

Ensuring Respect and Protection of Economic and Social Rights During and After the COVID-19 Pandemic



ISER

Facilitating Social Justice

INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

**ECONOMIC & SOCIAL
RIGHTS ADVOCACY**

(ESRA) Brief

June 2020

TABLE OF CONTENTS

Acknowledgement	1
Introduction	2
HEALTH	
Adopting a human right-base approach to COVID-19 to ensure the right to health for all in Uganda	4
Underfinancing of the public health sector undermines universal health coverage: Reflections on the COVID-19 pandemic	9
COVID-19 and access to mental health care	12
Impact of COVID-19 on the right to health of prisoners in Uganda	15
Awareness on non-communicable diseases (NCDs) as the last ship	20
EDUCATION	
The right to education during and post the COVID-19 pandemic	23
The impact of COVID-19 on Uganda children’s right to education	27
COVID-19 and the right to education	30
The COVID-19 pandemic: Hindering access to education encouraging child marriages and teenage pregnancies	33
LABOUR & EMPLOYMENT	
Occupational safety and health during and beyond COVID-19	36
Uganda under lockdown: Highlighting the socio-economic inequalities in the informal sector	39
The impact of the COVID-19 pandemic on the right to work of economically precarious informal sector workers	44
Impact of COVID-19 and the lockdown on employment and access of social services in Uganda	47

The occupational health and safety implications of COVID-19 for workers in Uganda	50
SOCIAL PROTECTION & HOUSING	
Social protection for women and girls in the face of COVID-19 pandemic	53
Stay home, Stay safe: Uganda’s right to adequate housing in the COVID-19 era	57
COVID-19: Tracing the right to an adequate standard of living for persons with disabilities	60
ECONOMY	
The implications of COVID-19 for Uganda’s fiscal policy & public debt	65
Weathering a crisis: Exploring the utility of the stakeholder approach in the wake of COVID-19	68
About Initiative for Social and Economic Rights (ISER)	71

ACKNOWLEDGEMENT

The Economic and Social Rights Advocacy (ESRA) Brief is a biannual publication of the Initiative for Social and Economic Rights (ISER), which provides insight into the debates and steps currently being undertaken towards the full realization of economic and social rights in Uganda. The goal of the ESRA Brief is to create awareness, encourage and stimulate national debate around social and economic rights as well as act as a knowledge exchange platform for stakeholders and the broader Ugandan populace, the East African Community and beyond.

To contribute to future editions of ESRA brief, please email the editors at info@iser-uganda.org

ESRA brief is also available online at www.iser-uganda.org

Executive Director: Salima Namusobya

Editors: Nokukhanya Mncwabe & Moses A. Nsubuga

This edition of the ESRA brief is published with support from





1 INTRODUCTION

INTRODUCTION

This edition of the Economic & Social Rights Advocacy (ESRA) Brief, which has as its theme, “The Protection and Respect for Economic and Social Rights During and Post the COVID-19 Pandemic,” is timely, motivated as it is by the global outbreak of the COVID-19 pandemic, which has intensified focus on the realisation of economic, social and cultural rights (ESCRs) – not only in Uganda but throughout the world.

Uganda confirmed its first case of coronavirus (COVID-19) on March 21, 2020, spurring the government to adopt various measures in a bid to contain the spread of the virus. This included the introduction of a national lockdown, which suspended all non-essential economic and social activity, effectively subjecting the entire population to temporary home confinement, with public excursions and the use of public and private vehicles prohibited save for limited exceptions (which in the case of transportation required pre-authorisation by a government official).

Lockdown precipitated the temporary closure of non-essential establishments including among others, state institutions, professional workplaces, business enterprises, schools, universities and other educational institutions, religious places of worship, and public facilities such as markets, shopping malls, restaurants, hotels, etc.

While well intentioned and commendable, it is indisputable that the Ugandan government’s COVID-19 interventions have placed the nation under considerable strain, with many citizens struggling to survive. This is attributable, in part, to Uganda’s largely cash economy, and the disproportionate dependence on the informal sector, with many livelihoods sustained through daily or weekly earnings. Exacerbating this vulnerability is a lack of adequate savings to sustain people through this period of suspended trade and protracted home-confinement, which has made it increasingly difficult for informal and casual workers and other vulnerable groups in society to secure food and pay for basic amenities such as rent.

The ramifications of government’s COVID-19 interventions are not only economical: the national lockdown has compromised many people’s ability to access social services, including non COVID-19 related health services; and there are fears of an impending food security crisis, due to compromised production, and swiftly diminishing food stores.

It is the abovementioned, which has prompted influential role players such as the World Bank’s Vice President for Africa, Hafez Ghanem, to stress the importance of a holistic response to COVID-19. A holistic policy response is concerned not only with the public health containment of the virus; but importantly, puts in place safeguards to protect already fragile healthcare systems from buckling under the strain of the pandemic, to ensure that appropriate, adequate and equitable healthcare and social services remain available. Moreover, it ensures that the negative financial implications of the pandemic are addressed – so that, for example, people are not unfairly

exploited by unscrupulous employers and landlords; and it prioritises economic recovery to protect livelihoods and jobs over the longer term.

While Uganda does have some enabling policy and regulatory frameworks in place to guide government's COVID-19 response, these are not without significant gaps and constraints - particularly in relation to ensuring social protections for vulnerable and marginalized communities and the respect and protection of ESRs across the country more generally.

Hence, the articles in this Brief provide targeted policy recommendations, derived from analysis of the pandemic's ramifications and Uganda's COVID-19 response measures; assessing, among other things;

- i. The burden of the pandemic on Uganda's healthcare infrastructure, and government's response and management of the pandemic to ensure inclusion and equitable access of vulnerable groups to public healthcare.
- ii. Disruptions to education at primary, secondary and tertiary levels, and the efficacy of the alternative teaching instruction provided - particularly in the light of existing economic and social disparities (e.g. between students with disabilities and those who are able-bodied; impoverished and wealthy students; those in rural and urban areas, etc.).
- iii. The pandemic's effect on businesses and employment opportunities, and response measures thereto - from a labour as well as health and safety perspective.
- iv. The impacts and implications of the pandemic and lockdown on individuals' access to and enjoyment of their economic, social and cultural rights, particularly persons from vulnerable and marginalised social groups, (i.e. impoverished, disabled, elderly persons, refugees, youth, children and women); and the gendered impacts not only of the pandemic but also government's response efforts.
- v. The effects on the economy of the pandemic and the mitigation and recovery measures contemplated/implemented by government; as well as the extent to which the latter are cognisant of social inclusion.



2
HEALTH

ADOPTING A HUMAN RIGHTS-BASED APPROACH TO COVID-19 TO ENSURE THE RIGHT TO HEALTH FOR ALL IN UGANDA

Labila Sumayah Musoke¹

“Human dignity and rights need to be front and center in this effort, not an afterthought... lockdowns and quarantines...to contain the coronavirus should always be carried out in strict accordance with human rights standards...”²

Michelle Bachelet: United Nations High Commissioner for Human Rights

Introduction

COVID-19 has emerged as an unprecedented pandemic, adversely affecting among other things, the healthcare regimes, economies, education systems and employment opportunities of countries across the world. Uganda is no exception, and its government has adopted several measures it hopes will inhibit the spread of the virus. However, COVID-19 has exposed weaknesses in Uganda’s health system and highlighted existing health inequities, which the country’s pandemic response measures have the potential to exacerbate, undermining the nation’s public healthcare system, enjoyment of human rights, and development more generally. Hence, this article proposes a Human Rights Based Approach (HRBA) as the most effective framework for Uganda’s COVID-19 response, on the grounds that an HRBA can ensure vulnerable groups’ protection from adverse rights encroachments, during and after the pandemic.

Background

On March 11 2020, the World Health Organization (WHO), declared COVID-19 a global pandemic,³ in accordance with International Health Regulations (2005)⁴.

1 Health Law, Policy and Humans Rights Research. Advanced Diploma, Sustainable Development and Human Rights (Antwerp University, Belgium), P. Dip (LDC), LLB (Hons), Makerere University. Email: labirasumaya@gmail.com

2 Office of the High Commissioner for Human Rights (OHCHR), Media Briefing: COVID-19- Informal briefing to the Human Rights Council, 9 April 2020. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true&fbclid=IwAR38-bd2AA8ME1-ArpXEJSQGaC1tlxMaBRoSo7xH7wD7TVPq7T3MfsofWyYs>, last accessed, 3 May 2020.

3 World Health Organisation (WHO), Director General’s Opening Remarks at the media briefing on COVID-19, 11 March 2020. Available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020>, last accessed 2 May 2020.

4 The 2005 International Health Regulations, authorise the WHO- Director General to declare a state of ‘Public Health Emergency of International Concern (PHEIC), after due consultation with Emergency Committee and state parties in which the health event is occurring. Important to note is that, the 2005 is a legally binding document as per Article 22 of the WHO constitution.

The WHO Director General, Tedros Adhanom Ghebreyesus, expressed concern regarding "the alarming levels of spread and severity, coupled with Governments' inaction..." Notable recommendations to "flatten the curve"⁵ included amongst others 'self-isolation'⁶ and 'social-distancing.'⁷

As of the 2nd of June 2020, the COVID-19 pandemic continues to escalate in over 213 countries globally, with confirmed cases standing at 6,374,040, fatalities at 377,603, and recoveries at 2,909,331.⁸ In Uganda, as of the 2nd June 2020, 457 people had tested positive, with 72 recoveries, and zero fatalities.⁹

From a human rights perspective, prioritizing the right to health during a pandemic outbreak means that the overriding concern ought not to be whether states have sufficient resources, but rather, whether vulnerable groups¹⁰ enjoy access to essential healthcare and socio-economic determinants of health on an equitable footing with others.

Right to Health: not merely the absence of disease

The WHO provides a holistic definition of health, namely "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹¹ This offers an opportunity to prioritize the social well-being of vulnerable groups during the outbreak of COVID-19. The U.S Center for Disease Control defines

5 This is a public health strategy; the curve being flattened is the epidemic curve, which is achieved by slowing down the rate of infection, reducing the number of people simultaneously requiring healthcare admission and treatment. See further: https://en.wikipedia.org/wiki/Flattening_the_curve and <https://blog.providence.org/blog-2/COVID-19-what-does-it-mean-to-flatten-the-curve>, last accessed 2 June 2020.

6 Self-isolation is where a person intentionally limits the number of people with whom they come into contact for 14 days if they have or suspect they have potentially been exposed to the virus. See further: <https://publichealthmatters.blog.gov.uk/2020/02/20/what-is-self-isolation-and-why-is-it-important/> when you stay at home or hospital because you have or might have the coronavirus. See: <https://www.nhs.uk/conditions/coronavirus-COVID-19/what-to-do-if-you-or-someone-you-live-with-has-coronavirus-symptoms/when-to-self-isolate-and-what-to-do/>, last accessed 2 June 2020.

7 Social or physical distancing is a policy requiring people to maintain a stipulated distance between themselves and others when in public spaces. See further: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>, last accessed, 2 June 2020.

8 Worldometer (2020): COVID-19 Pandemic Information, available at: <https://www.worldometers.info/coronavirus/>, last accessed 2 June 2020.

9 Ibid, No.11, Uganda.

10 For purposes of this paper, vulnerable groups include; children, women and girls – especially those experiencing domestic and gender-based violence; persons with disabilities; persons with HIV/AIDS; elderly persons, refugees and asylum seekers; people living in precarious environments, e.g. on the streets, in informal settlements; informal workers; among others.

11 Constitution of the World Health Organisation (1946), signed 22 July 1946, entry into force 7 April 1948, available at: https://www.who.int/governance/eb/who_constitution_en.pdf, last accessed 4 May 2020.

well-being as the presence or absence of positive/negative emotions and moods (such as contentment, happiness, depression and anxiety).¹²

The Ugandan government has imposed measures such as the compulsory home confinement of all persons (also referred to as “lockdown”), which has necessitated school and university students to resort to home-schooling (notwithstanding the fact that most do not have access to computers and/or the internet). Persons reliant on the informal sector for their income (the majority of Ugandans) are similarly unable to sustain themselves, whilst formal sector workers are increasingly being laid off. Domestic violence is reportedly on the rise, borders remain closed and commercial flights grounded. This ‘new normal’ has had a tremendous impact on people’s well-being, particularly that of vulnerable groups. However, government’s measures to contain the virus do not take account of the mental and social well-being dimensions of health.

In sum, while healthcare provision is necessary, it is insufficient to protect persons from psychological harm; this requires more – namely, a more holistic approach to health, which includes ensuring access to adequate essential nutrition and other essential commodities, including clean water, soap, and decent shelter. A holistic definition of health is the only feasible way to respond to COVID-19.

Adopting HRBA response to COVID-19 pandemic

Understanding a HRBA

Conceptually, human rights are indivisible,¹³ equal in weighting, and all persons are deemed inherently entitled to them without arbitrary discrimination.¹⁴ A state is recognized as bearing an obligation to protect, promote, and respect the human rights of all persons within its sovereign territory, and states should facilitate the enjoyment of these rights by promoting their progressive realization, using the optimal available resources to do so.¹⁵ This brief background into human rights provides a foundation for an investigation into what a rights-based approach is and what benefits a state can derive from adopting it.

12 Centre for Disease Control and Prevention (CDC-USA), available at: <https://www.cdc.gov/hrqol/wellbeing.htm>, last accessed, 6 May 2020.

13 World Conference on Human Rights, Vienna Declaration and Program of Action, A/Conf.157/23 (25 June 1993) Pt II, para 5.

14 International Covenant on Civil and Political Rights (1966) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3.

15 International Covenant on Economic, Social and Cultural Rights, Art 2 (1); enjoins state parties to take steps... with a view to achieving progressively the full realization of rights recognized in the covenant...with available resources; the same is reached under Section 13 Uganda Human rights (enforcement) Act 2019. The obligation in Paragraph 30, further enjoins states to take deliberate steps in realization of the right and to ensure that the right is promoted without discrimination.

Kindornay et al¹⁶ posits that a human rights-based approach (HRBA) uses principles and standards from international human rights law (non-discrimination, equality, participation)¹⁷ to identify strategies for overcoming exclusion and discrimination. It is essentially a tool to ensure that government action reaches society's poorest and most vulnerable. In the context of COVID-19 response measures, an HRBA enjoins placing vulnerable groups at the centre of policy design, programming and implementation.¹⁸

Locating the silver lining

Without a deliberate HRBA, COVID-19 will exacerbate the existing health inequities currently experienced by vulnerable groups. Inadequate response to these groups puts everyone's health and well-being at risk; hence, government should amplify its obligation to promote the right to health for all during challenging times such as these. To the contrary, however, the pandemic has been the state's justification for encroachment upon several rights, including but not restricted to the right to health, freedom of movement, and non-discrimination through measures such as lockdown, isolation and the requirement for transport authorization documents to sanction the use of private or public transportation¹⁹ – all of which have negatively affected not only people's access to healthcare but relatedly their health outcomes, as attested by such examples as 'A pregnant woman bleeds to death as RDC puts phone off';²⁰ 'A pregnant mother dies walking to hospital after a ban on public transport amid COVID-19';²¹ 'Mothers in labour die amidst coronavirus lockdown.'²² Such examples highlight the implications of COVID-19 response measures for the full realization of the right to health, illustrating the particular vulnerability of women and girls and the disproportionate impact such measures have had on them,

16 Kindornay, S. Ron, J. Rights Based Approach to Development: Implications for NGOs, *Human Rights Quarterly*, 34 (2), 472-506.

17 UNICEF, Introduction to the Human Rights Based Approach: A Guide for Finnish NGOs and their Partners. Unicef Finland, 2015. Available at: http://hrbaportal.org/wp-content/files/HRBA_manuaali_FINAL_pdf_small2.pdf, last accessed 3 May 2020.

18 During the launch of the COVID-19 Humanitarian Response Plan, on 23 March 2020, Antonio Guterres, emphasized the need to step up for vulnerable populations. He noted, "We must come to the aid of the ultra-vulnerable- millions upon millions of people who are least able to protect themselves. This is a matter of basic human solidarity...". Full statement is available at: <https://www.un.org/sg/en/content/sg/press-encounter/2020-03-25/launch-of-global-humanitarian-response-plan-for-COVID-19>, last accessed 5 May 2020.

19 Available at: <https://www.monitor.co.ug/News/National/President-Museveni-bans-use-of-private-vehicle/688334-5509474-livqgw/index.html>, last accessed 2 May 2020.

20 Available at: <https://ekyooto.co.uk/2020/04/06/pregnant-woman-bleeds-to-death-as-rdc-puts-off-phone/>, last accessed 4 May 2020.

21 Available at: <https://www.newseditor.co.ug/2020/03/31/sad-pregnant-mother-dies-walking-her-way-to-hospital-after-new-presidential-directives-ministry-of-health-speaks-o>, last accessed 4 May 2020.

22 Available at: <https://www.reuters.com/article/us-health-coronavirus-uganda/in-uganda-mothers-in-labour-die-amidst-coronavirus-lockdown-idUSKCN21R2FA>, last accessed 4 May 2020.

pushing them further to the margins of an already fragile health system. This has inevitably elicited criticism of the government, with questions regarding its level of preparedness and whether it adequately weighed up ethical and policy considerations in the lead-up to its pronouncement of COVID-19 response measures.

The silver lining of an HRBA, is not that it will flatten the COVID-19 curve, but rather that it provides key lessons to government, namely that the legitimacy of decision-making, relief allocation, and appropriate action is enhanced where a broad range of stakeholders is consulted, in this case human rights experts, religious and community leaders, as well as vulnerable groups. An HRDA further ensures that vulnerable groups with a heightened risk of contracting COVID-19, are provided adequate access to affordable healthcare. Uganda's adoption of an HRBA will have a ripple effect, contributing positively to citizen's enjoyment of health benefits, human rights and social justice more broadly.

Looking Forward

It is crucial that public health measures to curb the spread of COVID-19 comply with international and domestic human rights law principles. Adopting an HRBA enhances the prospects of all, including vulnerable groups, surviving and thriving during and post the pandemic.

UNDERFINANCING OF THE PUBLIC HEALTH SECTOR UNDERMINES UNIVERSAL HEALTH COVERAGE: REFLECTIONS ON THE COVID-19 PANDEMIC

Kiira Brian Alex and Elizabeth Atori²³

Introduction

*Health can ... be seen as of great importance due to its impact on people's range of opportunities—such as their ability to work or pursue an education—or the range of life plans open to them.*²⁴

As the global COVID-19 pandemic rages on, the words in the quotation above ring true: the centrality of health to our social and economic welfare cannot be over-emphasised. In response to the pandemic, Uganda's government closed all educational institutions, prohibited the use of public and private transportation save in exceptional circumstances, banned public gatherings and introduced preventative measures including among others social distancing,²⁵ regular hand washing, and the confinement of all persons to their homes for a stipulated period. Indeed, Uganda's prompt and systematic response to the threat has been lauded.²⁶ Commendably, as of 14 May, 2020, Uganda had still recorded no COVID-19 fatalities. However, what remains to be seen is whether the country is making progressive health financing decisions, not only to contain the pandemic,²⁷ but also to keep sight of its Universal Health Coverage commitments.

23 Kiira Brian Alex is the Right to Health Program Officer at the Initiative for Social and Economic Rights (ISER). Email: briankr50@gmail.com. Elizabeth Atori is the Legal Officer at the Initiative for Social and Economic Rights (ISER). Email: atorelizabeth@gmail.com

24 World Health Organisation 2014. Making Fair Choices on the Path to Universal Health Coverage: Final Report of the WHO Consultative Group on Equity and Universal Health Coverage at https://www.who.int/choice/documents/making_fair_choices/en/Pg.3, accessed 14 May 2020

25 A measure aimed at averting contamination, whereby people are prohibited from engaging in direct contact and are required to maintain a stipulated distance from one another in public places.

26 Washington Post, 1 May 2020. 'East Africa has weathered pandemics - and has a few things to teach the U.S.' at <https://www.washingtonpost.com/outlook/2020/05/01/africa-united-states-coronavirus/>, accessed 12 May 2020

27 At close of the 14th May, 2020, the country had 139 confirmed cases of COVID-19 https://youtu.be/StBG_Trkkdg

The Right to Health and Universal Health Coverage

Article 12 of the International Covenant on Economic Social and Cultural Rights²⁸ (ICESCR) and its attendant General Comment 14²⁹ are the most profound international legal instruments on the scope of the right to health. Article 12 specifically recognises the right of everyone to enjoy the highest attainable standard of physical and mental health. Cognisant that States have an obligation to respect, protect and fulfil the right to health, the General Comment describes the essential elements for the realisation of the right to health and posits that States should ensure the availability, accessibility, acceptability and quality of health goods and services.

Global strategies to realise the right to health are further pronounced in Sustainable Development Goal (SDG) 3, which enjoins stakeholders to, 'Ensure healthy lives and promote wellbeing for all at all ages,' to achieve target 3.8 'Universal Health Coverage.' Universal Health Coverage (UHC) is defined as all people receiving quality health services that meet their needs without being exposed to financial hardships in paying for the services.³⁰ To achieve UHC, countries are advised to advance in at least three dimensions, namely (i) expand priority services, (ii) increase the number of people accessing health services - with the most vulnerable prioritized - and (iii) reduce out of pocket expenditure.³¹

Health Financing during and beyond COVID-19

If there is anything the COVID-19 pandemic has reaffirmed, it is that while financing may not be the exclusive solution to revamp health systems or facilitate UHC, it is nevertheless central. In Uganda, many COVID-19 response strategies have centred on generating more financial resources – from private donations, to international donor loans, and supplementary government budgets. However, even in the face of this pandemic, the State has maintained a seemingly lax attitude towards health sector funding. For example, in the supplementary budget, a paltry Ushs. 104.18 bn³² as opposed to the required Ushs. 464 bn³³ was recommended to be allocated

28 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html>, accessed 15 May 2020. Uganda is a signatory to this Covenant.

29 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at: <https://www.refworld.org/docid/4538838d0.html>, accessed 15 May 2020

30 Supra n.2, Pg. 1

31 Ibid, Pg. 5

32 Parliament of Uganda, Report of the Budget Committee on the Supplementary Expenditure Schedule No.2: Addendum 1 and 2 for FY 2019/20, Pg. 7

33 Parliament of Uganda, A Minority Report on Supplementary Expenditure Schedule No.2 – Addendum 1 and 2 for FY 2019/20, Pg. 2

to the health sector to facilitate the COVID-19 response. This laxity is consistent with the historical trend, which has seen the health sector significantly underfunded, undermining its ability to adequately address Uganda's identified health needs³⁴ – so much such that even in the FY 2020/21, the health sector is projected to be allocated Ushs. 2.7 trillion,³⁵ which constitutes approximately 6.2% of the total national budget, far below the 15% commitment urged in the Abuja Declaration.

The onset of COVID19 occurred within the context of an already beleaguered health sector in Uganda; characterised by a lack of essential medicines, low staffing levels, poor emergency services, a paucity or inadequate health facilities³⁶ and high out-of-pocket expenditure.³⁷ Most of these challenges are capable of resolution through the allocation of adequate funding, to facilitate, for example, the purchase of essential medicines, increased number and remuneration of health workers to address high attrition rates, the acquisition of ambulances and other essential health equipment, and the construction of health facilities in un-or under-served areas.

Conclusion

Uganda's progress towards achieving UHC should not be undermined by the myriad other policy demands imposed on government by the COVID-19 pandemic. If anything, retaining the aspiration of UHC at the centre of health interventions will go a long way, not only to better equip Uganda to respond to pandemics, but also to assist the country to strengthen its health systems more generally, so that it is more responsive to the needs of the most vulnerable. Prioritising public health financing is key to achieving these goals.

34 ISER 2018, Are We Failing to Progressively Realise the Right to Health in Uganda? Available at <https://www.iser-uganda.org/publications/reports/399-are-we-failing-to-progressively-realise-the-right-to-health-in-uganda>

35 Ministry of Health 2020. Ministerial Policy Statement for FY 2020/21

36 2019, Ministerial Statement to the Parliament on the State of Health Service Delivery in Uganda. Also see ISER's 'For Us We Are Like Forgotten People: Assessment of Health Services in Amudat.' August 2018 at <https://www.iser-uganda.org/publications/reports/378-%E2%80%9Cfor-us-we-are-like-forgotten-people-%E2%80%9D-assessment-of-health-services-in-amudat-district> and Here, When You Are Poor, You Die: Healthcare on Sigulu Islands' at <https://www.iser-uganda.org/publications/reports/366-here,-when-you-are-poor,-you-die-healthcare-on-sigulu-islands>

37 Ministry of Health, 2018/19 Annual Health Sector Performance Report reflects the household expenditure as 37% of the Current Health Expenditure (CHE); a percentage way above the WHO recommended maximum Household OOP of 15% of the CHE. Report available at <http://library.health.go.ug/publications/performance-management/annual-health-sector-performance-report-2018201> Pg. 42

COVID 19 AND ACCESS TO MENTAL HEALTH CARE

Mugabi Esther Grace³⁸

While COVID-19 restrictions across the world have varied from country to country, numerous countries, Uganda included, have instituted national lockdowns (closing down all non-essential public and private activities and requiring people to stay home) lasting several weeks. Inasmuch as this was intended for the greater good, it is negatively impacting the mental health of Ugandans.

Even before the COVID-19 pandemic, research showed that quarantine measures and chronic social isolation tends to have devastating mental health effects, such as depression and post-traumatic stress disorder. Studies on SARS, H1N1 flu, Ebola and other infectious disease outbreaks show that quarantined people experience both short- and long- term mental health problems. Such cases have been found to worsen where patients do not have a definitive notion as to when isolation will end. This raises concerns for Uganda, which has repeatedly extended its lockdown as COVID-19 cases have continued on an upward trajectory.

Ugandan specialists have warned that prolonged isolation may trigger mental health problems, stemming from a breakdown in everyday connections to friends, colleagues, family and the broader community. It is hardly surprising then that Uganda has witnessed a surge in domestic- and gender-based violence cases: anger, violence and aggression are just some of the behaviours observed to have increased during this period of isolation. This has been attributed to people's heightened stress, anxiety and depression. The facts speak for themselves: within the first 14 days of lockdown, Ugandan Police recorded at least 328 cases of domestic violence and 102 cases of child neglect, abuse or abandonment across the country.³⁹

Uganda is estimated to have 7 million people with some form of mental illness. Despite this, access to mental healthcare services remains a challenge. Uganda's six regional mental hospitals and one referral mental hospital, and the inadequate pool of suitably qualified personnel (only 1% of medical doctors and 4% of nurses are specialised in psychiatry)⁴⁰ simply do not suffice to effectively meet the apparent need.

Following implementation of COVID-19 restrictions, there has been an increase in the number of individuals with mental health challenges reported to be harassed by security agents, ostensibly for violating curfew. However, what security agents fail to realise is that persons with mental health challenges often do not appreciate

38 Legal Researcher. Email: esthergracemugabi@gmail.com

39 Police records 328 cases of domestic violence during COVID-19 lockdown, The Independent, April 16th 2020. Accessed at <https://www.independent.co.ug/police-record-328-cases-of-domestic-violence-during-COVID-19-lockdown/>, accessed on 04th May 2020.

40 Ben Kiromba Twinomugisha, *Fundamentals of Health Law in Uganda*, Pretoria University Law Press, 2015, pg.119

that there is a curfew; they should, therefore, be handled with a great level of sensitivity as opposed to punitively and violently. Awareness also needs to be raised about the medical needs of persons with mental health challenges, including but not limited to the need to seek out clinical support and to collect long-term medical prescriptions, which is extremely challenging to do during lockdown, given government limitations on the use of private and public transport. Even where individuals, against the odds, are able to gain access to a mental health facility, more often than not they are subjected to gruelling questioning by the security operatives stationed at roadblocks, who are unlikely to be trained in how to identify and appropriately engage a person with a mental condition. This points to the inadequacy of laws and policies to practically protect persons with mental health challenges.

Nevertheless, it is still important to understand what protections Ugandan laws and policies afford persons with mental health issues. According to Principle 1(1) of the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care⁴¹ (MI Principles), persons with mental illness (PWMI), ‘have the right to the best available mental healthcare, which shall be part of the health and social care system.’ Principle 1(2) calls for PWMI to be treated with human dignity and for their autonomy to be protected. PWMI have a right to be protected from exploitation, abuse or degrading treatment. The MI Principles explicitly prohibit discrimination on the grounds of mental illness.

Uganda is a party to the African Charter on Human and Peoples Rights (ACHPR).⁴² The ACHPR recognises the right of every person to enjoy the highest attainable “state of physical and mental health.”⁴³ Article 16 (2) of the ACHPR enjoins state parties to take the necessary measures to protect the health of their people and to ensure that they receive medical treatment, which includes mental health care services.

Articles 32 and 35 of Uganda’s Constitution⁴⁴ entrench the rights of Persons with Disabilities (including persons with mental illnesses). The Mental Treatment Act⁴⁵ seeks to provide for ‘the care of persons of unsound mind and the management of mental hospitals.’⁴⁶ Despite this legal framework, mental health has largely been overlooked as a priority during this pandemic, with efforts geared almost exclusively towards the containment of COVID-19. The concern this presents, however, is that if neglected, mental health challenges may be compounded by the pandemic and they will certainly persist even once it is brought under control. Hence

41 A/RES/46/119, 17 Dec 1991 <http://www.un.org/documents/ga/res/46/a46r119.htm>, accessed 03 June 2020.

42 African Charter on Human and Peoples' Rights. African Union, 1981

43 Article 16(1) ACHPR

44 1995 Constitution

45 1995 Constitution

46 Section 9, The Mental Treatment Act, Cap 279

government should prioritise mental health and factor it into COVID-19 response measures.

Measures to assist persons with mental health could include the establishment of a 24-hour toll free line, for readily accessible telephone advice, counselling and referral. This would increase the scope of available mental health support for those not proximate to the limited facilities currently available, and it would ease the burden of accessing care given travel restrictions.

A public sensitisation campaign should also be considered, to increase the population's awareness and combat stigma related to mental health. Government should further invest in increasing the number of mental health facilities and mental healthcare workers across the country, to enhance accessibility to mental health treatment and care.

IMPACT OF COVID-19 ON THE RIGHT TO HEALTH OF PRISONERS IN UGANDA

Ayeranga Godfrey⁴⁷

Introduction

On 11 March 2020, the World Health Organisation (WHO) declared the outbreak of the Coronavirus (COVID-19) a global pandemic and urged countries to adopt measures to contain the spread of the virus.⁴⁸ On 30 March 2020, Uganda's President Yoweri Museveni announced a 14 day nation-wide lockdown.⁴⁹ This was subsequently extended by a further 21 days and when this elapsed on May 5th 2020, it was again extended for another 14 days to enable an expert review of the situation and a determination as to whether lockdown could be lifted or needed to be extended yet again.⁵⁰

The outbreak of COVID-19 has highlighted the vulnerability of Uganda's prison population, whose conditions of incarceration – characterized by overcrowding, poor hygiene, lack of adequate nutrition and medication⁵¹ – places them at greater risk of contracting COVID-19.⁵²

Overcrowding is a major challenge confronting Ugandan prisons, with the current prison population estimated to average 319%, highlighting the vast disparity between prisoner numbers and available incarceration capacity.⁵³

47 *LLB (Uganda Christian University), LLM (Human Rights and Democratisation in Africa) (Pretoria), Dip L.P (Kenya School of Law); Law Lecturer (Cavendish University Uganda). Email: gayeranga@cavendish.ac.ug

48 World Health Organisation 'WHO-Director General's opening remarks at the media briefing on COVID-19 (2020) <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020>, accessed on 11 May 2020

49 'Museveni imposes 14-day COVID-19 lockdown' (The Observer, 2020) <https://observer.ug/news/headlines/64074-museveni-announces-14-day-COVID19-lockdown>, accessed on 11 May 2020

50 Joseph Kiiza 'Uganda relaxes coronavirus lockdown measures' (News Vision, 2020) https://www.newvision.co.ug/new_vision/news/1518485/-live-coronavirus-lockdown-uganda, accessed on 11 May 2020.

51 African Commission concluding observations on the 4th Periodic Report of the Republic of Uganda (Presented at the 49th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, the Gambia from 28 April to 12 May 2011), para 14 (ix), see also African Commission Concluding Observations and Recommendations on the 5th Periodic State Report of the Republic of Uganda (2010 – 2012) 04 – 18 November 2015, para. 66.

52 T Cadman, 'COVID-19 Symposium: The Impact of Coronavirus (COVID-19) on Prisoners' <https://opiniojuris.org/2020/04/01/-COVID-19-symposium-the-impact-of-coronavirus-COVID-19-on-prisoners/>, accessed on 11 May 2020.

53 World Prison Brief (2020) 'Highest to Lowest-Occupancy level (based on official capacity)' https://www.prisonstudies.org/highest-to-lowest/occupancylevel?field_region_taxonomy_tid=All, accessed on 11 May 2020.

In 2018, Ugandan prisons were reportedly the second most crowded in Africa.⁵⁴ Implementing the WHO's guidelines to help contain the spread of COVID-19, such as for example, maintaining a physical distance of at least 1 metres between people, is virtually impossible within prisons.⁵⁵

Similarly, implementing such measures as regular handwashing is difficult in prisons, where prisoners do not have unconstrained access to ablution facilities and cleaning agents, being entirely dependent upon the discretion of the state for their well-being.⁵⁶

Normative content of the right to health in Uganda

Uganda is a party to international and regional human rights instruments, including inter alia, the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵⁷ Universal Declaration of Human Rights (UDHR),⁵⁸ the Convention on the rights of the child (CRC),⁵⁹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶⁰ all of which recognize the right to health, to which all persons in Uganda are entitled, including prisoners.

Other International and regional frameworks governing the standards of medical care to which prisoners are entitled include: the UN Standard Minimum rules for Treatment of Prisoners 2015,⁶¹ the 1990 UN Basic Principles for the Treatment of Prisoners,⁶² the Kampala Declaration on prison conditions in Africa 1996,⁶³ the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁶⁴

54 John Masaba, 'Uganda has second-most overcrowded jails in Africa' (New Vision, 2018) https://www.newvision.co.ug/new_vision/news/1470269/uganda-overcrowded-jails-africa, accessed on 11 May 2020.

55 World Health Organisation 'Coronavirus disease (COVID-19) advice for the public' <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>, accessed on 11 May 2020.

56 International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 112.

57 Uganda ratified ICESCR on 21 January 1987, International Covenant on Economic, Social and Cultural Rights, GA Res 2200 (XXI) A (UN Doc A/6316) at 49 (Dec. 16, 1966).

58 UDHR, art 25(1).

59 Uganda ratified CRC on 17 August 1990, See art 24

60 Uganda ratified CEDAW on 22 July 1985, See art 11(1)f

61 Resolution adopted by the General Assembly on 17 December 2015, A/RES/70/175.

62 Basic Principles for the Treatment of Prisoners (1990) GA Res 45/111, UN Doc A/45/49 para 9.

63 Adopted at the Kampala Seminar on prison conditions in Africa, September 1996.

64 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), GA Res 43/173, annex 43 UN GAOR Supp (No. 49) at 298, UN Doc A/43/49 prin 24.

and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.⁶⁵ It is important to note, however, that the abovementioned do not have binding force and are thus merely soft law,⁶⁶ which implies that states have the discretion to decide whether or not they subject themselves to upholding these norms.⁶⁷

The ICESCR provides that the right to the highest attainable standard of health includes both physical and mental health.⁶⁸ The CESCR in its General Comment No. 14 has noted that the normative content of the right to health consists of Four(4) elements, namely: accessibility, availability, acceptability and quality(AAAQs)⁶⁹ as elaborated more extensively below:

Accessibility: implies that health- facilities, treatment and medication must be accessible to all persons, including vulnerable and marginalised groups such as women, children, older persons, persons with disabilities and impoverished persons, irrespective of any arbitrary distinction such as race, religion, social or economic status.

Prisoners also fall into the demographic of vulnerable persons, by virtue of being detained, and entirely dependent on the state to meet their every need.⁷⁰ Accessibility also implies that all citizens can readily acquire information regarding the different healthcare facilities, services, treatments and medicines availed by the state.

Availability: in the context of healthcare this refers to the existence and adequate availability of well-functioning health facilities, goods, services and underlying health determinants (i.e. hospitals, clinics, essential drugs, safe drinking water, adequate nutrition and sanitation facilities, etc.).⁷¹

Acceptability: refers to health facilities, goods and services being observant of medical ethics, attuned to the culture of individuals, minorities and communities, sensitive to gender and life-cycle requirements, and respectful of

65 Rules for the Protection of Juveniles Deprived of their Liberty (14 December 1990) GA Res 45/113 Art 31.

66 R Lines 'The right to health of prisoners in international human rights law,' (2008)4(1) International Journal of Prisoner Health 14.

67 NS Rodley, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' (1999) 280.

68 CESCR, art 12(1).

68 UN Independent expert body responsible for monitoring state compliance with the duties stipulated under the International Covenant on Civil and Political Rights

68 ICESCR, art 12(1), See also Carlos Cabal and Another v. Australia, Communication No. 1020/2001, CCPR/C/78/D/1020/2001, para. 7.7.

69 Committee on Economic, Social and Cultural Rights, General Comment No 14, para 12.

70 E Rieter 'ICCPR case law on detention, the prohibition of cruel treatment and some issues pertaining to the death row phenomenon.' (2002) Journal of the Institute of Justice International Studies 83,86.

71 World Health Organization, Human Rights, Health and Poverty Reduction Strategies (WHO 2008)22.

confidentiality, among other things.⁷²

Quality: implies that health care facilities as well as underlying health determinants are of an acceptable standard- in other words, health facilities and services are appropriate for purpose, health personnel suitably trained and skilled, and so forth.⁷³

Nature of the government's duties

It is important, given that lockdown is still in force, to analyse the steps taken by the Ugandan government to respect, protect and promote prisoners' rights to health.

Obligation to respect

States bear a negative duty to refrain from interfering directly or indirectly with any person's enjoyment of their right to health.⁷⁴ Where prisoners are concerned, many typically receive supplies - including medicine, food, sanitary items, etc. - from their friends and family.⁷⁵ The state thus needs to ensure that prisoners' health is not affected because their access to the external community is now restricted; similarly, the state needs to ensure that prisoners retain access to healthcare facilities and services, notwithstanding this pandemic.

Obligation to fulfil

States have a duty to take appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right to health.⁷⁶ Although President Yoweri Museveni recently pardoned 833 prisoners in order to decongest prisons and contain the spread of COVID-19, the beneficiaries were largely petty offenders.⁷⁷ More needs to be done to practically realise the right to health of the larger prison population. The following are recommendations the government should consider to achieve this:

the adoption of non-custodial measures for prisoners and alleged offenders, particularly those with caring

72 As above.

73 World Health Organization (n 25)22-23.

74 CESCR Committee, General Comment No 14, para 33.

75 Penal Reform International 'Coronavirus: Health care and human rights of people in prison' Penal Reform International Briefing Note (2020)5. <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>, accessed on 22 May 2020.

76 CESCR Committee, General Comment No 14, para 33.

77 Ephraim Kasozi 'Museveni pardons 833 prisoners country wide' (Daily Monitor, 2020) <https://www.monitor.co.ug/News/National/Museveni-pardons-833-prisoners-Attorney-General-Covid19/688334-5536982-ed9kg9/index.html>, accessed on 22 May 2020.

responsibilities, i.e. women with dependent children and pregnant mothers.⁷⁸ This would reduce overcrowding in prisons, helping to avert the spread of COVID-19;

conducting COVID-19 tests on all persons admitted and discharged from prisons, in order to identify, medically isolate and treat all who test positive.⁷⁹

Conclusion

While efforts such as lockdown are intended to contain the spread of COVID-19, they do not benefit prisoners whose conditions of incarceration increase their risk of contagion more so than the civilian population. For this reason, the government needs to take appropriate measures to ensure that prisoners' right to health is upheld and they are able to access healthcare that is comparable to the public healthcare enjoyed by the broader community, in a manner that is non-discriminating of their legal status.

78 World health organisation, 'Interim guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention' (2020)4.

79 As above.

AWARENESS ON NON-COMMUNICABLE DISEASES (NCDs) AS THE LAST SHIP

Francis Xavier Lule⁸⁰

The COVID-19 pandemic took almost everyone by surprise; as did the drastic measures adopted by governments worldwide to control its spread. Hashtags such as “#Stayhome, #staysafe, #tonsemblerera,” trended on social media after the Ugandan government implemented rules and guidelines to control the spread of COVID-19, which included among others, the home confinement of the general population (with excursions permitted solely for the acquisition of essential items) and the observance of social distancing.⁸¹ The result has been not only a drastic disruption of people’s normal routines and lifestyles, but also a huge toll on their economic and social welfare. This ‘new normal’ has instilled within individuals and communities a substantial degree of anxiety, depression and weariness from navigating life’s unrelenting pressures and demands. Thus, COVID-19 is contributing to an increase in Non-Communicable Diseases (NCDs) such as hypertension, diabetes, asthma, certain cancers, mental conditions and the like.

To better appreciate the scale of the health impact COVID-19 is anticipated to precipitate, we need to take a step back to the period preceding the pandemic and remind ourselves of the toll exerted by NCDs. NCDs, also known as chronic diseases, are attributable to a combination of genetic, physiological, environmental and behavioural factors. According the World Health Organization, NCD-related deaths account for more than 41 million deaths annually – which is approximately 80% of the human deaths recorded annually!⁸²

Losing a family member to a preventable and/or manageable NCD is frustrating, precisely because of the knowledge that it could, relatively easily, have been averted. My personal experience during this COVID-19 lockdown has not been any different: government’s prohibition on the use of private vehicles, except with the prior authorisation of the Resident District Commissioners (RDCs), prevented me from providing timely assistance to a neighbour; a rapidly deteriorating diabetic patient who lost consciousness, and who was spared because she was fortunate to be discovered an hour subsequently. But she almost died, and could well have in the ensuing helplessness and panic that gripped her family when they found her barely conscious! These family

80 The writer is a Ugandan lawyer and environmentalist. The theme of the article is inspired by a series, The Last Ship produced by Channel Road Productions and Platinum Dunes. Nathan James, ‘the Last Ship’ out alone in the high seas becomes the hub for a vaccine and cure for the war-torn and diseased USA restoring life and hope. Email: fxlule@gmail.com

81 A measure aimed at averting contamination, whereby people are prohibited from engaging in direct contact and are required to maintain a stipulated distance from one another in public places.

82 <https://www.who.int> accessed on May 8, 2020

did not know how to use the insulin kit that I was fortunate to obtain from a friend several kilometres away from their home. If I too had been ignorant on how to use it, the outcome would have been dire.

The above demonstrate two things: firstly, that COVID-19 and its effects, for as long as they persist, are going to exacerbate the risk NCD sufferers in Uganda and elsewhere face; and secondly, that the level of responsive or first aid knowledge within communities, including how to assist and stabilise NCD patients in emergency situations, is a cause for alarm.

Knowledge on how to prevent, detect and respond to NCD emergencies constitutes the Last Ship or the last hope for the life at stake. Government is enjoined to equip this ship, so that it is able to weather turbulent or emergency times. Sadly, there are many helpless cases of lives lost to NCD, with the recent demise of the Chairperson of Uganda's Human Rights Commission a prominent one. Therefore, this calls for the urgent prioritisation of awareness-raising on COVID-19 and its implications for those with NCDs as well as equipping those around them to provide optimal preventative and stabilisation support in the event of an emergency.

Knowledge of how to handle and respond to health emergencies at community level constitutes the last ship under circumstances where it is difficult for those in need to access physicians, as is the case during this pandemic. Families and community members are each other's last ship and should therefore be equipped with the knowledge and skill on how to respond to health emergencies, to avert death. It is my contention that the state bears this duty to facilitate and ensure this capacitation, by providing training and increasing public awareness on how to respond to NCD emergencies. With the increasing use of internet and social media, this should not be an impossible task to undertake, relatively easily and cost-effectively.

Such intervention from government would go a long way to enhancing the discharge of its duty towards the progressive realization of the right to health, as provided by Uganda's 1995 Constitution,⁸³ the International Convention on Economic Social and Cultural Rights, and the National Objectives and Directive Principles of State Policy.⁸⁴ Government, in particular the Health Ministry, would equally advance the realization of the right to access information through the utilization of available media infrastructure to publish and create basic first aid awareness materials, to instil these skills within communities.

This is especially pertinent as NCD cases are projected to increase during this pandemic, which is alarming as NCDs already, as attested by statistics from the 2010 WHO report on NCDs, constitute approximately 80% of all deaths in middle- and low- income countries. And as the WHO recommends, these could be averted through well-understood, cost effective and feasible interventions. Public awareness and training would go a long way

83 Objective XIV & A. 45 The Constitution of the Republic of Uganda 1995, as amended.

84 A. 8A & Objective XX The Constitution of the Republic of Uganda 1995, as amended.

towards ameliorating this situation.⁸⁵

Lastly, whereas the effects of COVID-19 are expected to increase NCD cases and complications, the multifarious nature of the pandemic should not be downplayed. For example, there has an increase in the number of domestic violence cases reported to police during the COVID-19 lockdown.⁸⁶ Therefore, emphasis should be placed on raising public awareness not only about how to intervene in emergency situations, but also on how to avoid a deterioration in the respect for human rights. Therefore, at a minimum, government and its stakeholder should engage in the sensitization of the public on human rights and responsibilities, and they should publicly disseminate information on how to avoid, mitigate, and provide emergency assistance to NCD patients struggling to access professional healthcare assistance. In this way, government can positively contribute to ensuring that NCD and related mortalities are avoided and mitigated and simultaneously ensure that human rights are upheld and respected even during this stressful time of the COVID-19 pandemic.

85 WHO library Cataloguing-in-Publication Data Global status report on noncommunicable diseases, <https://www.who.int/nmh> accessed on May 9, 2020.

86 Violence Against Children: a hidden crisis of the COVID-19 Pandemic, <https://www.end-violence.org> accessed on May 9, 2020.



3

EDUCATION

THE RIGHT TO EDUCATION DURING AND POST THE COVID-19 PANDEMIC

Musa Mugoya⁸⁷

Introduction

On March 20, 2020, the Ministry of Education and Sports (MoES) closed all educational institutions in Uganda, with the aim of controlling the spread of the COVID-19 virus. The ministry indicated that schools would reopen on April 20, 2020; however, this was not achieved due to the extension of the initial 14-day lockdown, which was subsequently extended by a further 21 days. Whereas learners in most traditional and affluent private schools continued to access learning materials availed by their schools via websites and social media platforms – such as WhatsApp – students in Universal primary and secondary schools as well as low-fee school did not have similar access. At the time of closure, the Ministry was still to issue a plan for continued learning; however, it wasn't until April 4, 2020 that the Minister for Education and Sports issued the Framework for Continued Learning during the Lockdown. What follows is a critical assessment of this Framework to ascertain whether it adequately upholds the right to education.

The Right to Education and COVID19

Uganda is a party to a several international and regional human rights instruments that guarantee the right to education.⁸⁸ Pursuant of its abovementioned obligations under these instruments, the Ugandan government has promulgated and enacted its Constitution,⁸⁹ and the Education Act⁹⁰ among others, which make provision for all persons in Uganda to enjoy the right to education.⁹¹

Practically realizing the right to education entails prioritizing and addressing four key conditions, namely: (i) availability (of infrastructure, teaching and administrative staff, learning materials, etc.); (ii) accessibility (i.e. non-discrimination – making provision for students with physical and mental disabilities and developmental challenges –, affordability and relatively proximate to communities)); (iii) acceptability (education of a

87 Program Officer, Right to Education at the Initiative for Social and Economic Rights. Email: mugoyamusah@gmail.com

88 Convention on the Rights of the Child, Articles 28 & 29, International Covenant on Economic, Social and Cultural Rights, Article 13 & 14 & African Charter on the Rights and Welfare of the Child Article 11.

89 The Constitution of the Republic of Uganda, 1995 as amended.

90 Education (Pre – Primary, Primary and Posts Primary) Act, 2008

91 Government of Uganda; The Constitution of the Republic of Uganda, Articles 30 & 34(2) and S. 4 of the Education Act 2008

qualitative standard) and (iv) adaptability (education responsive to its socio-cultural context).⁹²

The Framework for Continued Learning seeks to provide Ugandan children with ongoing teaching instruction, even as the COVID-19 pandemic keeps them confined to their homes. To accomplish this, the MoES has partnered with radio and television stations across the country to broadcast lessons for primary- and secondary-level students. The MoES explained that learners without access to radio and television would be provided learning materials.

Although commendable, this Framework has constraints that do not make it an ideal substitute for contact teaching. Firstly, television and radio lessons do not offer learners the opportunity to seek clarification from teachers. Secondly, in homes with more than one learner, it may be a challenge for parents to decide which child gets access to the medium of instruction, since most homes do not have multiple televisions or radios.

Thirdly, this arrangement incorrectly assumes that there is a greater need for printed learning materials in rural areas, aiming to distribute fewer printed resources in urban areas. However, many urban families also cannot afford a television and/or radio; and those who can, frequently cannot afford the batteries, electricity and subscription fees required to effectively operate their device(s). Lockdown has likely exacerbated this situation, since peoples' ability to generate income has been compromised or eliminated by the effective shutdown of the economy, inasmuch as this is temporary. This points to the need to make printed materials equally available in rural and urban areas.

Fourthly, the convoluted process for the distribution of printed materials is highly inefficient, making it susceptible to politicization: the Resident District Commissioners (RDCs) – as opposed to District Education Offices, which are the local government office responsible for education – take receipt of learning materials, which they distribute to sub county chiefs, who convey them to Parish chiefs, who in turn ensure they reach village chairpersons before finally reaching the intended beneficiaries. Not only does this point to the inefficiency of the framework, but it also underscores Uganda's unequal access to education – since it is almost exclusively Universal Primary Education (UPE) and Universal Secondary Education (USE) and low-fee schools that will depend on the framework to facilitate learning during the pandemic; high-end private schools have indicated that they will leverage virtual learning platforms and social media platforms to ensure their students on-going learning during lockdown.

Inadequate state investment in education over the years has likely contributed to the abovementioned inequality.- For instance, whereas household expenditure on education as a percentage of GDP was 3.82% in the FY2009/10,

92 CESCR General Comment No. 13: The Right to Education (Art. 13), Para.6. Available at <https://www.refworld.org/pdf/id/4538838c22.pdf> (accessed on May 12, 2020)

and 3.58% in the FY2013/14, public expenditure has remained constant at 2% over the same period.⁹³ The following recommendations are proposed to strengthen public education and reduce the unequal access between public and private education; the MoES should:

Prioritize urgent consultations between itself, the Ministry of Health and other relevant state agencies to determine a feasible date for the reopening of schools, in particularly candidate classes. This date, and related pertinent decisions, should be communicated to the public promptly to allay growing anxiety.

Ensure that all intended beneficiaries gain prompt access to learning materials, this includes materials appropriate for students with special needs.

The District Local Governments, through their respective District Education Offices, are mandated to provide and monitor the delivery of primary and secondary education; therefore, they need to be empowered with the requisite financial and human resources to be able to provide and monitor the children's learning during lockdown.

Enhance the management, governance and monitoring of public education delivery in primary and secondary schools, through the strengthening of social accountability forums, such as School Management Committees (SMCs), Board of Governors (BoGs) and Parents-Teacher Associations (PTAs). This will require amending the Education Act, 2008, to harmonize the roles of the Directorate of Education Standards (DES) and Inspectors of Schools in District Local Governments as regards school inspections and implementation of the recommendations in inspection reports.⁹⁴ The amendment should also explicitly provide for PTAs, with their roles and responsibilities clearly defined, and the duties of SMCs and BoGs clearly elaborated with an account of their remuneration, and avenues for the effective participation of communities in their decision making processes.

Develop a data management system to record enrolment, school attendance and track all learners completing school.

Urgently grant aid to community primary and secondary schools to implement UPE and USE schools in districts with large parishes and sub-counties that cannot be equitably served by one primary and secondary school respectively.

93 The National Education Accounts of 2016.

94 DES is the national central agency responsible for school inspection, policy and guidance and the District Local Governments implement the Inspection policies and standards in a decentralized framework. However, the law that does not require the District Local Governments to share reports with DES. Also, the recommendations by DES are not binding on District Local Governments.

Increase funding for public education, to cater for the enhancement of UPE and USE capitation grants;⁹⁵ increase funding for the monitoring and inspection of schools, and recruitment of vacant staff positions to reduce the pupil/student-teacher ratio,⁹⁶ renovate and improve infrastructure – i.e. laboratories, staff quarters and others classrooms – to reduce the high pupil/student-classroom ratio and cater for social distancing. The increment in funding also needs to initiate the digitalization of instruction in schools to facilitate continued learning in case of emergencies like the current COVID-19 further down the line.

Conclusion

One of the core responsibilities of the MoES is to ensure equitable access to education. It is therefore incumbent upon the ministry to ensure that all children enjoy equal access to education opportunities, which the above mentioned recommendations can contribute to achieving.

95 Under UPE, each pupil is allocated UGX 14,000 per year, the National Planning Authority has since recommended that a unit cost allocation be increased to UGX 63,546 and UGX 59,503 for urban and rural schools respectively.

96 The Ministry of Education and Sports has indicated in various Ministerial Policy Statements that the Primary sub sector is operating with a staffing gap of 22,000 primary teachers.

THE IMPACT OF COVID-19 ON UGANDAN CHILDREN'S RIGHT TO EDUCATION

Lwanga Musisi Abubaker⁹⁷

The right to education, which is recognized by the Universal Declaration of Human Rights and various other international and regional instruments including but not limited to the International Covenant on Social, Economic and Cultural Rights (ICESCR) as well as national laws such as the Children's Act (2016 as amended), the Constitution of the Republic of Uganda (1995), the Education act (2008), is a right that should be enjoyed by every child.

The outbreak of the COVID-19 pandemic in Uganda has compromised children's full enjoyment of their right to education. The closure of schools which came into effect on the 20th of March 2020, was introduced by the government as a measure to control the spread of COVID-19. This decision, while pursuant of a positive goal, has affected the teaching and learning processes not only for primary and secondary students but also students attending Universities and other tertiary institutions in Uganda.

The Ministry of Education and Sports (MoES) devised the "Continuity of learning" programme, which was intended to facilitate scholar's continued learning during lockdown.⁹⁸ To effectively implement this program, MoES collaborated with the National Curriculum Development Centre (NCDC) to develop study materials and learning guidelines, which were to be distributed to learners throughout the country, in particular those in primary and secondary schools so as to enable them to continue learning from home via television and radio broadcast under the supervision of parents and guardians.

However, an assessment of this virtual teaching and learning program reveals some fundamental gaps, which government needs to address as a matter of priority since failure to do so will ensure that children's right to education is undermined.

At the time of writing this article (6th May 2020), study materials were yet to arrive in districts and sub-counties around the country. This is because the Local Council (LC) system through which the delivery of study materials was to occur, was not adequately equipped to facilitate reliable delivery to children's homes. Without these materials, children have been unable to study, which has affected their full enjoyment of the right to education.

Children who have received study materials have found them to be complicated, making them unsuited to

97 Executive Director, Centre for Education, Graduate Entrepreneurship and Empowerment (C4Gee). Email: lwangamusisi@gmail.com

98 Lockdown refers to the nation-wide closure of all social institutions (public and private) and the home-confinement of the population for a stipulated period as a measure to contain the spread of COVID-19.

self-study. Moreover, parents who are supposed to supervise and assist their children in the absence of teaching instruction, have also struggled as they received no preparation or induction to successfully undertake this task. Compounding this further is the fact that many parents and guardians are illiterate, making it impossible for them to engage with the study material, let alone to effectively guide and supervise their children's learning process and assess their work.

According to the Ministry of Education and Sport's guidelines, children are to learn via radio and television broadcast during lockdown, with a full teaching programme laid out for their respective grades. However, some homes in Uganda are too poor to afford a radio, television, and in many cases, electricity; this is especially the case in rural Uganda. A 2018 Uganda Media landscape report attests to this, finding that 80% of people living in urban areas use radios, compared to 76% of Ugandans living in rural areas; while 52% of urban Ugandans (2.053 million) have access to television sets in contrast to 34% of the rural population. This, coupled with the unpredictability of power supply, makes it difficult for children and students in rural areas to access the radio and television educational broadcasts, undermining children's ability to learn.

The "Continuity of Learning Programme" is also contested because it is discriminatory, privileging some learners more than others. Ugandan children with special needs, for example children who are blind, deaf, those who have developmental challenges, or mental health conditions, etc., currently number approximately 2.5 million (UNICEF, 2016); however, the needs of these children are not adequately served by this programme; children from poor homes are also largely excluded. Study materials have not been made available in large print or braille format to help visually impaired and blind learners, who cannot readily follow lessons on television and whose needs radio broadcasts are unlikely to have tailored to specifically meet. This highlights the shortcomings of television and radio broadcasts: they are not appropriate for a substantial cohort of children who will miss out on learning and thus be further disadvantaged for as long as the COVID-19 pandemic keeps them away from school. The Ministry of Education and Sports has not provided this vulnerable category of children with the special learning equipment they need to learn effectively. Not only does this constrain vulnerable children's ability to fully enjoy their right to education, but it also highlights the discriminatory nature of Uganda's education system.

Lastly, the Continuity of Learning program largely targets primary and secondary school learners, making no provision for students in university and other higher learning institutions. In addition, it's not clear whether government and Universities have formally engaged on how these students will continue with their studies during the COVID-19 lockdown period. Some Universities which had expressed an intention to shift classes online ultimately abandoned this plan (perhaps due to reasons similar to those outlined above).

If the Ugandan government is committed to providing equitable and inclusive education for all, even during the tumultuous circumstances caused by COVID-19, it needs to address the abovementioned gaps. This means providing learning materials and teaching instruction in a format that is appropriate for all children, including those with special needs or who come from less-resourced homes. Only then will children fully enjoy their right to education.

COVID 19 AND THE RIGHT TO EDUCATION

Tuhairwe Herman⁹⁹

The right to education

The right to education is recognised in many international human rights instruments. The Convention on the Rights of the Child (CRC) recognises a child's right to education, with the state mandated to take measures to encourage regular school attendance and reduce drop-out rates, with a view to achieving this right progressively and on the basis of equal opportunity.¹⁰⁰ The International Covenant on Economic, Social and Political Rights (ICESCR) recognises that education must be directed to the full development of the human personality and sense of dignity; moreover, education is expected, more generally, to strengthen respect for human rights and fundamental freedoms.¹⁰¹ The right to education has also been reiterated in the Universal Declaration of Human Rights,¹⁰² the Convention on the Elimination of All Forms of Discrimination Against Women,¹⁰³ the Convention on the Rights of Persons with Disabilities,¹⁰⁴ the African Charter on Human and Peoples' Rights¹⁰⁵ and the Constitution of Uganda.¹⁰⁶

Under the human rights instruments, education is to be equitably accessed by all persons, without regard to their social or economic standing.¹⁰⁷ As such, all Ugandan children, whether rich or poor, are deemed to merit equitable access to quality education, even in the midst of a pandemic. Just as the state bears the responsibility to make provision for the physical infrastructure of schools and classrooms, suitably trained teachers and administrators, textbooks and other educational resources that practically give expression to a child's right to learn, so too should the state put in place alternative measures to avert disruptions to a child's education where it is impossible for them to access school, as in the case of a pandemic such as Covid-19.

99 Research and Publications Officer, Law Development Centre. Email: htuhairwe@ldc.ac.ug | hermantuhairwe@gmail.com

100 Article 28(1) Convention on the Rights of the Child 1989

101 Article 13(1) International Covenant on Economic, Social and Cultural Rights, 1976

102 Article 26(1) Universal Declaration of Human Rights, 1948

103 Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1981

104 Article 24 of the Convention on the Rights of Persons with Disabilities, 2008

105 Article 17 of the African Charter on Human and Peoples' Rights, 1981

106 Article 30 of the Constitution of Uganda, 1995 (as amended)

107 Article 21 of the Constitution of Uganda 1995 (as amended)

The impact of COVID-19 on education

Initial studies show that the COVID-19 virus is airborne, and currently indicates a low mortality rate for children, compared to other age cohorts. Notwithstanding this, however, classroom education has largely come to a standstill all around the world, since public health specialists have urged governments to implement precautionary measures including confining citizens to their homes, closure of all save essential public facilities, the strict use of personal protective equipment and the exercise of social distancing. In most cases, school closures were sudden, prompted by political leaders' desire to inhibit the spread of COVID-19 once infections were confirmed within their respective countries.

The closure of schools has had different implications: for many students in the global north who enjoyed access to computers and the internet, learning instruction simply shifted online under the home supervision of parents or guardians. For many students in the global south, however, formal learning has ceased since children here do not enjoy widescale access to computers and the internet and many parents would not be capable of supervising this mode of learning even if it was an option.

In Uganda, schools were the first public institutions to be closed by government, even before a lockdown was instituted,¹⁰⁸ abruptly disrupting the first term of primary and secondary level school pupils; and the second semester of university students. Some institutions attempted to continue hosting classes and assessments online. However, this was stopped by the Ministry of Education and Sports after some students complained about a lack of access to computers and the internet, placing them at a disadvantage to those students who did.¹⁰⁹

Different interventions have been implemented by the state, private businesses and educational institutions in an effort to circumvent disruptions to education. The Ministry of Education has broadcast primary school classes on television and radio.¹¹⁰ However, whereas access to radio is almost universal, the same cannot be said for television. A further critique of this strategy is that for students in rural areas, electricity supply is unreliable, with the recent flooding making it almost inevitable that supply will be erratic or intermittent when available at all. TV/Radio classes also do not allow for interaction: the instructor is recorded conducting a class, which is then broadcast to students, who are unable to pose questions, to request clarification from the instructor, or to make-up a lesson missed on account of power outage – all of which invariably compromises a student's ability to learn. Further compounding students' challenges is the family expectation that a child will perform chores

108 Patience Ahimbisibwe, 'Government Releases Timetable For Radio, TV Teaching' (*Daily Monitor*, 2020) <https://www.monitor.co.ug/News/National/Government-releases-timetable-radio-TV-teaching/688334-5525598-12k25pqz/index.html> accessed 8 May 2020.

109 *ibid.*

110 *ibid.*

within the home: depending on the scheduling of broadcast classes, this may cause tension between a child and parents. Newspapers have included weekly educational supplements to assist students with revision; but this presupposes that their parents are able to afford to purchase newspapers, which relatively low readership levels across the nation indicating that this is not fair assumption to make.

Conclusion

The COVID19 pandemic has served not only to highlight but also to exacerbate inequalities in access to education. For students with access to the internet, computers and electricity, pandemics do not disrupt learning, though this may not be without a few challenges. For students who have limited or no access to these tools, confinement to the home brings formal education to a halt. And for such students, every time an emergency arises - in times of armed conflicts, natural disasters, or any other disruption to life - education is sacrificed.

At present, 1.5 billion people globally are unable to access education; in Uganda, 15 million students remain confined to their homes, foregoing education as a consequence of Covid-19. While other critical needs, such as access to healthcare, food, water and sanitation are prioritised, education is largely informally deferred to parents and caretakers. However, for many vulnerable children, particularly in the global south, education presents not only a means to acquire knowledge, but also a pathway to escape poverty and a beacon of hope for the future, which hope is currently being undermined.

While it is irrefutable that state efforts need to be focused on combatting the COVID-19 pandemic, the measures taken do need to be pragmatic. What will happen if, as in the case of HIV/AIDS, a vaccine is not immediately found? Or if the virus mutates, rendering an identified treatment obsolete? Will children from the global north be the only ones entitled to continue pursuing public education? It is time to critically examine the impact on education of current responses to COVID-19 to ensure that future generations are also able to benefit from the equitable education envisaged by our human rights regimes.

THE COVID-19 PANDEMIC: HINDERING ACCESS TO EDUCATION, ENCOURAGING CHILD MARRIAGES & TEENAGE PREGNANCIES

Leila May Nabatanzi¹¹¹

As COVID-19 forces school closures in 185 countries, Plan International and UNESCO warn of the potential for increased drop-out rates which will disproportionately affect adolescent girls, further entrench gender gaps in education and lead to increased risk of sexual exploitation, early pregnancy and early and forced marriage. Out of the total population of students enrolled in education globally, UNESCO estimates that over 89% are currently out of school because of COVID-19 closures. This represents 1.54 billion children and youth enrolled in school or university, including nearly 743 million girls.¹¹²

On the 20th of March 2020, Uganda's government instructed all educational institutions to close as a measure to curb the spread of the COVID-19 virus. This abrupt public health-motivated closure could not have foreseen the negative impact this decision would have on access on education and the attendant risks it would impose on school-going children.

There is strong evidence affirming the positive correlation between access to education and delayed marriage and pregnancy for girls. Girls with little or no education are three times more likely to marry by the age of 18 – over 60% of uneducated women globally marry before the age of 18 years.¹¹³ There is also a strong link between a lack of access to education and child/early marriages as well as teenage pregnancy. In Sierra Leone, adolescent pregnancy in some communities increased by as much as 65% during the Ebola crisis, with one study attributing this to young girls not being able to attend class, and thus not within the protective and monitored environment schools provide; what is unfortunate, is that many of the girls who fell pregnant during this period, never returned to school, due to a policy – recently revoked – which prohibited pregnant girls from attending school.¹¹⁴

Uganda's Government has implemented several initiatives to provide children with teaching instruction whilst educational institutions remain closed. Examples include promoting online and media learning options, to radio and television broadcasts. However, these measures do not cater to lower-income and rural households, which do not necessarily enjoy access to radios, TVs, newspapers, electricity and the internet.

While the closure of schools to mitigate the spread of COVID-19 has impeded children's access to education all

111 East Africa Public Interest Emerging Advocates Programme Fellow 2020: Center for Strategic Litigation. Email: mayleyla33@gmail.com

112 UNESCO; COVID-19 School Closures Around the World Will Hit Girls Hardest, 2020 at page 1

113 Girls Not Brides: Addressing child marriage through education (2014) at page 2

114 UNESCO; COVID-19 School Closures Around the World Will Hit Girls Hardest, 2020 at page 1

over the world, this has been felt more strongly in areas where structural and economic constraints undermine the possibility of shifting to remote-learning. Girls in development and humanitarian contexts are particularly affected. School closures for girls in development and humanitarian settings means reduced access to health-, education-, and protection- awareness messaging and increased caregiving burdens. The negative impacts of COVID-19 – which include economic and livelihood hardships and healthcare challenges, in addition to supervising children’s schooling within the home – increases the prospect of families abandoning efforts to provide their children with instruction. Furthermore, girl children bear the disproportionate responsibility for household chores, which are beneficial to the whole family: a further disincentive for struggling families to prioritise their schooling. However, girl children who are unable to access education are at an increased risk of engaging in transactional sex or other sexual relationships with a power imbalance, heightening their chances of falling pregnant or being coerced into early, or forced marriage.¹¹⁵

Many of the complex factors that drive child marriage during stable times, for example a breakdown in family and community structures, are exacerbated in emergency settings and during crises. The COVID-19 pandemic presents unique challenges both in the acute and recovery phases, which have the potential to increase child marriages. These challenges include but are not limited to the loss of household income, increased risk of domestic and household violence, and a lack of access to schooling.¹¹⁶ These are not hypothetical risks: in Uganda’s rural communities, it is not uncommon for parents to marry off their daughters early in an effort to protect them from uninhibited sexual activity, which has the potential to result in unplanned teenage pregnancy and/or to undermine positive marital prospects. The propensity to marry off daughters is likely to intensify whilst girls are subject to home confinement and do not have access to education, given the heightened prospect of sexual advances and opportunity to engage in sexual activity during this period.

As governments face the prospect of an indeterminate period of school closures, policy makers and practitioners should look to lessons from past crises to provide a gendered COVID-19 response, so as to effectively address the challenges, especially those confronting girls.¹¹⁷ One progressive step would be for Government to work closely with teachers and school staff to ensure that each household, no matter how remote, is reached with educational and curriculum packages.

Another advantageous step would be to engage young people and facilitate their participation, particularly girls, in policy and strategy processes pertaining to their education. This would ensure the input of girls into decisions regarding school closures, to ensure that the mitigation measures adopted, such as distance learning, are based

115 CARE, COVID-19’s Gender Implications Examined in Policy Brief, 2020 at page 5

116 Girls Not Brides, COVID-19 & Child, Early & Forced Marriage: An Agenda for Action at page 1

117 Ibid at page 3

on and are adequately responsive to their experiences and needs.¹¹⁸

Government provision of flexible learning approaches would additionally ensure that girls are not deterred from returning to school when they re-open. Efforts to encourage girls to return to school should equally target pregnant girls and young mothers who often face stigma and discrimination, which discourages them from seeking to access education. Government should also ensure that admissions processes implemented post COVID-19 take account of and address the particular challenges faced by girls. This may require the implementation of interventions such as catch-up courses and accelerated learning to place girls returning to school on an equal footing with their male peers who are not typically burdened with household chores.¹¹⁹

To ensure that children in rural, impoverished and humanitarian settings access education during uncertain times, such as this COVID-19 pandemic, government agencies and relevant stakeholders should recognize and seek to address the adverse effects and barriers – including economic hardships – that may prevent some children from returning to school once the pandemic is contained.

While many girls will resume their education once schools reopen, many others may never return to school. To avoid reversing the twenty years of gains Uganda has made in respect of girls' education, educational responses must prioritize the needs of adolescent girls.¹²⁰ Efforts to end child marriage must similarly continue to be prioritized, to sustain a downward trend in child marriages over the coming years. Moreover, since poverty is a known driver of child marriage – with families more likely to marry off daughters in times of economic hardship to alleviate the number of children cared for within a household – the anticipated economic fallout of the pandemic will result in millions more early marriages,¹²¹ unless targeted government intervention is prioritized.

Finally, it bears reiterating that all stakeholders should work together to ensure that the rights of children are protected and upheld.

118 Girls Not Brides, COVID-19 & Child, Early & Forced Marriage: An Agenda for Action at page 3

119 Ibid at page 3

120 UNESCO; COVID-19 School Closures Around the World Will Hit Girls Hardest, 2020 at page 1

121 It is estimated that as many as 13 million more child marriages could take place by 2030 in light of the economic pressures post COVID-19 – (see n10 at page1)



4
LABOUR
&
EMPLOYMENT

OCCUPATIONAL SAFETY AND HEALTH DURING AND BEYOND COVID-19

Joseph Byomuhangyi¹²²

Introduction

Uganda's phased opening of the economy following the onset of COVID-19, highlights the need for the observance of occupational safety and health (OSH) measures, to safeguard not only workers but also workplaces. While the government of Uganda has rolled out a range of health measures to minimize the effects of the pandemic,¹²³ this article will restrict itself to the measures targeted at workplaces and workers, critically assessing the efficacy of these measures and proposing recommendations where shortcomings are identified.

In the context of the COVID-19 pandemic, occupational safety and health is critical, seeing as it constitutes a core element of decent work¹²⁴, and should thus be universally guaranteed. It is, therefore, fitting that the theme of the 2020 World Day for Safety and Health at Work is "Stop the pandemic: Safety and health at work can save lives." Workers should feel safe within their workplaces and reassured that they are not exposed to undue risks. Although the health care management aspects of COVID-19 are important - including inter alia: social distancing, regular handwashing, sanitizing of surfaces, screening and quarantining of symptomatic persons, etc. - they are invariably strengthened if coupled with OSH regulations.

Occupational Safety and Health & COVID-19

Occupational safety and health (OSH) is defined as the science of anticipating, recognizing, evaluating, and controlling the hazards arising in the workplace or from work conducted therein, which have the potential to impair the health and wellbeing of workers, or other persons or communities or environment affected thereby.¹²⁵ OSH is thus concerned with the prevention of work-related injuries and diseases as well as the protection and promotion of the health of workers. It aims at the improvement of working conditions and environment.¹²⁶

The preamble of the International Labour Organisation's (ILO) Constitution provides that "the protection of the worker against sickness, disease and injury arising out of employment" is a fundamental element of social justice. Uganda is a signatory to the ILO conventions and standards that require workers to be protected from

122 Advocate & Program Officer, Business & Human Rights, ISER Email: jbyomuhangyi@gmail.com

123 The Public Health (Control of COVID-19) (No.2) Rules, 2020

124 C155 Occupational Safety and Health Convention, 1981

125 ILO Fundamental Principles of Occupational Health and Safety

126 Occupational Safety and Health Act 2006

sickness, disease and injury arising from their employment.

Indeed, the Occupational Safety and Health Act, 2006, provides for the right of persons to work under satisfactory, safe and healthy conditions. However, despite the existence of this Act, many workers in Uganda are not aware of their rights to a safe and healthy working environment and thus remain exposed to unhealthy working conditions, faulty plants and equipment, dangerous civil works and constructions - all of which have the potential to cause injury, illness and even death.

Essential service providers - who work in the healthcare, banking, taxation, telecommunications, water, sewerage, and infrastructure sectors among others) - were exempted from the COVID-19 national lockdown that called for the temporary closure of all non-essential public and private activities, and could thus continue to work following the onset of the pandemic. Protecting essential workers from the risk of infection requires strict compliance with OHS regulations.

Moreover, concern regarding the reopening of businesses and revival of the economy should not come at the expense of the health and safety of workers. Therefore, strict adherence to public health measures should be observed by all Ugandans at all times so as to minimize the risk of the spread of COVID-19.

Worryingly, however, Uganda does not have a strong track record of enforcing OSH legislation. In part this is attributable to a lack of awareness and the need for sensitization on OSH standards; limited personnel with OSH-specific qualifications and expertise, logistical constraints, and the absence of a National OSH Policy, are other challenges. Enforcing health management measures together with OSH regulations should be the key priority of all relevant stakeholders if Uganda is serious about effectively containing COVID-19. However, this does not always appear to be the case; hence the recommendations proposed below, which are intended to galvanise more concerted and coordinated action to achieve this end.

Recommendations

Inadequate enforcement of the Occupational Safety and Health Act 2006 has undermined government's efforts to improve the safety and health of all workers in Uganda notwithstanding OSH activities being legislatively mandated.

The following are recommendations proposed to assist government, business owners, employees and other stakeholders to enhance the safety and health of workplaces and workers, once the COVID-19 lockdown is lifted and economic activity is resumed:

- i. The State has a duty to mobilise and coordinate relevant stakeholders to enforce OSH and health management measures aimed at curbing the spread of COVID-19. Stakeholders such as the Department

of Occupational Safety and Health within the Ministry of Gender, Labour and Social Development (MoGLSD), the Ministry of Health and the District Local Government should work together to ensure effective implementation – not only of the Public health directives issued during the pandemic, but also general enforcement of OSH within workplaces across the country.

- ii. Employers should fulfil their responsibility to protect workers.¹²⁷ Ordinarily, the Occupational Safety and Health Act 2006 impose upon employers an obligation to take reasonable care to maintain a safe and healthy workplace for employees. The outbreak of the COVID-19 pandemic re-emphasises employers' responsibility not only to maintain a safe and healthy work environment, but also to inform and educate employees about the dangers of COVID-19, the precautionary measures to be followed within the workplace (e.g. observance of social distancing, wearing of personal protective equipment like face masks, regular hand washing and sanitization of work spaces, etc.); the steps to follow if an employee displays symptoms (i.e. notify state medical authorities) Employees in turn should, once economic activity resumes, take all reasonable precautions to protect themselves and those they engage with in the workplace from the spread of COVID-19.
- iii. Self-employed persons should take all reasonable precautions to ensure that their ventures are undertaken in a manner that does not expose them personally or any members of the public with whom they engage to health and safety risks.¹²⁸ Informal sector workers – this includes for example, mechanics, market vendors and carpenters, among others – should exercise the highest possible level of care to avoid spreading COVID-19 in the course of going about their business.
- iv. The MoGLSD needs to develop a framework for OSH training, and awareness- and information-sharing at all levels; this framework should also facilitate enhanced cooperation between civil society organizations and labour unions¹²⁹ National Organisation of Trade Unions (NOTU), Central Organisation of Free Trade Unions Uganda (COFTU), Federation of Uganda Employers (FUE) to enable the training and sensitization on all aspects of OSH for employers, workers and the general public.

Conclusion

The enforcement of OSH regulations in tandem with health measures to curb the spread of COVID-19 will go a long way towards striking a balance between containing the spread of the pandemic and ensuring the revival of the economy, in order to safeguard citizens' livelihoods and therefore survival.

127 Section 13 of the Occupational Safety and Health Act 2006

128 Section 24 of the Occupational Safety and Health Act 2006

129 The National Organisation of Trade Unions (NOTU), Central Organisation of Free Trade Unions Uganda (COFTU), Federation of Uganda Employers (FUE)

UGANDA UNDER LOCKDOWN: HIGHLIGHTING THE SOCIO-ECONOMIC INEQUALITIES IN THE INFORMAL SECTOR

Eliezer Edwin Ayebare¹³⁰

Introduction

Hours before the commencement of a government ordered COVID-19 lockdown,¹³¹ a small percentage of Ugandans rushed to supermarkets to engage in panic shopping, while the majority of the population could only look on, helpless. In Kasubi market, a vendor purchased shs.500. worth of groundnut paste two tomatoes and an onion – a day's meal. This vendor is representative of Uganda: she is emblematic of the millions of Ugandans who did not have the financial means to prepare for the pandemic-induced lockdown.

Two months have elapsed since Uganda instituted a lockdown and the socio-economic effects of this decision are felt throughout the country; affecting in particular the millions of Ugandans dependent on the informal sector for their livelihood, as well as other vulnerable groups who continue to struggle to meet their most basic daily needs.

The socio-economic state of Uganda

Uganda has a high poverty rate, with an estimated 21.4% of citizens living in poverty.¹³² The pandemic is projected to push approximately 780,000 people into poverty within the short term, with the longer-term projections modestly placed at 2,600,000¹³³ – with longer term impacts nowhere close to quantifiable as yet. The people who will be plunged into poverty by this pandemic will invariably be drawn from the ranks of market vendors, casual labourers, small scale farmers, hawkers, motor cyclists and many others who derive their living from working in Uganda's informal sector – a sector employing approximately 13.67 million working-aged people(14-64 years)¹³⁴ and contributing over 50% of the country's GDP¹³⁵. Sadly, the income of informal sector workers is precarious; as such, they live largely hand to mouth, having little savings if any. Informal earners have

130 LLB MUK (Honours), Dip LP(LDC). Email: ayebareeliezer@gmail.com

131 'Lockdown' refers to a nation-wide closure of all social institutions (public and private) and the home-confinement of the population for a stipulated period.

132 Uganda Economic Outlook 2018 <https://www.pwc.com>, accessed on 07/05/2020. This means that 21.4 % of Ugandans are living on \$1.90(UGX. 7,158.21) PPP (Purchasing Power Parity) per day or less.

133 Statement by Minister of Finance, Planning and Economic Development, Hon. Matia Kasaija. Accessed at <https://www.monitor.co.ug/News/National/Uganda-Shs1-9-trillion-loan-IMF> on 07/05/2020

134 <https://eprcug.org/press-media/news-opinions/584-informality-growing-faster-than-formality> on 08/05/2020

135 <https://www.independent.co.ug/unpacking-ugandas-informal-sector/>, accessed on 09/05/2020

limited access to capital, loans, medical care, housing, food, clean water and basic education for their children. Lockdown has exacerbated the tenuous position of informal earners and with seasonal floods ravaging the country, it has become virtually impossible for them to work and put food on the table.

The face of inequality under lockdown

This pandemic has served to spotlight the social and economic imbalances already existing in Uganda, drawing attention to the government's poor track record in the delivery of equitable social services. This dichotomy is characterised by millions of Ugandans on the one hand struggling to survive, and pinning their hopes on government relief (e.g. food parcels, relief grants, access to functional healthcare, etc.); while on the other hand a small percentage of Ugandans has the means to stockpile food and medicine.

Whereas the government has taken great strides to promote economic growth and development, this growth has not translated into widespread economic gains, benefitting only a small minority of the populace.¹³⁶ This is attributable largely to factors such as corruption, poor governance and poor policy prioritization, among others.¹³⁷

Sadly, the drivers of inequality continue to flourish during lockdown, which points to a need to scale up efforts to bridge the inequality gap, and enhance access to food and basic health goods, particularly for the most vulnerable citizens, of whom informal workers constitute part. It is unfortunate then that the media is awash with news of corruption and the misappropriation of funds earmarked to procure relief food and support other efforts to combat the effects of COVID-19. This indicates that Uganda is still far from realising socio-economic equality.

Way forward

Whereas the government must be commended for its efforts in respect of the health-related aspects of the pandemic, it is yet to provide clear policy direction on economic recovery. The President has concertedly avoided addressing the most pressing economic concerns. Issues such as occupants' inability to honour residential and commercial rentals and loan repayments, the financial distress and closure of business ventures and the possibility of economic stimulus packages to revive the flagging economy have been given only the most cursory treatment. This is not the time for government to be a passive player in the country's economic situation: government needs to exercise leadership in identifying and implementing a comprehensive intervention to ameliorate the extensive and negative effects of this pandemic.

136 Augustus Nuwagaba & Fred Muhumuza, *Who is growing? Ending inequality in Uganda*. <https://www.oxfam.org/en/research/who-growing-ending-inequality-uganda>, accessed on 08/05/2020

137 Ibid

There is, therefore, an urgent need for government to table an economic recovery plan that makes adequate provision for the informal sector. The protracted lockdown has resulted in many informal workers exhausting not only the little savings they had, but also the capital set aside to revive their ventures once lockdown is lifted. Advancement of credit by government to the informal sector should therefore be a key priority of any economic recovery plan, to equip workers in the sector to recover from the impact of the pandemic, and to incentivise financial institutions to restructure their loans to this demographic.

In addition, the government should consider such measures as reducing the rental income liability of landlords and waiving local authority levies. This will incentivise landlords to similarly award concessions to those tenants struggling to meet their rental obligations.

There is also a need to shift government expenditure priorities away from large infrastructural projects to social service delivery, because a majority of Ugandans are in dire need of health goods, food, water and housing.

As Uganda secures financial aid and loans¹³⁸ by which to mitigate the effects of the pandemic, transparency, accountability and priority-setting needs to be foregrounded if equal growth and development is to be realised in the country. Government must account not only for loans and financial aid, but also for the COVID-19 supplementary budget and the donations made by Ugandans during this crisis.

Unless government takes steps to draw up and implement an equitable economic recovery plan, the country will be confronted with an even wider inequality gap after the pandemic than it faced before.

138 IMF has approved US\$491.5 Million emergency disbursement to Uganda to address the COVID-19 pandemic. This emergency financing has been given under conditions that the funds will be managed transparently with accountability. The government will also have to report separately on the use of the funds, publish an independent audit of crisis mitigation spending and publish large procurement contracts. <http://www.imf.org/en/News/Articles/2020/05/06>, accessed on 07/05/2020

THE IMPACT OF THE COVID-19 PANDEMIC ON THE RIGHT TO WORK OF ECONOMICALLY PRECARIOUS INFORMAL SECTOR WORKERS

Najib Kasole¹³⁹

Uganda confirmed its first COVID-19 case on March 22nd 2020.¹⁴⁰ Two days later, the government suspended all public transport and non-food markets, setting in motion what has come to be referred to as lockdown.¹⁴¹ No one could foresee the impact this pandemic would have on the lives of Ugandans: that economic activity would grind to a halt for a protracted period, denying people who had previously earned their income on a day-to-day basis the means to support and sustain themselves.

COVID-19 has been mistakenly characterised as a great equaliser, the implication being that the virus affects both the poor and the rich in equal measure. To the contrary, however, this crisis has highlighted the economic and social divide between rich and poor. The economic effects of COVID-19 are expected to be dire; but the most affected will certainly be vulnerable persons, including people who work in the informal sector and are financially precarious as a result.

The World Bank has estimated that the pandemic could push up to 49 million people into extreme poverty worldwide, with almost half of these being in Sub-Saharan Africa.¹⁴² Some indications of this are already apparent: lockdown has deprived many informal sector workers of their source of income – only those deemed essential service providers/workers are permitted to continue trading; however, even within markets and businesses remaining operational, capacity is substantially reduced to ensure the observance of ‘social distancing,’¹⁴³ with some markets closed indefinitely for the duration of the pandemic outbreak.¹⁴⁴ The ILO has reported that women and girls, who constitute the majority of those working in the informal sector, are experiencing an increased risk of violence due to economic dependence on partners and stigmatisation in terms

139 Najib Kasole is human rights advocate and a member of the Network of Public Interest Lawyers (NETPIL) at the School of Law, Makerere University. Email: njbksl@gmail.com.

140 Ministry of Health – Uganda [[@MinofHealthUG](https://twitter.com/MinofHealthUG)] (March 21 2020). “Uganda confirms 1st case of COVID-19” (Tweet).

141 Lockdown refers to the nation-wide closure of all social institutions (public and private) and home confinement of the population for a stipulated period as a measure to contain the spread of COVID-19.

142 Sanchez-Paramo, C. 2020 COVID-19 will hit the poor hardest. Here’s what to do about it. [Online] [Accessed 8 May 2020]. Available from: <https://blogs.worldbank.org/voices/COVID-19-will-hit-poor-hardest-heres-what-we-can-do-about-it>

143 Social distancing requires people to maintain a prescribed distance from one another, particularly when in public.

144 ‘KCCA closes Kalerwe Market, section of Nakawa’ The Daily Monitor (2020) [Accessed 8 May 2020] <https://www.monitor.co.ug/News/National/KCCA-closes-Kalerewe-Market-Nakawa-Museveni-Mbale/688334-5514348-10k20qwz/index.html>

of finding alternative means of income as a result of the pandemic.¹⁴⁵

This article will explore the nexus between the right to work, guaranteed under Article 6 of the International Convention on Economic, Social and Cultural Rights (ICESR), and Government's efforts to alleviate the economic impacts of the COVID-19 pandemic and the crises, suffering and challenges it has wrought upon informal sector workers.

Despite corporations and formal sector workers being largely cushioned by substantial capital reserves and access to affordable lines of credit, the government has nevertheless focused its economic interventions on this same segment, motivated by the rationale that economic assistance to the formal sector will have a ripple effect on the informal sector. However, this is not the reality: the two sectors are patently divergent, requiring targeted intervention, with the informal sector requiring more extensive government assistance than the formal sector, which can more readily access private sector support.

It is important to note that approximately 13.67 million working-aged persons¹⁴⁶ – about 98% of Uganda's total workforce – sustain their livelihoods from the informal sector.¹⁴⁷ Despite this, however, the informal sector has not been engaged by government or provided support to weather the COVID-19 pandemic anywhere close to the scale of the engagement and anticipated support towards the formal sector. Small and medium traders, commonly referred to as 'omuntu wa wansi'¹⁴⁸ have overwhelmingly been ignored by public authorities, and where engaged typically treated inhumanely, in some cases even tortured and killed by those enforcing President Museveni's lockdown orders.¹⁴⁹

The Government of Uganda has proposed several broad economic interventions to help save businesses during the COVID-19 pandemic; however, almost none are targeted at the informal sector. Out of the thirteen measures that were proposed by the government to mitigate the economic impact of COVID-19, only one directly targets the informal sector and that is the suspension of some taxes like mobile money levy and those on essential commodities.

145 International Labour Organisation. 2020. COVID-19 and the informal economy in Africa. 14 April 2020. The impact of the COVID-19 on the informal economy in Africa and the related policy responses. [Online]. [Accessed 9 May 2020] Available from: https://www.ilo.org/africa/information-resources/publications/WCMS_741864/lang-en/index.html

146 Persons aged 14-64 years old.

147 Opolot, M. 2017 Informality Growing Faster than Formality. [Online] [Accessed 8 May 2020]. Available from: <https://epr-cug.org/press-media/news-opinions/584-informality-growing-faster-than-formality>

148 A Luganda phrase meaning a less prominent person in the society.

149 'Uganda police shoot 2 for violating movement ban' The East African (2020) <http://www.theestafrican.co.ke/news/ea/Uganda-police-shoot-2-for-violating-movement-ban/4552908-5506106-view-asAMP-pexswr/index.html> [Accessed 8 May 2020].

On March 24th 2020, Uganda's Revenue Authority announced measures to support taxpayers affected by the COVID-19 pandemic,¹⁵⁰ which included extended the period for the filing of tax returns. A few days earlier, on March 20th 2020, the Bank of Uganda (BOU) announced a host of similar measures,¹⁵¹ which included inter alia, intervening in the foreign exchange market to address excess volatility stemming from global market pressures, entrenching a mechanism to diminish the prospects of sound businesses becoming insolvent due to a lack of credit, providing financial institutions with exceptional liquidity assistance, and engaging mobile money operators to further reduce transactional fees.

These interventions may, on the face of it, appear to be aimed at saving the entire business community; however, a critical analysis of these measures shows that they are targeted primarily at rescuing the formal sector. The forex exchange intervention mainly benefits big corporations with foreign exchange debt that are liable to incur losses occasioned by foreign exchange fluctuations; but these are fully deductible expenses before computation of corporate tax.¹⁵²

The reduction of charges for mobile money transactional is the only measure likely to directly benefit the informal sector. And although telecoms companies reduced the transactional charges, mobile money tax is still in place; consequently, costs remain relatively high. This is problematic, since the informal sector is comprised predominantly of the most vulnerable groups in the community, namely women, youth, low income earners, etc. – all of whom greatly depend on mobile platforms to conduct their business transactions. As long as the Government does not directly intervene to by scrapping mobile money taxes, the BOU measures will remain inequitable and the informal sector workers' right to work will be endangered during and post the COVID 19 pandemic.

The measures outlined above indicate that the informal sector – and by implication low income earners – are not the primary targets of government's COVID-19 economic relief measures. Perhaps this is due to the assumption that the majority of informal sector workers are not registered tax contributors. This assumption, however, may well be misplaced: while it is true that most informal businesses are not registered corporate tax and Value Added Tax (VAT) entities, many do contribute to tax revenue through the payment of other government fees and levies such as trade licenses, market fees, income presumptive tax and consumer VAT,¹⁵³ and should thus be recognised

150 URA COVID-19 Business Continuity Measures [Accessed 8 May 2020] Available from: <http://www.ura.go.ug>

151 Bank of Uganda. Measures to Mitigate the Economic Impact of COVID-19 [Accessed 8 May 2020] Available from: <https://www.bou.or.ug>

152 If a company has an obligation to pay a debt in dollars, and the value of the Uganda shillings depreciates against the dollar, the company will have to pay more money than anticipated when the debt was incurred thus occasioning a loss, which is deducted from the company's profits before tax is computed.

153 J Verberne & R Areendsen, 'Taxation and the Informal Business Sector in Uganda an Exploratory Socio-Legal Research' (6th annual Tax Administration and Research Centre Conference, University of Exeter Business School, April 23-24, 2018) <http://jo-ta.website/index.php/JoTA/article/view/232> accessed 5 June 2020.

as paying their fair share of taxes. In the financial year 2017/18, the wholesale and retail sector¹⁵⁴ contributed 27.13% to the total revenue collections, which was the highest sectoral contribution (a substantial proportion of this is derived from informal/marketplace trade).¹⁵⁵

In the light of the above, it would be prudent for government to ensure that more COVID-19 economic relief measures are directed towards the formal sector. Omitting this sector is not only discriminatory, but will result in the infringement of the right to work of informal sector workers.

This is problematic since government has a positive duty, under Article 21 of Uganda's Constitution,¹⁵⁶ to treat all persons¹⁵⁷ equally in all spheres – political, economic, social and cultural – without discriminating arbitrarily. Article 32 provides that the State should take affirmative action in favour of groups marginalised for the purpose of redressing the imbalances which exist against them. General comment No. 18 Paragraph 31 of the Committee on Economic, Social and Cultural rights asserts that states have an obligation to ensure the right of access to employment, which entails inter alia avoiding discriminatory measures against disadvantaged and marginalised groups; and implementing national plans of action to practically realise the right to work of disadvantaged persons. Article 43 of Uganda's Constitution requires the limitation of any right to be demonstrably justifiable in a free and democratic society. Therefore, although government can constitutionally limit the right to work during circumstances such as that occasioned by the pandemic, it does have a responsibility to equitably support all those adversely affected by such a decision; the informal sector certainly constitutes a part of this “all,” and it is entitled to government intervention in the same spirit as that received by the formal sector.

In conclusion, the Government has a clear and legal duty to ensure that vulnerable groups, of whom informal sector workers form part given their financially precarious situation, are assisted by means of economic relief that is gender-sensitive – given the disproportionately high number of women and girls working in this sector – and non-discriminatory. This can be achieved, in part, through the following:

- i. Government facilitated economic relief for the informal sector, i.e. temporary waiver of utility fees, markets taxes and associated costs, mobile money levy – in addition to the deferral of income tax and PAYE contributions to the Revenue Authority (which benefits workers in both the informal and formal

154 The informal sector falls under this broad category.

155 Uganda Revenue Authority. Revenue Performance Report FY 2017/18 16th July 2018. [Accessed 8 May 2020] Available from: <http://www.ura.go.ug>

156 The 1995 Constitution.

157 No distinction is made in the constitution between natural and juristic persons therefore the provision can be interpreted to be all inclusive under the “sui generis” rule

sector)...as advocated by the International Centre for Tax and Development.¹⁵⁸

- ii. Government-facilitated loans and grants that are informal sector specific, and distributed through micro-finance facilities and trader Savings and Credit Cooperative Organisations (SACCOs) this will go a long way in aiding low income earners who largely cannot access commercial loans to get capital for their businesses;
- iii. The establishment of a funding scheme, similar to that developed by the South African government, to temporarily provide informal sector and low-income workers with a monthly stipend. This would enable people within this demographic to survive these times of “business unusual,” during which many either cannot pursue economic activity, or face significantly reduced demand due to lockdown.

158 Gallien, M & Boogard, V. To fight COVID-19, only the formal economy is getting tax breaks, the informal economy may be asked to foot the bill [Online]. [Accessed 8 May 2020] Available from: www.ictd.ac/blog/COVID-coronavirus-tax-breaks-informal-economy-workers

IMPACT OF COVID-19 AND THE LOCK DOWN ON EMPLOYMENT AND ACCESS OF SOCIAL SERVICES IN UGANDA

Mutesi Gloria Faith¹⁵⁹

Uganda confirmed its first case of COVID-19 on the 21st of March 2020. As in the rest of the world, shock and panic was the overwhelming reflex displayed by the population. This was attributable to the World Health Organisation's categorization of the viral outbreak as a pandemic, and acknowledgement of concerns regarding its health and safety implications.¹⁶⁰

In response, Uganda has implemented several strict measures in a bid to contain the spread of the pandemic, which include among others social distancing,¹⁶¹ the observance of personal hygiene protocols (regular handwashing, sanitization of public areas, etc.) and the wearing of personal protective equipment such as face-masks and appropriate workplace attire (particularly for healthcare professionals).

Although the pandemic's health implications are obvious, it has had a far wider-reaching impact, affecting sectors including inter alia education, the economy, employment, recreational activities, etc. In a bid to curb its spread, the government of Uganda has followed the global trend of shutting down economic activity, prohibiting mass gatherings – effectively bringing into effect nation-wide home confinement.¹⁶²

This has undermined people's general reliance on subsistence livelihoods, even as the country remains uncertain as to when lockdown measures will be lifted. Persons surviving hand to mouth, many of whom did not have savings prior to the lockdown and are generally incapable of accessing social security savings, have been grossly affected by the suspension of economic activities. People who sustained themselves on a day-to-day basis are in an especially heightened state of anxiety as it remains unclear when they will be able to resume their livelihood efforts.

In the absence of social protection measures, Uganda's lockdown has invariably exacerbated existing poverty levels and given rise to other serious consequences such as clashes between the police and citizens defying movement restrictions.

159 Lawyer. Email: gloriamutesi5@gmail.com

160 Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says, 11/03/2020 <https://www.npr.org/sections/goatsandso-da/2020/03/11/814474930/coronavirus-COVID-19-is-now-officially-a-pandemic-who-says>

161 A measure aimed at averting contamination, whereby people are prohibited from engaging in direct contact and are required to maintain a stipulated distance from one another in public places.

162 Instituted on the 30th March 2020 by way of Presidential Directive

The requirement to remain home would not be as difficult to observe if people's basic needs were met and they had access to social services. Many people are now dependent on food provided by the government, which is questionable in terms of its quality and quantity when compared to the extent of the need within the country and the varying socio-economic and developmental levels of different sectors of society. It is also unclear just how long government will be able to continue supplying this food.

In the light of the above, it is fair to say that government's efforts to control the spread of the COVID-19 pandemic, which include the national lockdown, have negatively affected people's livelihoods, pointing to a failing by the state to respect, protect and fulfil citizen's economic rights.

The protracted economic shutdown has placed many employers in a position where they can no longer subsidise wage costs, forcing them to lay off many employees, sending unemployment rates skyrocketing. This has served to seriously undermine Ugandan's enjoyment of the right to work, which is stipulated under Article 40 of the Constitution.¹⁶³ Employment, as with any another contract, is subject to the principles of offer, consideration and acceptance as well as other legally stipulated terms (notably, the Employment Act¹⁶⁴ makes provision for the enforcement of oral contracts).¹⁶⁵ This is intended to place contracting parties on an equitable footing and, ideally, to facilitate job protection. However, this has not been the case for either employers or employees during lockdown: employers have been expected to subsidise employees' wages in good faith as opposed to complying with the specific contractual conditions they entered into; where they have been unable to do so, they have been compelled to dismiss employees.

How has Uganda's situation compared to that of other jurisdictions? If we examine the case of Kenya for example, it has – in a bid to mitigate the effects of the prevailing pandemic – acted swiftly to introduce 100% tax relief for persons earning a gross monthly salary of USD 223,98; it has additionally earmarked funds for the elderly and orphans, among other measures.¹⁶⁶ This has provided much needed financial relief to employers and employees alike, contributing, however marginally, to job retention. At the time of writing, Uganda is yet to adopt equivalent measures, which has left the fate of people's jobs to employers' means and mercy; hence the high number of workers laid off.

This may be attributable to Kenya's Constitution,¹⁶⁷ which makes provision for the enforcement of economic

163 The Constitution of the Republic of Uganda, 1995 (As amended)

164 Employment Act, 2006

165 Section 25 Employment Act, 2006

166 David J Bakibinga, 2020, COVID-19 social protection and fiscal implications, Page 3

167 The Constitution of Kenya, 2010, Article 43

rights. Uganda, notwithstanding Article 8A(1) of the Constitution¹⁶⁸ and relevant case law, has a more conservative conception of “progressive realisation of economic and social rights;”¹⁶⁹ which may be why, even though employment is recognised as an economic right under Article 40 of the Constitution, it continues on a downward trajectory on account of the COVID-19 lockdown and the absence of a regulatory framework to provide employers with robust relief measures to help them preserve as many jobs as possible.

Rwanda also provides a contrasting case-study to Uganda: it lifted its partial lockdown on the 4th of May 2020, permitting the resumption of private and public transportation subject to all passengers wearing a protective mask. This measure facilitates the steady resumption of economic activities, which will enable Rwandans to regain access to their workplaces and pursue livelihood activities once more.

In conclusion, the ramifications of COVID-19 are not restricted to health – notably infection and morbidity rates and their effect on health and related infrastructure; moreover, its consequences will continue to be felt long after lockdown, with negative impacts on the economy and job security severely hampering Ugandans livelihood prospects over the longer term.

The COVID-19 situation has served to spotlight, among other things, the interdependence of rights and sectors – both public and private – such that what was initially deemed a health crisis has come to be recognised as a more comprehensive and multi-faceted challenge, affecting not only economic, but also social undertakings in the country.

Therefore, the state should, while dealing with COVID-19 carefully consider its impacts, not only on health but also on the socio-economic welfare of citizens. The government should also consider adopting relief measures and policies, for example tax incentives, to promote business recovery so as to alleviate the economic setbacks experienced by small and large-scale businesses during and after the lockdown period.

168 It stipulates that Uganda shall be governed based on principles of national interest and common good enshrined in the National Objectives and Directive Principles of state policy.

169 Christopher Mbazira, *Uganda’s Hybrid Constitutional Protection of economic, social and Cultural Rights*, Cambridge University Press, pp447-475, November 2016

THE OCCUPATIONAL HEALTH AND SAFETY IMPLICATIONS OF COVID-19 FOR WORKERS IN UGANDA

Obbo Geoffrey Derrick¹⁷⁰

Introduction

The COVID-19 virus, which is reported to have originated in China, has spread to virtually every country in the world, and Uganda is no exception. This has prompted the Ugandan government to adopt several measures to curb the spread of this virulent pandemic. These measures include the temporary suspension of all services and closure of workplaces government deems non-essential. While the lockdown has stopped most economic activity, essential service employees, e.g. medical service personnel, factory workers, miner workers, press and media service staff, members of the police and army, private security companies, electricity and water service staff among others, continue to work during lockdown. Consequently, there are people who continue to traverse public spaces and workplaces, notwithstanding the risk of the spread of COVID-19, raising health and safety concerns. While it is probable that lockdown measures will soon be eased, allowing for the resumption of economic activities and the return of an increased number of people to work, this is likely to occur before the virus is completely eradicated or even effectively contained, which will potentially expose workers to the risk of COVID-19 infection.

In the light of the above, careful attention needs to be applied to the occupational health and safety concerns, needs and responses Uganda should implement to avert an upsurge in COVID-19 infections. What measures should workplaces adopt to safeguard workers? Who between the employer and employee bears the duty of protection? What normative health and safety standards should workplaces adhere to? Do Uganda's laws make adequate provision to ensure that workers are protected from the risk of contracting this pandemic? While these questions are not exhaustive, this article will endeavor to address some of them succinctly.

The health and safety implications of COVID-19 for workplaces in Uganda

The Constitution of the Republic of Uganda¹⁷¹ confers a blanket right to all workers to work in safe and healthy conditions. The COVID-19 virus threatens this right: many healthcare workers – not just medical personnel such as doctors and nurses, but also hospital cleaners, caterers, etc. – have a greater risk of contracting the virus as a result of their exposure to infected patients and contaminated surfaces and materials within testing and

170 Center for Food and Adequate Living Rights (CEFROHT). Email: geobbo13@gmail.com

171 The Constitution of the Republic of Uganda, 1995 as amended

treatment facilities. This has prompted health personnel in some areas of Uganda to refuse to assist patients suspected or infected with COVID-19 due to a lack of personal protective equipment or inadequate training pandemic protocols.

The threat of infection while at work is not restricted to healthcare workers: people who work in markets, factories and the media are also at risk, on account of their fraternization with other persons and the particularly infectious nature of this pandemic. Uganda's Occupational Safety and Health Act of 2006 (OSH) is the main law providing a framework for the safety of workers whilst in the workplace. While this Act does not make specific provision for the protection of workers from infectious diseases, an entire reading of the Act does reveal that this is a duty borne by employers. Section 13 of the Act imposes a duty on employers to protect, at their own cost, their employees from the dangerous aspects of their professional undertakings. The section further provides that this duty includes the provision of as reasonably practicable a safe working environment as possible. Section 46 of the Act imposes a further duty on employers to maintain a clean workplace. The implication of this in the time of the COVID-19 pandemic is that employers have a duty to regularly disinfect workplaces, ensure there are sufficient soap and handwashing facilities and provide personal protective equipment such as face masks and gloves (and all of this at their own expense), to prevent the spread of the virus within the workplace and among employees. This duty is discharged when an employer takes all reasonable, practicable measures to protect employees from infection.

Section 47 of the Act requires employers not to overcrowd workplaces to minimise workers' exposure to health risks. Therefore, whilst the COVID-19 pandemic remains an on-going threat, factory-, mining-, agricultural-, hospital-, healthcare-, -employees among others, should ensure that their workplaces are not overcrowded to avoid exposing workers to the risk of infection. Failure by employers to meet these standards constitutes a breach of the Act.

A reading of the Occupational Safety and Health Act makes it possible to conclude that while the provisions do not specifically require employers to protect their workers from COVID-19 and other infectious diseases, employers do bear a duty of care in respect of their employees, which requires that they take reasonably practical measures to generally protect employees from infection.

The International Labour Organization (ILO) has released an occupational health and safety guide specifically developed for the COVID-19 pandemic. ILO Convention No. 155, like Uganda's OSH, highlights employers' duty to take all practicable and protective measures to minimize the occupational risks of contracting the COVID virus. The ILO also imposes a duty on employers to provide their workers with emergency funds and notify labour inspectors in case of occupational infection. This is an important duty imposed on the employer, as it assists inspectors to assess the level of risk of infection at a workplace, draw up measures to protect persons

at a particular type of workplace, and impose penalties on employers who fail to take adequate measures to protect their employees from the virus.

The ILO Convention, like Uganda's OSH Act, also confers upon workers the right to remove themselves from situations where they feel they could be at a risk of contracting the virus. The duty to prevent the spread of the Corona virus within the workplace is imposed not only on the employer, but also on employees, who have a duty to follow the operational guidelines put in place to prevent the spread of infection in the workplace.

The ILO acknowledges that it does not yet have comprehensive provisions on the protection of workers from infectious diseases or what it terms "biological hazards." As with Uganda's OSH Act, the ILO Convention makes use of general provisions to protect workers from infectious diseases. This suggests that the time is opportune for more concerted action, in the form of a convention and/or targeted laws to protect workers from Infectious diseases and biological hazards. However, even before enactment of such measures, it is clear that employers already bear a duty to take reasonable and practicable steps to protect employees from the risk of contracting the corona virus as well as to inform them of likely hazards and risks presented by their work and/or workplace.

Adherence to the provisions of the OSH Act, the ILO guidelines and Uganda's Constitutional right to work in a safe and healthy environment, would go a long way towards safeguarding workers against the risk of contracting the Corona virus.



5
SOCIAL
PROTECTION
&
HOUSING

SOCIAL PROTECTION FOR WOMEN AND GIRLS IN THE FACE OF COVID 19 PANDEMIC

Harriet Asibazuyo¹⁷²

According to the Uganda Bureau of Statistics, the country's population in 2020 is projected to be 41,590,300, with females constituting 51% of the population.¹⁷³ Despite women making up the majority of the population, gender inequality persists at all levels of society, with the negative gendered impacts of inequality disproportionately affecting women.

Gender inequality is attributed to multiple factors that contribute to women being more socially, culturally, and economically vulnerable than men. These factors include but are not limited to negative cultural practices that render women voiceless in society; women's economic dependence on male counterparts because of limited access to the key factors of production, access to and control of land in particular; low levels of education amongst girl children, which undermines their ability, later in life, to secure better-paying jobs within the formal sector; and the unpaid care burden women bear for the family – immediate and extended.

The COVID-19 pandemic has caused major disruptions to people's livelihoods: observance of lockdown¹⁷⁴ regulations, for example, has constrained people's ability to pursue income-generating activities (particularly those dependent on the informal sector) and necessitated that people tap into their savings, in some instances even their business capital, which may inhibit their ability to revive their businesses once economic activity resumes. Lockdown has seriously compromised demand for goods and services besides the most basic needs, increasing the burden of care on women – who in Uganda constitute the majority of informal sector workers¹⁷⁵ – in the light of the substantial number of formal sector workers laid-off due to production cuts, which has aggravated food insecurity and starvation in the country.

Whereas at surface level these issues appear to affect men and women in the same or at least similar ways, closer scrutiny shows that negative economic impacts affect women and girls more severely – even more so women-headed families, single mothers, older women and women /girls with disabilities.

172 Senior Social Development Officer/Human Rights-MGLSD, certified National Trainer on Gender and Equity Budgeting. Email: asibazuyoharriet@gmail.com

173 Uganda Bureau of Statistics (UBOS), 2018

174 "Lockdown" refers to government's nation-wide shutdown of social and economic institutions and confinement of the population to their homes for a stipulated period as a measure to contain the spread of COVID-19.

175 Policy Brief for Decision Makers, Uganda: The role of the Informal Economy in City Growth available at https://www.citiesalliance.org/sites/default/files/PB_Uganda_WEB.pdf, last accessed on 16 June 2020

When employees downsize their workforce, it is unskilled workers who are targeted first and affected most substantially. In Uganda, women and girls predominate in this category and thus are likely to be the most affected. Similarly, resumption of economic activity once lockdown is lifted is likely to be characterized by fierce competition for scarce jobs, where women are once more at a disadvantage because of the socio-cultural expectation that they attend to their spouses, homes and children, undermining their ability to move around freely in pursuit of work.

Increased incidents of Gender Based Violence (GBV) are likely to be observed during and in the aftermath of COVID-19, in the light of the multiple attendant stress factors (protracted confinement, often in close quarters; heightened fear, anxiety, and frustration; depleting financial and other resources, etc.). This will affect women and girls in particular, given their economic dependence on male partners, many of whom are contending with heightened anxiety and stress and may therefore engage with their female partners more aggressively than they would ordinarily. Uganda's Police spokesman, Fred Enanga, reported that in the first month of lockdown alone, police recorded approximately 3,124 complaints of GBV – although the number of unreported cases may well be significantly higher. Government thus needs to increase the availability of physical, economic and psychological support to GBV victims and survivors.

Women and girls are also likely to experience limited access (if any) to family planning and sexual and reproductive health services during lockdown, since priority has shifted to meeting basic survival needs. This will likely increase the number of unwanted pregnancies, and illegal abortions solicited, which as we know has negative associated health complications, which most women will seek treatment for at public healthcare facilities.

Food insecurity and starvation is another likely outcome of the lockdown, especially in urban areas where people are more reliant on markets than personal crops; this inevitably impacts children, girls and women more than it does men, largely because of social and cultural norms (in many contexts, men are served food first and women and children consume what remains once they are satisfied). Sex-work is one avenue desperate children and girls and women may resort to in the absence of any other means of generating income, which exposes them to STDs/STIs.

These gendered effects of COVID-19 point to a need for comprehensive social protection systems. Social protection is defined as public and private interventions to address risks and vulnerabilities that expose individuals to income insecurity and social deprivation leading to undignified lives.¹⁷⁶ To provide women and girls with targeted and gender-responsive COVID-19 relief, government and the private sector should commission gendered needs analysis, to identify who and where the most affected and thus needy girls and

176 The Uganda National Social Protection Policy 2015, at pg.1

women are located; the nature of support they require to overcome the host of problems caused by the pandemic; the most appropriate recovery interventions; the most cost-effective means of delivering these, etc. Resource efficiency should be a key consideration for providers, to ensure that interventions benefit as many girls and women as possible.

It will be necessary to address the practical needs of women and girls, so that they are equipped – through the provision of among other things, food, clothes, sanitary pads and reproductive health services – to recover from the financial onslaught precipitated by COVID-19. Such measures should be viewed as a starting point, however, with more strategic gender needs identified and addressed as part of longer-term and larger-scale recovery efforts.

While government's substantial financial investment to prevent the spread of the pandemic was necessary to ensure that the health sector was not overwhelmed by cases, this should not, ultimately, be at the expense of economic empowerment efforts benefiting women. One such empowerment effort could be to scale up the Uganda Women Entrepreneurship Programme, both in terms of committed resources and the number of beneficiaries reached. As banks reschedule their client's loan repayment terms, it would be prudent to consider similar initiatives for UWEP beneficiaries, to afford them time to revive their business enterprises without placing them under undue pressure. Financial institutions could also boost Savings and Credit Cooperative Organisations (SACCOs), to facilitate their support the recovery of women and girls from the negative livelihood impacts of COVID-19.

The economic slowdown has caused families' incomes and savings to dwindle. When schools reopen, it is possible that they may raise fees. In the event of such an eventuality, some families may withhold some of their children – most likely girls, as outlined above – from returning to school. Children may also be drawn into working to supplement their parent's income; and girl children are typically singled out for this purpose while their male siblings become the beneficiaries of education. The increased school drop-out rate makes girls vulnerable to defilement and forced marriage – with the latter typically used by families as a survival strategy to reduce the number of dependents needing to be fed and sustained.¹⁷⁷

Policy makers and civil society organizations need to exercise vigilance and where necessary and appropriate adjust their efforts to avert negative cultural practices undermining gender equality and women's empowerment efforts in the country.

In conclusion, as the country struggles to keep abreast of the social and economic effects of COVID-19, the government will undoubtedly be tasked with addressing the abovementioned challenges affecting the welfare of

176 The Uganda National Social Protection Policy 2015, at pg.1

177 Shahidul S.M & Zehadul Karim A.H.M. 'Factors contributing to school dropout among girls: a research and reflection' in *Educational Sciences* Vol. 3 No. 2: 2015

girls and women. However, this responsibility should not fall solely to government: all members of society should contribute - individually and corporately - to improve the situation of women and girls. This contribution could be to advocate for social protection, to sensitize communities on the plight of women and girls, to provide support towards enskilling women and girls, mobilizing resources and monitoring government interventions with a view to ensuring that COVID-19 response and relief measures are both gender sensitive and responsive.

STAY HOME, STAY SAFE: UGANDA'S RIGHT TO ADEQUATE HOUSING IN THE COVID-19 ERA

Edgar E. Mugarura¹⁷⁸

Introduction

The world is currently grappling with an unprecedented challenge in the form of the COVID-19 global pandemic, which has prompted governments to impose novel measures to curb its unrestrained transmission. In Uganda, President Yoweri Museveni announced a national lockdown,¹⁷⁹ requiring all people, except essential workers, to confine themselves to their homes. Uganda thus joined the global movement of “Stay Home, Stay Safe,” which recognises the home as the first line of defence against this pandemic.

However, the “Stay Home” mantra presumes that people have a home to stay in, and the financial means to sustain themselves for the duration of the home confinement. But this presumption is simply not borne out by fact, with millions of Ugandans, even prior to lockdown, living in deplorable conditions – in homes without access to sanitation services, often under constant threat of eviction. The global pandemic has simply served to shake-up government complacency, drawing greater awareness to the centrality of a safe home for human survival¹⁸⁰. This article argues that the “Stay Home” mantra fails to take account of a vast proportion of Uganda’s urban population, which does not have safe housing in which to observe government’s lockdown orders.

Background

Uganda is one of Africa’s most rapidly urbanizing countries, with an annual growth rate of over 5%,¹⁸¹ which growth has been characterized by associated problems such as the emergence of slums. According to the Ministry of Lands, Housing and Urban development,¹⁸² 49%-64% of Uganda’s urban population lives in slums; while the National Population and Housing Census of 2014 indicates that the conditions of many Uganda homes is generally substandard. UN-Habitat¹⁸³ contends that cities have become a “dumping ground for a surplus of the population, working in unskilled, unprotected and low-wage informal service industries and trade.” This is also

178 LLB 2020 Graduate, Bar Course Student 2019/20, Email: edymugarura@gmail.com

179 Lockdown refers to a nation-wide closure of all social institutions (private and public) and the home-confinement of a population for a stipulated period to contain the spread of COVID-19. Uganda’s lockdown was announced on 22nd March, 2020.

180 How can billions of people stay at home with no safe place to live, The Guardian.

181 UN Habitat. Situation Analysis of Informal Settlements in Kampala; UN-Habitat: Nairobi, Kenya.

182 Uganda National Housing Policy, May 2016.

183 UN Habitat. The Challenge with Slums; UN-Habitat: Nairobi, Kenya

true of Uganda's major cities, Kampala, Wakiso, Entebbe and Jinja, in which a substantial number of people reside in unplanned settlements, which often become slums. Slums are characterized by a lack of durable housing, inadequate living space, and a lack of clean water and sanitation, among others.¹⁸⁵

Uganda's lockdown order has drawn attention to the fact that impoverished persons, particularly the urban poor, do not have adequate access to suitable housing. Moreover, current housing conditions have the potential to setback the strides made by the Health Ministry to contain the spread of the pandemic. The conditions in which slum dwellers live reinforces the extent to which housing is essential for survival, and therefore not a luxury but a basic human right.

The right to adequate housing

Article 25 (1) of the Universal Declaration of Human Rights recognises the right to adequate housing within the general context of an adequate standard of living, to which every person and family is entitled for their personal health and wellbeing. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes the right to adequate housing, which is expansive and includes entitlement not only to physical shelter but also to “adequate food, clothing and continuous improvement of living conditions.”

General Comment No. 4, of the Committee on Economic Social and Cultural Rights asserts that the human right to adequate housing derives from the right to an adequate standard of living, which is central to the enjoyment of all economic, social and cultural rights. It further emphasizes that the right should not be interpreted in a narrow or restrictive manner as consisting solely a roof over one's head or a physical commodity; rather it is to be conceptualized as the right to a secure, peaceful and dignified existence in one's habitation. At a regional level, while the African Charter on Human and People's Rights¹⁸⁶ does not explicitly provide for the right to adequate housing, the African Commission on Human and People's Rights (ACHPR) has held that this right can be inferred from other rights in the African Charter, namely the right to property,¹⁸⁷ and family,¹⁸⁸ among others.

At national level, Uganda's Constitution¹⁸⁹ does not specifically provide for the right to adequate housing; however, the National Objectives and Directive Principles of State Policy guarantees the fulfilment of the fundamental rights of all Ugandans to social justice, economic development and access to clean and safe water,

185 A. Richmond, H. Namuli, *Urban Informality and Vulnerability: A Case Study in Kampala, Uganda*

186 African Charter on Human and Peoples' Rights, African Union: 1981 (Banjul Charter)

187 Article 14, African Charter on Human and Peoples' Rights.

188 Article 18, African Charter on Human and Peoples' Rights.

189 The Constitution of the Republic of Uganda, 1995 as amended.

health and decent shelter, among others.¹⁹⁰ Notably, human rights are interdependent, indivisible and interrelated; as such, the right to adequate housing can be inferred from rights stipulated in the bill of rights, such as the rights to property,¹⁹¹ privacy,¹⁹² family¹⁹³ and a clean and healthy environment.¹⁹⁴

As a signatory to the abovementioned human rights instruments, Uganda has an obligation to ensure the full realization of the right to adequate housing, which entails inter alia, ensuring security of tenure by preventing arbitrary, forced and other improper evictions, and ensuring access to affordable housing. Residents of urban informal settlements are frequently under looming threat of eviction given their insecurity of tenure. The lockdown order has exacerbated their financially precarious position, since most derive their income from the informal sector, but are currently unable to work, increasing the likelihood that they will exhaust any meagre savings they may have put away prior to lockdown. Since the majority of these people live on a day-to-day, week-to-week or month-to-month basis, the lockdown order means that they are unlikely to be able to sustain their rental payments for very long. The Ministry of Lands, Housing and Urban development has sought to address this problem by prohibiting evictions during the lockdown period; however, this has not deterred overzealous landlords from evicting tenants. Therefore, government needs to craft a more robust and enduring solution to ensure that all Ugandans can fully enjoy their right to adequate housing.

Conclusion

Uganda continues to receive global acclaim for its handling of pandemics, COVID-19 being no exception. While the lockdown measures were necessary from a public health perspective, they have spotlighted the poor state of Uganda's housing, particularly within informal settlements. The state is thus called upon to take more action to ensure that the right to adequate housing is fully respected, protected and promoted.

190 NODPSP XIV (b), the state shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that, all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

191 Article 26.

192 Article 27.

193 Article 31.

194 Article 39.

COVID 19: TRACING THE RIGHT TO AN ADEQUATE STANDARD OF LIVING FOR PERSONS WITH DISABILITIES

Kevin Bakulumpagi¹⁹⁵

Introduction

Uganda's national lockdown,¹⁹⁶ which has been in effect since 21st March 2020, has severely and adversely affected the populations living standards, with impacts far worse for persons with disabilities (PWDs).¹⁹⁷

'Disability' refers to a substantial functional limitation on a person's daily life activities that is due to physical, mental or sensory impairment.¹⁹⁸ There are approximately 4.5 million disabled persons in Uganda, constituting 12.5% of the population.¹⁹⁹

PWDs are rights-holders just like all other persons in Uganda; however, they are amongst the most marginalised and stigmatized people. The government of Uganda has both international and national obligations to protect, respect and fulfil their rights, even more so during situations of risk and emergency as is the case with COVID-19.²⁰⁰ One of these rights, which the government has an obligation to ensure, is access to an adequate Standard of Living (S.O.L). This right is expansive, encompassing not only the provision of housing or physical shelter but also adequate food, clothing, and the continuous improvement of living conditions.

The policies, plans and strategies devised by government to curb the COVID-19 scourge have not, unfortunately, made specific provision for PWDs, whose needs are distinctive from those of the general population; consequently, they frequently are left to persevere under the harshest of conditions.²⁰¹

Legal Background

Article 28 of the International Convention on the Rights of Persons With Disabilities, 2006, provides that states parties must take appropriate steps to realise every person's right to an adequate standard of living for everyone,

195 LLM (University of Dar-es Salaam), DLP (LDC), LLB (Hons), Makerere University. Email: kbakulu@gmail.com.

196 Lockdown refers to governments' nation-wide closure of social institutions (public and private) and home-confinement of the population for a stipulated period as a measure to contain the spread of COVID-19.

197 UN Rights Expert, "COVID-19: Who Is Protecting the People with Disabilities?" OHCHR 27th March, 2020.

198 Section 1(1) of the Persons with Disabilities Act, 2019.

199 Uganda National Population and Housing Census 2014.

200 Article 12 of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa, 2018.

201 Article 28(1) of the Convention on the Rights of Persons with Disabilities, 2006.

without any discrimination, including that based on disability.²⁰²

These obligations are reiterated in Article 18 of the African Charter on Human and People's Rights 1981 and its attendant Protocol.²⁰³ The provisions speak to the right of PWDs to special measures to meet their specific needs and expand this right to include access to sanitation and safe drinking water, which has been hampered by the COVID-19 pandemic as will be shown below.

At a national level, the 1995 Uganda Constitution²⁰⁴ protects PWDs, and provides for affirmative action to place PWDs on a more equitable footing with other persons. The Persons With Disabilities Act, 2019 additionally sets out the standards that must be upheld to effectively meet PWD's needs, which includes accessibility to premises, among other things.²⁰⁵

Government, civil society and other stakeholders have not been as attentive and responsive to the needs of PWDs in the development of COVID-19 interventions. This is a major oversight, which needs to be remedied as a matter of urgent priority. This article assesses the situation of PWDs to identify the specific impact of COVID-19 on this cohort. It further proposes recommendations on how best to incorporate PWDs into COVID-19 response.

The Right of PWDs to an Adequate Standard of Living (S.O.L) during the COVID-19 Pandemic

Instances of failure to protect, respect and fulfil the right to an adequate S.O.L for PWDs include the following-

Right to Food

Food security has dwindled, following the suspension of trading activities, adversely affecting both the availability and quality of food in Uganda.²⁰⁶ PWDs are not singled out by government for preferential treatment in respect of food distribution, notwithstanding the difficulty confronting many to access distribution points. Certain categories of PWDs require special diets and there is no evidence that government is making special provision for this in food drops.²⁰⁷

202 Stems from the International Covenant on Economic, Social and Cultural Rights, 1966, Article 11.

203 Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities, 2018, Article 20. Note that Uganda has not yet signed this Protocol.

204 Article 32(1) and 35 of the 1995 Constitution of Uganda.

205 Section 10 of the Persons with Disabilities Act, 2019.

206 Centre for Food and Adequate Living Rights (CEFROTH), "understanding The Implications of COVID-19 on Food Security & The Right to Livelihood," CEFROTH: 22 April, 2020. Zoom Meeting.

207 Esther Oluka, "How Are PWDs Coping with Lockdown?" Kampala, Daily Monitor 19 April, 2020.

Housing

Many PWDs live in residential institutions (both government and private). Within these facilities, PWDs reside in close quarters to one another, making it difficult if not impossible to observe social distancing and other preventative measures.²⁰⁸ Certain institutions are not specially adapted to PWDs and are poorly maintained, which increases PWDs vulnerability to infection.²⁰⁹

Sanitation and Clean Water

PWDs who need support to conduct hygiene and ablution functions (wash, use the toilet, clean laundry, etc.) are exposed to greater risk of infection by virtue of frequently being in contact with people -and being unable to effectively self-quarantine.²¹⁰ The caretakers who tend to PWDs, assisting them to maintain standards of cleanliness and hygiene are equally restricted in their movements and ability to pursue income-generating activities, which undermines their ability to procure items such as sanitisers, soap and facial masks.

Deprivation of work

With lockdown restrictions, PWDs are unable to pursue any income-generating activities, exacerbating their living conditions and pushing many into declining conditions and even poverty. Most PWDs depend on the informal sector, while others support themselves by begging. Working from home is, therefore, not an option for many – with those willing and able largely not enjoying access to needed facilities such as braille machines, wheelchairs and aides.²¹¹

Many PWDs are reliant on the income of their spouses or other relatives, who themselves are unable to work during lockdown and are also experiencing the brunt of the economic downturn the pandemic has triggered.

Lack of inclusion in the COVID-19 response

Government structures dealing with the pandemic, such as the National and District Task Force on COVID-19, do not have PWDs representatives or specialist experts amongst their ranks. This is an unfortunate oversight, as their inclusion would ensure incorporation of the much-needed technical guidance to make decisions and interventions disability-sensitive and responsive.²¹²

208 Social distancing is a measure which requires persons to maintain a stipulated distance between one another at all times, to avert the spread of COVID-19.

209 Job Namanya, “Kabale PWDs Cry Out for Government Support,” Kampala: New Vision 30th April, 2020.

210 Global Action on Disability Network, “GLAD Network Statement on PWDs in the COVID-19 Outbreak and Response,” 2020.

211 “NUDIPU Calls for Disability-Friendly lockdown Measures,” Kampala: New Vision 8th April, 2020.

212 Ibid.

Recommendations

Though government and civil society organisations have undertaken a few efforts,²¹³ a lot more needs to be done. The following are recommendations of where positive actions could be taken to ameliorate the situation of Ugandan PWDs during and post COVID-19.

Government should:

- i. Prioritise PWDs as beneficiaries for COVID-19 relief, including food distribution, subsidised food prices, movement permits,²¹⁴ financial aid among others.²¹⁵
- ii. Monitor PWDs home situations and make provision for decongestion of over-crowded residential facilities and shelters. Government should where possible and appropriate oversee the return of PWDs from residential institutions to their families or relocate them to more expansive spaces, for example unused schools, provided these meet adequate specifications.
- iii. Allocate funds to institutions catering to PWDs and other PWD-focused non-governmental organisations. Government should avail equipment including sanitisers, mattresses, jerry cans, and soap for the benefit of PWDs served by these institutions.
- iv. Allow organisations supporting PWDs and their caretakers to be classified as essential service providers, thereby exempting them from the lockdown constraints so that they may continue with their work.²¹⁶
- v. Include and consult PWDs in the entire COVID-19 response cycle. Government institutions²¹⁷ should engage with representative institutions such as NUDIPU to ensure that PWDs' interests are represented in all COVID-19 interventions.

213 For instance the National Union for Disabled Persons of Uganda (NUDIPU), which issued a statement concerning the situation of PWDs

214 Government has prohibited the use of public and private vehicles for the duration of lockdown, save where a permit is obtained from a local level government representative approving the use of a private vehicle for an exempted purpose.

215 "NUDIPU Calls for Disability-Friendly lockdown Measures," Kampala: New Vision 8th April, 2020.

216 World Health Organisation, "Disability Considerations During the COVID-19 Outbreak," W.H.O, 2020, WHO/2019nCov/Disability/2020.1.

217 Institutions include the Directorate of Social Protection in the Ministry of Gender Labour and Social Development National Council for Persons with Disabilities, the District Councils among others.

Conclusion

The Ugandan government's COVID-19 response measures are largely general in nature, failing to make targeted provision for PWD's needs. PWDs are an especially vulnerable population and need reassurance that their survival is a government priority. Government, therefore, needs to make existing COVID-19 relief and recovery measures more disability-inclusive and responsive.



6 ECONOMY

THE IMPLICATIONS OF COVID-19 FOR UGANDA'S FISCAL POLICY & PUBLIC DEBT

Bulime Enock²¹⁸

Uncertainty about the length of time it will take to bring the COVID-19 pandemic under control, as well as increasing anxiety about the ramifications of Uganda's containment measures for the country's fiscal policy and public debt is understandable. This is not restricted to Uganda: countries around the world are concerned about how and when the domestic and global economy will recover from the effects of this pandemic. Containment measures are expected to have a significant and adverse impact on government revenue and expenditure, which in turn is expected to affect public debt.

Overall, containment measures will likely reinforce the expected economic downturn. The International Monetary Fund (IMF) has projected that the global economy will contract by approximately 3 percent in 2020; while the Bank of Uganda has revised Uganda's growth projection for 2019/20 downwards from 6% to 3-4%.

The short-term effects this is expected to have on the economy include general reductions in consumption, domestic and foreign investments, government revenues and spending, exports and imports. Other anticipated effects include increased unemployment and food insecurity. The medium- and long-term effects will depend on government's response to short-run fluctuations in the domestic economy and the pace of the global economy's recovery.

The government has already employed some fiscal and monetary policy measures to contain the pandemic and cushion its effects on the economy. The key fiscal policy measure has been to increase the health ministry's expenditure; while the key monetary policy measures include reducing the central bank rate and providing credit relief measures. With the extension of the national lockdown and hopes of economic recovery, the role of active fiscal policy is still justified.

Government's proposed fiscal actions are ideal to respond effectively and sustainably to the pandemic. On the spending side, government should prioritise COVID-19 prevention and treatment measures; however, expenditure should not be exaggerated, as government is receiving support (in the form of monetary donations and the provision of other goods/services) from individuals and businesses. Secondly, government should prioritise the provision of relief to households and businesses most affected by containment measures. Thirdly, government should reinforce the exchange rate, to off-set the likely effects of currency depreciation and anticipated reduction in the inflow of foreign currency from grants, exports, remittances, foreign investments and tourism revenues. Finally, government should prioritise payments to suppliers of essential goods and

218 Economic Policy Research Centre, Email: bulimeenock1@gmail.com

services, to avert sharp spikes in government expenditure arrears during this period.

On the revenue side, government should consider temporarily and reasonably reducing the taxes levied on some individuals and firms. While eliminating taxes, even temporarily, is not ideal as it could sharply increase debt in the event Ugandans are emboldened through this measure to borrow in order to spend on current priorities. However, government's fiscal actions should be flexible enough to respond not only to fluctuations in economic activity but also the spread of COVID-19.

The fiscal actions government adopts can affect public debt: data from the Ministry of Finance Planning and Economic Development (MoFPED) shows that Uganda's public debt, in December 2019, stood at a total of Ush 49,433.1 billion, with 17,376.1 billion of this being domestic debt and 32,057 billion, external debt. Fiscal measures and COVID-19 containment measures are both likely to lead to an unanticipated increase in debt. Containment measures can affect Uganda's debt in several ways: (i) through a reduction in government revenue due to low tax and non-tax revenue collection; (ii) through increased government expenditure on COVID-19 prevention and treatment; (iii) through financial institution's increased demand for government bonds and treasury bills owing to the perceived riskiness of domestic borrowers and reduction in foreign exchange inflow.

To close the widening gap between revenues and expenditures, government may opt to borrow; which it might facilitate through the sale of treasury bills and bonds for monetary and fiscal policy purposes. The government may also borrow to ensure it has adequate foreign exchange reserves to import essential commodities and raw materials, to settle international debts repayments and to cushion Uganda's shilling from excessive depreciation. Such borrowing could affect the country's debt size, composition, scheduled debt repayment and debt sustainability as elaborated below.

Firstly, public debt will increase, although this increase is expected to be small and directed towards current priorities. To reduce the need to borrow, however, resources can be reallocated from non-priority to priority sectors.

Secondly, because the government is cautious not to crowd out private investment, the increase in domestic borrowing will be smaller than the increase in external borrowing – especially from multilateral lending institutions such as the IMF and the World Bank, which provide concessional loans.

Thirdly, Uganda may fail to honour its debt obligations falling due if there is increased fiscal pressure due to a trade-off between containing the pandemic, stabilising the economy and meeting scheduled debt repayments. However, the preferred course of action would be to lobby bilateral and multilateral lenders for debt relief – in the form of rescheduling – because the ability to mobilise revenues is uncertain. However, domestic debt relief is a rare phenomenon and its implementation could even be more hurtful to the economy and should thus not be contemplated.

Finally, recent evidence from the MoFPED's debt sustainability analysis indicates that Uganda's debt is still sustainable, with low risk of debt distress. Although the exact economic shock attributable to the pandemic was not considered by this analysis, it is unlikely that Uganda's debt sustainability position will be significantly altered in the long run, though it is likely to be compromised in the short run.

It is important to note that these implications for Uganda's fiscal policy and public debt greatly depend on the extent to which the pandemic and measures to contain it debilitate domestic and global economic recovery. Government should be wary of unnecessary expenditure justified under the guise of containing the pandemic or shoring up the economy, to avoid plunging the country into deeper and avoidable debt plaguing the nation even once the pandemic has been addressed.

WEATHERING A CRISIS: EXPLORING THE UTILITY OF THE STAKEHOLDER APPROACH IN THE WAKE OF COVID 19

Lawrence Jjumba²¹⁹

Introduction

“Corporate behavior in a time of crisis—both in how companies treat employees and customers, and their impact on society in a time of need—can have lasting implications, both positive and negative. These factors can be linked to long-term performance and returns.”²²⁰

The COVID 19 pandemic has brought into stark focus the extent to which business is integrated into other aspects of life. The linkages between business, the preservation of public health, and mobilization of resources has been magnified by the pandemic. Even more significant has been the engagement between the private sector and the state in efforts to identify strategies to address the socio-economic impacts wrought by the protracted lockdown.²²¹ For business to have a lasting impact in addressing the issues precipitated by COVID, business must embrace with conviction, the stakeholder approach.

The stakeholder theory

The stakeholder theory is often contrasted to the shareholder theory. Economist Milton Friedman posited that a company is only beholden to its shareholders (shareholder theory); hence, its primary objective should be to maximize profits for shareholders to benefit from dividend payments. Dr. Edward Freeman, in contrast, observed that shareholders constitute merely one of the stakeholders with an interest in a company's affairs.²²² Therefore, the stakeholder approach advocates for accountable business that considers all those involved in and affected by a company's operations, which is held to contribute to a company's long-term success and sustainability. Although these two opposing theories were applied initially to corporate entities, the stakeholder approach has come to be applied more expansively.

The stakeholder theory does not prescribe the persons and groups that constitute the “stakeholders” which an entity – business or otherwise – should strive to satisfy. Indeed, each entity has the discretion to discern its stakeholders, which vary depending on the nature, focus and location of the enterprise in question.

219 LLB (HONS) MAK, Dip LP (LDC), Associate at M/s Mubiru-Musoke, Musisi & Co Advocates Email: lawrencejjumba9@gmail.com

220 Jessica Alford, Head of Sustainability Research, Morgan Stanley

221 Lockdown refers to the nation-wide closure of social institutions and home-confinement of the population in an effort to contain the spread of COVID-19.

222 Freeman, R. Edward. Strategic management: A stakeholder approach. Boston: Pitman, 1984

There are, however, some general categories of stakeholders, which are particularly pertinent to business operations; these include for example, employees, government, environment and community, which shall be the focus of this paper.

Employees

The stakeholder theory places employees at the core of a business, and it is not difficult to construe why: employees who feel valued (i.e. whose employers are law-abiding and uphold ethical operations; who are engaged regarding the strategic direction of the business; who are able to express their aspirations and concerns with an expectation that these will be considered by management, etc.) are inclined to be more motivated, increasing the likelihood of their productivity.²²³

As employers reorient and restructure businesses to cope with the economic downturn wrought by COVID-19, it is employees who will bear the brunt of the adverse effects, which will inevitably include substantial job losses. Employers are being strongly urged to regard lay-offs as a last recourse, with more flexible arrangements preferred – for example, the renegotiation of remuneration and contractual terms – provided this does not compromise a business' status as a going concern. The World Economic Forum has also enjoined employers to prioritise employee wellbeing, which is holistically conceived to include physical, emotional, financial and social dimensions.²²⁴ Such steps are not only key to building and sustaining workforce resilience, but they also signal to employees that they matter – to their employers and society more generally.²²⁵

Government

Government is another key business stakeholder, which the COVID-19 pandemic has spotlighted as central to shoring-up and ensuring the economic recovery of businesses. In the case of Uganda, business has heeded President Yoweri Museveni's call to contribute towards pandemic relief and recovery efforts. These measures include ensuring that persons enjoy just and favourable working conditions, as provided under the International Covenant on Economic and Cultural Rights.²²⁶ It is government's responsibility to ensure, among other things, that workers are fairly remunerated, and work under safe and healthy conditions. Government's concerted focus on public health initiatives to contain COVID-19 should not allow other key obligations and priorities to fall

223 Bosse, D.A., Phillips, R.A., and Harrison, J.S (2009). Stakeholders, reciprocity and firm performance. *Strategic Management Journal*, 30: 447-456.

224 "Workforce Principles for the COVID-19 Pandemic: Stakeholder Capitalism in a Time of Crisis"; accessed on 9 March 2020 at http://WEF_NES_COVID_19_Pandemic_Workforce_Principles_2020.

225 Ibid

226 Article 7 of the International Covenant on Economic, Social and Cultural and Cultural Rights 1966

off the radar. This is an opportune time for government to promote and incentivize stakeholder reforms, for example more transparent and inclusive practices, by requiring imposing these norms as eligibility criteria for access to economic recovery stimuli such as tax deductions and financial bailouts amongst others.

Environment

Prior to the outbreak of COVID-19, climate change was the issue preoccupying an inordinate proportion of decision makers' focus and policy prioritization. Environmentalists have breathed a sigh of relief as the pandemic has brought global economies to a halt, prompting a reduction in greenhouse emissions with manufacturing operations temporarily ceasing and only a fraction of aeroplanes and cars still operational.

However, many companies and countries are gearing up to resume economic activity at full throttle, in order to compensate for lost time, reverse recessions and create jobs; some may be tempted to relax environmental regulations to achieve these goals. Governments need to sustain a balance between reviving their economies, without sacrificing the environmental gains made during the lockdown period. In this way, they will ensure environmental sustainability. Business must also be mindful of the critical role it can play in the fight against climate change, since business operations can impact the environment positively or negatively depending on the strategic choices made.

Community

Corporate Social Responsibility is one of the ways in which businesses can engage communities. A Stakeholder approach is characterized by a business adopting a keen interest in and striving to ensure a community's public health, safety, community development, protection of human rights, among other things. Many Ugandan businesses have contributed, in cash or kind, to the governments' COVID-19 relief efforts.

However, the economic implications of the protracted lockdown will require even greater outreach efforts by business, particularly as hordes of workers will be made redundant, adversely affecting their living standards. Besides, public-health precautions that have been established are likely to be relaxed gradually hence the need for continuous community outreach.

Conclusion

The cessation of economic activity as a result of COVID 19, poses a litmus test for stakeholder capitalism. The business sector should not lose sight of its key stakeholders even as it seeks to recover its earnings following the protracted period of economic inactivity. The business sector's engagement of key stakeholders can be facilitated through Corporate Social Responsibility (CSR); however, CSR should be strategically aligned with the business and implemented in a robust manner, not merely as an ad hoc brand enhancement campaign.

About Initiative for Social and Economic Rights (ISER)

ISER is a registered national Non - Governmental Organization (NGO) in Uganda founded in February 2012 to ensure full recognition, accountability and realization of social and economic rights primarily in Uganda but also within the East African region.

Initiative for Social and Economic Rights (ISER)

Plot 60 Valley Drive, Ministers' Village, Ntinda

P.O Box 73646, Kampala - Uganda

Email: info@iser-uganda.org Tel: +256 414 581 041

Website: www.iser-uganda.org Cell: +256 772 473 929

Initiative for Social and Economic Rights (ISER)

Plot 60 Valley Drive, Ministers' Village, Ntinda

P.O Box 73646, Kampala - Uganda

Email: info@iser-uganda.org Tel: +256 414 581 041

Website: www.iser-uganda.org Cell: +256 772 473 929



INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS



@ISERUganda



ISERUganda



ISER Uganda