KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

MEMORANDUM ON THE COVID-19 RESPONSE STRATEGIES FOR THE BASIC EDUCATION SUB-SECTOR

PRESENTED TO

THE NATIONAL COVID-19 EDUCATION RESPONSE COMMITTEE

22ND MAY 2020

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A. INTRODUCTION

1. The Kenya National Commission on Human Rights ("KNCHR" or “the Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote and protect human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles.

2. The Commission under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the Constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories and memoranda.

3. It is on this basis that the KNCHR submits this memorandum to the National COVID-19 Education Response Committee to explore the best possible response strategies for the Basic Education sub-sector in response to the COVID-19 pandemic in Kenya.

B. BACKGROUND

4. Education is a human right and an indispensable means of realizing other human rights.¹ States, including Kenya have committed, through regional and international frameworks to promote the right to access education to wit; Article 11 of the African Charter on The Rights and Welfare of The Child; Article 26 of the Universal Declaration of Human Rights (UDHR), Article 28 of the Convention on the Rights of the Child and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under Sustainable Development Goal No. 4, States commit to ‘ensure inclusive and equitable quality education’. At the domestic level, these principles have been reiterated in our Constitution under Article 43 (1) (f) that provides for the right of every person to education and further Article 53 (1) (b) on the right of every child to free and compulsory basic education. Other enabling legislation and policies

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including the Children Act, Basic Education Act, among others, further operationalize this right to education.

5. In line with international standards, the Commission wishes to bring to the attention of the Committee on Kenya’s general obligations with regards to the right to education and in particularly the obligatory concepts of accessibility, affordability and adaptability. The former means that educational institutions and programmes have to be accessible to everyone, without discrimination. It also requires that the education must be affordable to ensure all learners can be able to access without incurring financial burden. Non-discrimination is a core element of accessibility meaning that education must be accessible to all, especially the most vulnerable groups. The concept of adaptability obliges Kenya to ensure that education is flexible and adaptable to the needs of changing societies and communities and that it responds to the needs of students within their diverse social and cultural settings.\(^2\) The requirement for non-discrimination is a minimum standard/core obligation for States in achieving the right to education. It is therefore one that Kenya must strive to fulfil and respect, even in times of emergencies, such as the current COVID-19 pandemic.

**Impact of schools’ closure and alternatives to physical learning**

6. In response to the COVID-19 pandemic, countries around the world implemented several public health and social measures (PHSM) such as movement restrictions, closure of schools and businesses, border closure among others. The COVID-19 pandemic has greatly affected the Education sector all over the world. On March 15\(^{th}\), the Kenyan government suspended learning in all schools, colleges, universities and all other institutions of learning. While schools’ closure is logical in enforcing social distancing within the student and pupil communities, it has a far reaching economic and social consequences especially on vulnerable and marginalized students. This disruption which might not just be a short-term issue can also have long-term consequences on the affected cohorts and is likely to result in increased inequalities in the long run. As an alternative to physical learning following the closure, interventions were made by schools and colleges through the roll out of online learning programmes. These programmes were mainly rolled out by private learning institutions who mainly cater for the upper and middle-class members of the society; who could afford the required equipment such as computers, tablets, smart phones and TVs, leaving out the lower classes of the poor, rural and marginalized members of the society. However, even for those accessing online learning, there are concerns on the affordability of internet connectivity.

\(^2\) CESCR General Comment No. 13: The Right to Education (Art. 13) Para. 7.
and the various requirements including printing of material that is out of reach for a big percentage of Kenyan households.

7. On their part, the Ministry of Education, through the Kenya Institute of Curriculum Development (KICD) has been running digital programmes from 23rd March, 2020 via four different platforms namely: Television through Edu-Channel, Radio through Radio Taifa and English service, You-Tube through @edutvkenya and the Kenya Education Cloud, available through www.kec.ac.ke.

8. While the efforts to adapt and continue teaching and learning online are very commendable to mitigate the impact of school closures on the right to education, it is worrying that this has not been accessible to all learners due to social status, technological and geographical challenges. Nationally, 57.9 per cent of the households have members who usually attend learning institutions, 48.2 per cent of households used home schooling as a coping mechanism to continue learning as 24.6 per cent of households with members who usually attend any learning institution were not using any method to continue learning at home. The Committee on Economic and Social Cultural Rights (CESCR) in its recent note has similarly cautioned the risk that such measures carry in terms of, ‘deepening educational inequalities between rich and poor learners due to unequal access to affordable internet services and equipment such as computers, smart phones and tablets.’

9. Noting that the technology based programmes are not accessible to all learners, deciding to re-open or not to re-open schools should be guided by scientific and medical evidence and a risk-based approach to maximize the educational and health benefits for students, teachers, non-teaching staff, and the wider community so as to prevent transmission of COVID-19 in the country. A human rights-based approach should also be incorporated to ensure that no learner is left behind.

10. As the Ministry of Education prepares for in-school learning to start again, it is important to note that school closure is likely to have worsened educational inequalities, jeopardizing the attainment of Sustainable Development Goal 4 (SDG 4). The government has a duty to ensure that a temporary break in schooling does not become a permanent one for vulnerable children as the longer they are out of school, they are less likely to return i.e. girls, learners with disabilities, intersex children, those affected by their physical locations in places

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3 Ministry of Education Press release dated March 18th 2020, signed by the CS Education Prof George Magoha.
4 KNBS Survey on Socio Economic Impact of COVID-19 ON Households Report
witnessing insecurity, floods, landslides and other natural disasters among others. It is important to note that girls are burdened with assisting their mothers with household chores while the boys could have more free time to engage in their schoolwork.

11. There are also protection-related risks of children not attending schools i.e. risk of domestic violence, sexual exploitation, teenage pregnancy, child marriages among others. Also, the prolonged schools’ closure disrupts essential school-based services like immunization, school feeding programmes, provision of sanitary towels and mental and psychosocial support. As the government plans on reopening schools, it should adopt measures to mitigate the unequal effect this pandemic has on children who already experience barriers to education, are vulnerable or marginalized.

Re-opening Schools

12. Various Agencies including the WHO, UNICEF, World Bank, WFP and IFRC have issued guidelines on the prevention and control of COVID-19 in schools and a framework for re-opening schools. This framework highlights six key dimensions to consider when planning to re-open schools during the COVID-19 pandemic: policy, financing, safe operations, learning, reaching the most marginalized and wellbeing/protection6. The KNCHR wishes to draw the attention of the National COVID-19 Education response committee to these six key dimensions for their consideration.

13. The Government in response to the COVID-19 pandemic has put in place the following measures: ban of formal and informal meetings which include closure of schools, 7pm to 5am curfew, cessation of movement into and out of Nairobi Metropolitan Area, Kilifi, Mombasa, Kwale and Mandera and the cessation of movement in and out of Eastleigh and old town Mombasa. The government has further directed the public to observe social distancing, sanitization, washing of hands, wearing of masks in public and remaining indoors.

14. The Kenya National Commission on Human Rights notes that reopening of schools in Kenya in the present circumstances will face a variety of challenges. These include but not limited to:

- The night curfew, if it persists, will make it challenging as some students especially day scholars, and teachers get to their areas of residence past 7pm. The cessation of movement in the affected counties and localities will restrict travel since some schools are located in those areas, the net effect could be re-

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opening of schools in other areas and not in others. The KNCHR submits that this will be tantamount to discrimination and will not adhere to the human rights-based approach (HRBA) principles of non-discrimination.

- Disruption of the school calendar has been one of the many effects of COVID-19 on the right to education. The closure of schools, colleges and universities in Kenya, not only interrupted teaching and learning but also coincided with a key assessment period and many exams have been postponed or cancelled. Majority of schools having covered 20-40 per cent of this year’s syllabus, the Kenya Union of Post Primary Education Teachers (KUPPET) took a nationwide survey that revealed that nearly 80 per cent of students were not given enough assignments and study materials to take home when the schools were abruptly closed. The low coverage of the syllabus coupled with the high number of students who were not given adequate homework will likely result in poor performance in the subsequent exams especially the national exams for class 8 and form four candidates.

- Around 460 boarding schools and colleges across the country have been designated as coronavirus isolation centers and according to KUPPET, less than one per cent of these schools have been fumigated or staff tested for COVID-19, posing a challenge to the learners and teachers.

15. The impact of the COVID-19 pandemic on the mental well-being of all, including learners cannot be overemphasized. It has been observed that the home learning situation by itself is a cause of stress for families and learners as a result of the added family responsibilities to the learners and financial stress. This could be compounded for those families with learners with the various forms of disabilities. This resonates well with the recent survey by info track in Kenya which indicated that a majority of Kenyans at 75% are worried about the COVID 19 situation. Therefore, it is essential that any back to school plan must factor in the need to provide psychosocial care for the learners as well as their families.

C. LESSONS LEARNT FROM OTHER COUNTRIES

16. According to UNESCO, Coronavirus lockdown measures have partially or fully closed schools for more than 90% of the world’s student’s population across 186 countries and territories. However, only a handful of countries like Denmark, Norway, China and Japan have started re-opening schools after

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8 Infotrack CoronaVirus Poll.
9 weforum.org/agenda/2020/05/coronavirus-countries-schools-education-covid19-reopen-classroom/
reinstating safety measures ranging from keeping windows open for ventilation, spacing desks six feet apart, temperature checks and resuming classes for students of a certain age. According to UNESCO, we could draw the following lessons from other countries;

17. In China, students are slowly returning to school with hygiene measures put in place. They are wearing disposable face masks, using hand sanitizers, having their temperatures checked at the school entrance and they display a "green" code of health via China’s smartphone health code program. UNESCO’s data shows that most schools in China remain closed in larger regions while schools in nine mainland provinces reopened for graduating students as of early April. From the Chinese experience above KNCHR notes that as of now Kenya has not yet been able to provide adequate masks for her citizens, let alone provision of adequate sanitizers and equipment to check temperatures, without these facilities, it will be too soon to re-open schools.

18. Taiwan took swift action to contain its spread after learning of the coronavirus outbreak. It never closed schools but did extend winter break by ten days in February in order to disinfect education facilities, distribute medical supplies, and implement new procedures for schools with confirmed coronavirus cases. The learners have been sitting with plastic dividers, to stop the spread of germs and having temperature checks.

19. Japan has reopened 40% of schools. On March 24, the country announced that it would not extend its school closure recommendations, leaving the decision of when and whether or not to reopen schools to local municipalities based on the number of coronavirus cases in the area. The Ministry of Health released guidelines for school reopening which include opening windows to ventilate classrooms, maintaining physical distance, checking temperatures daily and wearing face masks. As for the case of Kenya, KNCHR notes that education being a national function save for pre-school and technical colleges, it may not be proper to leave the re-opening to the counties as is the case with Japan.

20. Denmark on the other hand, became the first European country on lockdown to reopen its schools, beginning with children in the lower grades as COVID-19 lockdown was lifted, but Danish parents are refusing to send their children back. We need to ask this, are Kenyan parents willing to release their children to school when they re-open? What assurances are the government providing for the parents on the safety of their children?

21. Norway like Denmark, sent its youngest students back to class ahead of older learners due to a decline in the rate of coronavirus transmission.
22. Germany reopened high schools to high school seniors, giving priority to graduating students.

23. While schools have reopened in some parts of the world, it is notable that safety measures have been put in place, in order to adhere to social distancing, frequent hand-washing, plastic partitions and socially distanced classrooms, are all part of the 'new normal' for the world's classrooms. Is Kenya prepared for this "new-normal", given our other challenges?

D. FRAMEWORK FOR REOPENING OF SCHOOLS

24. The Commission submits that the framework for re-opening of schools must incorporate a human rights-based approach. This means carefully consideration of all strategies to ensure no learner is left behind or discriminated because of a particular vulnerability. Parents, teachers, and the school community need to have confidence that the school system can protect the physical and mental health of students, teachers, and other personnel and this calls for meaningful participation and consultation.

25. We particularly call on the Ministry of Education to be alive to the following factors:
   - Whether reopening of schools risks spreading the virus - by basing the decision on scientific and medical evidence, analyzing risks around the movement and interactions of the learners from home to the school environment;
   - Whether schools have the necessary facilities and capacity to implement any measures given by the government including catering for caregivers in school communities, maintaining social distancing, affording psychosocial support and medical needs, preventing stigmatization and putting in place isolation practices;
   - Whether students are engaged in virtual learning particularly the most vulnerable and marginalized;
   - How to guide peculiar needs of vulnerable children including children with disabilities, children in statutory institutions and charitable institutions; and
   - The consequences of reopening to children’s mental health as well as social development especially with regards to revising the academic calendar and examinations; this means that there should be thorough preparations and all stakeholders should be involved.
26. There are certain pre-conditions that should be met before schools reopen. The primary criteria for reopening should primarily take care of physical protection against the coronavirus\textsuperscript{10}. This implies that the school amenities such as ablution blocks, transport, meals etcetera should not expose the learners to the disease.

E. RECOMMENDATIONS

27. As per the Terms of Reference for the National Covid-19 education response committee, the Kenya National Commission on Human Rights proposes the following:

1. Advise to the Cabinet Secretary on the re-opening of Basic Education institutions (Pre-Primary, Primary, Secondary, Teacher Training Colleges and Adult Education Institutions)

1.1. The Ministry of education should apply due diligence in assessing the right to health of the children and put in place the right measures to safeguard this right to health and in the long run the pupils, students and teacher’s right to life.

1.2. Teacher and student numbers in classrooms will have to change and it may be necessary to reorganize the school programmes. There should be focus on the capacity of local administrations and institutions to meet the required needs i.e. can they maintain social distance between the students and teachers? Can they provide adequate hygiene facilities such as clean water, soap and sanitizers to all learners, teachers and the entire school community to all schools?

1.3. The Kenya Government should re-consider the proposal to reopen schools until the COVID-19 transmission curve flattens and there is effective management of the reported cases of new infections or transmission. The national infections have already surpassed the 1,000 mark (1,109) and recorded the highest number of infections per day (80 as of May 21\textsuperscript{st} 2020) since the first case was reported, when the schools were closed. In its Third Progress Report on access to health, the Senate Ad Hoc Committee on COVID-19 Situation in Kenya Committee has observed that according to estimates by the Ministry of Health, the number of deaths arising from COVID-19 may reach as high as 30,000 during the peak phase of the outbreak if strict containment and hygiene guidelines are not adhered to.

From the foregoing, it is the humble submission of KNCHR that schools SHOULD REMAIN CLOSED until the infection rates subside and only at such a time shall we consider a phased re-opening of learning institutions starting with the candidates.

2. Review and reorganization of the school calendar as part of the COVID-19 post recovery strategy.

2.1. According to KUPPET findings an average of 20 percent syllabus coverage had been achieved by the time the schools closed. Based on this finding, it is not appropriate for the Kenya National Examinations Council (KNEC) to assess students at this time, we recommend that KNEC should consider rescheduling exams to a later date and that the re-opening of schools to be reconsidered until such a time when the scientific and medical evidence points to a manageable situation.

3. Advice to the Cabinet Secretary on boarding students/pupils when schools re-open

3.1. Fumigation of the 460 boarding schools and colleges across the country that had been designated as coronavirus isolation centers and transfer of isolation centers from the schools and colleges to other facilities.

3.2. Provision of counselling services to both the students, teachers and the school workers as a way of on-boarding students and pupils following this pandemic.

4. Advice to the Cabinet Secretary on the impact of the COVID-19 pandemic on the demand for education by poor households and suggest mitigation measures

4.1. The Commission recommends, and in line with guidance by the CESCR that the government should take measures to address the structural barriers that disadvantage a section of learners in the homeschooling set up in particular by, ‘[expediting] access to affordable internet services and vital technical equipment including radios or tablets by all students, particularly those in poorer communities and regions, so that they can benefit equally from the virtual learning programs while schools and higher education institutions are

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closed due to the pandemic'.

This includes access to other basics such as access to electricity, food, water, housing and other vital necessities.

5. Advice to the Cabinet Secretary on health and safety measures to be put in place for the pupils/students, teachers and the entire school community

The KNCHR proposes the following measures to be implemented in the school community ONLY after the infection rates are effectively managed NOT immediately as the infection rates are still on the rise.

5.1. Everyone in the schools should be educated on COVID-19 symptoms, prevention and management. This information should be available in multiple accessible formats, including for those with auditory or visual impairments.

5.2. Creation of a schedule for frequent hand hygiene and provision of sufficient alcohol-based sanitizers, soap and clean water at the school’s entrance, exits and throughout the school compound.

5.3. Schedule regular daily cleaning and disinfection of the schools and the learning environment, sports facilities/equipment, surfaces, door handles, desks, supplies, light switches, doorframes, and covers of books.

5.4. Hand hygiene and physical distancing measures in transportation such as school buses, and trips for students on safe commuter vehicles to and from schools should be put in place, including those using public transport.

5.5. Develop and enforce a policy on wearing of masks and “staying at home if unwell” for students, teachers or school staff with symptoms. Daily screening for body temperature, on entry into the building for all staff, students and visitors, this is meant to identify persons who are sick.

5.6. Provide free sufficient disposable masks for those who are in the school learning environment.

5.7. Establish procedures for students or staff who have symptoms of COVID-19 or are feeling unwell in any way to be sent home or isolated. Students who have been in contact with a COVID-19 case should be quarantined for

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13 WHO recommends 70% ethyl alcohol to disinfect small surface areas and equipment, or sodium hypochlorite 0.1% for disinfecting surfaces.
14 days as well as encouraging school officials to notify public health authorities in case of a positive COVID-19 case.

5.8. Establishment of regular and safe delivery of essential services to schools i.e. school feeding, sanitary towels and vaccination campaigns.

5.9. In order to limit risk of exposure or direct physical contact in Physical Education classes, sports or other physical activities as well as playgrounds, wet areas and changing rooms to be suspended for one term as the situation is monitored.

5.10. Ensure sexual and reproductive health (SRH) services are available at schools as well as strengthen referral systems for Gender Based Violence (GBV) and protection against sexual exploitation and abuse (PSEA).

5.11. Provide school feeding programmes in all schools so as to prevent students from travelling to and from home during lunch hour.

5.12. Establish counselling and other support systems targeting high school students who may have fell into the trap of abusing drugs during the period when the schools have been closed due to the COVID-19 pandemic.

5.13. Set up mechanisms for reporting any form of stigmatization, harassment, mistreatment or torture of any actor in school due to their COVID-19 status.

F. CONCLUSION

28. The sudden schools’ closure has left low income families struggling to make ends meet and provide basic necessities. It has further revealed and exacerbated the socio-economic gap between learners, with the most vulnerable children bearing the brunt. These includes children in marginalized areas, children from the poorest households, children-headed households, orphans and children with disabilities.

29. The Commission urges the Government to guarantee continued meal provision during school closures for children in low income families who are missing subsidized meals in the school feeding programmes. The government should also sustain the distribution of sanitary towels during the school closure period as this ends up affecting girls’ self-esteem making the girls vulnerable to exploitation and a causal factor to poor school attendance and performance.

30. It is also the responsibility of the Kenyan government and education providers to anticipate reopening of schools and the measures for reopening will need to be context specific. The circumstances of each county and area is unique.
hence it will be much more efficient and effective if the Kenyan Government and authorities delve based on the actual situation on the ground rather than dictating a policy measure nationwide.

31. There is need for resource allocation for implementation of Kenya National School Health Policy and Guidelines as well as for the provision of face masks sanitizers and other basic facilities to support hygiene such as clean water. Changing of class sizes to adhere to social distancing shall also be a necessity.

32. The concern regarding the disparity between learners and accessibility to e-learning programmes is something that the government needs to deliberately address to ensure that progressively, this gap is bridged.

33. Finally, KNCHR recommends that the schools remain closed for the moment, given that the infection rates are on a continuous increase and re-opening the schools at such a time defeats the purpose of closing them down in the first place. Let us all continue to combat this pandemic until we have stabilized the infection rates as re-opening the schools now is tantamount to placing our children in the forefront of a war and expecting them to be safe.

SIGNED BY:

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Secretary to The Commission/Chief Executive Officer