

COMMUNIQUE ON THE RIGHT TO AND ACCESS TO EDUCATION IN THE CONTEXT OF THE COVID-19 PANDEMIC

HELD ON TUESDAY 5 MAY 2020

1. The Kenyan Section of the International Commission of Jurists (ICJKenya) held the fourth in a series of its Justice and Rule of Law Webinars. The webinar, held on 5 May 2020, was on access to education in the context of the COVID-19 pandemic.
2. We appreciate the participation of our distinguished panelists representing the government, civil society, the private sector and the legal fraternity lawyers on Zoom, our social media platforms and online streaming services including YouTube, Twitter, Facebook and WhatsApp.
3. Acknowledging that the closure of schools as part of the responses to containing the spread of the Covid-19 disrupted the entire education system, including 15 million learners from different social, economic and cultural backgrounds.
4. Noting that in the wake of the Covid-19 pandemic, the government through the Kenya Institute of Curriculum Development (KICD) reinforced the delivery of school programmes through radio and television broadcasts. The Cabinet Secretary of Education announced the use of Kenya Education Cloud that has been updated with extensive digital content including videos, audio and pdf material for learners.
5. Deeply concerned by the inequalities that virtual learning has exposed on learners who are already facing other barriers to accessing education like poverty, disabilities, learners in rural areas and the urban poor population who are unable to access learning materials through online platforms or broadcast media;
6. Further noting the likelihood of further exacerbating the inequality gaps in the country as these children are disadvantaged by their poor social-economic backgrounds.
7. Recognizing the right to education is a fundamental right envisaged under Articles 43 and 53 on the rights of children in the Constitution of Kenya and provided under international human rights instruments that Kenya has ratified.
8. Appreciating that the right to education is not a standalone right. Its enjoyment is dependable upon the enjoyment of other fundamental rights such as food, housing, sanitation, health. Thus, a holistic approach is necessary in combating COVID 19 to ensure that fundamental rights are not violated or abrogated in the fight against this pandemic.



9. In the discussion, the panellists and participants acknowledged that:

- a. The key factors to consider on the right to education within the context of COVID-19 pandemic are access to and affordability of the online learning materials;
- b. There are legitimate concerns on exposure of educational inequalities in the face of COVID-19 and the need for the government to focus on mitigating the disproportionate effects exacerbated by barriers to accessing online learning.
- c. In many informal settlements, rural and remote locations, schools would provide children with meals in school feeding programmes and the closure of schools had meant the loss of a daily meal.
- d. Kenya's education system as envisaged in law and in practice is pegged on the physical interaction between the teacher and the student, which poses a challenge when this interaction is neither possible nor feasible;
- e. The current interventions do not meet the definition and parameters of the legal framework on basic education: it is not free and compulsory, there is no supervision, and there are no quality assurance measures in place;
- f. The gadgets and tools necessary for online learning, such as mobile phones, tablets, radio, television sets, are not accessible to everyone;
- g. As long as there are costs attached to accessing online materials to learners and/or their parents, the right to education will discriminate and tilted against the economically marginalised and those without internet access.
- h. The private sector has taking some measures on bridging the gaps on accessibility and affordability. Safaricom PLC has, for instance, created tools such as shupavu, a USSD-based service that provides access to learning materials on both smart and feature phones. They are collaborating with Viusasa, Eneza Education and Longhorn Publishers to provide free access to learning materials, up to a certain limit. The Telecom company is also currently working with universities to provide internet packages to students at subsidised rates;
- i. There are both immediate and long-term solutions that need to be put in place;

10. Therefore, and in view of the foregoing, ICJ Kenya calls upon:

A. The Government to:

- i. Review existing legislation on education to provide for and promote e-learning, and to ensure equity and non-discrimination in access to e-learning services and infrastructure;
- ii. Ensure data protection and privacy for children, and safeguard learning platforms from hacking for child violence, intimidation and bullying;
- iii. Negotiate more zero-rating of services with providers to enhance access to learning materials;
- iv. Diversify the modes of transmission of online materials to include, high tech, low-tech and no-tech mediums;



- v. Provide tools and gadgets to students especially those expected to sit for national exams;
- vi. Develop policy guidelines to guide standards of online learning;
- vii. Provide data on the number of students, particularly those sitting for national exams, who have access to online learning materials, and provide criteria for an assessment to guide the decisions regarding the national examinations;
- viii. Provide solutions that respond to the needs of the most vulnerable in the society including persons with disabilities including those with learning disabilities;
- ix. Rethink the entire education system to reduce dependency on physical teacher-student interaction; and
- x. Rethink the traditional 'classroom education' to accommodate customised learning through digital solutions for a more inclusive education system;

B. To the Private Sector:

- i. Provide more solutions to address the gaps in access and affordability of online learning materials;
- ii. Address the inequalities in access to the internet to ensure stable and consistent access in all regions in Kenya, including the informal settlements, rural and remote areas; and
- iii. Create more awareness of the various solutions that are available to consumers.

C. To the Civil Society actors:

- i. Provide technical support in the development of policy guidelines on online learning that ensure compliance with the constitutional, legislative and international legal standards; and
- ii. Demand accountability for the implementation of the laptop project that would have resolved the issues of digital infrastructure for online learning at this critical time;

D. To the general public:

- i. Demand accountability for the implementation of the laptop project that would have resolved the issues of digital infrastructure for online learning at this critical time; and
- ii. Support responses and actions that ensure access to education for every child. For example, consider donating gadgets to poor families and aiding children in your community with the online materials, especially where the immediate parents or guardians are unable to help due to illiteracy or other reasons.



11. ICJ Kenya commits and undertakes to:
- i. Assess the impact of the COVID-19 on the enjoyment of human rights with a view to ensuring that the highest protection of human rights is guaranteed and offered during the pandemic;
 - ii. Continuously advocate for and demand transparency and accountability from the government in respect of the design, development and implementation of laws and policies during this pandemic;
 - iii. Offer our technical expertise towards rethinking and reviewing the legislative frameworks on education to incorporate and promote e-learning, and to ensure compliance with the constitutional, legislative and international legal standards.

Signed



Kelvin Mogeni
Chairman
Icj Kenya