



## Submission to the Committee on the Rights of Persons with Disabilities on Draft General Comment No. 4 – Article 24: The right to inclusive education

Human Rights Watch welcomes the initiative by the CRPD Committee to develop a comprehensive General Comment on Article 24 of the Convention on the Rights of Persons with Disabilities. We appreciate the opportunity to provide our observations and suggestions on a range of issues to strengthen the draft and we thank the Committee for taking these changes or suggestions into consideration. We look forward to continuing to support the work of the Committee in promoting strong and effective implementation of the CRPD.

### Substantive Comments

***Reasonable accommodation and accessibility:*** Human Rights Watch has found that some countries do not have a clear definition or explanation of reasonable accommodation in education legislation or policy.<sup>1</sup> To strengthen paragraph 18 and reinforce this in paragraph 28, we urge the Committee to explicitly call on states parties to define and/or include an unequivocal obligation to provide reasonable accommodation in schools or other educational institutions and in national education legislation or policy. Additionally, we suggest that the Committee adds a recommendation that provincial and school budgets should include budget lines to ensure schools can absorb the costs of reasonably accommodating children with disabilities.<sup>2</sup>

In addition to the reasons listed in paragraph 18, Human Rights Watch has found that many schools exclude children with disabilities on the basis of their dependence on staff to help them access toilets or sanitary facilities.<sup>3</sup> Similarly, the lack of accessible housing is a key barrier

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<sup>1</sup> Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*, August 2011, <https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal>, p. 42; Human Rights Watch, *As Long as They Let us Stay in Class”: Barriers to Education for Persons with Disabilities in China*, July 2013, <https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china#68ebed>, p. 3, 5; Human Rights Watch, “*Complicit in Exclusion”: South Africa’s Failures to Guarantee Inclusive Education for children with Disabilities*, August 2015, p. 21 - 22, <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>; Human Rights Watch, *Left Out*, September 2015, <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia>; Human Rights Watch, *Treated Worse than Animals*, December 2014, <https://www.hrw.org/report/2014/12/03/treated-worse-animals/abuses-against-women-and-girls-psychosocial-or-intellectual>; Human Rights Watch, *Without Dreams*, May 2014, <https://www.hrw.org/report/2014/05/01/without-dreams/children-alternative-care-japan>; Human Rights Watch, *Impairing Education*, August 2009 <https://www.hrw.org/report/2009/08/10/impairing-education/corporal-punishment-students-disabilities-us-public-schools>

<sup>2</sup> See as well United Nations Convention on the Rights of the Child, art. 23 (3).

<sup>3</sup> Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*, August 2011, <https://www.hrw.org/report/2011/08/24/futures-stolen/barriers-education-children-disabilities-nepal>, p. 40, 43; Human Rights Watch, *As Long as They Let us Stay in Class”: Barriers to Education for Persons with Disabilities in China*, July 2013,

affecting access for many children who often have to travel long distances to enroll in an adequate school.<sup>4</sup> We encourage the Committee to include a reference to accessible toilets and sanitary facilities and accessible housing, in paragraph 21 on “accessibility.”

To complement paragraph 27, it is also not sufficient for governments to rely on home schooling as one of the few realistic options for children with disabilities who face significant accessibility barriers. Russian law, for example, gives parents the option of applying for their children to study at home, with visits from local teachers several times a week. While this measure may be acceptable on a temporary basis, children with disabilities interviewed by Human Rights Watch studied at home because they lacked accessible schools in their communities, or because inaccessible housing and transportation made it difficult or dangerous for children to leave their homes for school each day. Most children and young people with disabilities who studied at home told Human Rights Watch their interactions with teachers were limited and that they felt isolated from their peers.<sup>5</sup>

**Training:** Human Rights Watch research in South Africa and China found that many teachers often do not have the relevant training in sign language or braille, and often may not have adequate command of sign language or braille script to teach children with sensory disabilities.<sup>6</sup> We would suggest that paragraph 12 (c) on “Supported teachers,” includes a reference to teachers being provided “quality training in appropriate languages, modes and means of communications.”

We strongly recommend that paragraph 67 also includes a requirement that ministries of health and social development provide adequate information and training on inclusive education to health practitioners, social workers and other relevant staff, to ensure all decisions and actions taken in the early stages of a child’s life promote inclusion. In Russia and South Africa, for example, Human Rights Watch found that doctors and health practitioners often have the first say on which type of school children with disabilities should go to. In most cases, children with disabilities were referred to special schools.<sup>7</sup>

Human Rights Watch also found that few universities in South Africa teach inclusive education programs; while the majority offer special needs education as the focus of their postgraduate programs.<sup>8</sup> In paragraph 74 it would be useful to highlight that training in special needs education

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<https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china#68ebed>, pp.26-27, 29, 39; Human Rights Watch, “*Complicit in Exclusion*,” p. 42.

<sup>4</sup> Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, September 2015, <https://www.hrw.org/report/2015/09/01/left-out/obstacles-education-people-disabilities-russia>; Human Rights Watch, “*Complicit in Exclusion*,” pp. 25 - 26.

<sup>5</sup> Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, p. 3.

<sup>6</sup> Ibid; Human Rights Watch, “*As Long as They Let us Stay in Class”: Barriers to Education for Persons with Disabilities in China*, July 2013, <https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china#68ebed>.

<sup>7</sup> Human Rights Watch, “*Complicit in Exclusion*,” p. 81 – 84; Human Rights Watch, *Left Out? Obstacles to Education for People with Disabilities in Russia*, p. 30-31.

<sup>8</sup> Human Rights Watch, “*Complicit in Exclusion*,” p. 59.

does not satisfy the requirements for inclusive education training listed in paragraphs 35-36 and 74. Human Rights Watch also found that students with sensory disabilities are often limited in the subjects they can access in secondary education, particularly where governments fail to provide accessible materials or specialized teachers in special schools.<sup>9</sup> This limits their university paths or career choices later on in life. We would recommend paragraph 34 includes a reference to the importance of providing equal access to a full curriculum at all levels of education.

**School fees:** Financial barriers keep many children with disabilities out of school. We therefore welcome a strong reference to the government's obligations to provide free and compulsory primary education, and progressively introduce free secondary education in paragraph 23. Our research in South Africa shows that children with disabilities continue to pay for school fees in special schools, and in China and Nepal children with disabilities often need to pay additional fees or pay for facilitators as a condition to be taught in mainstream classrooms.<sup>10</sup> We urge the Committee to specify that: "Governments should also remove any direct or indirect school fees or additional conditions imposing a financial burden on students to pay for their own accommodations."

We similarly note the reference in paragraph 17 to ensure governments provide assistance to ensure children with disabilities have effective access to education. We encourage the Committee to also use language in article 23 (3) of the Convention on the Rights of the Child which specifically recommends that such assistance "shall be provided free of charge, wherever possible, taking into account the financial resources of the parents or others caring for the child."<sup>11</sup>

**Quality education:** While paragraph 26 on "quality" sets out a number of key principles based on inclusive practices, we would recommend the Committee complements this with existing guidance on what constitutes a right to quality education, namely:

- 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."<sup>12</sup>
- The Committee on the Rights of the Child "requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs."<sup>13</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> Human Rights Watch, *Submission to the Committee on the Rights of Persons with Disabilities*, April 15, 2015 <https://www.hrw.org/news/2015/04/15/submission-committee-rights-persons-disabilities>.

<sup>11</sup> Convention on the Rights of the Child, art. 23 (3).

<sup>12</sup> UNESCO Convention against Discrimination in Education (1960), art. 4 (b).

<sup>13</sup> 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, p. 5. [http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a/GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a/GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx).

- According to the UN special rapporteur on the right to education, 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.”<sup>14</sup>

**Government structures:** Human Rights Watch has found that systemic marginalization of children with disabilities also takes place within ministries of education, particularly where responsibility for persons with disabilities lies solely with often small and under-resourced inclusive education or special education units. We believe paragraph 61 could include an explicit recommendation for governments to ensure all relevant departments within ministries of education have a shared responsibility and accountability for children with disabilities.

In paragraph 80, it would be useful to underscore that families of students with disabilities, and children with disabilities themselves, should be provided with the opportunity to be involved in the development of implementation of learning programs, including individualized education plans. Human Rights Watch recognizes that parents and caregivers may fill in gaps in the support provided in schools in low resource settings. However, our research has found that schools may not budget for assistants, in a number of cases, making the inclusion of children in mainstream schools conditional on the participation of parents as their children’s facilitators or assistants within classrooms.<sup>15</sup> We therefore strongly urge the Committee to further define the parameters used in paragraph 80.

**Women and girls with disabilities:** We welcome paragraph 44 and its focus on women and girls with disabilities, which governments should read alongside the Committee’s forthcoming General Comment 3 on women and girls with disabilities, as well as the joint general comment on harmful practices by the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child.<sup>16</sup> Many girls with disabilities drop out of education before they complete compulsory education, and many may be limited in their educational choices due to their gender and their disability. Adolescent girls with disabilities are subjected to distinct barriers in secondary education, for example during menstruation and puberty.<sup>17</sup> In India, for example, Human Rights Watch found that girls with psychosocial and intellectual disabilities are sometimes dumped in institutions because of the lack of community-based support services

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<sup>14</sup> 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>.

<sup>15</sup> Human Rights Watch, “*Complicit in Exclusion*,” p. 31; Human Rights Watch, “*As Long as They Let Us Stay in Class*,” pp. 26-27.

<sup>16</sup> United Nations, “Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices,” 4 November 2014, CEDAW/C/GC/31-CRC/C/GC/18

<sup>17</sup> Human Rights Watch, *Submission to the Committee on the Rights of Persons with Disabilities*, April 15, 2015 <https://www.hrw.org/news/2015/04/15/submission-committee-rights-persons-disabilities>.

for people with disabilities and their families.<sup>18</sup> Paragraph 44 could be strengthened with a reference to the high risk of women and girls with disabilities in schools and education institutions to physical or sexual violence, abuse and neglect, due to the lack of adequate sanitation facilities and menstruation management in schools, compounded by the lack of adequate redress or child protection mechanisms for girls.<sup>19</sup>

***Protective or sheltered workshops:*** Human Rights Watch has found that protective or sheltered workshops are used to engage people with intellectual disabilities after basic education, though they are often a means to ensure people with intellectual disabilities have access to protective spaces and activities, rather than to access life skills and other skills for meaningful, inclusive employment.<sup>20</sup> We believe that the Committee’s guidance on the use of protective or sheltered workshops in paragraph 55 would help clarify existing state practice.

***Institutionalization:*** Human Rights Watch welcomes that the General Comments draws attention to the link between the right to education (Article 24) and the right to live in the community (Article 19). To address the needs of children who are currently living in institutions, in addition to community services and support to families, the General Comment could be strengthened with references to adoption and foster parents. For example, the Committee could call on ensuring that state financing for formal care of children with disabilities privileges family-based care options. Further, the General Comment could call for measures to return children with disabilities to their birth families and ensure that families have adequate support to care for these children, and for measures to actively encourage adoption and fostering of children with disabilities.

***Access to information:*** In paragraph 65, we strongly recommend the committee includes a reference to the obligation to ensure that information about the right to education and enforceable complaints mechanisms are “available in all appropriate languages, modes and means of communication to ensure all children with disabilities are able to access them.” Additionally, Human Rights Watch has found that the poorest families often have very limited or no access to information essential to making an informed decision on what school is best for their children.<sup>21</sup> Paragraph 65 should include a reference to the importance of ensuring parents or guardians of children with disabilities have access to adequate and appropriate information on all types of education available.

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<sup>18</sup> Human Rights Watch, *India: Women With Disabilities Locked Away and Abused, End Forced Institutionalization, Sexual and Physical Violence, Involuntary Treatment*, December 3, 2014, <https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused>.

<sup>19</sup> Ibid.

<sup>20</sup> Human Rights Watch, *Complicit in Exclusion*, p. 71- 72.

<sup>21</sup> Human Rights Watch, *Submission to the Committee on the Rights of Persons with Disabilities*, April 15, 2015.