through such initiatives.

Furthermore, the government's first baseline report provided a more accurate picture of a number of barriers faced by children with disabilities when accessing education, often due to numerous systemic faults which the government undertook to address.[400]
Human Rights Watch research shows that children with disabilities continue to be significantly affected by the lack of inclusive teacher training, the lack of teacher awareness of the diversity of disabilities, the lack of understanding and practical training of children's needs according to their disabilities, and the absence of teacher incentives to teach children with disabilities in public ordinary schools. Human Rights Watch's research found that all these factors combine to expose children with disabilities to unequal and poor quality education, as well as unequal and discriminatory treatment in ordinary, full-service and special schools.

Tracking out-of-school children [Pars. 98-99] and Statistics [Pars. 100 – 137]
Despite the draft report's reference to the existence of a protocol between the Departments of Education and Social Development and the South African Social Security Agency (SASSA), Human Rights Watch notes that the Department of Basic Education has to-date not published a consistent figure of out-of-school children with disabilities.

The draft report fails to clarify the significant discrepancy in overall data on enrollment of learners with disabilities provided by the Department of Basic Education and the Department of Social Development, originally presented in paragraphs 204 to 208 of the government's initial submission to the Committee on the Rights of Persons with Disabilities.

While paragraph 141 of the draft report indicates that the estimated number of children with disabilities out of school is 197,517, the baseline report indicates that "children of school-going age who are not at school, could be as high as 480,036," according to the Department of Basic Education's own calculations. Furthermore, the government accepted

[400] Baseline Country Report to the United Nations on the implementation of the Convention on the Rights of Persons with Disabilities in South Africa (2008-2012). paragraphs 226, and 238- 240.

a discrepancy of 535,524 learners with disabilities "for whom the system cannot account" in its baseline report.[401]

In line with its obligations in the CRPD, the government of South Africa should clarify the above discrepancy and only present accurate data which provides the full extent of the reality affecting children with disabilities. If the government is unable to do so, it should acknowledge the steps taken to produce an accurate figure and assessment of children with disabilities who are out of school, and disaggregate by types of disabilities.

The government should also outline what measures are in place to ensure the government enrolls all children with disabilities of compulsory school-going age who are presently out of school, in compliance with article 24 of the CRPD.

[401] Ibid, paragraphs 205 and 206.

June 24, 2015

Hon. Min. Angie Motshekga MP
Minister of Basic Education
Department of Basic Education
Private Bag X895 Pretoria 0001
South Africa

Re: Findings of Human Rights Watch report on the right to education of children with disabilities

Dear Honorable Minister,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in more than 90 countries globally.

Human Rights Watch conducted research on the right to education of children with disabilities in South Africa in October and November 2014 and May 2015. We worked closely with many nongovernmental organizations focused on education and social services for children with disabilities, as well as with leading organizations and practitioners working in the field of education and the rights of people with disabilities.

Human Rights Watch has been in ongoing communication with senior members of your Department in the context of this research. On November 12, 2014, Human Rights Watch met with the Director and Chief Education Specialist of the Inclusive Education Unit to discuss the Department's implementation of "Education White Paper 6." On May 19, 2015, Human Rights Watch met with the Acting Chief Director of Media Liaison and Spokesperson of the Department of Basic Education, as well as with the Acting Director of Communications and Research.

Prior to this, Human Rights Watch sent an official letter to the Department's Acting Director General on February 22, 2015, requesting additional information to clarify the government's progress and clarify existing data inconsistencies. We also liaised with South Africa's Permanent Mission to the United Nations in Geneva to seek an official response. We regret that we have not received an official response to the letter, which we aimed to include in our research. We have included a copy of this letter for your information.

We write to you to share an overview of our report's findings and recommendations.

We note that South Africa has made significant gains in guaranteeing an education for the overwhelming majority of primary school going children. We strongly encourage you to mobilize the resources and political will demonstrated by the government so far to ensure all children with disabilities are promptly guaranteed their right to an inclusive, quality education.

We would be pleased to include your Department's responses to our findings and recommendations. In order to include your Department's response, we respectfully request you to provide an answer no later than July 21, 2015.

In an effort to engage with you and your Department, we will also share information on the forthcoming launch of our report, including an invitation for you to participate in an official event.

Sincerely yours,

Daniel Bekele
Executive Director, Africa division

Zama Coursen-Neff
Executive Director, Children's Rights division

CC. Mr. S G Padayachee, Acting Director General
Ms. Carol Nuga-Deliwe, Chief Director, Strategic Planning and Reporting
Mr. Elijah Mhlanga, Acting Chief Director, Media Liaison and National and Provincial Communication
Mr. Moses Simelane, Senior Director, Inclusive Education

July 1, 2015

Hon. Min. Bathabile Olive Dlamini MP
Minister of Social Development
Department of Social Development
Private Bag X904
134 Pretorius Street
HSRC Building North Wing
Pretoria 0001, South Africa
Fax: +27 86 715 0829

Re: Findings of up-coming Human Rights Watch report on the right to education of children with disabilities

Dear Minister,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in more than 90 countries globally.

Human Rights Watch conducted research on the right to education of children with disabilities in South Africa during October and November 2014, and May 2015. We worked closely with many nongovernmental organizations focused on education and social development services for children with disabilities, as well as with leading organizations and practitioners working in the field of education and the rights of people with disabilities. Although we requested a meeting by email, we were not able to meet with representatives of your department.

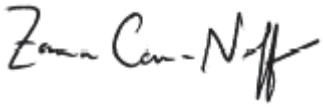
We write to you to share an overview of our up-coming report's findings and recommendations pertaining to the Department of Social Development's mandate on the rights of persons with disabilities, as well as its responsibility for centers for children and adults with disabilities.

We note that South Africa has made significant gains in guaranteeing the right to education and other child rights. We strongly encourage you to mobilize the resources and political will demonstrated by the government so far to ensure all children with disabilities are promptly guaranteed their right to an inclusive, quality education, as well as the full extent of their rights.

We would be pleased to include your Department's responses to our findings and recommendations in our up-coming report. In order to include your Department's response, we respectfully request you to provide an answer no later than July 31, 2015.

In an effort to engage with you and your Department, we will also share information on the forthcoming launch of our report, including an invitation for you to participate in an official event.

Sincerely yours,



Daniel Bekele
Executive Director, Africa division

Zama Coursen-Neff
Executive Director, Children's rights division

CC. Hendrietta Bagopane-Zulu, Deputy Minister of Social Development

Ms. Lidia Pretorius, Chief Director, Advocacy, Disability Rights Unit

Mr. Elijah Mhlanga, Acting Chief Director, Media Liaison and National and Provincial Communication

Mr. Moses Simelane, Senior Director, Inclusive Education

Annex 2:
Response from the Department of Basic Education

Email received May 21, 2015, 13:23
From: Elijah Mhlanga, Chief Director: Media Liaison, National and Provincial Communication, Department of Basic Education
Attachment Name: DBE on Inclusive Education

The South African Schools Act, 1996 requires public ordinary schools to admit children/learners with special education needs, where this is reasonably practical. The Act goes further to suggest that if the integration of a learner in a particular educational context cannot be achieved, the principal of the school must refer the application for admission to the Head of Department to have the learner admitted to a suitable public school in that province or to a school in another province.

The Department of Basic Education is implementing Education White Paper 6 which provides for a progressive conversion of public ordinary schools to full service/inclusive schools, which should be able to admit special needs learners and provide them with appropriate support. This conversion process entails the provision of capacity to the selected schools, which includes teacher development activities. To date, over 500 such schools have been selected and are being capacitated.

On the question about the adaptation of schools, SASA, 1996 provides for public schools to make necessary arrangements, as far as practically possible, in making their facilities accessible to special needs learners. This they must facilitate through the support of the district.

Equipping public schools to deal with disabilities is inherent in the capacity building that is provided to those schools that are progressively earmarked for conversion to inclusive schools, and where necessary, the capacity building process should be coupled with the provision of necessary assistive devices and technologies.

There are currently 106 Full-Service Schools out of a total of 791 have been physically upgraded at a cost of 1.17billion in total. Because accessibility is such a critical priority for the DBE, the

programme of ensuring that schools are accessible is a priority area and progress is being tracked on an ongoing basis.

As indicated above 791 ordinary schools have been designated as full service schools. Over and above the physical upgrading an enormous amount of training has been conducted to equip teachers at these schools with the skills to support learners who experience barriers to learning, including learners with disabilities. Assistive technology to the value of R69,4 million has been supplied to 459 full-service schools, 13798 teachers have been trained to implement curriculum differentiation in 2013 – 2014. Furthermore 2979 teachers and 891 officials have been trained on the Guidelines for Responding to Diversity.

There are 440 special schools in the country. Of these 285 have been strengthened in 2013 – 2014 at a cost of R1,6 billion. There are 80 special schools that have been equipped to become resource centres in 2013 at a cost of R516 million. It is one of the ongoing priorities of the DBE to improve qualifications and specialised skills of teachers in areas such as South African Sign Language, Braille, Augmentative and Alternative Communication and other areas.

Currently the DBE has embarked on developing a Skills and Vocational Qualification and Learning Programmes to ensure that learners in special schools will have access to a curriculum which will improve their opportunities to enter employment or further occupational training pathways.

In terms of the General Household Survey 92.5 % of children with disabilities between the ages of 7 and 15 are attending school. This would translate in not more than 30000 learners being out of school. This number can be much more of the latest statistics on disability as published by the Statistician-General is taken into account. The DBE has entered into an agreement with the Department of Social Development to determine which children who receive care dependency grants are not in school and plans are in place to ensure that they have access to educational programmes as a matter of urgency.

One of the biggest challenges faced by the DBE related to children with disabilities are the negative attitudes of society, schools, school managers and teachers towards including them into ordinary schools as is their basic right in terms of the Constitution and the South African Schools Act.

It is critical that schools change their practices to comply with the prescripts of the National Curriculum Statement which has inclusivity as one of its key principles.

Another challenges is the unequal spread of specialised facilities that are equipped to support learners with high support needs. Although a large number of new special schools have been built in rural areas over the past 20 years, there will never be enough special schools to meet the needs of all disabled learners. In terms of its obligations in terms of the Convention on the Rights of Persons with Disabilities, Government is therefore strengthening its implementation of Inclusive Education and reviewing its approach to funding and personnel planning to ensure that the district-level is strengthened to support schools in several ways to become more inclusive.

South Africa has some of the world's best legal protections of the right to basic education, yet more than half-a-million South African children with disabilities are not able to exercise this right.

Based on 135 interviews with children and young adults with disabilities, their parents, and disability and education experts, Complicit in Exclusion outlines multiple ways in which children with disabilities are discriminated against, refused access to school, or made to wait years to access public schools. Although primary education should be free, many children with disabilities have little choice but to pay high fees and expenses that children without disabilities do not. Lack of attention to both the quality of education in schools and to children's learning needs means many children and young adults with disabilities leave school without gaining essential life skills to live independently in their communities.

In 2001, South Africa adopted a national policy to guarantee inclusive education for all children with disabilities. As of 2015, fundamental aspects of this policy have not been implemented. The government has also yet to make its education system inclusive or address serious systemic gaps in enrolment data, budget allocations, and access to information for parents and children.

Human Rights Watch calls on the South African government to adopt new measures that will help realize its international obligations to guarantee quality inclusive education for all children, access to free primary education, enforce people with disabilities' right to access adult basic education, and ensure adequate resources are invested in inclusive education.

(above) Margaret Masinga (left), of the Siphilisa Isizwe disability people's organization in Kwa-Ngwanase, Kwazulu-Natal province, monitors access to education for children and young adults with disabilities who are out of school in and around Kwa-Ngwanase. She walks behind the mother of an 18-year-old man with an intellectual disability.

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(front cover) Two children sit on chairs in the New Covenant day care center, a center set-up and led by parents in Orange Farm township, Johannesburg, to cater to children with disabilities who are not admitted in the township's mainstream schools.

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