

FEATURE

Realising the Right to Education for Learners with Disabilities during the Covid-19 Pandemic in Kenya

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Introduction

On 11 March 2020, the World Health Organization declared Covid-19 a pandemic. Following the confirmation of the country's first Covid-19 case on 12 March 2020, the Government of Kenya acted to address the pandemic through a number of regulatory measures anchored upon the Public Health Act of 1921 and the Public Order Act of 1950. Subsequently, policy-makers, including those in the education sector, undertook Covid-19 response and recovery measures that could disproportionately affect the most marginalised people in society. These include learners with disabilities (LWDs), who are vulnerable and often depend strongly on accommodations that are designed to overcome constraints arising from their disabilities.

Generally, LWDs have been subjected to discrimination in education for a long time in Kenya, with only about 9 per cent of all persons with disabilities (PWDs) being able to attend public schools with other non-disabled children (Kenya National Survey for Persons with Disabilities 2009). The majority of LWDs are forced to attend special schools designed to accommodate specific categories of disabilities. Even before the pandemic, LWDs were less likely than other learners to complete education, and more likely to be excluded altogether from schooling.

In order to curb the spread of the virus, Kenya closed all learning institutions on 20 March 2020, and subsequently adopted remote teaching to support distance learning and online education. Most of the learning institutions hastily moved their education programmes onto virtual platforms, an approach which has raised attendant difficulties for learners who cannot afford

the necessary software and hardware, or who face logistical difficulties when they seek to participate in online classes.

These difficulties have been magnified for LWDs since, far too often, the new changes have not taken account of their specific needs. Social distancing requirements have meant that LWDs may not use human assistance, virtual platforms have not been configured to be accessible, and learners with reduced mobility have been less able to attend classes that conflict with Covid-19 restrictions such as curfews. This creates an imperative for states to carry out a multidimensional response to the crisis which ensures that the interests of society's most marginalised groups are appropriately addressed. This article explores the measures that the Government of Kenya has put in place to support learning for LWDs during the Covid-19 pandemic and discusses effective approaches for ensuring inclusive learning for



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PWDs during this period. Additionally, the article suggests measures to improve the realisation of the right to education for LWDs during the Covid-19 period and beyond.

Among them are: developing disability-specific measures to address the needs of LWDs; enhancing the accessibility of Covid-19-related information, facilities, services and programmes; undertaking meaningful consultation with LWDs and their representative organisations and institutions; and establishing monitoring and evaluation frameworks to ensure that LWDs are not left behind.

Recognition of the right to education for LWDs

The promulgation of the Constitution of Kenya 2010 (Kenyan Constitution) brought with it a progressive bill of rights that enshrines socio-economic as well as civil and political rights. Odongo & Musila (2016) have argued that the rationale for the consensus on the inclusion of socio-economic rights was twofold.

First, it was the result of the demand for 'a constitutional framework that would enable the state to transform society in social, economic and cultural spheres, and to protect the most vulnerable and marginalised'. Secondly, there was wide recognition of these rights as justiciable rights, as evidenced by a wealth of jurisprudence and literature on their judicial enforcement in other African countries such as South Africa.

It should be noted that the Kenyan Constitution places a strong focus on vulnerable and marginalised groups, imposing a duty upon all state organs and public officers to address their needs, including the needs of persons with disabilities and of children. This gives vulnerable and marginalised groups an opportunity to demand accountability from the state in regard to measures it has taken to protect, promote and fulfill their rights, including during a pandemic such as Covid-19.

The right to education is recognised in article 43(f) of the Kenyan Constitution and reinforced under article 53, which provides for every child's right to free and compulsory basic education. The Constitution also en-

shrines substantive provisions on persons with disabilities that have a direct bearing on the right to education for LWDs. Article 54 provides as follows:

1. A person with any disability is entitled – ...
 - b. to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
 - c. to reasonable access to all places, public transport and information;
 - d. to use sign language, Braille or other appropriate means of communication; and
 - e. to access materials and devices to overcome constraints arising from the person's disability.



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In addition to these constitutional provisions, the right to basic education for LWDs is protected under national legislation, particularly under the Basic Education Act of 2013 and the Persons with Disabilities Act of 2003. Despite the express recognition of LWDs under its provisions, the Basic Education Act has been criticised for failing to provide for reasonable accommodation in education and for creating 'a system in which all children with disabilities are required to attend separate schools, solely based on their disability' (Aseka & Kanter 2014).

This failure may be cured by the progressive implementation of the Sector Policy for Learners and Trainees with Disabilities, a normative framework adopted

to promote inclusive education in Kenya. Kenya is also party to a range of international instruments that form part of Kenyan law under article 2(6) of the Constitution and promote and protect the right to education for LWDs. These include the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities (CRPD); the African Charter on Human and Peoples' Rights; and the African Charter on the Rights and Welfare of the Child.

Government response to Covid-19's effects on LWDs

The Covid-19 pandemic caused a global education crisis that disrupted learning for more than 1.5 billion learners worldwide (Human Rights Council 2020; UNESCO 2020), including more than 18 million Kenyan learners and trainees (Ministry of Education 2020). This is a significant threat to the attainment of Sustainable Development Goal 4 on access to quality, equitable and inclusive education. To curb the spread of the virus, the Government of Kenya took a three-pronged approach to facilitate the continuation of remote learning: providing digital learning; supporting access to textbooks and other teaching and learning materials in remote areas; and improving water and sanitation infrastructure in preparation for the reopening of schools.



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Undoubtedly, the adoption of remote teaching to support distance learning and online education posed a challenge to the inclusion of LWDs, most of whom would lack access to the requisite media of learning. First, learners who do not have access to the requisite digital devices such as TV and radio were left out. Secondly, learners with print disabilities did not have home access to assistive devices such as braille devices, screen readers, magnifiers and other devices which

are available in special and mainstream schools. Thirdly, lessons conducted on television cannot be accessed by learners with hearing impairments unless captioning and sign language interpretation is provided. Also, most learners with intellectual, mental and psychosocial disabilities require a more adapted and personalised mode of learning.

In other words, remote learning for LWDs in most cases would require far more than the availability of a TV or radio, a pen, and an exercise book. The challenges faced by LWDs are directly linked to the interactions between their impairments and their living conditions, and are exacerbated by a lack of effective communication media as well as a lack physical human support as a result of social distancing. Additionally, most LWDs from poor households depend on schools for meals and basic health-care services and information.

To address the effects of Covid-19 on education, the Ministry of Education, in collaboration with other stakeholders, developed the Basic Education COVID-19 Emergency Response Plan, which aims to ensure continued learning and promote the health, safety and well-being of learners, teachers and education officials during and after the coronavirus crisis. The Response Plan targets, among others, the most vulnerable learners in the Kenyan school system. The objectives of the one-and-a-half-year plan include providing access to quality, equitable and inclusive education, and developing and implementing intervention programmes for the marginalised and most vulnerable.

Commendably, the Response Plan mainstreams disability issues and proposes some disability-specific interventions, such as:

- sharing educational content in sign language, with more screen space for the sign language interpreter;
- using captions and providing audio descriptions during online and televised sessions;
- providing offline resources such as textbooks, study guides and equipment to learners from poor, marginalised and vulnerable households;
- providing appropriate psychosocial support to learners, teachers and education officials, as well as caregivers, to manage the impact of Covid-19 on learners;

- identifying and supporting the most vulnerable learners who may have suffered due to Covid-19; and
- providing scholarships for the most vulnerable, including LWDs.

At the time of writing, it is difficult to assess the effectiveness of the plan since it is still in the initial stages of implementation. Be that as it may, the plan offers inclusive interventions which, if properly implemented, should enhance the effective participation of LWDs on an equal basis with others.

What is the way forward?

Given that the Covid-19 pandemic has deepened pre-existing inequalities, it is necessary that the Government of Kenya mainstream disability and, in some cases, develop disability-specific measures in its Covid-19 response to address concerns that have been raised by the disability movement. Several human rights mechanisms and bodies have outlined key actions and recommendations that can be employed to ensure the inclusivity of Covid-19 response and recovery measures, including the right to education. In regard to these recommendations, this article identifies four overarching areas of action that Kenya should consider as it implements the Response Plan.

First, the Ministry of Education should develop disability-specific guidelines to build the capacity of the implementing partners in order to ensure that remote learning platforms are safe and accessible to LWDs; ensure that teachers are trained in accommodating LWDs remotely; and ensure that special education programmes are included in measures supporting the continuity of education for learners with severe disabilities. Moreover, the guidelines should offer support to the caregivers of LWDs, including those with developmental or intellectual disabilities, in implementing

specific considerations when managing the care and education of children at home.

Even though the Response Plan includes some key interventions that address concerns that have been raised with regard to LWDs, it does not provide specific interventions that should be applied when accommodating learners with different types of impairments. As mentioned, LWDs have different types and degrees of impairment, a fact that necessitates individualised interventions – mere acknowledgement of the barriers LWDs face cannot address their concerns.

Secondly, Kenya should ensure that all information, facilities, services and programmes that have a bearing on the education of LWDs are accessible to all. Notably, Kenya has not satisfactorily ensured that accessibility is at the centre of its activities. For example, the educational activities that have been undertaken through mainstream media have not included captions or provided sign language interpretation for learners who are deaf.

Additionally, the Covid-19 measures that have been undertaken, including the Response Plan, have not been provided in alternative formats. This is despite the availability of timely and comprehensive information on disability considerations during the Covid-19 period, as provided by the WHO and the disability movement. To enhance accessibility of all information, Kenya should

- include captioning and sign language for all live and recorded educational events and communications;
- convert educational materials into an easy-read format so that they are accessible for learners with intellectual disability or cognitive impairment;
- develop accessible written information products by using large print and braille formats for people who are deaf-blind; and
- include captions for images used in documents or online media.



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Thirdly, Kenya should undertake meaningful consultation with, and enhance the active participation of, LWDs and their representative organisations while undertaking Covid-19 response and recovery measures. Commendably, a purposive reading of the Response Plan can lead to the conclusion that disability focal points were involved in developing the plan. The proposed interventions, some of which are disability-related, provide clear indication of such engagement.

This notwithstanding, disability focal points, and even LWDs, should be involved in the development of the proposed disability-specific implementation guidelines. Without a doubt, the educational experiences of LWDs could contribute greatly to creativity, new approaches, and innovative solutions to the identified challenges. Additionally, local organisations of PWDs can assist in the identification of LWDs and their specific needs, and in the development of key messages aimed at building capacity on disability inclusion in communities.

Finally, the development of a clear monitoring and evaluation strategy should inform the assessment of the successes and challenges in the proposed interventions, and facilitate necessary adjustments if needs be. It should plug administrative loopholes that have resulted in delays in disability-focused investments and which should be considered a priority for the country. Additionally, the strategy should ensure the availability of effective accountability measures to guarantee proper implementation of disability-related policies, strategies, programmes and activities.

The long-term impact of Covid-19 on education will depend on the measures that the government adopts now. Accordingly, to avoid reversing the progress that has been made in recent decades, the interventions undertaken by the government should be relevant in the long term.

Conclusion

The inclusion of PWDs in the Covid-19 response and recovery plan is essential for ensuring that no one is left behind; it is also a critical test of the commitments by Kenya made in ratifying the CRPD. The CRPD, the national human rights framework, and the 2030 Agenda call for PWDs to be placed at the centre of all efforts, including those relating to Covid-19. As things stand, Kenya is increasingly recognising the need to mainstream disability in its pandemic response. Nonetheless, a disability rights-inclusive approach is required so as to ensure PWDs are not left behind in the global mission of 'building back better'. In the words of the UN Secretary-General:

A disability inclusive Covid-19 response and recovery will better serve everyone. It will provide for more inclusive, accessible and agile systems capable of responding to complex situations, reaching the furthest behind first. It will pave the way for a better future for all.

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