

The Right to Education for Children with Disabilities Alliance
Initial statement to the United Nations Committee on the Rights of Persons with
Disabilities:
9th Pre Sessional Working Group
15th March 2018, Geneva

1. INTRODUCTORY COMMENTS (Robyn)

We 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. We will be focussing primarily on issues under Article 24, encompassing Articles 5 (equality non-discrimination), 16 (freedom from violence and abuse), 9 (access), 17 (physical and mental integrity) and the general principle of the right to respectful inherent dignity.

We acknowledge the efforts that have been made by the South African Government towards improving implementation of an inclusive education system. Systemic transformation of the general education system has not been achieved and urgent attention must be given to the drastic improvement of quality education in all schools children with disabilities currently attend. Furthermore, children with disabilities, particularly in rural provinces, still experience “dual apartheid” discrimination based on race and disability.

Despite the fact that the South African Constitution contains an ‘immediately realisable’, ‘unqualified’ right to basic education for all children, hundreds of thousands of children with disabilities in South Africa are being denied this right, as they are unable to gain admission to either ordinary or special schools.

Civil society organisations receive regular reports of children refused admission to ordinary schools on the basis of their disability. Children are often tested as part of the admission process not to determine support needs but to exclude from admission; incontinence is a ground for exclusion from many special schools; another practice requires female learners to take contraceptives as a condition to admission. Learners with multiple disabilities who do not easily fall within a school’s “area of specialisation” are often excluded.

No framework legislation has been enacted that gives full effect to the right to education within an inclusive education system. Instead only outdated policy and fragmented and scattered provisions in legislation exist. The committee should explicitly ask the government to review the South African Schools Act and White Paper 6 before its expiry in 2021.

In addition, no legally binding resourcing obligations for inclusive education have been adopted, resulting in chronic underfunding, lack of accountability and extremely limited progress. Compounding this funding vacuum, no special schools are categorised as “no-fee-paying schools”. While families may apply for fee exemptions, many parents are unaware of this or struggle with the procedures. Secondary costs, such as hostel accommodation and transport, impact poor households.

Where transport is available, learners are often transported in unsafe, unmodified vehicles. Many have to wait to be picked up at unsafe locations and often travel long distances to get to pick up points. Learners are vulnerable to abuse both on the buses and at these pick up points. The National Learner Transport Policy is inadequate and does not offer sufficient provision for the safe, free and secure transport for learners with disabilities.

2. HUMAN RIGHTS VIOLATIONS IN SPECIAL SCHOOL HOSTELS (Silomo)

The state of affairs in special school hostels is very disturbing to me personally. When I lost my eyesight in grade 3, I also had to leave home to stay in the special school hostel. One incident that still troubles me and my mother, was when I got severely ill and the house parents refused to inform my family, but instead accused me of devising tricks to stay out-of-class. When my mother came to visit she found me in a disturbing condition, having lost a lot of weight and my bed covers covered in blood from my nosebleeds. She had to take me home to provide proper medical care. She couldn't hold anyone to account because she was afraid it would jeopardise my education and the only thing she wanted was for me to have access to education.

It is very disturbing for me to know that in 2018 children with disabilities like myself still live in life-threatening conditions in hostel facilities. Abuse, neglect and inadequate care characterise life for children in many special schools and special school hostels in South Africa. A recent South African Human Rights Commission Report highlights the lack of adequate supervision, safety equipment, staff training and care in a special school hostel resulting in the death of 3 Deaf learners when a fire broke out in their hostel in August 2015.

In addition Civil Society Organisations and Government reports site many instances of physical, sexual and emotional abuse of learners in special school hostels attributed to, amongst others, no protective measures, insufficient staff, inadequate training of staff. Many "house mothers" in hostels are merely unpaid or underpaid volunteers from communities. Protective measures in the Children's Act do not apply to special school hostels as they are not categorised as "child and youth centres". The South African Government has not developed specific legislation, guidelines, or post provisioning norms to address the ensuing gap. This is a shocking oversight.

3. FAILURE TO MAKE REASONABLE ACCOMMODATIONS (Chaeli)

Reasonable accommodation has, in my personal experience, always been a challenge in the mainstream education system in South Africa. When I started school I was denied entry to pre-school because I have always struggled with incontinence and as a result it was deemed an impossibility to support my education in that space. This is not and should not be an insurmountable problem, it is an issue that can be managed.

I went to a special needs school until I was 9 years old. It was clear that the school could not reasonably accommodate my curriculum needs and challenge my cognitive ability. Thereafter I went to a mainstream school. Whilst the school addressed my physical accessibility needs, they were not prepared to admit me unless my parents paid for a full time facilitator. Despite clear international and national obligations to make reasonable accommodations for learners with disabilities in ordinary schools, this is the exception and not the rule.

Reasonable accommodation is particularly important in the context of a failure to realise the Article 9 right to accessibility. This failure is reflected in the 2030 timeframes for school buildings to comply with universal design requirements. This token reference to the vague objective of universal design is inherent throughout most policies without accompanying comprehensive guidelines.

Learners continue to be assessed in ordinary schools for referral to special schools without consideration of the support that can and should be provided at ordinary schools. **Ultimately, segregation remains the prevailing attitude towards education for children with disabilities.**

(Odette)

Learners in both ordinary and special schools do not receive assistive devices and technology or the appropriate learning and teaching support material needed to ensure their equitable inclusion in learning. This is evident in the failure to provide braille textbooks in nearly all of the schools for blind learners in South Africa. Similarly for learners who are deaf or hard of hearing there is inadequate provision for communication support either through additional support personnel or assistive devices.

In addition, where accommodations for assessment are approved, the cost of scribes or other resources needed are often shifted to the parent, as is the cost of personal assistants or other support personnel.

In schools of the Deaf, teachers remain unable to use South African Sign Language proficiently for teaching and learning. Where the government reports on increased training of SASL, evidence suggests that this does not translate into competent subject teaching. The poor matric pass rates for deaf learners reflects this. The lack of inclusive pedagogical skills and qualifications of teachers in both special and ordinary schools remains of critical concern.

4. CONCLUDING REMARKS

Unfortunately, none of the issues highlighted in this statement are new. Recommendations based on these have been made repeatedly to the South African government over many years. It is regrettable that it is often only as the result of expensive and time-consuming litigation that the government is compelled to action. Our recommendations echo those made by the UN Committee on the Rights of the Child in 2016. None of these recommendations have to date been actioned by the South African government. Without clear targets, action plans, accurate data, budgets and accountability measures which prioritise these recommendations as a matter of urgency, our fear as civil society, is that we will be standing before you again in 5 years time saying exactly the same things, whilst the right to education for thousands more children with disabilities will have been denied.