



FAILING TO LEARN THE LESSONS?

THE IMPACT OF COVID-19 ON A BROKEN AND UNEQUAL EDUCATION SYSTEM

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Cover photo: A group of people including teachers, parents and members of the community demonstrate against the re-opening of schools at the intersection of Joe Marks and M5 during lockdown level 3, 25 June 2020, Cape Town, South Africa ©Gallo/Getty Images

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1. EXECUTIVE SUMMARY

“The crisis has forcefully demonstrated the central role of educational institutions in our societies”.

UN Special Rapporteur on the right to education

South Africa has borne the heaviest burden in Africa of the COVID-19 pandemic in terms of numbers of both reported cases and reported deaths. Beyond this devastating toll, as with many other countries, the socio-economic impacts on the country have been multiple and far-reaching. In this report, Amnesty International focuses, in particular on, the impact that the pandemic has had on the right to education.

Seeking to guarantee access to education during a pandemic is not easy. However, our research highlights some ongoing crucial and avoidable failings of the South African government with respect to the right to education. These failings are undermining its ability to ensure that all children are able to access learning in a safe and decent environment during the crisis.

This report is a follow up to *Broken and Unequal: The State of Education in South Africa*, that Amnesty International issued in February 2020 just before COVID-19 struck. That report highlighted stark inequalities in the education system, exposing how the infrastructure of many schools that serve poorer communities do not meet the government’s own “Minimum Norms and Standards” for educational facilities.

For this latest report, Amnesty International has drawn on extensive desk research, including both national and comparative statistical data, government regulations and policies, statements by government ministers, reports of parliamentary proceedings, academic and institutional studies and surveys, court judgments, NGO reports and public statements, as well as media reporting.

It concludes that the historic challenges faced by South Africa prior to the pandemic – including stark socio-economic inequality and great disparity in life chances – have been exacerbated by COVID-19. In so doing, it argues that unless the findings of our previous report are begun to be seriously addressed, inequalities in education will continue to grow.

A HEAVY TOLL

The impact of COVID-19 on South Africa has been devastating with respect to a whole range of human rights including not just the rights to health and life but also work, adequate standard of living and food. The impact has been well documented by academic researchers, the media, international bodies, and the government itself. The country has endured one of the highest reported infection rates globally with over a million reported cases by the end of 2020, and a death toll of over 45,000 by early February 2021. whilst the socio-economic cost in terms of unemployment and livelihoods has affected millions. This is against a backdrop of already stark inequality. Official statistics show that the majority of South Africans - at least 54% of households - have no access to clean water, while at least 14% live in crowded informal settlements. According to World Bank estimates, in 2015 the richest 10% of the population held around 71% of net wealth while the bottom 60% held just 7%. Black South African households earn on average less


than 20% of white households, whilst nearly half of the black population is considered to be below the poverty line compared to less than 1% of the white community.

On 22 June, just over three months after the first reported cases of COVID-19 in South Africa, the number of reported cases breached 100,000, according to the government's official figures. By early August this had increased to over 500,000, and by November there were over 750,000 cases – easily the highest in Africa and 15th highest in the world. These relatively high infection rates, despite a strict lockdown, must be seen in the context of millions of South Africans living in poor quality and overcrowded housing in townships and rural areas, making it very difficult if not impossible to socially distance.

As in many countries, the socio-economic impact has been severe. Many businesses have collapsed, with widespread job losses, adding to the unemployment rate that was already 30.1% before the pandemic, according to the official labour market survey. One in three adults who had earned an income in February were no longer doing so by April, with women, young people, Black and less educated South Africans disproportionately affected. By the end of July, the National Incomes Dynamic Study was calculating that three million jobs had been lost and more than one million people pushed into food poverty. Despite various government fiscal and social assistance measures, a nation-wide survey reported that only one in five households (22%) had received any additional government support in the previous month. Academic researchers have calculated that approximately one in three who have lost their jobs have received no social protection at all.

Prior to the lockdown, official statistics showed that at least 2.5 million children routinely went hungry and of children under 5 years old who died, almost a third were severely malnourished. All the available data shows that COVID-19 has exacerbated this dire situation, with evidence of increased hunger during lockdown as workers lost income and children no longer received free school meals. In particular, the halting of the national feeding programme on 18 March, when schools closed, had a devastating impact on many of the nine million extremely poor children to whom it provided food.



 ↑ A pupil sanitizes his hands before entering a classroom as classes resume in the Tembisa township, Ekurhuleni, on 8 June 2020
©AFP/Getty Images

THE IMPACT ON EDUCATION

The consequences for the right to education have been severe in a situation where all schools were closed on 18 March but then in many cases reopened without sufficient support to ensure safe learning environments. At the same time, many learners have struggled to access any education during this period, including through remote learning. Amnesty's research for our previous report, conducted over two years between 2017 and 2019 in Gauteng and the Eastern Cape, found numerous examples of schools with poor infrastructure and lacking basic facilities and equipment.

Our findings are confirmed by the government's own statistics. In 2018, out of 23,471 public schools, 19% only had illegal pit latrines for sanitation, with 37 schools having no sanitation facilities at all; 86% had no laboratory; 77% had no library; 72% had no internet access. and 42% had no sports facilities. 239 schools lacked any electricity. Many of the shortcomings are in breach of not just the government's international human rights obligations but its own "Minimum Norms and Standards" for educational facilities. Compounding the problem has been the continued failure

of the government to meet its own targets. In March 2020, just before COVID-19 struck, the Department of Basic Education itself reported that only 266 out of 3,988 schools had benefitted from the President's own 2018 Sanitation Appropriate for Education (SAFE) campaign to address inadequate sanitation. Learners at schools with poor infrastructure will have undoubtedly been worse affected by the pandemic than those attending schools with better infrastructure.

The schools that struggle most with poor infrastructure are also most likely to have found it difficult to provide continued education for children in poorer communities who already had little or no access to the internet and computers. Nationally, only 22% of households have a computer and 10% an internet connection. Data from the Trends in International Mathematics and Science Study 2015 shows that for no-fee schools (the poorest 75%), less than half of children in a given class have a computer with internet access. Only in the wealthiest 5% of schools do at least 90% of learners have access to a computer and the internet at home. Most children therefore have little prospect of being able to participate in online teaching and whose parents or carers are usually not in a position to home teach.

The socio-economic divide has also recently been highlighted by an audit of the Department of Basic Education with the Financial and Fiscal Commission finding that, "if performance challenges and uneven access to school infrastructure and other educational inputs are not addressed, the wide disparities in educational outcomes between rural and urban provinces and between less affluent and more affluent schools will persist. COVID-19 has served to further highlight these existing inequalities in access to quality education where we saw learners from private schools able to continue learning under lockdown through online classes whereas learners from poorer schools were not able to do so."

Learners were out of school for a considerable period of time, so the lack of any education during this period is likely to put them at a serious disadvantage in comparison to those attending better resourced schools. By early August, South African children had lost on average between 30 and 59 days of school, depending on their grade, due to school closures. Even after schools reopened, many pupils were also only able to attend half the school days in rotation in order to comply with social distancing whereby no more than two learners can share a desk.

Longer term, the lack of education for so many must be seen in the context of already historically high numbers of dropouts. On 6 October 2020, the Department of Basic Education published new data on the drop-out rate at South African schools and the impact of the coronavirus pandemic which indicated that between 44% and 50% do not complete Grade 12. The Minister for Basic Education confirmed on 22 November that more than 300,000 children had dropped out of primary school during the previous six months.

AN INADEQUATE GOVERNMENT RESPONSE

South Africa closed all schools on 18 March, less than three weeks after the first COVID-19 case in the country. Some schools then reopened within the space of 10 weeks in early June, only to be shut down again at the end of July as large numbers of cases emerged. A phased return of all learners by 31st August was then implemented. In terms of remote learning during lockdown, the DBE has provided some support via television and radio by partnering with the South African Broadcasting Corporation. However, this is very limited both in terms of grades covered and number of hours.

When schools should reopen has been the subject of heated debates between various stakeholders including teachers' unions, parents, and civil society. Regardless of which side of the argument people come down on, decisions about schools opening or closing need to be informed by the government's human rights obligations. In particular, any analysis must ask what mitigation measures the government should be taking in order to ensure that it has functioning education institutions which can deliver acceptable education that is accessible to all, without discrimination. The government's approach has faced widespread criticism, mainly on the basis that it has not put in place sufficient resources to assist schools, particularly those serving poorer communities, to mitigate against the risks of COVID-19.

Research by Amnesty International and others have demonstrated that many schools – particularly those serving poorer communities – have very poor infrastructure and are ill equipped to become 'COVID-19 safe'. It is impossible to maintain hygiene and hand-washing measures at schools where many have no running water and adequate sanitation. It is impossible to socially distance when classrooms are already overcrowded. A study analyzing the data on class sizes in South Africa in conjunction with government regulations related to COVID-19 and the spatial realities of classrooms, led the authors to conclude that that at least half of South African learners will not be able to practice social distancing within a classroom.

A survey of 7,440 schools on material readiness (defined as has having sufficient supplies of hand and surface sanitizers, along with face masks to meet government's regulations) conducted on 18 January by five teacher and

education unions found that at least 40% of schools did not have adequate supplies, while 53% say they were not confident that they could comply with the government's sanitizing and social distancing protocols effectively. The survey of school principals also found that 55% reported increased infections in their immediate area with 65% reporting heightened anxiety from the community around Covid-19.

Yet the government response to COVID-19 did not prioritize tackling this inequality by ensuring those schools and learners had the additional resources they needed. Parliamentarians have expressed concerns about the failure of the DBE to meet deadlines for the delivery of PPE, classrooms, toilets, scholar transport and additional teachers to deal with overcrowding. Some schools which reopened on 8 June were still using pit toilets and dilapidated buildings without water for regular handwashing.

Results from an electronic survey conducted by the South African Human Rights Commission (SAHRC) amongst 4,485 schools (20% of the total number) in June reported that in the Eastern Cape less than half (47%) had running water with other provinces also recording relatively low scores - 59% in KZN; 74% in Limpopo; and 78% in Mpumalanga bearing in mind that this amounts to thousands of schools without such a basic service which is even more vital during a pandemic.

DIVERTING VITAL RESOURCES

Despite the clear evidence that school infrastructure and equipment can play a key role in ensuring safer learning environments, in June the government announced that it was planning to divert over R2 billion (US\$ 0.13 billion) from the provincial education infrastructure grant. This cut was confirmed by the Minister of Finance in his medium term budget statement at the end of October whilst also announcing that the DBE's overall budget would not be increased at all for the next three years – adjusted for inflation, this means that spending on education will actually reduce during this period.

Therefore, instead of prioritizing education as an essential service as the Constitution requires, it has been repeatedly neglected during the COVID-19 response and will continue to be so in the medium term unless urgent action is taken. President Ramaphosa's commitment on 15th October to invest in school infrastructure during the next 24-36 months including by eradicating all mud schools and addressing inadequate sanitation in thousands, is welcome. However, urgent action is needed now to support those schools in the midst of a pandemic.

RECOMMENDATIONS

In order to ensure that all schools can comply with the government's own COVID-19 guidance, the government needs to think again. The historic lack of investment is exacerbating inequalities during the pandemic and risking the loss of opportunity for an entire generation. The government should address continuing serious infrastructure failings, prioritizing those schools which continue to fall below the government's own Minimum Norms and Standards for educational facilities whilst also ensuring that all schools have sufficient supplies of PPE. It should also provide more resources to enable remote or blended learning to take place when schools are closed. Above all, it needs to put human rights at the heart of its policies, plans and response to COVID-19 in order to ensure that all children regardless of their status and circumstances can benefit from a decent education and the life opportunities it can bring.

2. METHODOLOGY

This briefing builds on a report launched by Amnesty International in February 2020, *Broken and Unequal: the State of Education in South Africa*, which highlighted deep inequalities and crumbling infrastructure across South Africa's education system.¹ This was based on both desk research and field research in Gauteng and Eastern Cape provinces where researchers visited 38 public schools and interviewed 290 people including learners, parents and teachers.²

Since the outbreak of COVID-19, Amnesty International has closely monitored the impact of the pandemic and the government's response on a range of socio-economic rights including health, adequate standard of living and food with a particular focus on the right to education. Research consisted of analysis of both national and comparative socio-economic statistical data on health, living standards and education, including by UN agencies and the WHO; government regulations and policies; statements by government ministers; reports of parliamentary proceedings; academic and institutional studies and surveys, including the South African Human Rights Commission; court judgments; NGO reports and public statements; and media reporting.

Amnesty International sent letters to the Minister, Deputy Minister and the Director-General of the Department of Basic Education on 4 November summarising our main findings and concerns in addition to requesting some further information. The recipients were given an opportunity to reply by 13 November so their responses could be incorporated into this briefing. By the time of publication, no replies had been received.

1 Amnesty International, *Broken and Unequal: The State of Education in South Africa* (Index: AFR53/1705/2020), <https://www.amnesty.org/en/documents/afr53/1705/2020/en/>

2 Research included analysis of reports by international and national NGOs, the UN, regional human rights bodies, academics and the media, and government data including in areas such as public spending on education and education outcomes disaggregated by region.

3. BACKGROUND

3.1. THE CONTEXT PRE COVID-19

As in many countries, COVID-19 has exacerbated already existing and stark inequalities in South Africa. The majority of South Africans — at least 54% of households — have no access to clean water, while at least 14% live in crowded informal settlements.³ According to World Bank estimates, in 2015, the richest 10% of the population held around 71% of net wealth while the bottom 60% held just 7%.⁴ Black South African households earn on average less than 20% of white households, whilst nearly half of the black population is considered to be below the poverty line compared to less than 1% of the white community.⁵

The South African economy was already facing difficulties prior to COVID-19. Although it remains the second largest economy in Africa, the country's economic growth rate over the past five years averaged only 1.5% p.a., while the official unemployment rate before the pandemic hit was at 30.1%.⁶ The country was already in recession and contending with severe water and electricity shortages.⁷ Major rating agencies including Moody's Fitch and S&P have given South Africa a negative investment rating, reflecting the weak nature of the economy and accompanying risk for investors.⁸ Added to this is widespread corruption as evidenced by the ongoing Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the Zondo Commission) established in August 2018 to investigate allegations of state capture and various acts of maladministration and corruption with respect to state enterprises.⁹

3.2. THE SOCIO-ECONOMIC IMPACT OF COVID-19

The government's response to COVID-19 has had an impact on a range of rights including the rights to life, health, work, adequate standard of living and food.

The first case of COVID-19 (in South Africa?) was identified on 1 March 2020. South Africa moved very quickly to declare, just two weeks later, a national state of disaster under the Disaster Management Act 2002.¹⁰ This included a strict lockdown commencing on 26 March, which saw the closing of borders; people required to stay at home unless to obtain food, essential goods or seek medical attention; an overnight curfew; a limit on outdoor exercise; and a ban on alcohol sales. This was introduced with the aim of reducing non-COVID-19 alcohol-related admissions in an effort to

3 "Coronavirus: South Africa's social divide and economic woes exposed", DW, 9 June 2020, <https://www.dw.com/en/covid-19-south-africas-social-divide-and-economic-woes-exposed/a-53739914>. Based on Statistics SA General Household Survey Statistics South Africa (StatsSA), *General Household Survey (GHS) Series Volume VIII: Water and Sanitation In-Depth Analysis of the General Household Survey 2002–2015 and Community Survey 2016 data* (2016)

4 World Bank, South Africa Overview, <https://www.worldbank.org/en/country/southafrica/overview>

5 "Black South Africans lose out as economic divide bites", Financial Times, 2 May 2019, <https://businessday.ng/financial-times/article/black-south-africans-lose-out-as-economic-divide-bites/>

6 "Coronavirus: South Africa's social divide and economic woes exposed", DW, 9 June 2020, <https://www.dw.com/en/covid-19-south-africas-social-divide-and-economic-woes-exposed/a-53739914>

7 "South Africa hit by Record Blackouts, Raising Recession Risk", Bloomberg, 9 December 2019, <https://www.bloomberg.com/news/articles/2019-12-09/eskom-widens-south-africa-blackouts-to-highest-ever-level>; "South Africa power crisis: Severe blackouts shut down mines", DW, 10 December 2019, <https://www.dw.com/en/south-africa-power-crisis-severe-blackouts-shut-down-mines/a-51614351>. "South Africa's real water crisis: not understanding what's needed", Mike Muller, 6 November 2019, <https://theconversation.com/south-africas-real-water-crisis-not-understanding-whats-needed-126361>

8 "Moody's downgrades South Africa's ratings to Ba1, maintains negative outlook", 27 March 2020, https://www.moody's.com/research/Moodys-downgrades-South-Africas-ratings-to-Ba1-maintains-negative-outlook-PR_420630

9 Commission of Inquiry into State Capture, <https://www.statecapture.org.za/>

10 "South Africa's Ramaphosa declares state of disaster over COVID-19", Reuters, 15 March 2020, <https://uk.reuters.com/article/us-health-coronavirus-safrica/south-africas-ramaphosa-declares-state-of-disaster-over-covid-19-idUSKBN21214A>

preserve hospital capacity.¹¹ On 1 June the government lifted some of these restrictions including the curfew, the limit on outdoor exercise, the ban on alcohol sales and a partial reopening of schools (see next section).¹² However, on 13 July, President Ramaphosa reinstated the alcohol ban and a curfew in an attempt to free-up hospital beds occupied by those suffering alcohol-related traumas.¹³ In the wake of declining infection rates, and recognizing an increasing socio-economic toll, the Government loosened restrictions again on 17 August with nearly all constraints on economic activity lifted across most industries, including the sale of alcohol. However, as of 29 November 2020 alert level 1 lockdown¹⁴ had been extended to 15 December 2020.¹⁵ On 28th December, in the wake of surging cases with a new more infectious variant (501 V.2) and the South African Medical Association warning that the health system was on the verge of being overwhelmed, the President announced that the alcohol ban would be reintroduced, together with the extension of the night time curfew by four hours from 9pm to 6am.¹⁶ Some have questioned the impact of the lockdown on reducing the number of COVID-19 cases in the country and that some measures might have actually had the opposite effect, although this remains a matter of scientific debate.¹⁷



↑ July High school, near Peddie, Eastern Cape ©Amnesty International

RIGHTS TO HEALTH AND LIFE

On 22 June, just more than three months after the first reported cases of COVID-19 in South Africa, the number of cases breached 100,000.¹⁸ By early August this had increased to over 500,000¹⁹ and by November there were over 750,000 cases – easily the highest in Africa and the 15th highest in the world.²⁰ On 28 December 2020 South Africa became the first African country to record more than one million cases.²¹ These relatively high infection rates, despite a

11 National Lockdown Regulations, 26 March 2020, <https://sacoronavirus.co.za/2020/03/26/national-lockdown-regulations/>. The regulations included “You can only be outside of your home to acquire food, essential goods or while seeking medical attention. The movement between provinces, metropolitan and district areas is prohibited”.

12 “South African unions square off with gov’t over school reopening order”, CGTN, 29 May 2020, <https://africa.cgtn.com/2020/05/29/south-african-unions-square-off-with-govt-over-school-reopening-order/>

13 Statements available at <https://sacoronavirus.co.za/>

14 Most normal activity can resume, with precautions and health guidelines followed at all times. Population prepared for an increase in alert levels if necessary. Details at <https://www.gov.za/covid-19/about/coronavirus-covid-19-alert-level-1>

15 “Ramaphosa : State of disaster extended, alcohol sales back to normal”, The Citizen, 11 November 2020, <https://citizen.co.za/news/covid-19/2382852/ramaphosa-state-of-disaster-extended-alcohol-sales-back-to-normal/>

16 “Ramaphosa announces alcohol sales ban, tighter curfew in new Covid-19 restrictions”, 28 December 2020, <https://www.news24.com/citypress/news/ramaphosa-announces-alcohol-sales-ban-tighter-curfew-in-new-covid-19-restrictions-20201228>

17 “How Should We Evaluate Lockdowns? Disentangling Effectiveness, Context and Politics”, Broadbent et al, CGC, 26 October 2020, <https://www.cgdev.org/blog/how-should-we-evaluate-lockdowns-disentangling-effectiveness-context-and-politics>. See also <https://theconversation.com/south-africas-lockdown-a-great-start-but-then-a-misreading-of-how-society-works-139789>

18 “COVID-19 cases in South Africa surpass 100,000”, AA, 23 June 2020, <https://www.aa.com.tr/en/africa/covid-19-cases-in-south-africa-surpass-100-000/1886348>

19 Accounting for half the cases in Africa at the time. See Africa CDC Dashboard at <https://africacdc.org/covid-19/> accessed at 9 August 2020

20 WHO COVID-19 Dashboard, https://covid19.who.int/?gclid=EAlalQobChMkbWrz5mM7QlVqvjVCh2T3wZIEAAYASAAEgJAqfD_BwE accessed at 18 November 2020. The next highest African country is Morocco with nearly 300,000 cases

21 By contrast the next highest country was Morocco with 432,079 cases. See “Covid: South Africa passes one million infections as cases surge”, 28 December 2020, <https://www.bbc.co.uk/news/world-africa-55462863>

strict lockdown, must be seen in the context of millions of South Africans living in poor quality and overcrowded housing in townships and rural areas, making it very difficult, if not impossible, to socially distance.²²

By the end of September, nearly 32,500 health care workers had been infected, accounting for 4.8% of all cases.²³ On 28 December the President stated that the number had risen to 41,000.²⁴

In the education sector, following the initial reopening of schools at the beginning of June (see further below), 98 teachers and 1,800 students had been infected within two weeks.²⁵ By the end of 2020, the Department of Basic Education announced that 1,493 teachers had died during 2020, some of them as a result of COVID-19.²⁶ More than 300 died in the December/January 2021 school holidays alone taking the total up to nearly 1,700 by the end of January 2021.²⁷

Over 10,000 people had died by early August²⁸ and this had doubled to over 20,000 by mid-November.²⁹ This included 240 health care worker deaths by the beginning of September.³⁰ By early February 2021 South Africa had recorded over 45,000 deaths.³¹ In terms of excess deaths there had been 132,000 between 3 May 2020 and 30 January 2021 – a higher rate per person than recorded in Western Europe.³²

The authorities have progressively increased access to testing, with 1.4 million tests conducted by the beginning of June,³³ rising to 4.7 million by 25 October.³⁴ However, public health experts have noted large disparities in access to tests and waiting time for results between the private and public sectors.³⁵ Overall, despite recent improvements, testing capacity continues to be a challenge with a relatively low ratio of numbers of tests per numbers of confirmed cases, although this has recently improved.³⁶

Although the government did not impose any formal restrictions on accessing health services, on the basis that health care is categorized as an essential service, many people still experienced challenges accessing essential health care and treatment. A survey by the Partnership for Evidence-Based Response to COVID-19³⁷ indicated that a substantial proportion of households that needed medical care had difficulty accessing health care visits (38%) or medicines (31%) during the pandemic, with people with longstanding illnesses particularly affected. Barriers cited included facilities being closed or inaccessible due to mobility restrictions, as well as concerns about COVID-19 transmission. Nearly 10% of people deferring accessing the health system cited not being able to pay as the reason.³⁸

22 "COVID-19: Social Distancing and Lockdown in Black Townships in South Africa", 7 May 2020, <https://kujenga-amani.ssrc.org/2020/05/07/covid-19-social-distancing-and-lockdown-in-black-townships-in-south-africa/>; see also "Poorest face dilemma in Africa's cities", 14 January 2021, <https://phys.org/news/2021-01-poorest-dilemma-africa-cities.html>

23 "COVID-19 Situation Report 1-30 September", UNICEF, 30 September, <https://www.unicef.org/southafrica/media/4431/file/%20ZAF-COVID-19-situation-report-1-30-September-2020.pdf> p1

24 "Our priority at this time must be to save lives", Daily Maverick, 28 December 2020, <https://www.dailymaverick.co.za/article/2020-12-28-our-priority-at-this-time-must-be-to-save-lives/>

25 "South Africa: 1800 students infected by COVID-19", AA, 15 June 2020. <https://www.aa.com.tr/en/africa/south-africa-1-800-students-infected-by-covid-19/1878145>

26 "Motshekga salutes teachers who succumbed to Covid-19", 17 December 2020, <https://www.sowetanlive.co.za/news/south-africa/2020-12-17-motshekga-salutes-teachers-who-succumbed-to-covid-19/>

27 "Call to delay reopening of schools", Daily Maverick, 7 January 2021, <https://www.dailymaverick.co.za/article/2021-01-07-call-to-delay-reopening-of-schools/>

28 This accounted for 43% of the whole African continent and 64% of the WHO African region. See Africa CDC Dashboard at <https://africacdc.org/covid-19/> accessed at 9 August 2020

29 COVID-19 South African Resource Portal. <https://sacoronavirus.co.za/> accessed at 15 November 2020

30 "Global: Amnesty analysis reveals over 7000 health workers have died from COVID-19", 3 September 2020, <https://www.amnesty.org/en/latest/news/2020/09/amnesty-analysis-7000-health-workers-have-died-from-covid19/>

31 WHO COVID-19 Dashboard, https://covid19.who.int/?gclid=EALalQobChMIkbWrz5mM7QlVqvjVCh2T3wZIEAAYASAAEgJAqfD_BwE accessed at 4 February 2021.

32 SAMRC, Report on Weekly Deaths in South Africa, <https://www.samrc.ac.za/reports/report-weekly-deaths-south-africa> accessed at 7 February 2021

33 "COVID-19 spreads to schools in South Africa", AA, 23 June 2020. <https://www.aa.com.tr/en/africa/covid-19-spreads-to-schools-in-south-africa/1887226#>

34 "COVID-19 SA dashboard", News 24, <https://specialprojects.news24.com/coronavirus/index.html> accessed at 25 October

35 "A fundamental shift is required to pool health resources to ensure public sector health patients are not left behind", PHM SA, 21 June 2020, <https://www.phm-sa.org/a-fundamental-shift-is-required-to-pool-health-resources-to-ensure-public-sector-patients-arent-left-behind/>

36 Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19 p. 2 at <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/> By September the National Institute for Communicable Diseases reported an increasing trend in tests per confirmed case, which supports the overall declining trend in new reported cases. After a major testing backlog in May, turnaround times for test results have now decreased to around 3 days in the public sector and less than 2 days in the private sector <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

37 Collaboration between amongst others the African Union, WHO and the World Economic Forum

38 Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19 at <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

Based on global modelling off large surgical cohort studies, two medical experts at the University of Cape Town have estimated that over 70% of surgeries will have to be cancelled or postponed due to COVID-19.³⁹ Treatment for chronic conditions has also been seriously impacted – 11% of missed visits have been for diabetes treatment, 9% for cardiovascular conditions and another 9% for HIV and TB in the context where, prior to COVID-19, approximately 20% of South African adults are living with HIV and nearly half a million develop TB each year.⁴⁰ 7% of missed visits were for suspected COVID-19 symptoms, which suggests that at least some people were not able to get the care they needed for COVID-19 during the crisis.⁴¹ Medical and civil society organizations, including Amnesty International, documented that complaints relating to the lack of availability and accessibility of sexual and reproductive health services, including safe abortion, had increased during lockdown.⁴² Lack of access to services must also be seen within the context of the disparity in capacity between public and private health providers.⁴³

It should also be noted that the high level of COVID-19 infections among health care workers will have also contributed to health care service disruptions.⁴⁴ This in the context of already high level of burnout amongst health care workers.⁴⁵ During a surge in cases in July, South Africa's public health system was struggling to cope with the South African Medical Association reporting that, "the COVID-19 pandemic is overwhelming hospitals, with workers suffering 'burnout'."⁴⁶ A BBC investigation found that in Eastern Cape province, where key staff were either on strike or sick with COVID-19, nurses were forced to act as cleaners, and there were reports of stillbirths amid overcrowded, understaffed wards.⁴⁷ Some hospitals were forced to turn away patients. For example, one ICU was only able to receive 25% of chronically ill people.⁴⁸ Around half of South African respondents in an African wide survey conducted by the AU and WHO believe they are at risk of contracting COVID-19, a significantly higher share than in other AU Member States surveyed.⁴⁹ In light of this data the AU/WHO survey's authors concluded that "the indirect health impacts of the epidemic may be significant."⁵⁰ This is further confirmed by an estimated excess of more than 51,000 deaths from natural causes between 6 May and 10 November 2020.⁵¹

The relatively high numbers of infections suffered by South Africa does raise serious questions about both the underlying socio-economic challenges in the country as detailed in the next section but also the government's public health response.

RIGHTS TO AN ADEQUATE STANDARD OF LIVING, WORK AND FOOD

As in many countries, the socio-economic impact has been severe. It is estimated that Gross Domestic Product will contract by 7.8% in 2020 – the most in nearly 90 years - and that there will be no quick rebound, with the Finance Minister in his medium-term budget statement on 28 October predicting growth of only 3.3% in 2021, 1.7% in 2022 and 1.5% in 2023.⁵² In this context, it is not surprising that many businesses have collapsed, with widespread job

39 "Over 70% of surgeries in South Africa will be cancelled or postponed due to Covid-19. How will we catch up?" Cairncross et al, PHM SA, 1 June 2020, <https://www.phm-sa.org/over-70-of-surgeries-in-sa-will-be-cancelled-or-postponed-due-to-covid-19-how-will-we-catch-up/>

40 "South Africa Perspective: TB", Copenhagen Consensus Center, <https://www.copenhagenconsensus.com/publication/south-africa-perspective-tuberculosis>

41 Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19 at <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

42 Joint letter to the Minister for Health, Protecting safe access to sexual and reproductive health services during covid-19, available <https://amnesty.org.za/wp-content/uploads/2020/04/Letter-to-Minister-of-Health-Access-to-SRHR-17042020.pdf>; www.msf.org.za/stories-news/fieldworker-stories/south-africa-providing-safe-abortion-care-during-national-lockdown; <https://www.msf.org/women-and-girls-face-greater-dangers-during-covid-19-pandemic>;

43 "A fundamental shift is required to pool health resources so public sector patients are not left behind", Cairncross et al, PHM SA, 21 June 2020, <https://www.phm-sa.org/a-fundamental-shift-is-required-to-pool-health-resources-to-ensure-public-sector-patients-arent-left-behind/>

44 "COVID-19 Situation Report 1-30 September", UNICEF, 30 September 2020, p1, <https://www.unicef.org/southafrica/media/4431/file/%20ZAF-COVID-19-situation-report-1-30-September-2020.pdf>

45 "Nurses burnt out at clinic that turned away pregnant woman reports SAHRC", SA Times, 8 July 2019, <https://www.timeslive.co.za/news/south-africa/2019-07-08-nurses-burnt-out-at-clinic-that-turned-away-pregnant-woman-says-sahrc/>

46 "Health workers are burning out: SAMA", ENCA, 14 July 2020, <https://www.enca.com/life/health-workers-are-burning-out-sama>

47 "Coronavirus in South Africa: Staff 'terrified' to work in Eastern Cape Hospitals", BBC, 14 July 2020, <https://www.bbc.co.uk/news/av/world-africa-53410406>. See also "After Early Success, South Africa Buckles Under Coronavirus Surge", WSJ, 26 July 2020, <https://www.wsj.com/articles/after-early-success-south-africa-buckles-under-coronavirus-surge-11595779200>

48 "South African Hospitals Forced To Turn Away Covid-19 Patients", VOA, 16 July 2020, <https://www.voanews.com/covid-19-pandemic/south-african-hospitals-forced-turn-away-covid-19-patients>

49 "Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19", <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

50 "Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19", <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

51 "Report on Weekly Deaths in South Africa", South Africa Medical Research Council, <https://www.samrc.ac.za/reports/report-weekly-deaths-south-africa> accessed on 30 November 2020. Excess deaths follow a similar distribution to reported COVID-19 cases, with the greatest number recorded in Gauteng followed by the Eastern Cape, Western Cape, and KwaZulu-Natal

52 "South Africa government medium-term budget policy statement", 28 October 2020, <https://www.gov.za/speeches/minister-tito-mboweni-medium-term-budget-policy-statement-28-oct-2020-0000>. In addition, the consolidated budget deficit is predicted to be 15.7% for 2020 while the gross debt-to-

losses, adding to the unemployment rate that was already 30.1% before the pandemic.⁵³ One in three adults who had earned an income in February were no longer doing so by April, with women, young people, Black and less educated South Africans disproportionately affected.⁵⁴ According to the National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) half of households reported running out of money to buy food.⁵⁵ By the end of July, three million jobs had been lost⁵⁶ and more than one million people pushed into food poverty.⁵⁷ Unemployment hit a 17-year high of 30.8% by mid-November.⁵⁸

The serious socio-economic impacts of COVID-19 were confirmed by a nation-wide survey which found that nearly three quarters (74%) of respondents had faced at least one barrier to accessing food in the previous week, including income losses, higher food prices, market shortages and other barriers. Nearly two-thirds (62%) reported having to survive on lower incomes than at the same time a year ago.⁵⁹ At the same time, forced evictions and cutting off essential services such as water and electricity by landlords continued despite government orders to suspend evictions.⁶⁰

To minimize the socio-economic impact of COVID-19, South Africa introduced various fiscal and monetary stabilization measures such as direct cash transfers to households and businesses through a \$26 billion (€23 billion) recovery package.⁶¹ This included food distribution, early payments and top-ups of existing social assistance grants, additional unemployment benefits, and a “COVID-19 Social Relief of Distress (SRD) Grant” for unemployed people not eligible for other benefits – R350 per month to be only paid from May until October – subject to certain qualifying criteria.⁶² This SRD Grant is currently benefiting six million people, and has been subsequently extended until January 2021.⁶³

The South African Social Security Agency rolled out food assistance at scale through vouchers and cash transfers to ensure that help reached those who needed it faster and more efficiently.⁶⁴ In addition, the Department of Social Development (DSD) partnered with the Solidarity Fund, NGOs and community-based organizations to distribute 250,000 food parcels across the country.⁶⁵ However, civil society has criticised the DSD for failures in delivery.⁶⁶

However, despite these measures, a nation-wide survey reported that only one in five households (22%) reported receiving any additional government support in the previous month.⁶⁷ Approximately one in three who have lost their jobs have received no social protection at all.⁶⁸ On 15 October President Ramaphosa announced a further package of measures including an “employment stimulus” with R100-billion (US\$ 6.5 billion) over the next three years for mass

GDP ratio is set to reach 81.8% this year, peaking at 87.4% in 2023-24. See also “South Africa’s economy hit hard amid the COVID-19 pandemic”, CGTN, 24 June 2020, <https://africa.cgtn.com/2020/06/24/s-africas-economy-hit-hard-amid-the-covid-19-pandemic/>

53 “South Africa’s economy hit hard amid the COVID-19 pandemic”, CGTN, 24 June 2020, <https://africa.cgtn.com/2020/06/24/s-africas-economy-hit-hard-amid-the-covid-19-pandemic/>

54 “COVID-19 has throttled South Africa’s economy”, The Economist, 18 July 2020, <https://www.economist.com/middle-east-and-africa/2020/07/18/covid-19-has-throttled-south-africas-economy>

55 NIDS-CRAM Wave 1 report, <https://cramsury.org/reports/#wave-1>

56 “National Income Dynamics Study Covid Rapid Mobile Survey”, NIDS, 15 July 2020, <https://cramsury.org/wp-content/uploads/2020/07/Spaull-et-al.-NIDS-CRAM-Wave-1-Synthesis-Report-Overview-and-Findings-1.pdf>

57 “The labour market and poverty impacts of covid-19 in South Africa”, NIDS, 15 July 2020, <https://cramsury.org/wp-content/uploads/2020/07/Jain-The-labour-market-and-poverty-impacts.pdf>

58 Africa: South African unemployment rises to 17 year high of 30.8%, Nairametrics, 13 November 2020, <https://nairametrics.com/2020/11/13/africa-south-african-unemployment-rises-to-17-year-high-of-30-8/>. South African analysts reported that unemployment according to the definition of people who need work and are available for jobs had actually risen to 43.1%.

59 “Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19”, <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

60 “Evictions, power cuts heighten S African housing crisis amid lockdown,” Thomson Reuters, 24 April 2020, <https://news.trust.org/item/20200424082353-4txpq/>

61 “Coronavirus: South Africa’s social divide and economic woes exposed”, DW, 9 June 2020, <https://www.dw.com/en/covid-19-south-africas-social-divide-and-economic-woes-exposed/a-53739914>. Child support grant beneficiaries received an extra R300 in May and from June to October an additional R500 each month. All other grant beneficiaries will receive an extra R250 per month for the next six months.

62 To apply people need to be South African citizens, permanent residents or refugees registered with Home Affairs; resident within the borders of the Republic of South Africa; above the age of 18; unemployed; not receiving any income; not receiving any social grant; not receiving any unemployment insurance benefit and do not qualify to receive unemployment insurance benefits; not receiving a stipend from the National Student Financial Aid Scheme; not receiving any other government COVID-19 response support; and not resident in a government funded or subsidized institution. “Social Grants COVID-19”, South African government, accessed at 30 November 2020 <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19#:~:text=All%20other%20grant%20beneficiaries%20will,social%20grant%20or%20UIF%20payment>.

63 Announcement made by Pres Ramaphosa in address to Parliament 15th October 2020, <https://www.gov.za/speeches/economic-advisory-council-12-oct-2020-0000>

64 South African government Social Relief of Distress Grants. <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19>

65 <https://www.dsd.gov.za/index.php/latest-news/21-latest-news/113-president-cyril-ramaphosa-additional-coronavirus-covid-19-economic-and-social-relief-measures>

66 “Feeding poor people: the national government has failed”, Jeremy Seekings, Ground Up, 2 June 2020, <https://www.groundup.org.za/article/feeding-poor-people-national-government-has-failed/>

67 “Finding the Balance: Public Health and Social Measures in South Africa Partnership for Evidence-Based Response to COVID-19”, <https://africacdc.org/download/finding-the-balance-public-health-and-social-measures-in-south-africa/>

68 “The labour market and poverty impacts of covid-19 in South Africa”, Zizziama et al, CSAE, 19 July 2020, <https://www.csae.ox.ac.uk/papers/the-labor-market-and-poverty-impacts-of-covid-19-in-south-africa>

employment programmes. The aim is to create 800,000 job opportunities before the end of the 2020/21 financial year.⁶⁹

Prior to the lockdown, it was estimated that at least 2.5 million children routinely went hungry and of children under 5 years old who died, almost a third were severely malnourished.⁷⁰ COVID-19 has exacerbated this dire situation, with evidence of increased hunger during lockdown as workers lost income and children no longer received free school meals.⁷¹ In particular, the halting of the national feeding programme on 18 March, when schools closed, had a devastating impact on many of the nine million extremely poor children to whom it provided food.⁷² On 5 July the first wave of results from the National Income Dynamics Survey – Covid-19 Rapid Mobile Survey (NIDS-CRAM) – were released showing that 47% of respondents had run out of food in the month of April, and that 1 in 7 participants reported a child had gone hungry in the week prior to the survey. 1 in 13 respondents reported that a child had gone hungry for 3 or more days in a week, demonstrating a notable level of frequent child hunger in the absence of the National School Nutrition Programme (NSNP).⁷³

The situation became so serious by July that legal action was taken to compel the government to resume the school meals programme as the DBE Minister had promised but failed to do when schools reopened on 8 June.⁷⁴ The complaint noted the interdependent link between the rights to basic education and to food.⁷⁵ The court ordered the National Minister and the eight Provincial Ministers (MECs) to produce a progress report every 15 days on implementation. However, by the end of the first reporting period, only the Minister had filed a report to the court with the majority of MECs filing late.⁷⁶ After reviewing the reports, the applicants contended that the programmes and reports were insufficient, with the result that further relief could be sought if these defects were not remedied.⁷⁷ Regardless, other barriers to children accessing these meals remain, such as lack of transport compounded by increased poverty during the pandemic.⁷⁸

The UN Special Rapporteur on the right to education has emphasised that governments should ensure the delivery of food as well as other social services to vulnerable children during the crisis.⁷⁹ Yet the South African government has failed to do so in many cases. A report from the Human Sciences Research Council on the state of food security generally in South Africa, presented to Parliament in September, noted the “weak coordination mechanisms for ensuring food security... policy environment was fragmented, and the process was encumbered by too many actors, conflictual institutions, lack of socio-economic change and social fragmentation.”⁸⁰

69 “Ramaphosa’s economic reconstruction and recovery plan – from infrastructure, mass employment to fighting corruption”, Marianne Merton, Daily Maverick, 15 October 2020, <https://www.dailymaverick.co.za/article/2020-10-15-ramaphosas-economic-reconstruction-and-recovery-plan-from-infrastructure-mass-employment-to-fighting-corruption/>

70 “Child mortality in South Africa: Fewer deaths, but better data are needed”, Bamford et al, South African Medical Journal 2018;108(3a):s25-s32, <http://www.samj.org.za/index.php/samj/article/view/12238>

71 “COVID-19 school closures in South Africa and their impact on children” citing Rapid surveys by StatsSA and the Human Sciences Research Council, 14 July 2020, <https://theconversation.com/covid-19-school-closures-in-south-africa-and-their-impact-on-children-141832>

72 “Coronavirus: South Africa’s social divide and economic woes exposed”, DW, 9 June 2020, <https://www.dw.com/en/covid-19-south-africas-social-divide-and-economic-woes-exposed/a-53739914>

73 “Timeline for the National School Nutrition Programme Court Case”, Equal Education, 3 August 2020, <https://equaleducation.org.za/2020/08/03/timeline-for-the-national-school-nutrition-programme-court-case/>

74 *Equal Education and Others v. Minister of Basic Education and Others*, 22588/2020 at <https://www.escri-net.org/caselaw/2020/equal-education-and-others-v-minister-basic-education-and-others-225882020>. The applicants successfully sued the Department of Basic Education for a violation of constitutional and statutory duties and sought declaratory relief with court oversight to achieve full implementation of the National School Nutrition Programme as soon as possible. The court concluded that all qualifying learners are entitled to a daily meal from the NSNP. The court held that as the NSNP was explicitly introduced to address both the right to basic education under section 29(1)(a) of the Constitution and the right of children to basic nutrition under section 28(1)(c), the Minister of Basic Education and the MECs have a constitutional duty to provide basic nutrition to learners, that learners have a basic right to nutrition, and that the suspension of the NSNP has infringed upon that right.

75 “Timeline for the National School Nutrition Programme Court Case”, Equal Education, 3 August 2020, <https://equaleducation.org.za/2020/08/03/timeline-for-the-national-school-nutrition-programme-court-case/>

76 *Equal Education and Others v. Minister of Basic Education and Others*, 22588/2020, <https://www.escri-net.org/caselaw/2020/equal-education-and-others-v-minister-basic-education-and-others-225882020>. Further updates at <https://equaleducation.org.za/2020/08/03/timeline-for-the-national-school-nutrition-programme-court-case/>

77 *Equal Education and Others v. Minister of Basic Education and Others*, 22588/2020, <https://www.escri-net.org/caselaw/2020/equal-education-and-others-v-minister-basic-education-and-others-225882020>. Further updates at <https://equaleducation.org.za/2020/08/03/timeline-for-the-national-school-nutrition-programme-court-case/>

78 “South Africa: These Learners Are Not Getting School Meals Because Transport to School Costs Too Much.” All Africa, 2 September 2020, <https://allafrica.com/stories/202009020805.html>

79 “Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities”, Report of the Special Rapporteur on the right to education, A/HRC/44/39, 30 June 2020, para 84, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

80 HSRC presentation to the Select Committee on Appropriations, 2 September 2020, <https://pmg.org.za/committee-meeting/31009/>

4. THE IMPACT OF COVID-19 ON THE RIGHT TO EDUCATION

4.1. THE CONTEXT PRE COVID-19 - STARK INEQUALITIES

“Calling all 25,000 institutions, “schools”, as though they are all substantially the same, is misleading. If one compares schools to cars, a tiny minority own multiple luxury sedans, 4x4s, or bakkies. A second, small group of households own one or more Toyota Corollas or Volkswagen Polos. A third, larger group of households share access to “skedonks”: old, beat-up, stuck-together-so-they-barely-work, unsafe, third-hand cars?”

Jon Fish Hodgson, Education Researcher⁸¹

South Africa’s socio-economic inequality is starkly reflected in the education system, as Amnesty International outlined in its report in February 2020.⁸² A child’s experience of education in South Africa still very much depends on where they are born, how wealthy they are, and the colour of their skin. A 2018 survey of school principals conducted by the OECD reported that 71% of South African teachers work in schools where over 30% of the students are socio-economically disadvantaged, more than treble the average of 20% of those who do in other surveyed countries.⁸³

Amnesty’s research conducted over two years between 2017 and 2019 in Gauteng and the Eastern Cape found numerous examples of schools with poor infrastructure and lacking basic facilities. These included badly maintained buildings that had never been renovated, many of them dating back decades to the apartheid era or even before; hazardous buildings with dangerous material such as asbestos; poor maintenance, in some cases putting the safety and security of learners at risk; unhygienic, poorly maintained and unsafe sanitation, with some schools only having pit latrines; overcrowded classrooms without basic equipment and materials such as furniture and textbooks; and lack of security exacerbating the problems of vandalism and burglary. All of these issues impact on the enjoyment of the right to education as well as pupils’ other rights such as water, sanitation, privacy, and dignity as highlighted by their testimonies.⁸⁴

Amnesty International’s findings are confirmed by the government’s own statistics. In 2018, out of 23,471 public schools, 19% had illegal pit latrines for sanitation, with 37 schools having no sanitation facilities at all; 86% had no laboratory; 77% had no library; 72% had no internet access and 42% had no sports facilities; and 239 schools lacked any electricity.⁸⁵ 56% of South African head teachers reported in the OECD survey that a shortage of physical infrastructure (compared to an average of 26%) is hindering their school’s capacity to provide quality instruction. 70%

81 “Open or closed, South African schools need radical social change”, Daily Maverick, 6 August 2020, <https://www.dailymaverick.co.za/opinionista/2020-08-06-open-or-closed-south-african-schools-need-radical-social-change/>

82 Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/documents/afr53/1705/2020/en/>


83 South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

84 Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/documents/afr53/1705/2020/en/>

85 DBE, 2018. National Education Infrastructure Management System, <https://bit.ly/2MJn5bq>

report a shortage of library materials compared to the survey average of 16%.⁸⁶ Many of the shortcomings are in breach of not just the government's international human rights obligations but its own Minimum Norms and Standards for educational facilities.⁸⁷



 ↑ Makhunya Mvulo primary school, Eastern Cape ©Amnesty International

Compounding the problem has been the continued failure of the government to meet its own targets. In March 2020, just before COVID-19 struck, it was reported that only 266 out of 3,988 schools had benefitted from the President's own 2018 Sanitation Appropriate for Education (SAFE) campaign to address inadequate sanitation.⁸⁸ It is clear that unless these serious and widespread infrastructure failings are addressed, many schools across the country will struggle to provide safe and decent learning environments for both students and teachers. The government's repeated failure to reach its own targets demonstrates its unpreparedness to respond effectively to COVID-19 in terms of protecting some of the most disadvantaged learners and their communities due to lack of adequate mitigation measures.

4.2. THE IMPACT OF COVID-19 – EXACERBATING EXISTING INEQUALITIES

“The sheer number of children whose education was completely disrupted for months on end is a global education emergency. The repercussions could be felt in economies and societies for decades to come.”

Henrietta Fore, UNICEF Executive Director⁸⁹

Globally, the impact of COVID-19 on education has been devastating. At the height of country lockdowns, nearly 1.5 billion schoolchildren were affected by school closures. Of these, UNICEF has estimated that there was no remote learning at all for at least 463 million children – 1 in 3 – whose schools had to close.⁹⁰ Schoolchildren in

86 South Africa - Country Note - TALIS 2018 Results p.2 at <http://www.oecd.org/education/talis/>. The OECD Teaching and Learning International Survey (TALIS) is an international, large-scale survey of teachers, school leaders and the learning environment in schools.

87 Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, Government Gazette, No. R.920, 29 November 2013, at <https://bit.ly/2wy6koT>

88 “Only 266 of 3898 schools have benefitted from Ramaphosa's sanitation campaign”, SA Times, 3 March 2020, <https://www.timeslive.co.za/news/south-africa/2020-03-03-only-266-of-3898-schools-have-benefitted-from-ramaphosas-sanitation-campaign/>. Of these only 18 had been directly funded from the SAFE campaign (which was meant to bring in private sector funding) with the rest funded from existing infrastructure grants.

89 “COVID-19: At least a third of the world's schoolchildren unable to access remote learning during school closures, new report says”, UNICEF, 27 August 2020, <https://www.unicef.org/press-releases/covid-19-least-third-worlds-schoolchildren-unable-access-remote-learning-during>

90 “COVID-19: Are children able to continue learning during school closures”, UNICEF, August 2020, <https://data.unicef.org/resources/remote-learning-reachability-factsheet/>. Data primarily from the UNESCO-UNICEF-World Bank Survey on National Education Responses to COVID-19 School Closures (June-July 2020) surveying 100 countries, together with household microdata from sources such as Multiple Indicator Cluster Surveys (MICS), Demographic and Health Surveys (DHS)

sub-Saharan Africa were the worst affected, with half of all students not reached with remote learning.⁹¹ Unsurprisingly, those from the poorest households and those living in rural areas were at the highest risk of missing out during closures.⁹² According to UNICEF, the impact on young people's education as well as other aspects of their lives can be potentially devastating.⁹³

By the start of the new academic year – which in most cases for countries in the global north is September, and for countries in the global south such as South Africa is January – it was estimated that less than half of school children globally would be able to return to school – about 433 million out of 900 million across 155 countries.⁹⁴ At the same time, existing inequalities have undermined the ability of many children in vulnerable situations to benefit from any form of distance learning. UNESCO has called it an “emergency for global education”.⁹⁵

In South Africa, the impact of COVID-19 on children's right to education must be seen against a background of severe socio-economic inequalities. As Amnesty's research has highlighted, a deeply divided and unequal education system (with those schools serving both urban and rural poorer communities)⁹⁶ have struggled to provide a decent education to their pupils due to lack of adequate resources. In particular, as well as lack of basic education equipment such as computers, the report identified poor quality and dangerous infrastructure which has not been replaced, fixed or adequately maintained and the continued existence of poor sanitation, including in many cases, pit toilets and overcrowded classrooms.⁹⁷ Unsurprisingly, in this context it is these same schools that will struggle the most to provide access to learning for their students during the closure period.⁹⁸ Various actors have raised concerns about schools reopening within this context (see next section).⁹⁹

In the context of schools being closed during a pandemic, there is no prospect of continued education for children in poorer communities who already had no access to the internet and computers.¹⁰⁰ These children have no prospect of being able to participate in online teaching and whose parents/carers are usually not in a position to home teach due to their own lack of education and capacity.¹⁰¹ Nationally, only 22% of households have a computer and 10% an internet connection.¹⁰² In North West and Limpopo provinces, only 3.6% and 1.6% respectively have access to the internet at

91 “COVID-19: Are children able to continue learning during school closures”, UNICEF, August 2020, <https://data.unicef.org/resources/remot-learning-reachability-factsheet/>. Data primarily from the UNESCO-UNICEF-World Bank Survey on National Education Responses to COVID-19 School Closures (June-July 2020) surveying 100 countries, together with household microdata from sources such as Multiple Indicator Cluster Surveys (MICS), Demographic and Health Surveys (DHS)

92 “COVID-19: Are children able to continue learning during school closures”, UNICEF, August 2020, <https://data.unicef.org/resources/remot-learning-reachability-factsheet/>. Data primarily from the UNESCO-UNICEF-World Bank Survey on National Education Responses to COVID-19 School Closures (June-July 2020) surveying 100 countries, together with household microdata from sources such as Multiple Indicator Cluster Surveys (MICS), Demographic and Health Surveys (DHS)

93 “Time to re-open schools in Eastern and Southern Africa, as the cost for children escalates in learning, protection and nutrition”, UNICEF, 21 September 2020, <https://www.unicef.org/press-releases/time-re-open-schools-eastern-southern-africa-cost-children-escalates-learning>. See also “UNICEF Chief: Closing schools should be ‘measure of last resort’”, 12 January 2021, <https://news.un.org/en/story/2021/01/1081912>

94 Factoring in about 128 million students in the middle of their academic year, a total of 561 million students, or one-in-three pupils globally attend classes. That leaves almost a billion students – two-thirds of the global student population – facing either school closures or uncertainty surrounding their classes. “Emergency for global education, as fewer than half world's students cannot return to school”, UNESCO, 1 September 2020, <https://news.un.org/en/story/2020/09/1071402>

95 “Emergency for global education, as fewer than half world's students cannot return to school”, UNESCO, 1 September 2020, <https://news.un.org/en/story/2020/09/1071402>

96 These schools are overwhelmingly in quintiles 1-3. In 2005, in response to unequal access to quality public schooling, the government established a quintile system under which schools are categorized into five groups (quintiles) based on the relative wealth of their surrounding communities, with quintile 1 being the poorest and quintile 5 being the least poor. Schools in quintiles 1-3 cannot charge fees and are therefore reliant on government funding

97 Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/>. For a recent commentary on the situation of schools during the COVID-19 pandemic see <https://www.dailymaverick.co.za/opinionista/2020-08-06-open-or-closed-south-african-schools-need-radical-social-change/>

98 As UNICEF has pointed out even when children have the necessary platforms, they may not be able to learn remotely due to other factors such as pressure to do chores, being forced to work, a poor environment for learning, and lack of support in using the online or broadcast curriculum. <https://www.unicef.org.uk/press-releases/coronavirus-at-least-a-third-of-the-worlds%E2%80%AFschoolchildren%E2%80%AFunable-to-access%E2%80%AFremote-learning%E2%80%AFduring-school-closures-new-unicef-report-says%E2%80%AF/>

99 “Sending children back to school next week is dangerous – EUSA”, EWN, 26 May 2020, <https://ewn.co.za/2020/05/26/motshekga-is-sending-teachers-to-their-deaths-by-reopening-schools-says-eusa>

100 Data from the Trends in International Mathematics and Science Study (TIMSS 2015, Grade 9) shows that for no-fee schools (the poorest 75%), less than half of children in a given class have a computer with internet access. Only in the wealthiest 5% of schools do at least 90% of learners have access to a computer and the internet at home. “How is the COVID-19 pandemic affecting educational quality in South Africa?”, Gustafsson & Nuga, NIDS, 15 July 2020, https://cramsurvey.org/wp-content/uploads/2020/07/Gustafsson.-Nuga.-How-is-the-COVID-19-pandemic-affecting-educational-quality-in-South-Africa_-1.pdf

101 “Open or closed, South African schools need radical social change”, Jon Fish Hodgkin, Daily Maverick, 6 August 2020, <https://www.dailymaverick.co.za/opinionista/2020-08-06-open-or-closed-south-african-schools-need-radical-social-change/>

102 “Counting the Cost: COVID-19 school closures in South Africa and its impact on children”, N Spaul and S van der Berg, Stellenbosch University Research on Socioeconomic Policy Group (RESEP), 15 June 2020, p 18, <https://resep.sun.ac.za/counting-the-cost/>

home.¹⁰³ This reality contrasts with the government's target to ensure 90% of all South Africans can have access to internet access (at a minimum 5mbps) by 2020.¹⁰⁴



↑ An example of an overcrowded classroom pre-COVID-19. This is the reality in many schools, making it very difficult to adhere to social distance guidelines ©Amnesty International

At the same time, there is little likelihood that such learners will be able to repeat their academic year due to lack of education capacity to accommodate them as new learners enrol.¹⁰⁵ By contrast, those students from wealthier communities have been able to take advantage of both home schooling from parents who are often in a much better position to do so, as well as remote learning provision from private schools.¹⁰⁶ StatsSA reported that 83.5% of private school learners (amounting to approximately 550,000 children) could, with minimal disruption, continue learning from home through online platforms. This compared to 67.1% of those in public schools, many of whom have to rely on radio or television broadcasts, or textbooks and worksheets distributed to them.¹⁰⁷

The socio-economic divide has also recently been highlighted by the independent NGO information service, Parliamentary Monitoring Group, when examining an audit of the Department of Basic Education, noting that the Financial and Fiscal Commission found that if performance challenges and uneven access to school infrastructure and other educational inputs are not addressed, the wide disparities in educational outcomes between rural and urban provinces and between less affluent and more affluent schools will persist. COVID-19 has served to further highlight these existing inequalities in access to quality education where we saw learners from private schools able to continue learning under lockdown through online classes whereas learners from poorer schools were not able to do so.¹⁰⁸

Although not affected to the same extent due to better resources including facilities and infrastructure, private schools have also been impacted due to a loss of income as the economy has contracted.¹⁰⁹ This has resulted in the closure of some independent schools because they cannot afford to continue teaching learners in the

103 "The digital divide in South Africa's higher education sector: why public internet access is important", In on Africa, 15 August 2017, <https://www.polity.org.za/article/the-digital-divide-in-south-africas-higher-education-sector-why-public-internet-access-is-important-in-the-context-of-tertiary-education-2017-08-15>

104 "The digital divide in South Africa's higher education sector: why public internet access is important", In on Africa, 15 August 2017, <https://www.polity.org.za/article/the-digital-divide-in-south-africas-higher-education-sector-why-public-internet-access-is-important-in-the-context-of-tertiary-education-2017-08-15>

105 "Catch 2020: Schools at risk, open or closed", Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

106 "Home learning, reopening schools especially hard in Africa", AP, 20 July 2020, <https://apnews.com/2d6ee7b9756965b5c498488659b61b5b>

107 "Covid-19 exposes South Africa's digital literacy divide", Pauline Hanekom, 8 September 2020, <https://mg.co.za/opinion/2020-09-08-covid-19-exposes-south-africas-digital-literacy-divide/>

108 PMG Meeting summary of 2019/20 DBE Audit Outcomes & Expenditure Patterns in respect of ASIDI, Conditional Grants & Equity in Education: FFC briefing Basic Education, 03 November 2020, <https://pmg.org.za/committee-meeting/31355/>

109 It is also likely to have affected those public schools in quintiles 4 and 5 which rely on some form of top up fees.

absence of fees being paid.¹¹⁰ In an interview with the media, the chairperson of the National Alliance of Independent Schools Association (Naisa), Mandla Mthembu, stated that the situation was exacerbated by provincial education departments failing to pay subsidies to private schools. Mthembu said the average school fees payment percentage for independent schools stood at about 21% in April and dropped to 18% in June. Naisa was aware of schools closing in the Free State, Gauteng, KwaZulu-Natal, Mpumalanga, and Limpopo.¹¹¹ At the same times, others have seized opportunities to provide edtech¹¹² services for those who can afford it.¹¹³

By early August, South African children had lost on average between 30 and 59 days of school, depending on their grade.¹¹⁴ Even when attending school, many pupils continue to attend only half the school days in rotation in order to comply with social distancing whereby no more than two learners can share a desk.¹¹⁵ Consequently, teachers will not be able to complete the curriculum for the year with poorer learners and schools being again the most impacted with potentially long lasting implications¹¹⁶ including, of course, access to the labour market.¹¹⁷ In Gauteng, before the second closure only 23% of Grade R learners had come back since the reopening of schools with 53% of Grade 6 learners going back, 58% of Grade 7, 61% of Grade 11 and 70% of Grade 12.¹¹⁸ Speaking to the media, Gauteng MEC for Education, Panyaza Lesufi, said, “It’s still worrying. We can’t account for almost 30% of Grade 12 learners who are not attending schools in Gauteng as of now.”¹¹⁹ By end of September, the education system still faced a major challenge with significant numbers of learners still not returning to school as many parents appeared to lack confidence in the safety of the education system.¹²⁰ Figures varied from 94% in Mpumalanga to only 77% of learners attending class in Free State province.¹²¹ Other reasons could also be the inability to pay either direct (fees) or indirect (transport) costs in a situation where livelihoods have been severely impacted with learners from poorer families likely to be hardest hit.¹²² This in turn will have an impact on those schools – whether public or private – that depend on fees.¹²³ The Minister for Basic Education confirmed on 22 November 2020 that more than 300,000 children had dropped out of primary school during the previous six months.¹²⁴ At the other end of education the potential impacts are serious in terms of learners not matriculating.¹²⁵

Approximately 1.2 million learners have been entering grade 1 each year since 2016. If the 2020 academic year is not completed, the year’s 1.2 million learners would have to return to grade 1 in 2021. However, with a new

110 “Fees freefall, independent schools close”, Mail and Guardian, 8 August 2020, <https://mg.co.za/coronavirus-essentials/2020-08-08-fees-free-fall-independent-schools-close/>

111 “Fees freefall, independent schools close”, Mail and Guardian, 8 August 2020, <https://mg.co.za/coronavirus-essentials/2020-08-08-fees-free-fall-independent-schools-close/>

112 Hardware and software designed to enhance teacher-led learning in classrooms and improve students' education outcomes. It continues to be the subject of controversy as to the extent to which it can enhance or undermine outcomes (J. Bransford; A. Brown; R. R. Cocking, eds. (2000). “Technology to support learning”. How people learn: Brain, mind, experience. Washington, DC: National Academies Press. pp. 206–230)

113 “Crimson’s private online high school comes to SA”, IT Web, 24 July 2020, <https://www.itweb.co.za/content/Olx4z7knrJQv56km>.

114 “COVID-19 school closures in South Africa and their impact on children” citing Rapid surveys by StatsSA and the Human Sciences Research Council, 14 July 2020, <https://theconversation.com/covid-19-school-closures-in-south-africa-and-their-impact-on-children-141832>

115 “The impact of COVID-19 on student achievement and what it may mean for educators”, Soland et al, Brookings, 27 May 2020, https://www.brookings.edu/blog/brown-center-chalkboard/2020/05/27/the-impact-of-covid-19-on-student-achievement-and-what-it-may-mean-for-educators/?utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=brookingsrss/topfeeds/brown_center_chalkboard

116 “The impact of COVID-19 on student achievement and what it may mean for educators”, Soland et al, Brookings, 27 May 2020, https://www.brookings.edu/blog/brown-center-chalkboard/2020/05/27/the-impact-of-covid-19-on-student-achievement-and-what-it-may-mean-for-educators/?utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=brookingsrss/topfeeds/brown_center_chalkboard

117 “We have to protect the kids”, Das et al, RISE, https://riseprogramme.org/sites/default/files/publications/RISE%20Insight%202020_16_Protect%20the%20Kids_0.pdf; see also “Catch 2020: Schools at risk, open or closed”, Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

118 “Thousands of Gauteng teachers ditch school”, Business Tech, 20 July 2020, <https://businesstech.co.za/news/government/418129/thousands-of-gauteng-teachers-ditch-school/>

119 “Thousands of Gauteng teachers ditch school”, Business Tech, 20 July 2020, <https://businesstech.co.za/news/government/418129/thousands-of-gauteng-teachers-ditch-school/>

120 See for example: “COVID-19 Education Crisis Committee calls for schools to shut down”, ENCA, 9 August 2020, <https://www.enca.com/news/covid-19-education-crisis-committee-calls-schools-shut-down>

121 “COVID-19 Situation Report 1-30 September”, UNICEF, 30 September, <https://www.unicef.org/southafrica/media/4431/file/%20ZAF-COVID-19-situation-report-1-30-September-2020.pdf>

122 On general issues concerning cost of education see Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/>

123 “A growing number of schools in South Africa have a real problem – unpaid fees”, Business Tech, 30 January 2021, <https://businesstech.co.za/news/finance/463926/a-growing-number-of-schools-in-south-africa-have-a-real-problem-unpaid-fees/>

124 KwaZulu-Natal had the highest number of recorded absentees, 126,553, followed by the Western Cape with 114,558 and Gauteng with 55,571. <https://www.timeslive.co.za/news/south-africa/2020-11-23-more-than-300000-pupils-may-have-dropped-out-of-primary-school-during-pandemic/>

125 On 6 October 2020 The DBE published new data on the drop-out rate at South African schools and the impact of the coronavirus pandemic which indicated that between 44% and 50% do not complete Grade 12. “This is the school drop-out rate in South Africa”, Business Tech, 6 October 2020, <https://businesstech.co.za/news/government/438509/this-is-the-school-drop-out-rate-in-south-africa/>

batch of 1.2 million learners, the numbers of grade 1 learners in 2021 would double.¹²⁶ At the exit level, if the grade 12s do not matriculate¹²⁷, universities will not have a similar intake for 2021 as they would normally have resulting in further backlogs and a potential admissions crisis.¹²⁸ This is also in the context of very dire employment prospects for those students who will leave school in 2020 without matriculating and going on to higher education.

Beyond general socio-economic inequality, particular groups, such as learners with disabilities, have been disproportionately impacted.¹²⁹ Following a perceived lack of attention by the DBE, the Centre for Child Law represented by the Equal Education Law Centre filed an application to compel the Department to develop guidelines for all types of disabilities, support schools with infrastructure capacity in hostels, and ensure that learners with disabilities who remained at home would be adequately supported.¹³⁰

COVID-19 has also exacerbated the teacher retention crisis that predated it.¹³¹ Between January 2012 and December 2019, more than 57,000 permanent teachers resigned.¹³² It was reported in July 2020 that thousands of educators in Gauteng had applied to either work from home or exit the system indefinitely for fear of COVID-19.¹³³ As of 15 July, the department had received 3,699 applications for early retirement from teachers who were above the age of 60 and could not report for duty due to comorbidities. Of these, 2,117 were from primary schools, 1,193 were from secondary schools and 389 from special needs schools.¹³⁴ It should also be noted that sadly over 1,400 teachers died from COVID-19 during 2020 (see section 3.2 above).

“You can see that we need to replace the educators in Gauteng who say they don’t want to come back with almost 3,620 educators with young, dynamic new educators.”

Gauteng MEC for Education Panyaza Lesufi.¹³⁵

Data from a survey conducted by the OECD amongst member states and other countries including South Africa, released in March just before COVID-19 struck, revealed that 25% of teachers in the country were already battling acute stress due to their working environment.¹³⁶ This compared to an average in OECD countries of 18%. The main cause of high levels of stress is workload often caused by overcrowding. 30% of all teachers reported that they would like to leave teaching within the next five years.¹³⁷

COVID-19 has merely shone a light on the deep rooted and systemic problems in the education system which we highlighted in our earlier report. This meant that it was ill prepared to deal with the multiple impacts of both the disease and the government’s response, which we examine in the next section.

126 “Catch 2020: Schools at risk, open or closed”, Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

127 The DBE has reported: “over one million candidates were registered to participate in the NSC November 2020 examinations due to the June exams being cancelled for full-time and part-time candidates during covid-19.” Proceedings of the Portfolio Committee on Basic Education, 27 October 2020, <https://pmg.org.za/committee-meeting/31296/>

128 “Catch 2020: Schools at risk, open or closed”, Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

129 “The education of children with disabilities risks falling by the wayside”, UCT, 28 May 2020.

<https://www.news.uct.ac.za/campus/communications/updates/covid-19/-article/2020-05-28-the-education-of-children-with-disabilities-risks-falling-by-the-wayside>

130 “Safe special schools...”, EELC, 4 August 2020, <https://eelawcentre.org.za/portfolio-posts/ssslba/> On 4 August 2020, the North Gauteng High Court handed down an order (by consent) which is being monitored by the EELC and the Centre for Child Law.

131 “Many SA teachers want to quit the profession due to stress report says”, The Star, 1 October 2020, <https://www.iol.co.za/the-star/news/many-sa-teachers-want-to-quit-profession-due-to-stress-report-says-fb6ca52-07f0-4a47-93aa-8aa39bc75081>

132 “Unions lament looming brain drain as teachers continue to quit in droves”, The Star, 29 April 2020, <https://www.iol.co.za/the-star/news/unions-lament-looming-brain-drain-as-teachers-continue-to-quit-in-droves-47328634>

133 “Thousands of Gauteng teachers ditch school”, Business Tech, 20 July 2020,

<https://businesstech.co.za/news/government/418129/thousands-of-gauteng-teachers-ditch-school/> . The Deputy Minister of the DBE reported to Parliament that of the approximately 27,000 applications received from teachers with co-morbidities, 22,000 were approved. The demand for substitute teachers was beyond what the Department could afford. The option of teacher assistants was more affordable.” PMG report of the Portfolio Committee on Basic Education, Reopening of Schools; National School Nutrition Programme & Directions for Learners with Special Education Needs: DBE; with Deputy Minister Basic Education 01 September 2020, <https://pmg.org.za/committee-meeting/30989/>

134 “Thousands of Gauteng teachers ditch school”, Business Tech, 20 July 2020,

<https://businesstech.co.za/news/government/418129/thousands-of-gauteng-teachers-ditch-school/>

135 “Thousands of Gauteng teachers ditch school”, Business Tech, 20 July 2020,

<https://businesstech.co.za/news/government/418129/thousands-of-gauteng-teachers-ditch-school/>

136 28% of teachers in urban schools compared to 15% in rural areas. Based on questionnaires sent to 4,000 teachers and principals from 200 schools across the country, with 2,215 responses.

137 TALIS 2018 results Volume II”, OECD, 23 March 2020, <https://www.oecd.org/publications/talis-2018-results-volume-ii-19cf08df-en.htm>


5. THE GOVERNMENT'S COVID-19 RESPONSE, WITH RESPECT TO EDUCATION

“The potential costs related to losing an academic year, will not be equally borne by all in the school system. The incalculable costs will moreover be paid by those who can least afford it. It is not fair that the most vulnerable have to place their bodies on the line to risk being overcome by the virus before being overcome by poverty... Perhaps we need to be debating how we ensure that this school year (and subsequent years) can be completed in the safest - and thus the most equalising - manner possible”.

Zahraa McDonald, Lecturer, University of Johannesburg¹³⁸

This section examines the measures taken by the government as part of the COVID-19 response with respect to education. In so doing it assesses the government's response against its human rights obligations to ensure that all learners have the right to access quality education.



 Grade 7 students sit in their class, 6 July 2020 ©AFP/Getty Images

As in many other countries, there has been an active debate about whether and when schools should be closed or reopened and what the government should be doing to ensure safe learning. The World Health Organization

¹³⁸ “Catch 2020: Schools at risk, open or closed”, Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

(WHO) has stated that debates about closing versus reopening schools can be problematic if decisions about schooling are not made as part of a society-wide, long-term response informed by accurate data. In particular, the WHO states that it does not make sense to announce terms, dates, weeks or even months in advance in the absence of targeted testing and tracing to provide accurate local-level data on transmission.¹³⁹

Certainly, decisions about schools opening or closing need to be informed by the government's human rights obligations. In particular, any analysis must ask what mitigation measures the government should be taking in order to ensure that it has functioning education institutions which can deliver acceptable education that is accessible to all, without discrimination.

A Human Rights Centred Approach

The right to basic education is guaranteed under section 29 of the South African Constitution.¹⁴⁰ Unlike some other socio-economic rights, it is “immediately realizable,” meaning that it is not subject to progressive realization and must be prioritized regardless of the State's other budgetary commitments.¹⁴¹

In addition to the Constitution, there are a number of key provisions in international and regional law which South Africa is obliged to implement with respect to the right to education. These are non-derogable meaning they continue to operate during the pandemic.¹⁴² At the international level, these include Article 13 of the International Covenant on Economic, Social and Cultural Rights¹⁴³, Articles 28 and 29 of the Convention on the Rights of the Child¹⁴⁴ and Article 11 of the African Charter on the Rights and Welfare of the Child.¹⁴⁵ The UN Committee on Economic, Social and Cultural Rights has set out how the content of the right to education should be assessed:

(a) Availability – functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party [including] buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water...; **(b) Accessibility** – educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party; **(c) Acceptability** – the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4)); **(d) Adaptability** – education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁴⁶

It should also be noted that South Africa has also committed to implement Sustainable Development Goal 4 to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030; ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes; and build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.¹⁴⁷

Beyond the right to education, South Africa is also obliged to guarantee other rights which are relevant in ensuring safe learning spaces for students and teachers. These include the rights to life¹⁴⁸, health¹⁴⁹, safe and healthy working conditions¹⁵⁰, water and sanitation.¹⁵¹

139 “WHO warns against reopening schools during COVID-19 peak”, SABC news, 14 July 2020, <https://www.sabcnews.com/sabcnews/who-warns-against-reopening-schools-during-covid-19-peak/>

140 Section 29(1)(a) provides “Everyone has the right to a basic education, including adult basic education”.

141 The Constitutional Court affirmed this in *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (11 April 2011) para 37, <http://www.saflii.org.za/za/cases/ZACC/2011/13.html>

142 *Limitations to and Derogations from Economic, Social and Cultural Rights*, Amrei Müller, 9 H.R.L. Rev. 599 (2009)

143 Text at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

144 Text at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

145 Text at https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf

146 UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, para 6 at

[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d\)GeneralCommentNo13Therighttoeducation\(article13\)\(1999\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralCommentNo13Therighttoeducation(article13)(1999).aspx)

147 Further information at Unpacking SDG 4 Education 2030 (UNESCO 2017), <https://www.campaignforeducation.org/wp/wp-content/uploads/2018/07/SDG4.pdf>

148 Article 6 ICCPR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

149 Article 12 ICESCR, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

150 Article 7 ICESCR, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

151 Article 11 ICESCR, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

Drawing on this framework, the UN Special Rapporteur on the right to education¹⁵² has identified a number of actions that states should take in line with their human rights obligations to put rights at the centre of the response to the pandemic including:

- Integrate the “4As” framework (Availability, Accessibility, Acceptability and Adaptability) as policy guides throughout the education system at all levels, including at school level;
- Ensure preventative and precautionary measures are in place to protect and ensure the right to health, including mental health and well-being of every education worker and learner, especially at the reopening of educational institutions. Special attention should be paid to those at particular risk;
- Adopt special, targeted measures, including through international cooperation, to address and mitigate the impact of the pandemic on vulnerable groups, as well as communities and groups subject to structural discrimination and disadvantage;
- Prioritize the most accessible, ‘low-or-no-tech’ approaches in distance learning, as well as adopting measures such as moratoria on the payment of school fees, providing cash transfers to families, and ensuring delivery of food and other social services to vulnerable children during the crisis;
- Carry out child rights impact assessments of crisis-related education decision-making. Furthermore, States should provide opportunities for children’s views to be heard and taken into account in decision-making processes in the COVID-19 context;
- Ensure the response to the crisis is multidimensional and multi-sectoral and action-based on a continuum between education, health, housing, food, employment and essential social services. Consequently, States should be cautious not to redirect massive funding towards health or economic recovery at the expense of education;
- Maintain good relationships and mutual trust with teachers, associations and trade unions of teachers and other education workers, as well as parents and communities at the national and local levels. Permanent lines of dialogue should function at all stages of the crisis in order to ensure that measures adopted are adequate, efficient and acceptable to all. Schools reopening should be undertaken in cooperation with teachers and associations and trade unions of teachers.¹⁵³

However, as the next section highlights, the South African government has not placed human rights at the centre of its response to the pandemic, according to our research, This includes failing to provide the vital resources needed for infrastructure upgrading to ensure schools can provide a safe learning environment. This lack of a human rights approach reflects the government’s wider neglect of not integrating rights sufficiently within its policies and practices such as integrating the “4As” framework (Availability, Accessibility, Acceptability and Adaptability) as policy guides throughout the education system and carrying out child rights impact assessments of decision-making. In particular, as demonstrated further below, contrary to the recommendation of the UN Special Rapporteur to neglect education when allocating resources during the pandemic, the government has failed to sufficiently prioritize the right to education during the pandemic in terms of budget allocation with vital resources actually being diverted.

TIMELINE OF GOVERNMENT RESPONSE AND SOME OTHER KEY EVENTS

18 March 2020: all schools closed

29 May: Human Rights Commission urges government to reconsider decision to reopen

8 June: grades 7 and 12 return to school

Late June: R2 billion diverted from Education Infrastructure Grant to other COVID-19 relief

30 June: MPs at a meeting of the Parliamentary Portfolio Committee on Basic Education express concern that many schools are not prepared for reopening

152 Report of the Special Rapporteur on the right to education, *Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities*, A/HRC/44/39, 30 June 2020, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

153 Report of the Special Rapporteur on the right to education, *Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities*, A/HRC/44/39, 30 June 2020, para 84, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

6 July: grades R, 6 and 11 return to school
8 July: number of COVID-19 cases exceeds 500,000
14 July SADTU calls for schools to be closed until number of COVID-19 cases begins to fall
15 July: President Ramaphosa announces need to review decision to reopen schools
27 July: all schools closed again for four weeks
24 -31 August: phased return of all learners under new guidelines
30 September: UNICEF reports attendance is still worryingly low
15 October: President Ramaphosa announces major investment in addressing education infrastructure over 24-36 months period
22 October: DBE Minister announces review of social distancing guidelines in light of too many lost school days
27 October: Medium term budget statement confirms diversion of EIG funds, and that overall DBE budget will stay the same for next three years
15 December: schools close for holidays
28 December: number of cases passes one million
27 January 2021: government plans for schools to reopen on this date but faces strong opposition from teachers' unions and others amongst surging cases
15 February: revised date for schools to reopen but continued concerns that many are not ready

5.1.18 MARCH – 7 JUNE: A RAPID SHUTDOWN BUT INADEQUATE PLANS AND RESOURCES FOR CONTINUING ACCESS TO LEARNING

South Africa closed all schools on 18 March, less than three weeks after the first COVID-19 case in the country.¹⁵⁴ Some schools then reopened within the space of 10 weeks in early June, only to be shut down again at the end of July as large numbers of cases emerged.¹⁵⁵ A phased return of all learners by 31st August was then implemented. The government's approach faced widespread criticism, mainly on the basis that it had not put in place sufficient resources to assist schools, particularly those serving poorer communities, to mitigate against the risks of COVID-19.

After the initial closure, the government stated that it planned to reopen schools on 8 June but immediately faced significant opposition. Teaching unions and governing associations called on teachers to not comply with the return in the absence of sufficient PPE to keep both them and students safe.¹⁵⁶

“The education system ... is not ready for the re-opening of schools. If the PPE (protective equipment such as masks and hand sanitiser) have not been delivered by now, chances are slim that all schools will have them on Monday. We therefore call on all schools ... not to re-open until the non-negotiables have been delivered,”

Joint Statement of teachers' unions and governing associations¹⁵⁷

154 All schools were closed initially but private schools chose when to return.

155 “South Africa to close schools again over virus fears”, AA, 24 July 2020, <https://www.aa.com.tr/en/africa/south-africa-to-close-schools-again-over-virus-fears/1920752>

156 “South African unions square off with government over school reopening order”, CGTN, 29 May 2020, <https://africa.cgtn.com/2020/05/29/south-african-unions-square-off-with-govt-over-school-reopening-order/>

157 Joint statement “South African unions square off with government over school reopening order”, CGTN, 29 May 2020, <https://africa.cgtn.com/2020/05/29/south-african-unions-square-off-with-govt-over-school-reopening-order/>

The Educators' Union of South Africa threatened to take legal action against the Education Minister if she went ahead with the plan to reopen schools,¹⁵⁸ although this was subsequently rejected by the High Court.¹⁵⁹ The Human Rights Commission on 29 May also urged the government to reconsider its decision until schools were better prepared.¹⁶⁰

The KZN provincial education department claimed in mid-May that it had procured enough PPE for all teachers and pupils at over 6,000 schools for the next six months. However, the Minister stated that they still needed an additional R1 billion (US\$ 65 million) from the national government to ensure that the academic year could effectively resume.¹⁶¹

At the same time, although the DBE did provide a COVID-19 guide¹⁶² for teachers that addressed both the health aspects of providing a safe learning environment as well as how to teach remotely, this was not matched with the resources needed to achieve this. This is in the context of many learners not having access to both equipment and affordable internet access and schools lacking the necessary IT equipment¹⁶³ to deliver blended learning - a combination of remote and in class teaching¹⁶⁴ - as well as the training for teachers who had never done so.¹⁶⁵ The DBE has provided "COVID-19 Learner Support" via television and radio by partnering with the South African Broadcasting Corporation. However, this only targets Grades 10-12 - the final two years of secondary school¹⁶⁶ - and pre-school learners. Moreover, it is only available for 1.5 hours per day across three television channels amounting to less than 5% of the 'instruction' time learners would be receiving if they were in school, assuming they watch all the programmes dedicated to their grade.¹⁶⁷

5.2. 8 JUNE – 26 JULY: REOPENING WITHOUT SUFFICIENT RESOURCES TO SUPPORT SCHOOLS

"We can't teach from our graves"¹⁶⁸

One of the key measures - if not the key measure - to ensure that learners can continue to enjoy their right to education in schools is to ensure that everyone on the school premises - learners, teachers and support staff - are safe. In the framework guidance issued by a number of UN and other international institutions to authorities on deciding when and how schools should be reopened, one of the key criteria is "What is the capacity of the school to maintain safe school operations to mitigate risks, such as social distancing (i.e. size of classroom compared to number of students); and water, sanitation and hygiene facilities and practices?"¹⁶⁹ The UN Special Rapporteur on the right to education has also issued guidance that states should "ensure preventative and precautionary measures are in place to protect and ensure the right to health."¹⁷⁰

Our previous research has demonstrated that many schools - particularly those serving poorer communities - have very poor infrastructure and are ill equipped to become 'COVID-19 safe'.¹⁷¹ A study analyzing the data on

158 "Sending children back to school next week is dangerous - EUSA", EWN, 26 May 2020, <https://ewn.co.za/2020/05/26/motshekga-is-sending-teachers-to-their-deaths-by-reopening-schools-says-eusa>

159 "EUSA loses court bid to halt reopening of schools", EWN, 10 June 2020, <https://ewn.co.za/2020/06/10/eusa-loses-court-bid-to-halt-reopening-of-schools>

160 "South African unions square off with government over school reopening order", CGTN, 29 May 2020 <https://africa.cgtn.com/2020/05/29/south-african-unions-square-off-with-govt-over-school-reopening-order/>

161 "Sending children back to school next week is dangerous - EUSA", EWN, 26 May 2020, <https://ewn.co.za/2020/05/26/motshekga-is-sending-teachers-to-their-deaths-by-reopening-schools-says-eusa>

162 "COVID-19 Guide for Teachers", DBE, <https://www.education.gov.za/BB/covid-19-guide-for-teachers/content/index.html#/>

163 "National Education Infrastructure Management System Standard Report August 2019", DBE, 30 August 2019, <https://www.education.gov.za/Portals/0/Documents/Reports/NEIMS%20standard%20reports%202019.pdf?ver=2019-09-27-150623-250>

164 "Covid-19 - will blended learning become the future of education?", Acer for Education, 18 May 2020, <https://acerforeducation.acer.com/blended-learning/covid-19-will-blended-learning-become-the-future-of-education/>

165 "Lessons learned from teachers' perspectives mobile learning in South Africa with cultural and linguistic constraints", Jantjies and Joy, South African Journal of Education, Vol 36(3) 2016 <https://www.ajol.info/index.php/saje/article/view/143683>

166 Ages 15-18

167 "Counting the Cost: COVID-19 school closures in South Africa and its impact on children", N Spuull and S van der Berg, Stellenbosch University Research on Socioeconomic Policy Group (RESEP), 15 June 2020, p 18, <https://resep.sun.ac.za/counting-the-cost/>

168 A teacher's poster. See "Catch 2020: Schools at risk, open or closed", Zahraa Macdonald, Mail and Guardian, 16 July 2020, <https://mg.co.za/education/2020-07-16-catch-2020-schools-at-risk-open-or-closed/>

169 "Framework for Reopening Schools," UNICEF, June 2020, p 2, <https://www.unicef.org/documents/framework-reopening-schools>

170 "Right to education: impact of the coronavirus disease crisis on the right to education - concerns, challenges and opportunities", Report of the Special Rapporteur on the right to education A/HRC/44/39, 30 June 2020, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

171 Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/documents/af53/1705/2020/en/>

class sizes in South Africa in conjunction with government regulations related to COVID-19 and the spatial realities of classrooms, led the authors to conclude that at least half of South African learners will not be able to practice social distancing within a classroom.¹⁷²

Yet the government response to COVID-19 did not prioritise tackling this inequality by ensuring those schools and learners had the additional resources they needed in order to provide a safe learning environment.

Between 8 June and 26 July, learners returned only in many cases to see schools quickly shut again due to COVID-19 infection rates with ultimately all schools being closed for a second time on 27 July.

5.2.1.8 JUNE: GRADES 7 AND 12 RETURN

Despite the concerns expressed by several key stakeholders including teachers' unions and governing associations that many schools were not ready to reopen, the government directed that Grade 7s and 12s would return on 8 June.¹⁷³ This should be seen in the context of the UN Special Rapporteur on the right to education's recommendation that "schools reopening should be undertaken in cooperation with teachers and associations and trade unions of teachers"¹⁷⁴,

Schools were supposed to implement various safety measures, including temperature checks at school gates, sanitizer dispensers located at different places on school premises and making it mandatory for students to wear face masks and observe physical distancing.¹⁷⁵

However, at a meeting in November of the Portfolio and Select Committees on Education as part of a special COVID-19 audit, the Auditor General revealed that provincial education departments had (a) used different processes to determine the PPE needs at schools and (b) did not use available systems to determine how much PPE was needed for the schools based on the actual number of registered employees and learners. PPE was not distributed consistently to provinces, education districts and schools and substandard quality of PPE was supplied to schools.¹⁷⁶

Within the space of a few days of reopening, numerous schools were either being closed again or kept closed due to COVID-19. On 8 June, the Eastern Cape provincial government – a province with historically serious infrastructure problems¹⁷⁷ – was forced to shut 196 schools after high numbers of infections were being reported.¹⁷⁸ This included 204 cases at one school alone – Makaula Senior Secondary School.¹⁷⁹ In response, the South African Democratic Teachers Union (SADTU) called for a stop to all in-person education across the Province although this was not heeded.¹⁸⁰ On 12 June, the education director of the Buffalo City metro district, Nomvuselelo Fikeni, stated that 38 schools remained closed in the district with 12 being cleared to reopen the following week.¹⁸¹ On the same day the DBE Minister said her Department was doing everything to make sure that all schools were COVID-19 compliant before they could welcome students back.¹⁸² However, data from the ground across the country raised serious concerns.

172 "Counting the Cost: COVID-19 school closures in South Africa and its impact on children", N Spuull and S van der Berg, Stellenbosch University Research on Socioeconomic Policy Group (RESEP), 15 June 2020, <https://resep.sun.ac.za/counting-the-cost/>

173 In making its decision the DBE stated that it had relied on the fact that "Health experts indicate that the cases are likely community transmissions and the cases are picked up in school screenings." "Reopening of Schools progress report, with Deputy Minister", Portfolio Committee on Basic Education, 30 June 2020, <https://pmg.org.za/committee-meeting/30560/>

174 "Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities", Report of the Special Rapporteur on the right to education, 30 June 2020 A/HRC/44/39 para 84, <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

175 "Standard Operating Procedure for the Containment and Management of COVID-19 for Schools and School Communities, Revised Draft", DBE, 18 August 2020, <https://section27.org.za/wp-content/uploads/2020/09/2020.08.18-Revised-SOPs-for-Prevention-Containment-and-Management.pdf>

176 PMG Meeting Report, 2019/20 DBE Audit Outcomes & Expenditure Patterns in respect of ASIDI, Conditional Grants & Equity in Education: FFC briefing Basic Education 03 November 2020 <https://pmg.org.za/committee-meeting/31355/>

177 See Amnesty International, Broken and Unequal: The State of Education in South Africa (Index: AFR53/1705/2020), <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/>

178 "South Africa: Another Eastern Cape School Closes Due to COVID-19", All Africa, 24 June 2020, <https://allafrica.com/stories/202006240680.html>

179 "Coronavirus: South Africa School Reports 204 Cases of COVID-19", TFS, 23 June, <https://techfinancials.co.za/2020/06/23/coronavirus-south-africa-school-reports-204-cases-of-covid-19/>. By 23 June there were 303 COVID-19 deaths and more than 16,000 cases in the Province. "Stop classes now: Fears grow as 185 COVID-19 cases found in one school", The South African, 23 June 2020, <https://www.thesouthafrican.com/news/will-schools-close-again-eastern-cape-covid-19-cases-outbreaks/>


180 "Stop classes now: Fears grow as 185 COVID-19 cases found in one school", The South African, 23 June 2020, <https://www.thesouthafrican.com/news/will-schools-close-again-eastern-cape-covid-19-cases-outbreaks/>

181 "South Africa: Another Eastern Cape School Closes Due to COVID-19", All Africa, 24 June 2020, <https://allafrica.com/stories/202006240680.html>

182 "Coronavirus: South Africa School Reports 204 Cases of COVID-19", TFS, 23 June, <https://techfinancials.co.za/2020/06/23/coronavirus-south-africa-school-reports-204-cases-of-covid-19/>

Results from an electronic survey conducted by the SAHRC amongst 4,485 schools (20% of the total number) in June did provide some positive findings.¹⁸³ For example, in all nine provinces, over 90% of schools reported that all learners were wearing masks at schools and over 95% reported that staff were wearing masks at school. This would still account for over 2,200 schools not meeting this basic safety provision in the case of students and 1,120 with respect to staff).



←  Simzamile Secondary school, Ndevana, Eastern Cape – repeatedly vandalised standpipe which has to supply all the water for the school
©Amnesty International

However, when it came to other relevant issues, the picture was far more mixed. The percentage of schools reporting running water ranged from less than half (47%) in the Eastern Cape to 99% in the neighbouring Western Cape. Other significant relatively low provincial scores came from KZN (59%), Limpopo (74%) and Mpumalanga (78%). This amounts to thousands of schools which do not have a basic service which is so vital during the pandemic. A similar picture emerges with access to sanitisers ranging from Mpumalanga and North West (69%) to KZN (78%), Eastern Cape (81%) and Limpopo (89%) with the remaining four provinces scoring over 90%.¹⁸⁴ In Limpopo, school heads reported that they were struggling to choose between paying for sanitiser and other basic necessities.¹⁸⁵

At a meeting of the Parliamentary Portfolio Committee on Basic Education on 30 June, MPs expressed concern that many schools were not prepared for reopening with a failure of the DBE to commit on phase 2 reopening deadlines for the delivery of PPE, classrooms, toilets, scholar transport and additional teachers to deal with overcrowding. Some schools which reopened on 8 June were still using pit toilets and dilapidated buildings without water for regular handwashing. Teachers who were being asked to teach subjects they never taught before.¹⁸⁶

5.2.2. 6 JULY: GRADES R, 6 AND 11 RETURN

Despite evidence that many schools were not equipped to accommodate returning learners safely, the government pressed ahead with more openings. On 6 July, Grades R, 6 and 11 learners – amounting to nearly 2.5 million children – were also told to return with plans for a staggered return for the remaining grades over the following weeks.¹⁸⁷

183 “SAHRC on Learners Returning to School”, 15 July 2020, <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2405-media-statement-sahrc-on-learners-returning-to-school>

184 “SAHRC on Learners Returning to School”, 15 July 2020, <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2405-media-statement-sahrc-on-learners-returning-to-school>

185 “Limpopo schools face an impossible choice – sanitiser vs, basic necessities”, Daily Maverick, 26 May 2020, <https://www.dailymaverick.co.za/article/2020-05-26-limpopo-schools-face-an-impossible-choice-sanitiser-vs-basic-necessities/>

186 “Reopening of Schools progress report, with Deputy Minister”, Portfolio Committee on Basic Education, 30 June 2020, <https://pmg.org.za/committee-meeting/30560/>

187 “Nearly 2.5 million pupils to return to school today after 4 months away”, EWN, 6 July 2020, <https://ewn.co.za/2020/07/06/nearly-2-5-million-pupils-to-return-to-school-today-after-4-months-away>

This was against the background of the WHO making clear in mid-July that the reopening of schools in any country would only be safe in the context of low community transmissions of COVID-19.¹⁸⁸ At the same time, South Africa was still approaching its peak. By 8 July cases had exceeded 500,000 and continued to increase exponentially.¹⁸⁹

Mirroring the WHO's approach, the largest teachers' union, the South African Democratic Teachers Union (SADTU), called on authorities on 14 July to close schools until the number of COVID-19 cases dropped in the country.¹⁹⁰ SADTU's call was echoed by the second largest teachers' union, the National Professional Teachers Organization of South Africa (NAPTOSA.) This was at a time when the country had the most infections in Africa and fifth in the world.¹⁹¹ NAPTOSA said reopening should be delayed until at least early August given that the country had still to reach the peak of the pandemic and, in this context, 13 million schoolchildren going back appeared rushed and did not make sense.¹⁹²

"Other countries have waited for the curve to flatten, then they started to talk about reopening schools. We seem to have gone all guns blazing to get as many children back at school as quickly as possible".

Basil Manuel, President of NAPTOSA speaking to the media¹⁹³

This caution found wider resonance when a study published in July found that 60% of South African adults did not want schools to reopen at all in 2020.¹⁹⁴ Those in lower income communities were more cautious than high-income respondents.¹⁹⁵

It should be noted that not everyone supported school closures. The Paediatrician Management Group and the South African Pediatric Association urged the government to open schools to all learners and "not to allow fear or politics" to harm the children of South Africa.¹⁹⁶ The South African Human Rights Commission also, in supporting the position of UNICEF, stated that children should return to school as soon as possible on the basis that evidence points to harm being done to children by not being in school.¹⁹⁷ Their views were echoed by two leading education experts who also called for schools to be reopened stating that the alternative is worse.¹⁹⁸ They based this on a number of factors including that the mortality risk for school age children of opening schools is low¹⁹⁹; the costs of school closures; and re-opening the economy while schools remain closed increases the risk of children being left home alone.²⁰⁰ In so doing, Spaull and van der Berg stated that the Department of Basic Education should acknowledge that it is not feasible for most South African schools to practice social distancing within the classroom, but instead it should require mask-wearing for older children and social distancing on the playground.²⁰¹ This acknowledgement reflects the fact that too many schools have overcrowded classrooms due to lack of adequate infrastructure.

On 14 July, following the rape of a 12 year old girl in KwaZulu-Natal who had been sent home from school to fetch her face mask,²⁰² the government issued new regulations requiring schools and parents to take extra

188 "World Health Organization says schools should only be reopened in the context of low community transmission rates", Drum, 14 July 2020, <https://www.news24.com/drum/news/local/world-health-organization-says-schools-should-only-be-reopened-in-the-context-of-low-community-transmission-rates-20200714>

189 COVID-19 South African Resource Portal. <https://sacoronavirus.co.za/> accessed at 8 July 2020

190 "COVID-19: S. African Teachers Call for School Closures", AA, 14 July 2020, <https://www.aa.com.tr/en/africa/covid-19-safrican-teachers-call-for-school-closures/1910649>

191 COVID-19 South African Resource Portal. <https://sacoronavirus.co.za/> accessed at 14 July 2020

192 "NAPTOSA: SA's Decision to Reopen Schools Seems Rushed", Eyewitness News, 7 July 2020, <https://ewn.co.za/2020/07/06/naptosa-sa-s-decision-to-reopen-schools-seems-rushed>

193 "NAPTOSA: SA's Decision to Reopen Schools Seems Rushed", Eyewitness News, 7 July 2020, <https://ewn.co.za/2020/07/06/naptosa-sa-s-decision-to-reopen-schools-seems-rushed>

194 University of Johannesburg and the Human Sciences Research Council study representative at a national level and based on a sample size of 2,569. <https://mybroadband.co.za/news/government/360961-south-africans-want-schools-to-be-closed-for-the-rest-of-the-year.html>

195 University of Johannesburg and the Human Sciences Research Council study representative at a national level and based on a sample size of 2,569. <https://mybroadband.co.za/news/government/360961-south-africans-want-schools-to-be-closed-for-the-rest-of-the-year.html>

196 "Paediatricians speak out against school closures", Netwerk 24, 13 August 2020, <https://www.netwerk24.com/ZA/UD-Express/paediatricians-speak-out-against-school-closures-20200812-2>

197 "SAHRC on Learners Returning to School", 15 July 2020, <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2405-media-statement-sahrc-on-learners-returning-to-school>

198 N Spaull and S van der Berg, "Counting the Cost: COVID-19 school closures in South Africa and its impact on children", Stellenbosch University Research on Socioeconomic Policy Group (RESEP), 15 June 2020, <https://resep.sun.ac.za/counting-the-cost/>; <https://theconversation.com/covid-19-school-closures-in-south-africa-and-their-impact-on-children-141832>

199 Those under the age of 20 make up less than 1% of total COVID-19 deaths in SA. See <https://www.statista.com/statistics/1127259/coronavirus-covid-19-deaths-by-age-south-africa/>

200 N Spaull and van der Berg note that if all employed workers returned to work, more than 2 million children aged 0-15 years would be left without an older sibling (15 years+) or an adult caregiver. Of greatest concern are that almost one million children (974,000) below age six who have no other adult caregiver except a working parent. Thousands of these children could be left home alone if their employed caregiver was forced to return to work to sustain the family. Even though most sectors of the economy have re-opened, early crèches and day-care centres remain closed.

201 N Spaull and S van der Berg, "Counting the Cost: COVID-19 school closures in South Africa and its impact on children", Stellenbosch University Research on Socioeconomic Policy Group (RESEP), 15 June 2020, <https://resep.sun.ac.za/counting-the-cost/>

202 "Teen, 17, Arrested after Grade 7 Pupil Raped en Route to KZN School, Cebelihle Mthethwa, News 24, 7 July 2020, <https://www.news24.com/news24/southafrica/news/grade-7-pupil-raped-en-route-to-kwazulu-natal-school-20200707>

measures to ensure children who arrived without masks were safe.²⁰³ These regulations stated that the principal of a school or owner or manager of an early childhood development centre, must take all reasonable steps to ensure the relevant authority supplies the institution with sufficient cloth face masks, homemade items, or other appropriate items that cover the nose and mouth of children who may not have one. Failing their inability to do so, the learner must be isolated and parent/caregiver contacted without delay. Failure to reasonably comply can result in a fine, six months imprisonment or both.²⁰⁴

Yet despite the new regulations pressure continued to build on government to change its decision and close schools as the pandemic surged.²⁰⁵ On 15 July, President Ramaphosa, during a virtual Imbizo²⁰⁶ with different communities across the country, said because of the stance of the WHO and SADTU, the issue of schools opening needed to be reviewed again. In so doing he acknowledged that, since the decision to open schools, a number of teachers and learners had been infected by the virus.²⁰⁷

"There has been a clear voice and message coming from the teacher unions and a number of other people; we are going to listen to that, we are going to engage. We must do everything possible to save lives, it's not a matter of weighing up a threshold... that is an approach I don't even want to see, I don't even want to get to or I don't even want any of us to talk about how many lives we must lose."

President Ramaphosa²⁰⁸

The President went on to say that the government was not weighing up the academic year against the number of lives which could be lost and that his government's priority has always been, first, to save lives and, then, to save livelihoods.²⁰⁹

The DBE Minister, whilst stating that schools would stay open, responded by meeting with stakeholders in order to "create certainty for the sector".²¹⁰ In calling for a temporary closure, teaching unions stated it would not be possible for the entire school year to be scrapped. In particular, they urged the department to use the period when schools are closed to map out a plan that would ensure pupils return to safe environments once the peak is over.²¹¹

5.3. 27 JULY – 31 AUGUST: A SECOND CLOSURE FOLLOWED BY A PHASED RETURN BUT STILL INSUFFICIENT RESOURCES TO ENSURE COMPLIANCE

On 27 July amid mounting pressure and evidence of new surges in cases, schools were closed for a second time for four weeks with all grades of pupils planned to return on 31 August.²¹² In so doing, the government

203 "New Lockdown Regulations: Pupils should not be sent home alone if they do not have a mask", Cebilehle Mthethwa, News24, 14 July 2020, <https://www.news24.com/news24/southafrica/news/new-lockdown-regulations-pupils-should-not-be-sent-home-alone-if-they-dont-have-a-mask-20200714>

204 Department of Co-Operative Governance and Traditional Affairs, *Disaster Management Act: Regulations: Alert Level 3 during Coronavirus COVID-19 Lockdown: Amendment, No. 763*, 12 July 2020, https://www.gov.za/sites/default/files/gcis_document/202007/43521gon763translations.pdf

205 "Schools should close until Covid-19 peak passes, Sadtu resolves", Sesona Ngqakamba, News24, 14 July 2020, <https://www.news24.com/news24/southafrica/news/just-in-sadtu-resolves-that-schools-close-until-after-covid-19-peak-20200714>

206 A gathering to share knowledge and discuss particular issues called by a traditional leader (Zulu/Xhosa origin)

207 "Reopening of schools under discussion, Ramaphosa and govt to engage with stakeholders", Tshidi Madia, News24, 15 July 2020, <https://www.news24.com/news24/southafrica/news/reopening-of-schools-under-discussion-ramaphosa-and-govt-to-engage-with-stakeholders-20200715>

208 "Reopening of schools under discussion, Ramaphosa and govt to engage with stakeholders", Tshidi Madia, News24, 15 July 2020, <https://www.news24.com/news24/southafrica/news/reopening-of-schools-under-discussion-ramaphosa-and-govt-to-engage-with-stakeholders-20200715>

209 "Reopening of schools under discussion, Ramaphosa and govt to engage with stakeholders", Tshidi Madia, News24, 15 July 2020, <https://www.news24.com/news24/southafrica/news/reopening-of-schools-under-discussion-ramaphosa-and-govt-to-engage-with-stakeholders-20200715>

210 Statement by DBE spokesperson; see "'Schools remain open until further notice', says education dept as sector meetings announced", Sesona Ngqakamba, News24, 15 July 2020, <https://www.news24.com/news24/southafrica/news/schools-remain-open-until-further-notice-says-education-dept-as-sector-meetings-announced-20200715>

211 "'Schools remain open until further notice', says education dept as sector meetings announced", Sesona Ngqakamba, News24, 15 July 2020, <https://www.news24.com/news24/southafrica/news/schools-remain-open-until-further-notice-says-education-dept-as-sector-meetings-announced-20200715>

212 Four weeks break starting on 27 July 2020 – 24 August 2020 for public schools; Allow Grade 12 learners and teachers a break in the first week (27-31 July 2020); School Management Teams using the whole of the first week (27-31 July 2020) to wrap up work at school and returning with teachers a week earlier (17-21 August 2020) for the return of learners; Grade 7 learners to return on 10 August 2020; The academic year will be extended beyond 2020; See <https://www.thesouthafrican.com/news/will-private-schools-stay-open-angie-motshekga/>

announced a new Directive incorporating a four-week staged return for different grades with the aim of still being able to complete a shortened school year by the end of 2020.²¹³ The Directive required amongst other things:

- The principal and the school management team to determine the staffing requirements to ensure compliance with social distancing requirements and to assist with the distribution of learning material and the roll-out of the daily school feeding programme (week 1: 27 - 31 July)
- Officials to return to school on 3 August 2020, to assist in ensuring compliance with the health, safety and social distancing requirements and to assist in the distribution of learning material and the roll-out of the daily school feeding programme for all qualifying learners (week 2)
- Schools to ensure compliance with the health, safety and social distancing requirements in accommodating the return of learners with disabilities (week 5: 24 August)

However, there was no information on how all schools, particularly those in the lower quintiles serving poorer communities, would be supported and provided with additional resources to comply with the Directive, when many of them already struggled to provide access to decent education before the pandemic. Teaching unions continued to express concern.²¹⁴

“We want schools to reopen. We want our kids back at school. Our teachers are ready, but of course, not at all costs. The schools don’t want to be the next place where the next wave of the virus starts... The biggest outstanding issue is still the social-physiological support for both teachers and learners... not all learners are resilient because some live in communities where people are dying or family members have been infected and need support just like teachers.”

Basil Manuel President of NAPTOA speaking to the media²¹⁵

The Budget Justice Coalition, a coalition of civil society organizations, reported that “The basic education sector did not receive any additional funding to help cover the cost burdens imposed by COVID-19. This has forced the DBE, Provincial Education Departments, and schools themselves to reallocate their already overstretched budgets. A consequence of this is schools being unable to maintain and upgrade dilapidated or dangerous infrastructure and being unable to purchase school furniture or other teaching and learning support materials.”²¹⁶ This situation was confirmed by the Director-General of the DBE when he told the Portfolio and Select Committees on Education in November that “Infrastructure in schools suffered the most severe budget cuts, extending even to the procurement of COVID-19 essentials by the education infrastructure grant.”²¹⁷

On 9 August, the COVID-19 Education Crisis Committee, formed by concerned parents and communities called on the government not to reopen schools and instead to promote pupils to the next grades.²¹⁸ On 24 August in the midst of schools reopening, SADTU announced that a joint teacher union survey showed that 1 in 10 schools were struggling to prepare a timetable due to constraints on space and teacher availability. The union went on to note that levels of support differed from school to school based on the availability of infrastructure and resources.²¹⁹

UNICEF reported at the end of August that school attendance was still worryingly low with all provinces only recording 75% or below and there needed to be a plan to encourage safe school attendance.²²⁰ In response to the issue of low attendance the Minister of Basic Education established a task team comprising key stakeholders in the sector.²²¹ However, this must be seen in the context of resources actually being reduced (see next section).

By mid-October the Minister stated that further changes were needed including a review of social distancing rules in classrooms given that the current rotation system whereby students were attending on alternate days was

213 In terms of the new calendar, there are now 163 actual school days for teachers, and 156 for learners. The department said that the school year will complete on 15 December 2020 for grades R to 11, and will not be carried over into 2021. A break will be required to separate the third and fourth terms, so a small holiday will take place between 26 and 30 October. These are the remaining terms: Term 3: 24 August – 23 October; Term 4: 2 November – 15 December. See also <https://businessstech.co.za/news/government/421886/new-lockdown-rules-for-south-african-schools/>

214 “South Africa: Teachers voice concern as schools reopen Country has registered over 600,000 COVID-19 cases, 13,059 deaths”, Hassan Isilow, AA, 25 August 2020, <https://www.aa.com.tr/en/africa/south-africa-teachers-voice-concern-as-schools-reopen/1952118>

215 South Africa: Teachers voice concern as schools reopen Country has registered over 600,000 COVID-19 cases, 13,059 deaths”, Hassan Isilow, AA, 25 August 2020, <https://www.aa.com.tr/en/africa/south-africa-teachers-voice-concern-as-schools-reopen/1952118>

216 Budget Justice Coalition, Imali Yesizwe, An alternative Human Rights Budget, 21 October 2020, p37

217 PMG Meeting Report, 2019/20 DBE Audit Outcomes & Expenditure Patterns in respect of ASIDI, Conditional Grants & Equity in Education: FFC briefing Basic Education, 03 November 2020, <https://pmg.org.za/committee-meeting/31355/>

218 “COVID-19 Education Crisis Committee Calls for schools to shut down”, eNCA, 9 August 2020, <https://www.enca.com/news/covid-19-education-crisis-committee-calls-schools-shut-down>

219 “Push for changes at South African schools, as millions head back to class”, Business Tech, 24 August 2020, <https://businessstech.co.za/news/government/428156/push-for-changes-at-south-african-schools-as-millions-head-back-to-class/>

220 UNICEF, *South Africa COVID-19, Situation Report No. 7 1-31 August*, 31 August 2020, <https://www.unicef.org/southafrica/media/4426/file/ZAF-COVID-19-situation-report-1-31-August-2020.pdf>

221 UNICEF, *South Africa, COVID-19, Situation Report No. 7 1-31 August*, 31 August 2020, <https://www.unicef.org/southafrica/media/4426/file/ZAF-COVID-19-situation-report-1-31-August-2020.pdf>

resulting in too much missed learning. Measures such as body screens were being considered.²²² However, again, this should be seen in the context of where blended learning was just not feasible for many schools lacking the capacity to do so.

5.4 JANUARY-FEBRUARY 2021: CONTINUED CONTROVERSY OVER SCHOOL REOPENINGS

'We hope they will go to school and return alive'

A father in the Eastern Cape as reopening loomed²²³

The Department's commitment to reopen schools on 27 January 2021 after the holiday break was subject to renewed criticism from various stakeholders including the main teachers unions and parents organizations, in the wake of a new more infectious variant and surging cases in early 2021.²²⁴

Their concerns were reinforced by a survey of 7,440 schools on material readiness conducted on 18 January by five teacher and education unions.²²⁵ Material readiness is defined as having sufficient supplies of hand and surface sanitizers, along with face masks to meet government's regulations. The survey found that at least 40% of schools did not have adequate supplies, while 53% say they were not confident that they could comply with the government's sanitizing and social distancing protocols effectively. The survey of school principals also found that 55% reported increased infections in their immediate area with 65% reporting heightened anxiety from the community around COVID-19.

An online representative survey conducted by the University of Johannesburg and the Human Sciences Research Council of more than 10,000 people between 30 December 2020 and 6 January 2021 found that 53% wanted schools to remain closed until the situation improved.²²⁶ This figure differed dependent on income, race and type of accommodation with opposition being strongest amongst the most socio-economically disadvantaged who the authors concluded had less confidence in their schools being able to provide a safe environment for learners.²²⁷

Critics noted that the same challenges of infrastructure and teacher shortages remained: "These have not improved, meaning that we will have the same challenges as we acclimatise ourselves to co-exist with the pandemic" Professional Educators Union general secretary Ben Machibi.²²⁸ The National Coronavirus Command Council, an official body created by the government to manage the response, also supported delaying the reopening of schools to 15 February.²²⁹ Provincial education departments also expressed concerns.²³⁰

222 "New lockdown change for South Africa's schools", Business Tech, 22 October 2020, <https://businesstech.co.za/news/government/442724/new-lockdown-change-for-south-africas-schools/>

223 <https://www.news24.com/news24/southafrica/news/second-wave-we-hope-they-will-go-to-school-and-return-alive-ec-father-as-reopening-looms-20210114>

224 "Re-opening schools places educators, learners at risk of contracting Covid-19 – Parent organization", IOL, 13 January 2021, <https://www.iol.co.za/pretoria-news/news/reopening-schools-places-educators-learners-at-risk-of-contracting-covid-19-parent-organisation--7852685c-5679-4c96-8d51-c031f4c67fa8>; Also "Cosatu concerned about schools reopening amid COVID-19 second wave", SABC, 14 January 2021, <https://www.sabcnews.com/sabcnews/cosatu-concerned-about-schools-reopening-amid-covid-19-second-wave/>; "Covid-19 pressures still dog education sector", Sowetan Live, 4 January 2021, <https://www.sowetanlive.co.za/news/south-africa/2021-01-04-covid-19-pressures-still-dog-education-sector/>; "Cosas calls for delay in school reopening", SABC, 14 January 2021, <https://www.sabcnews.com/sabcnews/cosas-calls-for-delay-in-schools-re-opening/>

225 "Schools are not ready to open: survey", Business Tech, 29 January 2021, <https://businesstech.co.za/news/lifestyle/464242/schools-are-not-ready-to-open-survey>

226 "More than half of South Africans want schools to stay closed: study", Business Tech, 13 January 2021, <https://businesstech.co.za/news/government/460434/more-than-half-of-south-africans-want-schools-to-stay-closed-study/>

227 53% of those earning less than R1,000 a month were against schools re-opening, compared to 41% of those who earned over R20,000 a month. Indian adults were the most strongly opposed to schools re-opening, at 77% compared to 63% of Coloured adults and 52% of Black Africans. By contrast, only 37% of white adults were opposed (UJ/HSRC survey December 2020/January 2021)

228 "Covid-19 pressures still dog education sector", Sowetan Live, 4 January 2021, <https://www.sowetanlive.co.za/news/south-africa/2021-01-04-covid-19-pressures-still-dog-education-sector/>

229 "Covid-19: National Coronavirus Command Council wants reopening of schools postponed", News 24, 14 January 2021, <https://www.news24.com/news24/southafrica/news/covid-19-national-coronavirus-command-council-wants-reopening-of-schools-postponed-20210114>

230 "COVID-19: Gauteng concerned about schools reopening", ENCA, 12 January 2021, <https://www.enca.com/news/covid-19-sa-gauteng-concerned-about-schools-reopening>

In calling for a delay in reopening some highlighted that the longstanding failure to address inequalities made it more difficult to ensure that all schools were in a position to guarantee learners their right to education:

“For way too long we failed to address the inequalities, and the gap has just widened. As a government we have become way too comfortable to leave the poor masses behind. They should have learned from the first wave” Vanessa Le Roux, Parents Against Reopening, speaking to the media.²³¹

The National Teachers' Union (Natu) in also calling for a delay reported that that pupils from historically disadvantaged schools had fallen behind in the curriculum coverage during 2020, which saw many pupils not completing the academic year. “Many learners remain unaccounted for between March and December 2020,” said Nata general secretary Cynthia Barnes speaking to the media. “It is for this reason that we call upon the Department of Education to ensure that its risk-adjusted strategy is sensitive to the fact that some schools are bound to suffer more than others, if schools open before the conditions are right.”²³² In a survey of 7,440 schools conducted on 18 January (see above) only 58% of schools nationally reported that they had completed most of the reduced curriculum for most subjects in most grades in 2020.²³³

5.5 VITAL RESOURCES FOR EDUCATION INFRASTRUCTURE DIVERTED

One of the other consequences of this crisis has been that the government has not been able to invest the significant funds required to improve the widespread poor infrastructure which had plagued so many schools pre COVID-19.²³⁴ This is despite the fact that unhygienic and overcrowded conditions undermine any attempts to keep pupils and staff safe, and that therefore this should have been a priority by the government, in its efforts to reopen the education system.

This situation must be seen in the context of a continuing trend to cut expenditure over recent years. Data published by Statistics South Africa on 1 October 2020 demonstrated that even prior to COVID-19 there had been a continuing decline in infrastructure spending by provincial government, with education taking a major hit. Overall, the 123 provincial government departments recorded a R1.88 billion (US\$ 122 million) decrease in infrastructure spending – referred to as capital expenditure – during the 2018/19 fiscal year, representing a fall of 5.4% compared with 2017/18.²³⁵ In late January 2020 just before COVID-19 hit the Finance Minister announced in the national budget a cut of R1.9 billion to the Provincial Education Infrastructure Grant (EIG).²³⁶

Particularly egregious examples include a R398 million (US\$ 26 million) cut in the construction of school buildings and other fixed structures (North West province); a decline of R447 million (US\$ 29 million) in Limpopo, largely the result of the provincial Department of Education spending less on infrastructure projects including delays in the construction and completion of new schools; and a major decline in capital expenditure back to 2014 levels in Gauteng²³⁷, driven largely by a fall in education spending due to a decline in construction of new school buildings and renovations.²³⁸

231 “Re-opening schools places educators, learners at risk of contracting Covid-19 – Parent organization”, IOL, 13 January 2021, <https://www.iol.co.za/pretoria-news/news/reopening-schools-places-educators-learners-at-risk-of-contracting-covid-19-parent-organisation--7852685c-5679-4c96-8d51-c031f4c67fa8>

232 “Opening of schools in South Africa under discussion, as worries grow about ‘repeating last year’s mistakes’”, Business Tech, 12 January 2021, <https://businesstech.co.za/news/government/460250/opening-of-schools-in-south-africa-under-discussion-as-worries-grow-about-repeating-last-years-mistakes/>

233 “Schools are not ready to open: survey”, Business Tech, 29 January 2021, <https://businesstech.co.za/news/lifestyle/464242/schools-are-not-ready-to-open-survey>. Only Gauteng, North West, Northern Cape and Western Cape did more than 60% of schools report finishing most of the syllabus.

234 One example where the government did respond was spending R200 million on emergency water supplies to schools. See <https://www.news24.com/news24/SouthAfrica/News/lockdown-education-dept-pays-rand-water-r200m-to-supply-emergency-water-to-struggling-schools-20200630>

235 Capital expenditure refers to the purchase, upgrading and maintenance of fixed assets such as buildings, vehicles, equipment, and land. In this respect North West, KwaZulu-Natal, Limpopo and Gauteng recorded the biggest decreases.

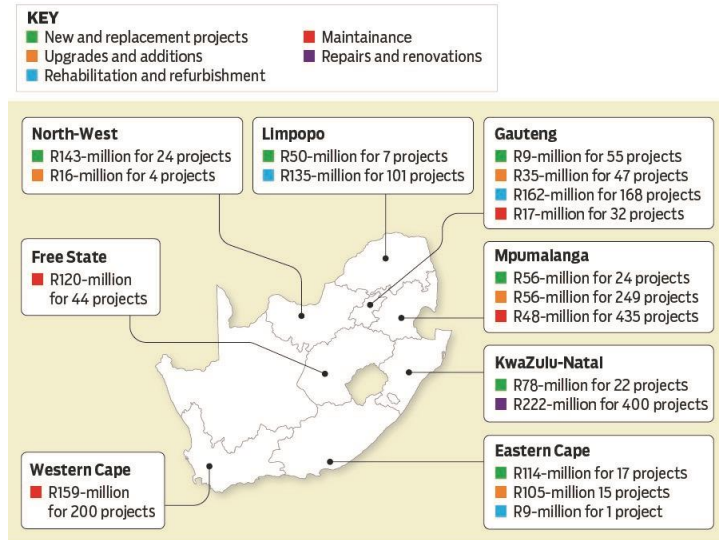
236 “School infrastructure projects on hold as Covid-19 slashes grants”, Ayanda Mthethwa, Daily Maverick, 5 August 2020, <https://www.dailymaverick.co.za/article/2020-08-05-school-infrastructure-projects-on-hold-as-covid-19-slashes-grants/>

237 The provincial Department of Education stated in its annual report that the underspending was caused by underperforming contractors, community disruptions, bad weather conditions and delays brought on by service providers. It should be acknowledged that that some cuts were as a result of failures to actually spend money allocated to projects due to limited absorption capacity.

238 “Data shows how government is falling behind on infrastructure – neglecting roads, schools and maintenance”, Business Tech, 1 October 2020, <https://businesstech.co.za/news/government/437455/data-shows-how-government-is-falling-behind-on-infrastructure-neglecting-roads-schools-and-maintenance/>

In addition to this serious retrogression, in late June it was announced that nearly 2,000 school infrastructure projects would be halted as a further R2 billion (US\$ 130 million) was due to be diverted from the EIG to COVID-19 relief.²³⁹ Yet if schools are not made COVID-19 safe they are likely to contribute to a rise in the infection rate and an increased likelihood of schools being closed yet again. The following graphic illustrates the impact per province.

National estimates of projects affected by the Education Infrastructure Grant cuts



Source: "School Infrastructure projects on hold as COVID-19 slashes grants", Daily Maverick, 5 August 2020²⁴⁰

On 15 October, there appeared to be a reversal when President Ramaphosa announced in Parliament that R340-billion (US\$ 22 billion) would be made available to improve infrastructure as part of an "Economic Reconstruction and Recovery Plan".²⁴¹ The President announced an ambitious school build programme with plans to replace the remaining 143 mud schools and improve the 3,103 schools without adequate sanitation over a 24 to 36 month period.²⁴² However, the programme focuses on medium term investment with a 2-3 year timeframe rather than making resources available in 2020 given the urgent need in the wake of the pandemic.

The lack of urgency was confirmed by the government's medium-term budget policy statement²⁴³ on 27 October which not only reaffirmed that (a) the R2.1 billion (US\$ 140 million) would still be diverted from the EIG, thereby dashing any hopes that infrastructure failings would be urgently addressed, and (b) there would be no increase in the overall budget of the Department of Basic Education for the next three years. When inflation is taken into account, this means that the education budget will actually reduce during this period. There was also no new money for the National School Nutrition Programme.²⁴⁴ At the same time, R73.6 billion (US\$ 4.8 billion) was allocated to prop up state owned enterprises, with the rescue plan for South African Airways alone equalling almost a year's worth of school infrastructure funding.²⁴⁵

A budget monitoring group noted that "The single largest cut in the 2020 Supplementary Budget was applied to the school infrastructure programme, despite government being four years behind on its legal duty to eradicate unimproved pit latrines and other elements of the learning environment that are unfit for purpose." It added that, of the R2.1bn

239 "School infrastructure projects on hold as Covid-19 slashes grants", Ayanda Mthethwa, Daily Maverick, 5 August 2020, <https://www.dailymaverick.co.za/article/2020-08-05-school-infrastructure-projects-on-hold-as-covid-19-slashes-grants>

240 "School Infrastructure projects on hold as COVID-19 slashes grants", Ayanda Mthethwa, Daily Maverick, 5 August 2020, <https://www.dailymaverick.co.za/article/2020-08-05-school-infrastructure-projects-on-hold-as-covid-19-slashes-grants>

241 "Ramaphosa's economic reconstruction and recovery plan – from infrastructure, mass employment to fighting corruption", Marianne Merton, Daily Maverick, 15 October 2020, <https://www.dailymaverick.co.za/article/2020-10-15-ramaphosas-economic-reconstruction-and-recovery-plan-from-infrastructure-mass-employment-to-fighting-corruption/>

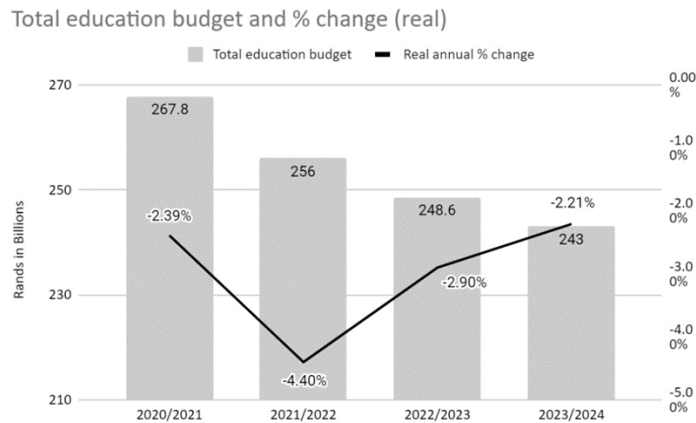
242 It was also announced that 300,000 matriculants would be hired as education and school assistants.

243 The Medium-Term Budget Policy Statement is a government policy statement which communicates the policy goals of government and provides a macroeconomic context, the foundation for a three-year budget forecast and the context in which the annual budget speech in February will be presented.

244 "Joint MTBPS media statement: No new money for schools, but SAA's rescue plan equals almost a year's worth of school infrastructure funding", 29 October 2020, <https://section27.org.za/2020/10/no-new-money-for-schools-but-saas-rescue-plan-equals-almost-a-years-worth-of-school-infrastructure-funding/>

245 This included R275.926 million to be transferred from the Department of Basic Education to the South African Airways business rescue plan.

cuts, “a net total of R1.7 billion was cut from school infrastructure grants alone, and a further R4.4 billion has been reallocated from these grants to cover COVID-19 expenditure needs.”²⁴⁶



Source: Medium Term Budget Policy Statement 2020, page 37.
 Figures converted to 2020 Rands.²⁴⁷

5.6 FAILING TO MEET HUMAN RIGHTS OBLIGATIONS

All governments have struggled to provide continued access to education for learners during the pandemic. However, a number of key failings can be identified with respect to the South African government’s obligations as clarified by the UN Committee on Economic, Social and Cultural Rights to guarantee “(a) *functioning educational institutions and programmes have to be available in sufficient quantity [including] buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water...* (b) *educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party and (c) education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.*”²⁴⁸

In particular, there has been a failure to sufficiently prioritize education as an essential service in line with its status under s29 of the Constitution, regardless of the State’s other budgetary commitments, and to provide sufficient resources to ensure that:²⁴⁹

- As many learners as possible – particularly those from poorer communities – can continue to access education through some form of remote/blended learning. This includes both the provision of equipment, access to data and appropriate teacher training;
- Vital infrastructure maintenance and upgrading is carried out to allow schools – particularly those with significant existing issues such as lack of sufficient classrooms, furniture, equipment, sanitation and water supply – to provide safe learning environments for both learners and teachers and in turn the wider community;
- All schools have enough supplies of adequate PPE.

Indeed, the recent announcement of R2.1 billion being diverted from the DBE budget instead amounts to a significant retrogression with serious consequential impacts for the government’s ability to meet its obligations with respect to an adequately resourced education system. It is also in contradiction to the UN Special Rapporteur on the right to education’s guidance. The Special Rapporteur states that the response to the crisis should be based on a recognition

246 Imali Yesizwe, *An alternative Human Rights Budget*, 21 October 2020, Budget Justice Coalition, https://budgetjusticesa.org/assets/downloads/BJC-Imali_Yesizwe-22oct.pdf

247 “Joint MTBPS media statement: No new money for schools, but SAA’s rescue plan equals almost a year’s worth of school infrastructure funding”, 29 October 2020, <https://section27.org.za/2020/10/no-new-money-for-schools-but-saas-rescue-plan-equals-almost-a-years-worth-of-school-infrastructure-funding/>

248 UN Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (Article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, para 6

249 The Constitutional Court affirmed this in *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011] ZACC

that all the key services – including education as well as health, housing, food, employment and essential social services- have a role to play in the COVID-19 response and that in this respect, States should be cautious not to redirect massive funding towards health or economic recovery at the expense of education.²⁵⁰

By taking a human rights centred approach based on its own constitutional and international obligations and guidance from a range of bodies such as UN CESCR, UNICEF, WHO and most recently the UN Special Rapporteur, the South African government would be better placed to ensure that those children who were already the victims of an unequal education system were prioritized during the pandemic. It could do this by integrating the “4As” framework (Availability, Accessibility, Acceptability and Adaptability) as policy guides throughout the education system at all levels; adopt special targeted measures to address and mitigate the impact of the pandemic on marginalized and at risk groups; carry out child rights impact assessments before putting in place any response measures and work with all stakeholders to ensure a holistic response.²⁵¹

250 Report of the Special Rapporteur on the right to education, *Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities*, A/HRC/44/39, 30 June 2020, para 84(l), <https://www.ohchr.org/EN/Issues/Education/SREducation/Pages/COVID19.aspx>

251 Report of the Special Rapporteur on the right to education, *Right to education: impact of the coronavirus disease crisis on the right to education – concerns, challenges and opportunities*, A/HRC/44/39, 30 June 2020, para 84

6. CONCLUSIONS AND RECOMMENDATIONS

During the 12 months since Amnesty International released its last report on the state of many parts of the education system in South Africa, the country has had to endure one of the most devastating periods in its history. The impact of the COVID-19 pandemic on a whole range of human rights have been multiple, widespread and severe. This includes the right to education, where many learners have struggled to access any education during this period.

It has to be acknowledged that the government, as with all its counterparts across the world, has had to face a daunting task across multiple areas. In the education field, after some false starts it has managed to reopen schools for all grades whilst responding, to some extent, to concerns from various stakeholders, including by issuing guidance designed to ensure that schools can reopen safely.

However, its approach has been undermined by its historical and continuing failure to address systemic infrastructure gaps in thousands of schools. Overcrowded and crumbling classrooms lacking furniture combined with wholly inadequate sanitation and water supply mean that many schools are finding it impossible to practically comply with the government's own COVID-19 guidelines. At the same time, these schools are also the least well placed to provide some form of remote or blended learning. The result is that an unequal education system has become even more unequal and precious time in a child's personal development is being lost. It appears that education was not prioritized sufficiently despite being an essential service and the fact that it is an immediately realizable obligation under s29 of the Constitution.

The government still has an opportunity to change course. Instead of diverting resources from vital infrastructure upgrading, now is the very time to invest in this area as part of the country's recovery from the impacts of COVID-19. The President's address on 15 October committing again to finally ending mud schools and pit toilets was a welcome step. However, people in South Africa have heard these promises too many times before and this announcement was undermined by the confirmation less than two weeks later of over R2 billion being diverted from the DBE's budget. Now is the time that South Africa needs to invest in its young people and ensure that they all can enjoy the right to quality education and contribute to a better future society.

RECOMMENDATIONS TO THE GOVERNMENT

Infrastructure and PPE

- As a matter of urgency, ensure that all schools are safe and have decent learning environments for learners and teachers by reversing the decision to divert resources and commit sufficient funds to address ongoing infrastructure failings, prioritizing those schools which are not meeting the Minimum Norms and Standards for educational facilities;
- In particular, ensure that all schools can practise safe social distancing by addressing overcrowding, prioritizing those schools which exceed the permitted maximum limits of learners per teacher ratios;
- Ensure that all schools have sufficient supplies of PPE, with a particular focus on those struggling to ensure safe social distancing;
- Ensure that all schools have adequate water supplies, including through the sufficient provision of mobile water tanks that are regularly re-filled and maintained;

- Follow through on the President's commitment to eradicate all mud schools and pit toilets adhering to concrete deadlines and targets in line with the Minimum Norms and Standards.

Supporting remote learning and vulnerable families

- Explore innovative ways to provide access to education where schools are partially or totally closed, such as distance learning, by further scaling up the use of accessible technology (such as radio programmes) to provide more comprehensive coverage;
- As part of infrastructure upgrading, scale up internet provision and access to IT in poorer communities and the schools they serve to both facilitate remote or blended learning during any further closures, whilst also investing in enhanced community engagement;
- Ensure that all teachers are trained and supported to deliver more remote and blended learning;
- Provide more guidance and support for parents to home school, including provision of accessible materials and instruction;
- Ensure adequate levels of financial support and social protection for those families that need it, particularly those in the most disadvantaged and vulnerable situations to ensure that children out of school can enjoy their socio-economic rights such as food and an adequate standard of living.

Integrating a human rights approach

- Integrate the "4As" framework (Availability, Accessibility, Acceptability and Adaptability) as policy guides throughout the education system at all levels;
- Carry out child rights impact assessments of crisis-related education policies, programmes and plans, providing opportunities for children's views to be heard and taken into account in decision-making processes in the COVID-19 context.

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FAILING TO LEARN THE LESSONS?

THE IMPACT OF COVID-19 ON A BROKEN AND UNEQUAL EDUCATION SYSTEM

South Africa has borne the heaviest burden in Africa of the COVID-19 pandemic in terms of both numbers of reported cases and deaths. Beyond this devastating toll, as with many other countries, the socio-economic impacts have been multiple and far-reaching.

The consequences for the right to education have been severe. Schools serving poorer communities that were already struggling with inadequate infrastructure will also find it the most difficult to provide continued education for learners. It is impossible to maintain hygiene and hand-washing measures at schools where many have no running water and decent sanitation. It is impossible to socially distance when classrooms lacking enough basic furniture are already overcrowded. Remote learning is not an option for those who already had no access to internet and computers. Yet the government response to COVID-19 did not sufficiently prioritize the right to education by tackling this inequality and ensuring those schools and learners had the additional resources they needed. Instead vital resources have been diverted.

The government should address continuing serious infrastructure failings, prioritizing those schools which continue to fall below the government's own Minimum Norms and Standards for educational facilities. It should also provide more resources to enable remote or blended learning for all children to take place when schools are closed. Above all, it needs to put human rights at the heart of its COVID-19 policies, plans and response in order to ensure that all children regardless of their status and circumstances can benefit from a decent education and the life opportunities it can bring.