

The Right to Education for Children with Disabilities Alliance
Statement to the United Nations Committee on the Rights of Persons with
Disabilities: 20th Session
27 August – 21 September 2018, Geneva

A. INTRODUCTORY COMMENTS

On International Disability Day in 2002, the late UN Secretary General Kofi Annan reminded us that:

“Action on the ground, in people’s lives, is the natural and necessary complement to norm-setting... The commitment to full and effective participation of persons with disabilities in economic and social development is deeply rooted in the principles of [international human rights] let us renew our pledge to fight exclusion, to create opportunities for all people, and to build societies in which persons with disabilities are seen not only as beneficiaries of society’s support, but as an empowered and empowering source of social, cultural, political and economic development.”¹

I thank the Committee for this opportunity to present on behalf of a broad alliance of South African civil society organisations: the Right to Education for Children with Disabilities Alliance (‘The Alliance’).

The Alliance reiterates its acknowledgment of the efforts that have been made by the South African Government towards improving implementation of an inclusive education policy towards the creation of an inclusive education system. In reality, however, systemic transformation of the general education system into an inclusive education system has not been achieved. Urgent attention must be therefore given by the Government of South Africa to the improvement of quality education in all schools – both the ordinary and special schools, that children with disabilities currently attend.

Despite some movement towards inclusive education policies, the lived experiences of children with disabilities bare testimony to a failure of implementation and consequent violation of South Africa’s obligations under the Convention. A member of a grassroots organisation for persons with disabilities captured this well:

“There are existing policies. They say good things. Theoretical things. Do they implement them. No. They only write nice theories.”²

The formulation of *conceptually* inclusive policies is not sufficient. Blind children cannot read off promises of Braille textbooks. Wheelchair users cannot enter classes through ringing human rights commitments to accessibility or well theorised state obligations to ‘universal design’ alone. Deinstitutionalization, desegregation and reasonable accommodation – which are at the core of inclusive education – must be prioritized not only in policy but also in implementation, including: resourcing, monitoring and accountability measures.

In 2016 the Department of Basic Education told Parliament that it estimates that the number of children with disabilities who are “either out of school or in school without having been identified for additional support” is as high as 597 593.³ This is an increase on the already high estimate of the Government of South Africa in its report to this Committee which puts this number at 480 036.⁴

Of the children in school, the Government of South Africa’s report to the Committee on Economic Social and Cultural Rights notes that while “the number of children with disabilities enrolled in ordinary public schools has incrementally increased from 80 000 in 2011 to 111 430 in 2014”⁵ “the number of learners with disabilities enrolled in special schools has also increased from 108 240 in 2011 to 119 972 in 2015.”

South Africa’s “inclusive” education system therefore remains anything but inclusive and segregation and financial disincentives to include prevail. Children with disabilities, particularly in rural provinces, still experience “dual apartheid” discrimination based on race *and* disability. Most children with disabilities are not in school at all. Of those who are in school the majority remain in segregated, underequipped and far-flung special schools.

This dire situation in the education environment reflects the dire realities of persons with disabilities when it comes to various other economic and social rights.

Two further examples will suffice. First, the South African Human Rights Commission estimates that “on average, eight in ten persons with disabilities are unemployed”⁶ and that the employment rate for persons with disabilities is “extremely low, currently standing at 1%”.⁷ Second, the Government itself acknowledges that a mere “25 361 beneficiaries with disabilities applied and qualified for access to the housing subsidy between 2008 and March 2012” and, of this number, which is dramatically lower than expected given South Africa’s disability prevalence of at least 7.5 percent of the population, “progress has been slow, with 163 beneficiaries obtaining the additional amount to cover reasonable accommodation measures”.⁸

What this situation broadly suggests is a widespread failure on the part of the Government of South Africa to fulfill its disability obligations in terms of economic and social rights. Despite varying degrees of policy changes regarding economic social rights, marginalization, institutionalization and segregation of persons with disabilities remain the norm in South Africa.

B. RECOMMENDATIONS

In this context, the Alliance has made the following submissions to this Committee during the Government of South Africa’s reporting process:

- a) Full Alternative Report (January 2017) endorsed by 53 organisations and individuals;⁹
- b) Oral Submissions at the 9th Pre Sessional Working Group of this Committee (March 2018), by five Alliance representatives;¹⁰ and
- c) Submission on the Government of South Africa’s response to the List of Issues (July 2018).¹¹

Based on these submissions, and in light of the Article 24 of the Convention and the Committee's 4th general comment on the right to inclusive education, the Alliance requests this Committee to address the following recommendations to the South African authorities:

1. GENERAL

- 1.1 The Government of South Africa should immediately ratify the African Disability protocol
- 1.2 The Government of South Africa must implement the recommendations made by the Committee on the Convention of the Rights of the Child¹² in its concluding observations in September 2016, without delay. To date none of the recommendations relating to education for children with disabilities have been implemented.

2. LEGAL AND POLICY MEASURES

- 2.1 The Government of South Africa must enact legislation giving full effect to the right to inclusive education. This is consistent with South African constitutional law, the Committee's expressed view in General Comment 4, and the CRC's 2016 Concluding Observations.
- 2.2 The Government of South Africa must indicate what policy measures will supplement and/or replace Education White Paper 6 when its implementation plan ends in 2021 and make a time-bound commitment to this policy process.
- 2.3 The Government of South Africa must urgently improve legislative provisions relating to the admission of learners with disabilities in school in order to secure placement for the estimated 597 953 children who are not currently in the education system. Ordinary schools must be compelled to comply with obligations to enroll learners with disabilities and apply reasonable accommodations.
- 2.4 The government must make good on its commitment to adopt comprehensive learner transport safety norms and standards, operational guidelines for transporting learners with disabilities and funding norms and standards.
- 2.5 Following the High Court ruling on the 17th July 2018 declaring aspects of the infrastructure norms and standards unconstitutional and invalid,¹³ the Government of South Africa must urgently review the Minimum Uniform Norms and Standards for Public School Infrastructure, shortening the time frames to ensure compliance with the its obligations in terms of universal design.
- 2.6 The Government of South Africa should clarify the legal status of guidelines produced by the Department of Basic Education including the guidelines for Full Service Schools (2010) and Special School Resource Centres (2014).

3. RESOURCING FOR INCLUSIVE EDUCATION

- 3.1 The Government of South Africa must urgently revise the draft guidelines for resourcing inclusive education and adopt these as norms and standards with provision of treasury

allocated funding. These norms should make adequate budgetary provision to ensure *free* education for all children with disabilities including:

- i. No school fees;
- ii. No hostel fees;
- iii. No transport fees;
- iv. Reasonable accommodations at no cost to the parent;
- v. Free assistive devices; and
- vi. Free learning and teaching support materials.

- 3.2 The Government of South Africa, through the National Treasury, must prioritise the initiation of the conditional grant contemplated by White Paper 6 for the resourcing of inclusive education.
- 3.3 The Government of South Africa must ensure that resources allocated for the purposes of implementing inclusive education policies are spent fully and for the purpose for which they were intended.
- 3.4 The provincial and national departments of basic education must budget comprehensively, transparently and equitably prioritising the inclusion of learners with disabilities in “general education system” including ordinary and full service schools.
- 3.5 Provincial education departments must make sufficient budget available to enable ordinary and full-service schools to cover the costs of reasonable accommodation of learners with disabilities, including education assistants and class facilitators and appropriately skilled and trained teaching and non-teaching staff.

4. CONDITIONS IN SPECIAL SCHOOL HOSTELS

The Alliance remains committed to the implementation of an inclusive education system where learners can attend their local school without having to travel to special schools, be removed from their families and live in hostels. However, we recognize that gross human rights violations are currently taking place in unregulated and unsafe special school hostels. For this reason we urge this Committee to require the Government of South Africa to remedy this situation immediately by urgently adopt regulations relating to special school hostels.

The process of adopting such norms should be time-bound, consultative and comply with the Government of South Africa’s obligations in terms of Article 24 of the Convention. These norms should include:

- i. A time-bound plan of action to address the high levels of physical, sexual, verbal and emotional abuse in special schools. This plan must include a monitoring framework and process.
- ii. A clarification of the interaction of the norms with the Children’s Act’s provisions on “child and youth centres”.
- iii. Minimum requirements for the conditions in special school hostels including:

- a. Educator and non-educator staff such as house parents, 24 hour care givers, security guards, cleaning staff and nurses;
- b. Safe and secure infrastructure consistent with universal design;
- c. The meals and nutritional content to which children living in hostels are entitled;
- d. Measures which will be taken to ensure that parents and children can be in contact during the course of the school year;
- e. Support with homework;
- f. Opportunities for recreation; and
- g. Provision for transport costs for learners to return home to visit their parents or parents to visit their children.

5. SPECIFIC MEASURES

5.1 Visually impaired learners

- a) The Government of South Africa must urgently develop an implementation plan with timelines to produce braille and large print learning and teaching support materials, including textbooks, for all visually impaired learners attending special, ordinary and full-service schools.
- b) The Government of South Africa must appoint a team of experts in the adaptation of print materials into braille, to be tasked with ongoing curriculum development.
- c) Provincial departments of education should provide comprehensive annual training of teachers in how to read, write and teach both contracted and uncontracted braille.
- d) The Government of South Africa must ensure that all forms of national learner assessment must be provided to schools accommodating learners with visual impairments in appropriately adapted and printed in braille.
- e) The Government of South Africa must take urgent steps must to ensure that all braille-using learners have access to their own Perkins machine for the production of braille for learning purposes.
- f) The Government of South Africa must take urgent steps to provide all schools accommodating learners with visual impairments with adequate numbers of personal computers and appropriate assistive software, as well as high quality training of staff in how to use and teach children to use these devices

5.2 Deaf learners

- a) The Government of South Africa must take urgent measures to adequately train teachers in South African Sign Language (SASL) at schools accommodating deaf or hearing-impaired learners.
- b) The Government of South Africa must declare SASL an official language.

- c) The Government of South Africa must approve budgets and timelines for:
- i. The improvement of infrastructure at schools for deaf learners,
 - ii. The recruitment of adequate, appropriately qualified non-educator staff at schools for deaf learners.
 - iii. The assessment and provision to learners who need alternative and augmentative communication (AAC) with meaningful AAC devices, techniques (and strategies).

6. DATA COLLECTION AND INFORMATION SYSTEMS

6.1 The Government of South Africa must establish a system for the regular collection of data relating to the education of children with disabilities. The data must be disaggregated for age, gender, population group, province and geographical location down to district level and must include:

- i. Indicators on children currently in the education system: ECD programmes, ordinary, full service and special schools; and special care centres. These must account for the numbers of children with disabilities enrolled, the grades they are in, progression, drop-outs and waiting lists;
- ii. Measures of accessibility and the quality of education provided (infrastructure, staffing, training, resources available, as well as access to assistive devices, which includes human support such as sign language interpreters); and
- iii. Budget allocations and expenditure for inclusive education.

6.2 The Government of South Africa must provide clarity on:

- i. The formula by which the estimation of the number and profile of children with disabilities in South Africa is calculated;
- ii. The formula by which the estimation of the number and profile of children with disabilities who are out of school is calculated;

6.3 The Government of South Africa must use data and statistics to inform the development of evidence-based interventions and associated budgets, with a baseline against which targets are set.

C. CONCLUSION

The Alliance thanks this Committee for the opportunity to make these submissions, which are made in a spirit of co-operation and with the intention of improving the Government of South Africa's efforts to ensure that the economic and social rights persons with disabilities – including in particular the right to inclusive education – are respected, protected promoted and fulfilled. The Alliance hopes that these submissions may assist the Government of South Africa in reporting to this Committee in the future.

In conclusion, again in memory of the late Kofi Annan, we should remember that:

“People who have to fight daily to overcome not only their disability but also the discrimination they face, typically show great patience, strength of character, and open-mindedness. In a troubled world that needs all people to contribute their unique skills and ideas, these are qualities we should cherish — and those who have them should enjoy our full respect and support.”¹⁴

A pre-requisite of the creation of the world envisioned by Annan is that children with disabilities require high quality inclusive education in well-resourced, accommodation inclusive environments in which they interact with their peers on an equal basis daily. In South Africa, this requires “action on the ground” to ensure the wholesale, systemic conversion of the well-intentioned inclusive education policy of the Government of South Africa into an inclusive education system that is more than a nice theory but a lived reality. At stake is the unlocking of the potential of over 2 million¹⁵ of children with disabilities in South Africa – more than 11% of all children – who are future leaders, teachers, lawyers and artists with “unique skills” and “great strength of character”.

¹ “Secretary-General, In Message For International Day, Stresses Need To Fight ‘Exclusion’ Of People With Disabilities” (29 November 2002) <https://www.un.org/press/en/2002/sgsm8530.doc.htm> (Accessed 22 August 2018).

² “SECTION27 Presentation at LRC Disability Conference” (13 November 2015) http://section27.org.za/wp-content/uploads/2015/11/SECTION27_Presentation_at_LRC_Disability_Conference_Draft_TFH_13_November_7_41.pdf (Accessed 22 August 2018).

³ Department of Basic Education, Report on the Implementation of Education White Paper 6 on Inclusive Education—An Overview for the Period: 2013–2015 (2016), <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308overview.pdf> (Accessed 22 August 2018), p 70; Silomo Khumalo and Timothy Hodgson, The right to basic education for children with disabilities, in F Veriava and others (eds) *Basic Education Rights Handbook* (2017), <http://section27.org.za/wp-content/uploads/2017/02/Chapter-5.pdf>, (Accessed 22 August 2018), p 105.

⁴ Government of South Africa’s Country Report to the Committee on the Rights of Persons with Disabilities, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fZAF%2f1&Lang=en, (Accessed 22 August 2018) para 205.

⁵ Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights initial reports of States parties due in 2017: South Africa, 25 April 2017, E/C.12/ZAF/1 (Gov SA Report) available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2f1&Lang=en (Accessed 22 August 2018).

⁶ South African Human Rights Commission, Achieving substantive economic equality through rights-based radical socio-economic transformation in South Africa, 12 July 2018, https://www.sahrc.org.za/home/21/files/SAHRC%20Equality%20Report%202017_18.pdf, p 32.

⁷ South African Human Rights Commission, National Hearing on Unfair Discrimination in the Workplace, September 2017, <https://www.sahrc.org.za/home/21/files/SAHRC%20-%20Unfair%20Discrimination%20in%20the%20Workplace%20Report%20-%20September%202017.pdf>, (Accessed 22 August 2018).

⁸ Committee on the Rights of Persons with Disabilities, Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of State parties due in 2009: South Africa, 26 November 2014, CRPD/C/ZAF/1, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fZAF%2f1&Lang=en (Accessed 22 August 2018)), para 329.

⁹ “Alternative Report to the UN Committee on the Rights of Persons with Disabilities in response to South Africa’s Baseline Country Report of March 2013 on the UN Convention on the Rights of Persons with Disabilities, with particular reference to the provisions of Article 24” (January 2018),

<http://www.included.org.za/wp-content/uploads/2017/03/FINAL-UNCRPD-Report.pdf> (Accessed 22 August 2018).

¹⁰ “Initial statement to the United Nations Committee on the Rights of Persons with Disabilities” (15 March 2018)

<http://www.included.org.za/wp-content/uploads/2018/03/WG-Statement-oral-final.pdf> (Accessed 22 August 2018).

¹¹ Above note 4.

¹² Committee on the Rights of the Child, Concluding observations on the second periodic report of South Africa, (September 2016) CRC/C/ZAF/CO/2,

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ZAF/CRC_C_ZAF_CO_2_25463_E.pdf (Accessed 22 August 2018).

¹³ Constitutional Court of South Africa, Equal Education and Another v Minister of Basic Education and Others (276/2016) [2018] ZAECBHC 6, 19 July 2018 <http://www.saflii.org/za/cases/ZAECBHC/2018/6.html> (Accessed 22 August 2018).

¹⁴ “Secretary-General, In Message For Day Of Disabled Persons, Says Goal Is ‘Society For All’, Recognizing Skills With No Discrimination” (30 November 2001),

<https://www.un.org/press/en/2001/sgsm8053.doc.htm> (Access 22 August 2018).

¹⁵ Department of Social Development & UNICEF, “Children with Disabilities in South Africa A Situation Analysis 2001-2011”, (2012)

https://www.unicef.org/southafrica/SAF_resources_sitandisability, (Accessed August 22 2018), p 6.