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September 20, 2013

Via Email

Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10
E-mail: registry@ohchr.org

Re: Call for Submissions on the study on the right to education for persons with disabilities

To the Office of the High Commissioner for Human Rights:

Thank you for the opportunity to submit our comments in advance of the Office of the High Commissioner for Human Rights (OHCHR) study on the right to education for persons with disabilities. Human Rights Watch welcomes and strongly supports the OHCHR's interest in examining the right to education for persons with disabilities.

This submission is based on research and advocacy conducted by Human Rights Watch, in particular our reports *"Futures Stolen": Barriers to Education for Children with Disabilities in Nepal*, issued August 2011,¹ and *"As Long as They Let Us Stay in Class": Barriers to Education for Persons with Disabilities in China*, issued July 2013,² and our ongoing monitoring of the right to education for persons with disabilities. We highlight areas of concern and good practices in implementation of article 24 of the Convention on the Rights of Persons with Disabilities (CRPD), focusing on the following issues:

- Key challenges to inclusive education
- Reasonable accommodations in education
- Access to secondary and tertiary education

1 Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*, August 2011, <http://www.hrw.org/reports/2011/08/24/futures-stolen>.

2 Human Rights Watch, *As Long as They Let Us Stay in Class: Barriers to Education for Persons with Disabilities in China*, July 2013, <http://www.hrw.org/reports/2013/07/15/longthey-let-us-stay-class-o>.



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- Active involvement of children with disabilities and their families, including in monitoring implementation of article 24
- Good practices in inclusive education, including with limited resources

This document underscores several concerns that figured most prominently in our research, and that significantly influenced the degree to which persons with disabilities are able to exercise their right to education. It does not attempt to review every aspect of the right to education.

1. Key challenges to inclusive education

Article 24 of the CRPD calls for governments to ensure that persons with disabilities “can access an inclusive, quality and free primary education and secondary education on an equal basis with others...”³

One of the key challenges is that the meaning of inclusive education is often not well understood nor clearly defined in law or education plans. Inclusion focuses on identifying and removing the barriers to learning and changing practices in schools to accommodate the diverse learning needs of individual students. Unlike inclusive education, integration focuses on developing the skills of children with disabilities so that they can join a mainstream school, sometimes through classrooms located within the mainstream school itself. However, this model tends to regard the child itself as the problem rather than addressing whether children with disabilities are in fact learning and the system-wide barriers in the education system. Specialized classes within mainstream schools may be beneficial for some students with disabilities to complement or facilitate their participation in regular classes, such as to provide Braille training or physiotherapy. Inclusive education stands in sharp contrast to the special or separate education model, in which children with disabilities are taught in segregated schools outside the mainstream.

The government of Nepal, for example, claims that it follows an inclusive education policy, even though it also maintains special, segregated schools as well as integrated resource classes. It is not clear from its policy how the government envisions a truly inclusive education system in the long-term.⁴ In China, there is often confusion over the concepts of “integration” (*ronghe*) and “inclusion” (*quanna*) by academics and policy makers, and the two terms are often used

³ International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, annex, I U.N. GAOR (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, art. 24.

⁴ Human Rights Watch, *Futures Stolen*, p. 28.

interchangeably.⁵ Disability experts continue to debate the effectiveness of inclusive schools versus special schools for children with disabilities, depending in particular on the type of disability. Some disabled people’s organizations believe that children with disabilities should in general be included in mainstream education.

Organizations working with people with intellectual disabilities and their families generally advocate for every student with a disability to have the right to choose an inclusive option. Accordingly, such organizations argue that education systems should accommodate students with disabilities and provide them with support in a regular classroom with non-disabled students. Organizations of deaf people, however, have traditionally preferred special schools in order to encourage learning of sign language, to preserve deaf culture and to ensure that deaf children have support and meaningful interaction with teachers and other students. Some children in special schools may be successful both academically and socially, particularly in developing strong relationships with others with whom they can communicate. However, at the same time, segregated educational settings—especially during a key part of their growth and development—may have a negative impact both on individual children and on society.⁶

The CRPD promotes the “goal of full inclusion” while at the same time considering the “best interests of the child.”⁷ However, the CRPD emphasizes the voice and choice of children with disabilities. Governments should ensure that mainstream schools are inclusive and accessible for all children with disabilities. When preferred by the child and his/her family, special education options should be available so that children with disabilities and their families have meaningful choices.⁸

Another major challenge to creating an effective inclusive education environment is training the teachers to instruct differently. Disability experts argue that if you teach children who are at different levels in learning, modifying the instruction and the curriculum will challenge those children who are more advanced and be relevant for those children who need more support. This approach not only benefits children with disabilities, but differentiated instruction can reach a broader range of students.⁹

5 Human Rights Watch, *As Long as They Let Us Stay in Class*, pp. 18-19.

6 Human Rights Watch, *Futures Stolen*, p. 27.

7 CRPD, art.7.

8 Human Rights Watch, *As Long as They Let Us Stay in Class*, p.19.

9 Human Rights Watch, *Futures Stolen*, p.49.

2. Reasonable accommodations in education

To realize the right to inclusive education, the CRPD obligates states party to ensure “reasonable accommodation.” As defined by the CRPD, reasonable accommodation means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden...to ensure to people with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”¹⁰ With regard to education, reasonable accommodation refers to steps that “allow students to get an equal education by limiting as much as possible the effects of their disabilities on their performance,”¹¹ with the caveat that the steps not impose “significant difficulty or expense” on the government.¹² This may include structural modifications in schools such as ramps and desks and blackboards at appropriate heights. It may include modifications to the curriculum and evaluation methods such as having alternative and differentiated ways to express what they have learned or fulfill course requirements, using innovative teaching techniques, and providing supervised tutorial assistance and adaptive technology.¹³

In implementing the right to education, governments should adopt a clear policy on reasonable accommodation in mainstream schools. For example, China and Nepal do not have such policies. In interviews with Human Rights Watch, parents of children with disabilities in China told of carrying their children up and down stairs to classrooms or bathrooms located upstairs several times a day. Students with hearing impairments said they could not follow along because the teachers walk around while teaching and do not provide written notes, and there is no sign language interpretation in most schools. They told us that students who are blind or who have limited vision are not provided with magnified printed materials or tests. The accommodations also tend to be less available in higher grades, as teachers face greater time pressure to prepare students for the national college entrance exam. The mother of a 15-year old girl with a hearing impairment explained:

¹⁰ CRPD, art.2.

¹¹ Ibid.

¹² Ibid.

¹³ Special Education Support Service, Department of Education and Skills, Government of Ireland, “What is Reasonable Accommodation in relation to examinations run by the State Examinations Commission,” 2007, <http://www.sess.ie/faq/whatreasonable-accommodation-relation-examinations-run-state-examinations-commission> (accessed May 27, 2011).

[My daughter] mainly reads lips, but now in universities and high schools the teachers speak very quickly, and they can't [always] talk facing you. In the past, her teachers were all very good, she was very lucky.¹⁴

Under the CRPD, states parties have an obligation to ensure that education, especially for those who are deaf or blind, is provided “in the most appropriate languages and modes and means of communication for the individual.”¹⁵ The CRPD also obligates states parties to “promote the availability, knowledge and use of assistive devices.”¹⁶

In China, in both policy and practice, the mainstream education system is set up in such a way that the teacher's focus is on students without disabilities. It is the child with a disability who is expected to adapt to the system. Many students with disabilities in China literally find themselves sitting in classrooms without being able to follow the curriculum. This leads to failing performance and declining confidence, which only reinforces the effects of existing discrimination. China calls its scheme for students in the mainstream education system “study along with the class”; because of the obstacles such children face, it has come to be jokingly referred to as “sit along with the class” or “muddle along with the class.” A large percentage of students with disabilities eventually drop out of school or move to special education schools. Once in the special education system, there is little hope of their being able to cross back to the mainstream school system. Families with children with disabilities should have a choice in selecting the most appropriate educational settings for their children, but currently they do not have a meaningful choice.¹⁷

Mainstream schools in China often receive little or no funding to provide accommodations for children with disabilities, even though Chinese regulations on disability and education provide that funding be allocated by local education bureaus to mainstream schools for that purpose. In a 2006 survey, only 7.7 percent of mainstream schools that enrolled students with disabilities reported that their local bureaus of education had earmarked sufficient funds for these children, while over half of the respondents said there was either no designated funding or that the funding was very little.¹⁸ In China, authorities administering standardized tests to evaluate students' achievements across the country often fail to make accommodations or provide alternative evaluation methods for students with

¹⁴ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.32.

¹⁵ CRPD, art.24(3c)

¹⁶ CRPD, art.26(3)

¹⁷ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.4.

¹⁸ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.36.

disabilities. For example, although students with hearing impairments are exempted from the listening portion of university entrance exams, they are not exempted from the listening exams for the College English Test, which are national exams administered by the Ministry of Education. University students are often required to pass these exams in order to graduate at both bachelor and graduate levels. As interviewee Li Hongdan put it, she could “only guess” the answers to the listening test as she could barely hear anything. Li tried to speak to her teachers about providing accommodations during the internal school assessment, but she was rebuffed.¹⁹

In the case of Nepal, there are little or no provisions under the government’s School Sector Reform Program for making schools accessible for children with disabilities, such as having ramps and accessible toilets. One boy with a spinal cord injury told Human Rights Watch about his experience in a mainstream school:

My class is on the second floor. There’s a ramp [built by a local organization] but my friends have to help push me up. There’s no toilet that I can use so I have to go to the toilet at home and then wait until I come back from school.

²⁰

The diversity of Nepal’s geography, particularly in the country’s mountain and hill zones, also presents clear challenges for children with disabilities, particularly those with physical disabilities. For example, children with disabilities in the hilly and mountain districts tend to stay home because family members cannot carry them to and from school on a regular basis.

3. Access to secondary and tertiary education

As noted in UNICEF’s 2013 State of the World’s Children Report, a 2008 survey in Tanzania found that children with disabilities who attended primary school progressed to higher levels of education at only half the rate of children without disabilities.²¹

Human Rights Watch research in Nepal and China echoed these findings. For example, In Nepal’s National Policy and Plan of Action on Disability, the government

¹⁹ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.43.

²⁰ Human Rights Watch, *Futures Stolen*, p.48.

²¹ Government of the United Republic of Tanzania, “2008 Tanzania Disability Survey,” United Republic of Tanzania National Bureau of Statistics, Dar es Salaam, Tanzania, 2009, p. 19, nbs.go.tz/tnada/index.php/ddibrowser/5/download/24 (accessed January 31, 2013).

acknowledges that children with disabilities who have received primary education cannot easily access secondary level education on an equal basis with other children. For example, accommodations such as sign language interpretation and Braille teaching materials are not made for deaf and blind children in secondary school. The Nepal government has also not provided technical and vocation education for people with disabilities, as stipulated in its 1982 Disabled Persons Protection and Welfare Act.²²

We also found that few students with disabilities in China reach higher education. Those who do tend to be ones who have physical or mild disabilities, and they face additional barriers as a result of government policy. In China, all students applying to universities must submit the results of a detailed physical examination, along with their academic records, for consideration. These include a record of the student's self-reported medical history, including the presence of disabilities, along with a doctor's assessment. The Ministry of Education, the Ministry of Health, and the China Disabled Persons' Federation (CDPF) have a set of guidelines advising universities on the type of "physiological defects" and "illnesses" that make a person "unable to take care of themselves or complete their studies," and these can be grounds for denying them admission to universities in general. Although only "guidelines," they send a clear signal to universities that they can discriminate in admissions on the basis of students' physical or mental attributes or disabilities. The guidelines also put people with disabilities in a difficult position. If they state their conditions fully as required, they risk discrimination by the universities; if they fail to report their disabilities, they risk being subsequently rejected due to dishonesty. In past years, a number of press reports have documented that several students with disabilities were rejected by universities for failure to report their disabilities.²³ While there are vocational schools for people with disabilities as well as higher education institutions in the special education system in China, they tend to focus on training for skills and professions that are traditionally reserved for people with disabilities. For example, the blind are trained in massage therapy and the hearing impaired are trained in visual arts. Students with disabilities who aspire to other professions face daunting challenges. This includes the education profession itself: bureaus of education typically prohibit the hiring of teachers with certain disabilities.²⁴

22 Human Rights Watch, *Futures Stolen*, p.31

23 Human Rights Watch, *As Long as They Let Us Stay in Class*, p.45.

24 Ibid.

4. Active involvement of children with disabilities and their families, including in monitoring implementation of article 24

Parental attitudes and resources play an important role in determining whether children with disabilities can overcome the multiple barriers preventing them from attending school or getting a proper education. In some cases, however, parents and grandparents themselves are the first barrier: they do not think that their children are capable of learning and thus do not bring them to school. To ensure that children with disabilities have access to education, a critical step is to inform parents about their children's right to education and their educational options.²⁵ As one parent in Nepal explained to Human Rights Watch:

Parents think if we can train normal children well, they will take care of us later, but what will [a child with disability] do studying? So why bother sending a disabled child to school?

As a result of such attitudes and lack of information, children with disabilities are often denied their right to education.

Family members can and should play a critical role in developing community-based education for their children. For example, parent networks can serve as mutual support groups and parents can be trained in skills to work with their own children. Parents can also act as advocates in their dealings with schools and authorities.²⁶

To reach an inclusive setting, it is necessary to establish formal mechanisms in schools at all levels of education for the active involvement of parents and children and young people with disabilities to ensure that they participate in decision-making and in monitoring implementation of inclusive education.

Article 4(3) of the CRPD states that “in the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

There is a need to establish an independent body made up of disability experts and representatives of children with disabilities and their parents to monitor the school system's compliance with relevant laws and regulations and to receive complaints

²⁵ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.55.

²⁶ Human Rights Watch, *Futures Stolen*, p.70.

about discrimination and lack of reasonable accommodation at mainstream schools. The body should be charged with making recommendations for reform.²⁷ For example, the Office of the High Commissioner for Human Rights in Nepal worked with the government and local disability organizations to develop human rights indicators in the areas of education, health and housing, among others, to disaggregate data including by disability. This was a positive step toward better data collection and monitoring.

5. Good practices on the process to inclusive education even with limited resources

Human Rights Watch has documented several positive examples of progress toward inclusive education. Inclusive education does not have to be costly or involve extensive infrastructural change. Some countries have developed cost-effective measures to promote inclusive quality education with limited resources such as “multi-grade, multi-age and multi-ability classrooms, initial literacy in mother tongues, training-of-trainer models for professional development, linking students in pre-service teacher training with schools, peer teaching and converting special schools into resource centers that provide expertise and support to clusters of regular schools.”²⁸ In some cases, it can be as simple as allocating classrooms on the ground floor to accommodate the needs of some students. Even where modifications are necessary to ensure that buildings are physically accessible to people with disabilities, making the necessary adjustments usually costs only 1 percent of the overall building cost.²⁹

In Nepal, one model of inclusive education includes community-based rehabilitation. The Resource Center for Rehabilitation and Development, which is part of the Community-Based Rehabilitation Organization, runs a daycare center for children with intellectual, developmental and multiple disabilities in Bhaktapur district, just outside of Kathmandu. The organization provides rehabilitation services, including assistive devices, and trains teachers and administrators of mainstream schools on basic techniques to make classrooms inclusive. They have used a range of strategies to create awareness among teachers, parents and students about the need to bring children with disabilities into mainstream schools, including through meetings and child-to-child interactions in class and on the

²⁷ Human Rights Watch, *Futures Stolen*, p.39.

²⁸ UNESCO, “Policy Guidelines on Inclusion in Education,” 2009, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf> (accessed August 30, 2013), p.11.

²⁹ Human Rights Watch, *As Long as They Let Us Stay in Class*, p.66.

playground. As of 2011, they had helped over 30 students with mild to moderate intellectual disabilities integrate into general schools.³⁰

A project funded by the Danish government in Banke district in the southern part of Nepal demonstrates that inclusive education can be achieved with limited resources. The teachers adopted different teaching methods, including working in groups so students at different skill levels could assist and encourage each other. The schools also benefited from international technical assistance, which monitored and followed up on progress and constraints. As a result of these efforts, children with sensory and intellectual disabilities were integrated with the rest of the class, and teachers reported that inclusive teaching methods improved discipline and the general working atmosphere.

Municipalities and provinces in China, especially in coastal regions, are also making efforts toward a more inclusive education system. In Beijing, for example, the municipal government announced that it will stop building more special education schools and instead will shift resources to integrate students into mainstream schools. It says it will improve the physical accessibility of mainstream schools and hire teachers to provide support to students with disabilities. The bureau of education in Xinjiang Uyghur Autonomous Region has also reportedly equipped all new schools with accessibility features and converted four mainstream schools to improve accessibility in recent years.

Conclusion and recommendations

To realize fully inclusive education systems worldwide, governments and their development partners should take a comprehensive and holistic approach to ensuring the right to education for children with disabilities. Central to this approach is the empowerment of parents and children and young people with disabilities in the formulation and implementation of inclusive education at all levels.

Human Rights Watch recommends that:

- Governments should immediately review and revise its laws and regulations in line with article 24 of the CRPD.
- Existing or new laws or regulations should define “inclusive education” and “reasonable accommodation” in accordance with article 24 of the CRPD.

³⁰ Human Rights Watch, *Futures Stolen*, p.71.

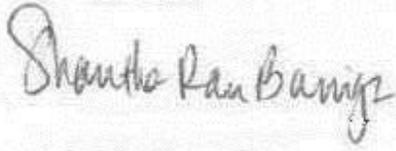
- Establish an independent body made up of independent disability experts and representatives of children with disabilities and their parents to:
 - Monitor the school system’s compliance with relevant laws and regulations.
 - Receive complaints about discrimination and lack of reasonable accommodation at mainstream schools.
 - Identify remaining barriers to quality and inclusive education for students with disabilities.
 - Make recommendations on actions the Ministry of Education can take to ensure access to inclusive education.

- Develop a time-bound, strategic plan to move toward an inclusive education system that delivers quality education. Such a plan should include:
 - Specific timelines with measurable goals.
 - An adequate budget that includes financial and other support to ensure that resources, including teachers, expertise, and equipment, are shifted from developing the special education system to making the mainstream system inclusive.
 - Adequate training for teachers, school administrators, and education officials at “all levels of education” in “disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support people with disabilities,” as set out by article 24(4) of the CRPD.
 - An evaluation mechanism that motivates and supports teachers to carry out inclusive education.
 - Formal consultation with independent disabled peoples’ organizations, parents’ organizations and children with disabilities in the country.
 - Awareness-raising of the right to an inclusive education, reasonable accommodation, and non-discrimination.

- Establish formal mechanisms in schools at all levels of education for the active involvement of parents and children and young people with disabilities to ensure that they participate in decision-making and monitoring processes in the implementation of inclusive education.

We hope this submission is useful to OHCHR as you prepare a study on the right to education for persons with disabilities. We look forward to continuing to support the work of OHCHR in promoting strong and effective implementation of the CRPD.

Sincerely,

A handwritten signature in black ink that reads "Shantha Rau Barriga". The signature is written in a cursive style and is centered within a light gray rectangular box.

Shantha Rau Barriga
Director, Disability Rights Division
Human Rights Watch