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Committee on the Rights of the Child
Office of the High Commissioner for Human Rights
Palais Wilson, 52 Rue des Pâquis
1201 – Geneva - CH

October 30, 2015

Re: Pre-Sessional Review of South Africa

Dear Members of the Committee on the Rights of the Child,

We write in advance of your upcoming pre-sessional review of the South African government's compliance with the Convention on the Rights of the Child.

This submission relates to Articles 23, 28, 29, and 38 of the Convention of the Rights of the Child, as well as the Committee's General Comment 1 on the aims of education and General Comment 9 on the rights of children with disabilities. The submission focuses on the right to education and the rights of children with disabilities in South Africa, as well as South Africa's endorsements of the Safe Schools Declaration and the Guidelines on Protecting Schools from Military Use during Armed Conflict. The submission proposes issues and questions that Committee members may wish to raise with the government while reviewing its compliance with these articles.

Evidence included in this submission is based in part on Human Rights Watch's research on the right to education of children with disabilities conducted in October and November 2014, in five out of nine South African provinces (Gauteng, KwaZulu-Natal, Limpopo, Northern Cape, and Western Cape). Further evidence can be found in Human Rights Watch's report, ["Complicit in Exclusion:" South Africa's Failure to Guarantee Inclusive Education for Children with Disabilities.](#)

Thank you for your attention to our concerns, and with best wishes for a productive pre-session.

Sincerely,

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The rights of children with disabilities (Article 23)

Human Rights Watch recognizes progress made within South Africa to redress the racist and discriminatory legacy of apartheid, particularly within education, and the important steps taken by the South African government to make progress in many aspects of the child rights agenda, including through the adoption of key legislation consistent with its international obligations. The inclusion of children with disabilities in national legislation, as well as the government's development plan, should be acknowledged.

In 2001, South Africa adopted "Education White Paper 6: Special Needs Education," a nationwide policy which aimed to increase access to education for children with disabilities, as well as to move towards an inclusive education system, strengthening mainstream schools so that they would become inclusive of children with disabilities. To-date, this national policy lacks accompanying legislation to ensure provincial governments have a legally binding obligation to guarantee inclusive education for children with disabilities.

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. Furthermore, the extended timeframe of implementation of the "Education White Paper 6," and other accompanying guidelines related to children with disabilities,¹ has been inconsistent with South Africa's international human rights obligation to realize the right to compulsory, primary education of all children.

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 continued 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 found that segregation and lack of inclusion of children with disabilities permeate all levels of South Africa's education system and reflect fundamental breaches of the Convention on the Rights of the Child.

Several factors underpin these problems, including undercounting children with disabilities in governmental data, inadequate funding for inclusive education, with a significant proportion going into special schools, and lack of adequate information and support services for parents, families, and children with disabilities.

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

¹ For example, in 2014, the government finalized the "National Uniform Minimum Norms and Standards for Public School Infrastructure," applicable to all mainstream schools. 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.

ensure that all girls and boys were in school and had completed a full course of primary education by that year.² However, 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 the government's Inclusive Education Policy, published by the Department of Basic Education in May 2015, notes that 597,953 children with disabilities could be out of school.³ To date, the government does not appear to be able to publish consistent data that shows how many children with disabilities remain out of school.

Human Rights Watch also found that many parents faced uncertainty and navigated a complex system without effective access to the right level of information about their children's disabilities, the necessary support services to assess the best interests of their children, or the best type of education for them. In many cases, in the absence of professional governmental multi-disciplinary teams, nongovernmental organizations (NGOs) plug considerable gaps in the provision of crucial information for parents, as well as in the delivery of public services for children who have been left out of the education system.

Human Rights Watch urges the Committee to ask the government of South Africa:

- *How does the government ensure that it produces and publishes adequate data on school enrolments and retention, disaggregated by age, grade, gender and disability?*
- *How does the Department of Basic Education track school placements for out-of-school students with disabilities?*
- *What steps are the government taking to clarify how many children with disabilities remain out of school?*
- *Are there any gaps in basic services or information available for families of children with disabilities?*
- *How does the government ensure families of children with disabilities have adequate information on how to access basic services for their children?*
- *What binding measures has the government taken to ensure provincial governments respect and fulfil the right to education of children with disabilities?*
- *Is the government planning on adopting legislation to provide specific protections to children with disabilities in education?*

² 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.

³ 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.

The right to education (Article 28 and Article 29)

Discrimination accessing compulsory education

Basic education is compulsory in South Africa: all children should be in school by the age of compulsory education, mandated as 5 to 6 years for grade R or pre-school, and 7 to 15 years for basic education.⁴ In 1996, the Schools Act directed the Minister of Basic Education to publish a government gazette with the compulsory age requirements for “learners with special education needs.” As of October 2015, this document had not been published.

Human Rights Watch found that many children with disabilities face discrimination when accessing all types of public schools. Enrollment in schools is influenced by decisions made by medical staff and education officials who continue to refer children with disabilities to special schools based on children’s disabilities. Human Rights Watch found that many children with intellectual or developmental disabilities are denied a place in nearby mainstream schools.

Although many children with physical or mild intellectual disabilities do enroll in mainstream schools, they often face discriminatory physical and attitudinal barriers. Human Rights Watch found that children with disabilities first enrolled in these schools are then often referred to special schools. This may occur when schools allege that they do not have the resources to teach children with disabilities, or that children are not learning and should be placed in a special school environment.

Due to overcrowding and special schools operating at maximum capacity, many children with disabilities are placed on waiting lists and can wait for up to four years. When children are placed on long waiting lists or turned down by special schools, parents face the burden of having to find alternatives for their children, including special schools further away from their homes or communities. Consequently, they are not always able to register children in the most adequate school. Travelling to schools to register children can be a very costly activity for many parents who already struggle to pay for basic needs. 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 learners, further delaying children’s entry into schools beyond the age of compulsory education.

Although South Africa’s Department of Basic Education recently issued more comprehensive guidelines to assess school placements for children with disabilities – the Screening, Identification, Assessment and Support policy—Human Rights Watch found that 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 spectrum disorder or fetal alcohol syndromes are particularly disadvantaged. In most cases, schools make the ultimate decision—often arbitrary and unchecked—as to who can enrol, thus contradicting the government’s obligation to guarantee compulsory primary education.

⁴ Department of Education, “Age Requirements for Admission to an Ordinary Public School,” Government Notice No. 2433 of 1998.

Human Rights Watch urges the Committee to ask the government of South Africa:

- *What steps has the government taken to ensure all children with disabilities have equal access to quality education, particularly in mainstream schools?*
- *When will the government publish a government gazette with the compulsory age requirements for learners with disabilities?*
- *How will the government ensure children with intellectual disabilities, as well as those with multiple disabilities, have adequate and equal access to quality education?*
- *Has the government adopted special measures to ensure children with intellectual disabilities or autism spectrum disorder have equal access to education?*
- *How does the government ensure and monitor schools' compliance with the obligation to provide compulsory education to all children?*
- *How will the government ensure that all of its schools can adequately and equally accommodate children with disabilities?*

Discriminatory fees and expenses

To date, South Africa's Constitution and legislation do not extend the right to free education to all children. Human Rights Watch found that 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 to stay in mainstream classes.

The South African Schools Act mandates that the state fund public schools on an equitable basis. 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."

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. 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. Today, according to the South African Human Rights Commission (SAHRC), around 80 percent of schools benefit from a "no-fee" policy across the country, and approximately 60 percent of the current school population accesses "no-fee" schools.

Human Rights Watch found that no special schools are currently listed in any "no-fee" schools lists assembled by provincial governments. However, a significantly high number of students enrolled in special schools come from townships and predominantly poor areas of towns or rural and remote areas of the country.

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. 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 difficult and very costly to obtain. 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. Many families interviewed by Human Rights Watch were not able to pay fees or afford high transportation fees that led to children staying at home.

Parents of children with disabilities are asked to hire and pay for private special care assistants as a pre-condition to enroll their children in a mainstream classroom. 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. 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.

Human Rights Watch urges the Committee to ask the government of South Africa:

- *What steps has the government of South Africa taken to make primary education free for all children since its last review by the Committee?*
- *Why are special schools for children with disabilities not listed as “no fee schools”?*
- *What is the government doing to remove financial barriers affecting children with disabilities, including costs related to transportation, accommodation and food?*
- *Has the government taken any steps to ensure children with disabilities in mainstream schools do not have to pay for their own class assistants?*

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. Human Rights Watch documented, and was made aware of, numerous cases of physical violence, and neglect of children and young adults with disabilities in mainstream, full-service, and special schools. These included serious cases of physical violence by teachers and students against children with autism –at times to discipline them—bullying from teachers and peers, and various instances of neglect of children with disabilities living in boarding schools.

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

Human Rights Watch urges the Committee to ask the government of South Africa:

- *How many cases of violence or sexual abuse have been reported annually to the Department of Basic Education and police forces? How many have resulted in prosecutions and action taken against the perpetrator?*
- *What steps has the government taken to adopt a national protocol against corporal punishment and sexual abuse in public schools?*
- *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, particularly for children with disabilities?*

Lack of quality education

Poor quality education affects hundreds of thousands of learners across South Africa. 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. Learning environments across the country continue to be affected, among other things, by crowded classrooms, the high incidence of violence and sexual violence in schools, the lack of adequate sanitation facilities, and the lack of appropriate learning materials.

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

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

Human Rights Watch also found that many students in special schools for children with sensory disabilities (children who are deaf, hard of hearing, blind or have low-vision) do not have access to the same subjects or appropriate learning materials as children in mainstream schools, jeopardizing their access to a full curriculum and development.

Human Rights Watch urges the Committee to ask the government of South Africa:

- *What steps has the government taken to improve the quality of education in schools?*
- *How are teachers supported to overcome the challenges of teaching large classrooms with a diverse student population?*
- *How does the government ensure children with disabilities have access to the same curriculum and skills if they study in special schools?*

- *How many children with disabilities have access to and successfully finish science, technology and mathematics courses in public schools across the country?*
- *What incentives are given to public schools to ensure they teach children with disabilities on an equal basis?*

Lack of preparation for life after basic education

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

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

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

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

Human Rights Watch urges the Committee to ask the government of South Africa:

- *What percentage of children with disabilities enrolled in public schools take and pass the National Secondary School Certificate or “Matric”?*
- *How many students with disabilities drop out of school before completing basic education?*
- *What programs, if any, are available for children with disabilities who do not complete basic education within the legal age limits?*
- *What programs are in place to provide adequate support and equal education opportunities for children with disabilities after they finish basic education?*

National resources for education

Deemed the government's "apex priority," education receives the highest percentage of the national budget for national services.⁵ However, independent analysis of annual provincial budgets suggests that students with disabilities may only account for a maximum of three percent of total provincial spending in education. Within this already limited investment, special school budgets absorb the majority of provincial resources dedicated to students with disabilities. 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.⁶

Human Rights Watch urges the Committee to ask the government of South Africa:

- *How does the government prioritize spending on vulnerable groups of children, particularly children with disabilities, in its annual education budget?*
- *How does the government ensure resources are adequately spent on the inclusion of more children with disabilities in its mainstream education system?*
- *What steps is the government taking to ensure adequate resources are spent on children with disabilities?*

Children affected by Armed Conflict (Article 38)

Human Rights Watch congratulates South Africa for being the first country to endorse the Safe Schools Declaration⁷ and the Guidelines on Protecting Schools from Military Use during Armed Conflict in May 2015.⁸

Human Rights Watch urges the Committee to ask the government of South Africa:

- *How will the government implement the Guidelines on Protecting Schools from Military Use during Armed Conflict in its domestic military doctrine, practice, and trainings?*
- *Will the government encourage other governments in the region to endorse the Declaration and its accompanying Guidelines?*

· Government of South Africa, "Minister Angie Motshekga: Basic Education Dept Budget Vote 2015/16," <http://www.gov.za/speeches/minister-angie-motshekga-basic-education-dept-budget-vote-201516-6-may-2015-0000> (Accessed October 20, 2015).

· Analysis based on the Department of Basic Education, "Progress Report on Inclusive Education and Special Schools," presentation to the Portfolio Committee on Basic Education, June 23, 2015. See, Human Rights Watch, "Complicit in Exclusion: South Africa's Failure to Guarantee Inclusive Education for Children with Disabilities," pp. 76 – 80.

· Global Coalition to Protect Education from Attack, "Public States in Support of the Guidelines and Safe Schools Declaration Process," <http://www.protectingeducation.org/support-process> (Accessed October 22, 2015).

· Global Coalition to Protect Education from Attack, "Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict," <http://protectingeducation.org/guidelines> (Accessed October 22, 2015).