



PROGRESS ON SAFEGUARDING THE RIGHT TO EDUCATION, RIGHT TO HEALTH AND RIGHTS OF VULNERABLE GROUPS IN UGANDA

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The Initiative for Social and Economic Rights (ISER) is a registered national non-governmental organisation in Uganda founded to ensure the full recognition, accountability and realisation of social and economic rights primarily in Uganda, but also within the East African region. It submits the following report on Uganda's implementation of key recommendations concerning the rights to health, education and vulnerable groups received during its first UPR in 2011 and highlights emerging issues since 2011 that threaten the realisation of these rights.

KEY WORDS: HEALTH; EDUCATION; FINANCING; VULNERABLE GROUPS; PRIVATE SECTOR; HIGH SCHOOL DROP OUT RATES; FREE, PRIOR AND INFORMED CONSENT

EXECUTIVE SUMMARY

1. This report addresses the status of Uganda's realisation of the rights to education and health and rights of vulnerable groups. Part I of this report sets out the methodology used to collect this information. Part II discusses the normative framework of the rights to education and health. Part III addresses the state of the realisation of the rights, discussing key cross cutting issues and issues specific to health, education and the protection of vulnerable groups.
2. There has been inadequate progress on the realisation of the rights to health and education and insufficient attention paid to safeguarding the rights of vulnerable groups. Although the economy has improved over the years,ⁱ trends in public financing reveal inadequate resources are devoted to the rights to health and education. The decline in funding coupled with the increased demand for services due to rising population growthⁱⁱ detrimentally affects the quality of education and health care services and has a retrogressive effect on the realisation of these rights. Amidst decreased state financing for health and education, Uganda is increasingly relying on public private partnerships to deliver key services. The National Development Plan II 2015/16-2019/20 notes that Uganda's strategy over the next five years is to rely on strong public private partnerships for sustainable development. However, while there has been increased proliferation of private actors in sectors like health and education, the expansion of the private sector has not been matched by an appropriate regulatory framework. The weak regulation and supervision of the private sector has contributed to the failure to ensure quality, affordable services, and accountability. Vulnerable groups, particularly indigenous minorities and people with disabilities, continue to face challenges accessing healthcare and education and are displaced from their land without free and prior informed consent. This report recommends how to address these challenges to ensure progressive realisation of the rights to education and health.

I. METHODOLOGY

3. The data relied on this report is derived from government statistics but also on primary data. The Initiative for Social Economic Rights has carried out studies and surveys of directly impacted people. We also consulted grassroots organisations working with directly impacted people.

II. NORMATIVE FRAMEWORK ON THE RIGHT TO EDUCATION AND HEALTH

4. Uganda has ratified a number of treaties enshrining the right to educationⁱⁱⁱ and health.^{iv} These treaties obligate it to meet certain minimum core obligations, uphold principles of non-discrimination and progressively realise these rights by taking deliberate, concrete and targeted steps. Domestically, it has a strong legal and policy framework on the right to education. Article 30 of the Constitution guarantees all persons the right to education and article 34(2) enshrines the child's right to basic education.^v The Education Act implements the Constitutional provisions on the right to education. Uganda has passed a

number of policies to ensure this right is recognized. These include: the National Development Plan II, 2015/16-2019/20, Vision 2040 and the Education Sector Strategic Investment Plan (2007/2015).

5. The right to health in contrast, lacks an adequate domestic legal framework. It is not enshrined in the Constitution beyond the National Objectives of Uganda's 1995 Constitution, which obligate the State to ensure Ugandans enjoy decent health.^{vi} The State has, however, passed key policies on the right to health: the National Health Policy 2010-2020; the Health Sector Development Plan 2015/16-2019/20; and the Patient Charter (2009).

III STATE OF IMPLEMENTATION OF THE RIGHTS TO HEALTH AND EDUCATION: ACHIEVEMENTS, BEST PRACTICES, CHALLENGES, CONSTRAINTS, AND RECOMMENDATIONS

A. Cross Cutting Issues

1. Low Government Investment In Education And Health Impacting Negatively On Quality Of The Services Provided

i. Education

6. During Uganda's 2011 UPR, Uganda accepted to increase public expenditure on education to increase the quality of education for all.^{vii} Trends in public financing of the education sector show that while spending on education has increased in absolute figures from US\$ 968 billion in 2003/4-2010/11, to US\$ 1.283 billion in 2013-2014, it has decreased as a share of GDP to reach 3.3% (against 4.2% in 2003/04).^{viii} This figure is far below the internationally accepted standard of 6% of the GDP, reiterated by States and international stakeholders in the recent UNESCO-led Muscat Agreement.^{ix} The portion of the national budget set aside for education when inflation is taken into account has actually been declining in real terms from 16.85% to 13.65% over the last four financial years and still falls short of the Education For All (2000) recommended target of 20% of the national budget.^x Basic education receives even less. Capitation grants, which replaced revenue lost by schools when school fees for state schools were abolished as part of Universal Primary Education, are currently 10,000US\$,^{xi} which is less than three dollars per child per year without adjusting for inflation.
7. A 2014 interagency report done with the Ministry of Education and Sports attributed the inadequacies in public education to low government investment in education.^{xii} Despite the increase in the numbers of children going to school, the comprehension and pass rate is still very low. Children are completing school without the basic and necessary competencies.^{xiii} Only one out of every ten children assessed in primary 3 was able to read primary 2 level stories and correctly solve primary 2 level numeracy questions up to division level.^{xiv} Overall, only 3 out of 10 (27.6%) children assessed in primary 1 up to primary 7 were able to read a primary 2 level story.^{xv}
8. The quality of education in Uganda is affected by several factors that could be addressed by increased financing including very high Teacher to Pupil Ratios, poor infrastructure in schools, lack of meals in many schools, and low motivation for teachers. A survey by the Initiative for Social Economic Rights in Apac District in North Eastern Uganda found a 1:122 Teacher to Pupil Ratios in Alwala Primary School and 1:120 at Amocal primary

School.^{xvi} The survey also found acute shortage of furniture with many pupils sitting on the floor. For example Awir Primary school with a student population of 1584 pupils has only 70 desks; Abalokweri Primary School with a student population of 1196 only has 150 desks each sitting 3 pupils.^{xvii} According to the Ministry of Education and Sports Ministerial Policy Statement for FY2014/15, the national classroom deficit stood at 39,788. Many pupils study and write exams on the school compound under trees.

9. Recommendation: Increase financial investment in the public education sector, and match as a minimum the international target of 6% of GDP or allocate 20% of the national budget to education.

ii. Health

10. Uganda has also been experiencing declining investment in the health sector over the years despite a recommendation made during Uganda's 2011 UPR to increase financing for health in line with the 15% of the national budget Abuja declaration target.^{xviii} For the FY 2015/2016, the total sector budget reduced from Ushs 1,282.473 bn in 2014/2015, to Ushs 999.45 bn. The 2016/2017 budget shows that the health sector is only allocated 8.5% of the national budget. The 2015/16 – 2019/20 Health Sector Development Plan shows that Government will be the least contributor to the plan, contributing 27%, while 36% will be contributed by bilateral partners, 7% multi-lateral partners and 30% being private contribution.^{xix}

11. The limited funding for health affects the quality of health services provided and can lead to discrimination since the poor and vulnerable will not be able to access healthcare. Currently, the essential package of health services is underfunded, leading to stock-outs of essential medicines and low quality of healthcare. According to the Annual Health Sector Performance Report 2014/15, the sector did not meet most of its targets for the year, while there was a decline in some of them. For example in 2014/15, the Under 5 mortality rate was 69 per 1000 live births, and fell short of the target 56 per 1000 live births.^{xx} The sector is unlikely to achieve its targets for the maternal mortality ratio.^{xxi} Mothers remain at high risk of untimely death due to health delivery system issues, the inadequacy and unavailability of services.^{xxii} Health workers are not yet working in the required numbers in rural districts with some districts staffing below 50%, which makes it difficult for them to provide the minimum health care package.^{xxiii} Households risk further impoverishment due to informal fees in the public sector or formal fees in the private sector.^{xxiv}

12. Recommendation: Progressively increase health financing to reach 15% of the national budget and ensure effective utilization of available resources.

2. Expansion Of The Private Sector In Education And Health Service Provision, With Limited Regulation And Oversight, Impacts Quality and Access for vulnerable groups

13. The National Development Plan II 2015/16-2019/20 notes that Uganda's strategy over the next five years is to rely on strong public private partnerships for sustainable development. The health and education sector are no exception.

i. Education

14. Currently, 27% of schools at primary level and 66% of schools at secondary level are private.^{xxv} As of 2013, private school enrolment as a percentage of total enrolment was 16.2% and 51.0% at primary and secondary levels respectively.^{xxvi} Out of the 1820 schools implementing the Universal Secondary Education (USE) scheme, 943 (52%) are government aided, while 852 (48%) are private institutions operating under Public Private Partnerships (PPP) arrangements.^{xxvii} The private sector has grown much faster than anticipated and is driven by market forces, and it is only now that government is trying to catch up with its expansion.
15. While international human rights law recognises the freedom to establish private educational institutions,^{xxviii} it obligates the State to regulate private providers, monitor and evaluate their compliance with educational outcomes and the minimum education standards set by the State.^{xxix} Currently, the private sector in education is regulated by the Education (Pre-Primary, Primary and Post-Primary) Act (2008) but it is only recently in 2014 that the Ministry of Education issued guidelines to give effect to the Act.^{xxx} Gaps remain in terms of quality control, and protecting families from exploitation by private schools. The 2012/2013 Education and Sports Sector Annual Report indicates that there is no clear policy on quality assessment at all education levels, and there are inadequate school inspection services in the country.^{xxxi} The Private Schools and Institutions department, charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding private schools, only monitors 50 schools, which amounts to 200 schools per year out of the 4000 private schools.^{xxxii} Existing policies and regulations on private schools have not been implemented. The weak regulation and supervision of the private sector in education has contributed to the failure to ensure quality, affordable services, and accountability and resulted in discrimination against children from poor backgrounds. A survey by the Initiative for Social Economic Rights found private schools charge fees that make them inaccessible to the poor.^{xxxiii} Our research indicates that unregulated privatization of education has a negative impact on the education of girls who are often left out when high fees force parents to choose who to educate.^{xxxiv}

16. Recommendation: Private education providers should be adequately regulated, both in law and in practice, with adequate inspection and effective accountability mechanisms.

ii. Health

17. The health sector is also experiencing expansion of a diverse private sector comprising of Private Not For Profit health providers (PNFP), Private Health Practitioners (PHP) and Traditional and Complimentary Medicine Practitioners (TCMP) with limited regulation and oversight. Private Health Practitioners own 93% of all Health Centre IVs in Uganda,^{xxxv} while the Private Not For Profit sub-sector currently operates 40% of all hospitals and 20% of all lower-level health centres. The government has also encouraged the growth of the for-profit health sector by allowing health workers in public facilities to moonlight in private clinics, and it has been found that 50% of the doctors working in the private sector also work in the government sector.^{xxxvi}
18. Despite the increased focus on public private partnerships, there is poor reporting and non-inclusion of data from private sector hospitals and clinics in the National Health Management Information System. The low reporting rates from the private sector limits

the ability to appropriately monitor overall sector outcome performance. The health sector has also acknowledged that there are a number of individuals, often without formal health training, engaged in treatment of patients and illegal sale of drugs.^{xxxvii} Yet Uganda has an obligation to protect third parties from interfering with the right to health and this includes adopting legislation and monitoring mechanisms to regulate the private sector. Evidence suggests that if monitored, the private sector can play a key role in the realisation of the right to health.

- 19. Recommendations: The state should strengthen policies, regulatory frameworks and laws and improve their enforcement by creating an oversight body for private health care providers in the country.**

3. The Rights of Vulnerable Groups Are Not Safeguarded

i. Vulnerable Groups Face Challenges Accessing Healthcare And Education

20. During Uganda's 2011 UPR, the State agreed to improve access for Persons With Disabilities (PWDs) to education and health care^{xxxviii} and to safeguard the rights of the Batwa.^{xxxix} Vulnerable and marginalized groups are not equally benefiting from public education and health services, particularly PWDs and ethnic minorities like the Batwa. In 2013, only 8 Batwa children sat for Uganda National Examination Board exams at different levels.^{xl} While the national enrolment level for Universal Primary Education is 94% and 91% for boys,^{xli} only 10% of the hearing impaired children are enrolled for UPE.^{xlii} Health facilities do not provide reasonable accommodations for PWDs.^{xliii}

- 21. Recommendation: The state should come up with a framework to give effect to the human rights based approach to service delivery as articulated under the National Development Plan by among other things ensuring equal access to social services by all people in Uganda with a specific focus on vulnerable groups.**

ii. Continued Violation Of The Right To Self Determination For Indigenous Communities

22. During Uganda's UPR in 2011, Uganda received recommendations to pursue accommodative dialogue with indigenous communities and to ensure their rights are safeguarded.^{xliv} Despite this, indigenous communities continue to be displaced from their ancestral land when natural resources are discovered. The free and informed consent of indigenous groups in Karamoja^{xlv} was not sought before mining companies like East African Mining exploited their land. Interviews with mining communities in Moroto indicate that the community was not consulted before their land was given to companies mining limestone.^{xlvi} The government of Uganda is obligated under international law to consult and cooperate with indigenous communities and receive their free, prior and informed consent before developing and exploiting their natural resources.^{xlvii}

- 23. Recommendation: The government should ensure the participation and engagement of indigenous communities by drafting guidelines and putting in place monitoring mechanisms to ensure parties seeking to exploit natural resources of indigenous communities seek their free, prior and informed consent and entering into revenue sharing mechanisms for natural resources owned by indigenous communities.**

B. Right Specific Challenges

1. Right to Education

i. High Drop Out and Non-enrolment rates Particularly for Vulnerable Groups

24. As a result of drop out and non-completion rates, many children are leaving school without acquiring basic literacy, numeracy and life skills while a significant number of children of school going age have never enrolled in school at all. Only 33% of enrolled children complete primary education, and 11% of children aged 7 to 15 have never been to class at all.^{xlviii} An analysis of students who drop out reveals they constitute socially excluded groups like girls, children with disabilities, those affected by conflict or natural disaster, rural and urban poor, children from pastoralist populations, religious and ethnic minorities, child workers and migrant children.^{xlix}
25. **Recommendation: The State should come up with an Action Plan for ensuring school completion of at least basic education for all children in Uganda regardless of social status.**

2. Right to Health

i. Lack Of A Comprehensive Health Insurance Scheme Disproportionately Affects The Poor

26. During Uganda's 2011 UPR, Uganda was urged to put in place a health insurance scheme for the poor.^l Cost remains one of the barriers to accessing health care in Uganda. Households spend 37% of their budget on out of pocket costs for healthcare,^{li} risking household impoverishment. This exceeds the WHO recommended maximum 20% out of pocket expenditure and disproportionately affects the poor and vulnerable groups like people with disabilities. Yet equity in health requires that poor households are not disproportionately burdened with out of pocket health expenses.
27. The government has designed a national health insurance scheme but it is yet to receive a certificate of financial implication from the Ministry of Finance, which is needed before the bill is tabled before Parliament. The draft bill is also unclear about when the poor, people with disabilities and people working in the informal sector will be covered.
28. **Recommendation: Pass a national health insurance scheme that pays adequate attention to the needs of the poor, people with disabilities, the elderly and other vulnerable groups.**

ENDNOTES

ⁱ In FY 2014/15, the real GDP at market prices grew by 5%. Uganda Bureau of Statistics Abstract (October 2015) at page 73.

ⁱⁱ Uganda's population growth rate is 3.03 percent. Uganda Bureau of Statistics Abstract (October 2015) at page viii.

ⁱⁱⁱ Article 26 of the Universal Declaration of Human Rights (1948); article 5 of the United Nations Economic Social and Cultural Organisation (UNESCO) Convention against Discrimination in Education (1960); articles 13 & 14 of the International Covenant on Economic, Social and Cultural Rights (1966); articles 28 & 29 of the Convention on the Rights of the Child (1989); article 10 of the Convention on the Elimination of All forms of Discrimination against Women (1979); article 17 of the African Charter on Human and Peoples' Rights (1981); article 11 of the African Charter on the Rights and Welfare of the Child (1999).

^{iv} Article 25 of the Universal Declaration of Human Rights (1948); article 12 of the International Covenant on Economic, Social and Cultural Rights (1966); article 16 of the African Charter on Human and Peoples' Rights (1981).

^{vi} See National objectives XIV (b), and XXII (a, b & c) of the 1995 Constitution of Uganda. They obligate the State to: "(a) Take appropriate steps to encourage people to grow and store adequate food; (b) Establish national food reserves; and (c) Encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State."

^{vii} Recommendation 111.96 states "Increase Public Expenditure on education and undertake additional efforts to improve the functioning of the education system, in order to ensure quality education for all children."

^{viii} Analysis based on Ministry of Education and Sports Ministerial Policy Statements and Budget Framework Papers

^{ix} Muscat Agreement, May 2014, available on

<http://www.uis.unesco.org/Education/Documents/muscatagreement-2014.pdf>.

^x It was 16.85% in fiscal year 2010/11, 15% in 2011/12, 14.61% in 2012/13 and 13.65% in 2013/14.

^{xi} National Budget Framework Paper for the financial year 2016/2017.

^{xii} Ministry of Education and Sports, in collaboration with UNICEF, Eriks, Save the children, UNHCR and Stromme Foundation, Out of School Children Study in Uganda, (March 2014) p. 9.

^{xiii} UWEZO Report (2012): Are our children learning? Annual learning assessment report

^{xiv} UWEZO Report (2012): Are our children learning? Annual learning assessment report, p. 10

^{xvi} Interview held by ISER with Apac district Local council V/ Secretary for social services on the 11/07/2014.

^{xvii} Findings by ISER during a monitoring visit to schools in Apac district in July, 2014.

^{xviii} Recommendations 112.41 in the United Nations General Assembly, Report of the Working Group, A/HRC/19/16 (22 December 2011) .

^{xix} National Health Sector Development Plan 2015/16-2019/20

^{xx} Ministry of Health, Uganda *Annual Health Sector Performance Report*, 2014/2015 at page 6.

^{xxi} Ministry of Health, Uganda *Annual Health Sector Performance Report*, 2014/2015 at page 4.

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- ^{xxii} Ministry of Health, Uganda, *Annual Health Sector Performance Report, Financial Year 2014/2015* at page 5.
- ^{xxiii} Ministry of Health, Uganda, *Annual Health Sector Performance Report, Financial Year 2014/2015* at page 16.
- ^{xxiv} Ministry of Health, Health Systems 20/20, and Makerere University School of Public Health, *Uganda Health System Assessment 2011* (April 2012) Kampala, Uganda and Bethesda, MD: Health Systems 20/20 project, Abt Associates Inc.
- ^{xxv} Ministry of Education and Sports Department of Private Schools and Institutions, available at <http://www.education.go.ug/data/smenu/50/Private%20Schools%20and%20Institutions.htm> (accessed 21 March 2016).
- ^{xxvi} Ministry of Education and Sports Sector Fact Sheet 2002 – 2012.
- ^{xxvii} Ministry of Education and Sports USE - UPOLET Head Count Database as of 21st May, 2014.
- ^{xxx} Ministry of Education and Sports, Guidelines for Establishment, Licensing, Registration and Classification of Private Schools/Institutions in Uganda (2014).
- ^{xxxi} 2012/2013 Education and Sports Sector Annual Report (ESSAPR).
- ^{xxxii} Interview with official from the Ministry of Education.
- ^{xxxiii} Findings from the Initiative for Social Economic Rights Right to Education Monitoring Work in 2014.
- ^{xxxiv} Research conducted by Initiative for Social Economic Rights on Privatisation in Education in Uganda (2014).
- ^{xxxv} SWECARE Foundation, Uganda Health Sector and Partnership Opportunities Report, 2013, p.30
- ^{xxxvi} SWECARE Foundation, Uganda Health Sector and Partnership Opportunities Report, 2013, p.31.
- ^{xxxvii} Health Sector Development Plan 2015/2016 – 2019/2020.
- ^{xxxviii} Recommendations 111.33; 111.34 in the United Nations General Assembly, Report of the Working Group, A/HRC/19/16 (22 December 2011)
- ^{xxxix} Recommendation 111.100 in the United Nations General Assembly, Report of the Working Group, A/HRC/19/16 (22 December 2011)
- ^{xl} United Organisation for Batwa Development in Uganda, Available at <http://uobdu.wordpress.com/read-our-blog/page/2/> accessed on 20/06/2014
- ^{xli} *Keeping Children Alive, Safe, Learning*: UNICEF Uganda Fast Facts 2012.
- ^{xlii} Initiative for Social Economic Rights, *Reasonable Accommodation for Deaf/Hard of Hearing Children in Uganda's Education System*: ISER Policy Advocacy Brief No. 2, 201
- ^{xliiii} National Development Plan II 2015/16-2019/20 at page 70.
- ^{xliv} Recommendations 111.99; 111.100
- ^{xlv} World directory of Minorities and Indigenous Peoples, “Karamojong and Related Groups,” 2005, <http://www.minorityrights.org/5032/uganda/karamojong-and-related-groups.html>
- ^{xlvi} Interviews by the Initiative for Social Economic Rights and Uganda Consortium for Corporate Accountability with three mining communities in Moroto carried out in March 2016.
- ^{xlvii} United Nations Declaration on the Rights of Indigenous Peoples(UNDRIP), art. 32(2); International Labour Organisation (ILO) Convention No. 169 on Indigenous and Tribal Peoples. Although Uganda was absent for the voting of the UNDRIP, it ratified the ILO. *See also* UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIII (Indigenous Peoples), August 18, 1997, at paras 4(d) and 5.

^{xlviii} Ministry of Education and Sports, in collaboration with UNICEF Eriks, Save the children, UNHCR and Stromme Foundation, *Out of School Children Study in Uganda* (March 2014).

^{xlix} Ibid.

¹ Recommendation 111.92 in the United Nations General Assembly, Report of the Working Group, A/HRC/19/16 (22 December 2011).

^{li} Health Sector Development Plan 2015/16-2019/20 at page 46.