

**ECONOMIC AND SOCIAL RIGHTS,  
SERVICE DELIVERY AND  
LOCAL GOVERNMENT IN UGANDA**

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## LIST OF ABBREVIATIONS/ACRONYMS

ACAO	Assistant Chief Administrative Officer
ATC	Assistant Town Clerk
AIDS	Acquired Immune Deficiency Syndrome.
ANNPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
CAO	Chief Administrative Officer
CAO	Chief Accounting Officer
CSO	Civil Society Organizations
CBO	Community Based Organizations
CRESS	Child Rights Education and Support Services
DSC	District Service Commission
DPA	District Planning Authority
DEO	District Education Officer
DHO	District Health Officer
DFO	Division Finance Officer
DTPC	District Technical Planning Committee
ESSIP	Education Strategic Sector Investment Plan
FAL	Functional Adult literacy
FIDA	Federation of Uganda Women Lawyers
IDP(s)	Internally Displaced Persons
ICESCR	International Covenant on Economic and Social Rights
KCC	Kampala City Council
LG	Local Governments
LGA	Local Government Act, 1997
LGDP	Local Government Development Fund
LGTB	Local Government Tender Board
LRA	Lord's Resistance Army
MGD(s)	Millennium Development Goals
NUSAF	Northern Uganda Social Action Fund
NAADS	National Agricultural Advisory Services
NGO	Non-Governmental Organization
NLPIP	National Livestock Productivity Improvement Project
NRC	National Resistance Council
TASO	The Aids Support Organization
TC	Town Clerk
TPC	Technical Planning Committee
PEAP	Poverty Eradication Action Plan
PAF	Poverty Action Fund
PWD(s)	People with Disabilities
PMA	Plan for the Modernization of Agriculture
RDC	Resident District Commissioner
SFG	School Facilities Grant
SNE	Special Needs Education

SWAP	Sector Wide Approach
UDB	Uganda Debt Network
UDHR	Universal Declaration of Human Rights
UPDF	Uganda People's Defence Forces
UPE	Universal Primary Education
UNDP	United Nations Development Programme
UHRC	Uganda Human Rights Commission

## **SUMMARY OF THE REPORT AND KEY POLICY RECOMMENDATIONS**

**The Decentralization reforms introduced by the Government in 1993 have had far reaching effects on the provision of public services. This paper analyses the adequacy of the decentralization framework to achieve economic and social rights as provided for in international instruments and national documents, including the 1995 Constitution of Uganda. In particular, it assesses the power of citizens to elect into office, plan for, participate in and oversee the performance of service providers and to monitor the provision of services and government programs. It is a critical assessment of the extent to which the decentralized system of governance has succeeded in delivering services to the people in order to enable them realise their economic and social rights, in the selected districts of Gulu, Kampala and Kayunga. The paper makes the following key observations:**

- At the international level, there is a comprehensive legal framework that exists to support the promotion of economic and social rights. However, the legal and conceptual structures for the actual implementation of these rights are riddled with controversy. Such controversy tends to overshadow the fact that these are guaranteed human rights which every human being is entitled to. The philosophical argument that these rights are merely aspirations, policies and programmes rather than real' rights has affected the gravity with which central and local government institutions plan for, implement and monitor them. Views have persisted in local governments that economic and social rights are simply spin-offs of economic processes rather than legal entitlements. In the same regard, Ugandans have not been able to adequately perceive public service delivery as a measure to achieve these rights or to effectively and authoritatively demand for them.**
- Public service delivery under a highly centralized system of governance did not achieve much for the majority of Ugandans, who remained unaware of the key development processes including the planning, implementation and monitoring services. Undoubtedly, decentralization has resulted in more basic and geographically customized units of governance being constituted nearer the ordinary person. Nonetheless, challenges are noted in promoting a human rights based approach to development, especially in ensuring equality and non discrimination, increased accountability and the consideration of vulnerable groups for specialized and measured interventions. In the absence of a 'rights' consciousness among service providers and beneficiaries under decentralization, some of the drawbacks associated with centralized governance systems, such as centralized and**

**technocrat based decision making processes, limited consultation with citizens, and the concentration of power in the hands of a few elites, tend to resurface.**

- The Central Government's commitment to ensuring that Ugandans progressively realize their economic and social rights can be gauged from the human, financial and technical resources devoted towards decentralized service provision. While 90% of local government funding is from the centre, these resources have been inadequate and are allocated in an untimely, uncoordinated and ineffective manner. The essence of decentralization is to promote good governance and democratic participation. However, the majority of funds for decentralized service delivery are conditional and earmarked, raising questions about the autonomy of district leaders in planning for services and also the degree of citizens' participation in identifying and prioritising service delivery programmes.**
- The lack of clarity between the roles and mandates of Central government functionaries and local government officials has led to hostile relations between the two entities. In turn this has affected anticipated outputs at the various levels of local government. The tensions have also tended to mar the effective allocation, collection and distribution of resources towards public services, as well as implementation and supervision.**
- Government seems to lack a clear framework for service delivery in conflict situations and the war torn areas continue to be the worst affected in terms of rights realization.**
- This paper makes the case that while decentralisation is not without its challenges and shortcomings, it nevertheless provides a useful framework and mechanism for democratic participation and the empowerment of local people, with the ability to improve service delivery.**

**In light of the above observations, the following recommendations are proposed:**

- The capacity of local governance personnel to engage in service delivery must be greatly boosted, especially through applying the human rights based approach to development, in budgeting, information development and communication skills, gender analysis and in programme monitoring.**
- Local governments should develop awareness and information dissemination mechanisms in user friendly forms and avail these regularly in order to build the capacity of citizens to engage in governance issues. It is also important for accountability processes and procedures to be disseminated well in advance in order to promote interest in and preparatory activities by all key actors.**

- **Local Governments should consider undertaking more formal engagements with CSOs in their various governance structures and processes in order to reach the communities and mutually reinforce each other's work in the promotion and realisation of economic and social rights.**
- **Local governments must move beyond the governance structures established to involve marginalized and vulnerable groups and address the structural barriers that prevent the equal enjoyment of rights by all citizens. This can only be done with the substantial involvement and participation of such groups, and within the framework of an equal opportunities baseline. It is also incumbent on the Central government to make relevant policies and laws that will ensure the effective inclusion and involvement of all people in the enjoyment of their economic and social rights.**
- **Local governments need to diversify their investments and sources of revenue for the sustenance of service delivery.**
- **Central Government should disburse allocated funds in time, and should increase funds for unconditional and equalization grants, especially in war torn areas such as Gulu District.**
- **Local Governments should be insulated from the politics of central government by being granted more fiscal autonomy in the determination of sources for and the collection of local revenue.**
- **For decentralisation to work well, the relationship between the centre and local government must improve. Central government must carry through its commitments to cede powers in defined areas and allow the local governments to perform without undue interference.**
- **Local governments should have a say in how conditional grants are earmarked in order to ensure that the priority programmes in the district inform what conditional grants should be used for.**
- **Local governments must seek various motivational factors for local government personnel.**

## I. INTRODUCTION

### 1.1 *Situating the Study*

The Universal Declaration of Human Rights (UDHR) has pronounced itself on the highest aspirations of the common people; freedom from fear and want.<sup>1</sup> With these few simple phrases, and despite the polemics, the International Community captured the essence of civil and political rights and economic and social rights. Although this paper mainly focuses on economic and social rights, at all material times the theme of the interconnectedness of rights is central to the analysis. The Preamble to the UDHR talks about the need to promote social progress and better standards of living in larger freedom. Social progress and better standards of living are at the heart of the enjoyment of economic and social rights. In the International Covenant on Economic, Social and Cultural Rights (ICESCR), the equivalent of this phrase would be contained in the phrase 'adequate standard of living',<sup>2</sup> which includes and encompasses the rights to food, clothing, housing and living conditions, the attainment of the highest standard of health, the right to education, the right to work under just and favorable conditions, the right to form and join trade unions and the right to culture.

This working paper is concerned with the extent to which Uganda is translating its international law commitments under the ICESCR, and the measures that Government is taking to implement its obligations. To do this, it is divided into five (5) sections. Part I introduces the study, while Part II looks at the situation of service delivery before the onset of decentralization in Uganda in the 1990s. It is concerned with the appropriateness of the mechanisms that Government has put in place to ensure that public services are delivered in such a manner as to faithfully execute its mandate. Part III looks at the arrangement of Governmental systems under decentralisation and devolution, and the organisation of structures, policies, resources and programs for service delivery. Part III examines the manner in which a rights-based approach can be effectively applied to the system of decentralization, with a particular focus on the issues of Participation, Accountability, non-discrimination and empowerment. Part IV looks specifically at the case of Gulu district and attempts to explore the manner in which a situation of insecurity has affected service delivery and the realization of economic, social and cultural rights. Finally, in Part V, I consider the issues which threaten to undermine the continued successful operation of the system of decentralization. The findings of the field research in the three districts of Kayunga, Gulu and Kampala Extra provide a number of insights into the realities of the extent to which prevailing human rights norms have been incorporated into the highly vaunted good governance approach to development. The issue of resource constraints and its impact on the realisation of economic and social rights is also visited in this part of the study, with a critical

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<sup>1</sup> Adopted by the General Assembly of the United Nations, Resolution 217 (III) of 10 December 1948- Paragraph 2 of the Preamble.

<sup>2</sup> Article 11 (1).

evaluation of how Uganda assigns its resources to meet its core obligations under various financing modalities.

## **1.2 A Note on the International Context and Conceptual Controversies**

The exigencies of Structural Adjustment Programs from the 1980s onwards required the withdrawal of states from their former function as core welfare provider. Around the African continent, states were thus consigned to a background and regulatory role. Under the world economic order that subordinated vulnerable African countries, donor conditionalities were driven by largely economic considerations. The development paradigm that has for long been favoured under International cooperation modalities mainly promoted economic growth and poverty reduction. The phenomenon of globalisation has served to further whittle away the protective role of the state. Some of the large Transnational corporations are wielding alarming levels of influence over the state, resulting in a disempowering environment for the enjoyment of economic and social rights as a whole.<sup>3</sup>

Human rights are inalienable entitlements. Traditionally, the notion of inalienability has received better reception concerning civil and political rights. In contrast, the extension of the notion of inalienability and the universality of economic and social rights has generated more heat than light. Some extreme views posit that rather than perceive these as rights, they are more appropriately conceptualized as welfare programmes or policies, aspirations and goals at best.<sup>4</sup> Since the enjoyment of economic and social rights involve designing appropriate interventions by the state, failure to attach due value and weight to them may affect the gravity and extent to which government applies itself to ensuring their realisation.

Notwithstanding the above, states that are signatories to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are obliged to protect and promote these rights as legal entitlements claimable by their citizens. While this paper will restrict itself to a discussion on economic and social rights, an ‘artificial distinction’ between the categories of rights is dangerous, and the underlying conceptual basis is that the realisation of economic and social rights is inextricably linked to the achievement of civil and political rights. Consequently, the simultaneous promotion and enjoyment of both sets of rights is the best measure to ensure that rights are enjoyed in a holistic and meaningful way.

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<sup>3</sup> This has been evidenced in the current tensions over the President’s bequests of lands to investors that had been held in trust by the Government for the public good, such as forests, governmental offices and school premises.

<sup>4</sup> Beetham, 1995 at 255.

## II. SERVICE DELIVERY BEFORE DECENTRALIZATION

For a long time, the attainment of economic and social rights under centralised service delivery in Uganda operated on the principle of faith. For many Ugandans outside Kampala and a few relatively urban districts, much needed services in the area of economic, social and cultural arenas were received infrequently. The few services that trickled down to the districts were received with great proclamation, dancing troupes and public handover ceremonies presided over by local leaders and government bureaucrats anxious to claim the glory for the feat. That said, even under present day service delivery paradigms, aspects of the individualization and appropriation of programs implemented in the districts have been noted, right from the presidential to the local government level. Such acts lend credence to the notion that these attainments are in fact acts of charity and goodwill towards the needy, rather than rights and entitlements. When push comes to shove, in election season the most favoured candidate is the one who promises to bring all manner of projects to the area. This has fostered the impression that developments to promote economic and social rights are a matter of individual discretion and enterprise rather than governmental obligation and entitlements for Ugandans.

Public Service delivery mechanisms in Uganda illustrate a chequered history.<sup>5</sup> In the various public service provision models in place before and after independence, power was either highly concentrated in the centre or in the hands of a few local elite. Sight was lost of the primary beneficiaries who became the hapless objects of top-down planning and service provision. Planning processes were dominated by technocrats, with little effort being made to customise the needs, aspirations and concerns of the various categories of Ugandans. As noted by Abigaba,

*The reasons for failure of this over-centralised system ranged from non achievements of objectives related to grand development designs, the non involvement of local populations and their indigenous knowledge into the process of problem analysis, plan formulation and project identification, and ineffective implementation of developments, that did not reach the beneficiaries.*<sup>6</sup>

The 1967 Constitution introduced a highly centralized form of governance in which the control and distribution of resources at both national and local levels was manipulated by the centre, with serious repercussions for peoples' participation and accountability.<sup>7</sup> Another disturbing feature of service delivery under centralised powers was the deployment of personnel from the centre to the districts. These staff did not deign to answer to the districts but were virtually untouchable as long as they responded to their masters' voice, the master of course, being outside the

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<sup>5</sup> Byrnes, 1990. Local Administration <<http://countrystudies.us/uganda/58.htm>> accessed July 2006

<sup>6</sup> Abigaba, 1993 at 12.

<sup>7</sup> Ministry of Local Government, 2003 at 13.

district. This led to disillusionment and detachment from the development and planning processes at the district level by ordinary people and succeeded in eroding local capacity by the district in providing services.<sup>8</sup>

The bloody reign of Idi Amin (1971 to 1979) served to further cripple public service delivery through the mismanagement of public resources and the mistreatment of key public servants. Planning and resource allocation became a whimsical affair rather than the serious national process it warranted. The *Mayumba Kumi* (or Ten cells) system established by the Uganda National Liberation Front (UNLF) after the demise of the Amin regime was an early, but short-lived attempt to transform the system of local government. The advent of the National Resistance Army/Movement (NRA/M) ushered in a number of structural reforms regarding prevailing governance mechanisms, and Resistance Councils (RCs) were set up as a precursor to our current system of local government. In 1993, the new local government administration was formalized through the Local Government (Resistance Councils) Statute, which set up subordinate decentralised district governments. The system of Decentralisation was formulated by the NRA in the days of the struggle, and proposals to adopt it resulted in prolonged and controversial debate, is reflective of its non-acceptance in certain quarters especially where there was preference for a federal system of governance.

## 2.1 The Constitution and Economic and Social rights

Unlike the expansive adoption and in many cases, restatement of civil and political rights as contained in international instruments, economic and social rights in the Constitution of 1995 received very short treatment. The bulk of the references to this category of rights were relegated to the section on the National Objectives and Directives Principles of State Policy. These are considered more or less as guidelines and are not entrenched in the Bill of Rights, thus robbing a significant body of human rights of legal capacity. Nonetheless, in the event of litigation on the few economic and social rights, these directive principles should serve to provide, *at least*, an interpretive value. National Objective XIV (b)—the most directly applicable principle in the context of this paper—charges the State to ensure that Ugandans benefit from the following rights and opportunities; access to education, health services, clean and healthy water, work, decent shelter, adequate clothing, food security and pension and retirement benefits. Other National Objectives also highlight the following economic and social objectives and principles of state policy:

<b>VI</b>	Protection of the aged
<b>XV</b>	Recognition of the role of women
<b>XVII</b>	Recognition of the dignity of Persons with Disabilities
<b>XVII</b>	Recreation and Sports
<b>XVII</b>	Free and compulsory basis education
<b>XX</b>	Basic medical services

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<sup>8</sup> Kato, 2006.

<b>XXI</b>	Clean and safe water
<b>XXII</b>	Food security and nutrition
<b>XXIV</b>	Cultural and customary values (consistent with human rights)
<b>XXVII</b>	The Environment

The economic and social rights that can be considered legally binding as they stem from the Bill of rights are very narrowly defined, and disappointingly few in number. This position reflects the unwillingness of Government to provide substantive rights that would entail a judicial remedy. It falls foul of the National objective that requires government to fulfill the fundamental rights of all Ugandans in the comprehensively identified areas.<sup>9</sup> Indeed, the Bill of Rights (Chapter 4 of the Constitution) provides for only the following entitlements:

<b>Article 26</b>	Right to own property
<b>Article 30</b>	Right to education
<b>Article 32</b>	Affirmative action for marginalised groups
<b>Article 33</b>	Rights of women
<b>Article 34</b>	Rights of children
<b>Article 35</b>	Rights of Persons with disabilities
<b>Article 36</b>	Protection of the rights of minorities
<b>Article 37</b>	The right to belong to and enjoy any culture
<b>Article 39</b>	The right to a clean and healthy environment
<b>Article 40</b>	The right to work (for reasonable hours and pay, to form or join trade unions and for protection of pregnant women)

The failure of the Constitution to put an equal emphasis on all economic and social rights as evidenced in the different placement of relevant provisions can only lead to an incoherent application and realisation of such rights. The interconnectedness of rights is not only applicable horizontally across the two categories; civil and political, and economic, social and cultural rights, but is also applicable vertically within the same set of rights.<sup>10</sup> To give undue emphasis, for example, to the right to a clean and healthy environment absent adequate shelter may not protect the homeless person living in a heap of garbage.

### **A Justiciability: The ultimate in rights protection?**

Authoritative interpretations of the ICESCR argue that the adoption of legislative measures alone does not qualify as appropriate measures.<sup>11</sup> These need to be buttressed by judicial remedies, also taking into account the rights of certain groups that may feel their rights are not being recognised.<sup>12</sup> An analysis of the emphasis

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<sup>9</sup> National Objective XIV on General Social and Economic Objectives.

<sup>10</sup> UNDP 2000 at 76.

<sup>11</sup> General Comment 3 Adopted by the by the Committee on Economic, Social and Cultural Rights at its 48<sup>th</sup> meeting (fifth session) held on 11 December 1000 (E/1991/23 and Corr.1) Annex III..

<sup>12</sup> Id.

that Ugandan institutions have placed on the juridical mechanisms for rights protection will be instructive in considering the adequacy of protective and promotional measures for economic and social rights. Litigators, and consequently the bench in Uganda have elicited a deficiency of jurisprudence around human rights in general, but more so in the area of economic and social rights. The few cases containing aspects of socio-economic rights violations have been glossed over and opportunities to widen the interpretation of such rights have not been fully utilized.<sup>13</sup>

The Commission's tentativeness in boldly defining these rights as claims set the scene for reservations on their justiciability, hence the current dichotomy of emphasis on what economic and social rights are entitlements and which are merely of normative value. Borrowing from persuasive authorities in countries that have similar Constitutional setups (National Objectives and the Bill of rights) logical analyses have been developed to show that the principles concerning the enjoyment of economic, social and cultural rights in the National Objectives are not merely directory.<sup>14</sup> They must be understood as forming an integral and inextricable part of the understanding of the rights contained in the Bill of Rights. Such provisions must be read *ejusdem generis*. Even the most reluctant judge would be hard put to deny that at a very minimum, the national directives set the standard for protecting human rights.<sup>15</sup> Observers have pointed out that the Uganda Human Rights Commission has been quite innovative in addressing economic and social rights violations that are not even contained in the Constitutions.<sup>16</sup> The Uganda Human Rights Commission is empowered with judicial functions under Article 53 of the Constitution that enable it to remedy the violations of human rights. A liberal interpretation of its monitoring function regarding Government's compliance with international treaty obligations in the area of human rights should provide a useful entry point for the incorporation of normative standards and developments.<sup>17</sup> For example, General Comment No.3 anticipates judicial remedies for the violation of economic and social rights. However, the Commission has not effectively decentralised its offices and only operates a handful of regional offices, who are swamped with violations of civil and political rights. This limits the availability of remedies for violations of economic and social rights at the community level under the system of decentralisation.

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<sup>13</sup> Mubangizi, 2006.

<sup>14</sup> Id., at 38-48.

<sup>15</sup> Article 3 (2) proscribes the unlawful suspension, overthrowing, abrogation or amendment of Constitution or any part of it, branding it treason.

<sup>16</sup> Mubangizi cites the case of *Kalyango Mutesasira v. Kunsu Kiwanuka and Others* (Complaint No 501 of 2000) where the Commission held that a person could claim for pension as a right and that refusal or delay in its payment was a human rights violation. This was despite the fact that the Bill of Rights does not provide for Social Security, which is provided for under Article 254 of the Constitution.

<sup>17</sup> Article 52 (1)(h).

The most accessible courts of law under decentralisation comprise of Local Council Courts (LCCs). These courts were designed to be available and customised and a user friendly means of resolving disputes in terms of physical location, composition, use of simplified procedures and transparency, since they are open-air courts. However, their practicability from the start was minimal given their very limited pecuniary jurisdiction, which more or less relegated them to handling minor cases. Further, they lack jurisdiction in several areas relating to economic rights, and are not allowed to handle matters relating to land. Although they settle disputes relating to property by handling petty theft cases, they generally lack sanction powers since criminal offences are outside their jurisdiction save under specified provisions of the Childrens Act.

Arguments for the justiciability of economic and social rights have also been overshadowed by the notion of checks and balances in the organs of governments. The fear has been raised that the Judiciary may preempt arbitrary resource allocations, and consequently usurp the policy-making role of the Legislature, which traditionally determines resource allocation based on considered policy priorities.<sup>18</sup> Counter arguments illustrate that courts have made rulings that did have implications on the Consolidated Fund regarding the violation of certain civil and political rights,<sup>19</sup> but this did not stop courts from having jurisdiction in this regard. After all, with Governments that do not respect the rule of law, the difference may not be visible. Government has notoriously failed to honour payments for compensations awarded by the Uganda Human Rights Commission in several civil and political rights complaints, so clearly the problem lies elsewhere.

While the justiciability of rights is undeniably a function of human rights protection, due regard should be given to the appropriateness of adjudicatory mechanisms to promote this category of rights. The nature of these rights requires the active intervention and mobilisation role of the state in marshalling the necessary resources, programme planning, and implementation. Litigation by its nature is a fault mechanism triggered when violations are looming or actually occur. Economic and social rights involve intricate relations between the individual, the state and the community as opposed to civil and political rights, which are largely individual in nature. While mass litigation would serve to compensate a significant proportion of Ugandans whose rights have been violated, the protection of the poor and vulnerable might not be guaranteed by such action. Rather, a comprehensive approach, including the use of judicial mechanisms, may serve a wider purpose and promote the more sustainable and realistic enjoyment of rights.

General Comment No.3 of the Committee on Economic, Social and Cultural Rights is instructive in proposing appropriate alternatives that may be as useful as judicial recourse, if not more appropriate. The Comment provides for a multifaceted strategy

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<sup>18</sup> Jackman, 1996 at 302.

<sup>19</sup> UNDP, *op.cit.*, at 3.

that states should undertake rather than depend on any single process. Administrative, financial, educational and social measures are recommended in addition to legislative and judicial steps. However, this should in no way be used as a basis to oust the jurisdiction of courts where the national conscience as exercised through Parliament clearly demarcates rights that are justiciable.

## **B. International Law and the Obligations of States**

Article 2 of the ICESCR has been the subject of several discourses and controversies concerning the obligations of states towards rights realisation. Article 2 (1) provides as follows:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all means, including particularly the adoption of legislative measures.*

Wary and recalcitrant governments have used the reference to ‘progressive realisation’ as an escape clause whenever called to book for the non-implementation of their responsibilities in this area. The usual arguments are that these rights are programmatic hence long term in nature and carry resource implications, which especially for developing countries, is problematic. Such governments use the bona fide leeway granted in this article to neglect to design time-bound and fitting measures to ensure these rights. However, should countries compile wish lists and pass them off as achievable entitlements out of a misguided sense of compliance with international law? In this regard, Uganda’s Poverty Eradication Action Plan (PEAP) offers an interesting glimpse into the sort of conundrums that trouble policy makers and planners when it states “...the relative speed at which any particular target is approached will reflect the particular constraints and trade-off that the country faces.”<sup>20</sup>

The Committee firmly identified Article 2 as creating legal obligations both in conduct and result and shed light on what the realisation of progressive rights entail. It emphasized that regardless of resource constraints, certain obligations under the Covenant are of immediate effect. The undertaking to ensure rights absent discrimination of any sort and to ‘take steps’ to meet the obligations imposed under the Covenant is considered as having an immediate application. Attached to this is the important principle that while economic, social and cultural rights are achievable over time, this does not rob them of ‘all meaningful content’.<sup>21</sup>

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<sup>20</sup> PEAP, at 10.

<sup>21</sup> General Comment No.3.

### **C. Resources and Rights**

The realisation of economic and social rights is inexorably (though not solely) tied to the availability of resources. In this regard, local governments are as effective in implementing programs as their planning processes are facilitated by technical and financial capacity. In keeping with the devolved powers and functions of central government to local governments, it is incumbent on the central government to resource the latter commensurately in order to facilitate service delivery. Although Local Governments are mandated to raise revenues, approximately 90% of their budgets are funded by conditional and non-conditional grants received from the centre. The revenue base of many local governments is thus inadequate to finance vital services. Without the adequate resources required to provide at least basic economic and social services, local governments may not achieve the objective of human rights realisation.

In Kayunga, for example, shortcomings curtailing service delivery in the finance and planning sector were identified by personnel involved in planning processes. The District Planning Office faces funding constraints problems in delivering services. Using a very basic example, the area of coverage is vast yet the staff is not facilitated well enough to be mobile through even rudimentary means like motor cycles to reach the 374 villages in the district. Implementation of planning programmes in each village becomes that much more difficult. The office is also burdened by high costs involved in participatory planning and budgeting processes. Additionally, budget cuts by the central government have also greatly affected the implementation of planned projects and activities. Rubaga Division in Kampala is similarly faced with funding constraints. The release of the Local Government Development Program funds comes so late that it curtails most of the plans that are meant to be worked upon in a particular year. Money allotments from Kampala City Council are inordinately delayed hence distorting development programs. Such uncertainties are detrimental to the effective and efficient delivery of the services at the local government division. Several more accounts of the inadequacy of funding mechanisms to equip local governments discharge their duties effectively will be highlighted in the course of this paper.

Concern is increasingly being raised over the effect of conditional grants in clipping the mandate of the people to identify their own priorities and concerns. The prescription of the areas to which grants should be directed risks alienating the beneficiaries, who question the genuineness of the participatory and consultative processes they are entitled to be involved in.<sup>22</sup> As has been aptly pointed out "the crucial concern is... the extent to which the local beneficiaries generate investment activities as contrasted to supply driven priorities at higher levels."<sup>23</sup> Local Governments have been forced to rely heavily on conditional grants, with several consequences for service delivery in the area of economic and social rights.

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<sup>22</sup> Behangana, 2005 at 3.

<sup>23</sup> Id.

While non-conditional grants are useful in meeting the recurrent costs of administration and operations, these are minimal at best. An erratic methodology for distributing these funds has been evidenced which is unlikely to result in timely and effective service delivery. In Kawempe for example, non-conditional grants channeled through the district are largely utilized at this level and their impact is not felt at the division level. The division gets only the Local Government Development Program funds. Graduated tax compensatory funds where received at all, have failed to meet the amount of revenue previously received from graduated tax before its abolition.

Contradictions also exist within the Government's funding frameworks. A review of government's donor funding modalities reveals incoherencies between centrally managed government frameworks, specifically the Sector Wide Approach (SWAPs), and decentralisation.<sup>24</sup> The shift in donor funding patterns from bilateral funding to the 'basket funding' of government programs has placed line government Ministries in a prominent role in terms of policy development and implementation.<sup>25</sup> Concerning planning and resources allocation, the Ministry of Finance, Planning and Economic Development has become particularly prominent.<sup>26</sup> Thus, priority plans and programmes identified and generated at the local government level that do not coincide with the centrally defined plans must yield to the SWAPs as the latter comprise of conditional grants.

Not all resource constraints are caused by funding modalities. Corruption and the misappropriation of even the scarce public resources that are available has had severe repercussions on the enjoyment of economic and social rights. Corruption has greatly undermined the ability of the districts to engage in service provision and imposes a dead weight on the efficacy of financial and human resources applied to this end. In Kampala divisions, allegations abound that money sent to the district council is embezzled and should be channelled directly to the division to avoid this evil. In another illustration, corruption at the center has spawned the mushrooming of illegal schools because of bribes at the Ministry of Education, with negative implications for the standards of education. Until Uganda commits itself to stamping out the endemic vice at all levels of public office, and begins to aggressively facilitate local governments in a well-coordinated and timely manner, it cannot genuinely claim to have used its available resources appropriately and to the full extent possible.

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<sup>24</sup> MOLG, 2004a, at 24.

<sup>25</sup> *Id.*

<sup>26</sup> Oloka--- Onyango, at 26.

## 2.2 Decentralisation and the Regulatory Framework for service delivery

While Decentralisation as a system of governance predates the Constitution of Uganda, 1995, its regulatory and operational mandate is concretized in the Constitution. Under the National Objectives and Directive Principles of State Policy in the Constitution, the state is charged to employ and promote democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.<sup>27</sup> In order to facilitate rapid and equitable development, the state is enjoined to encourage private initiative and self-reliance,<sup>28</sup> and to take necessary steps to involve the people in the formulation and implementation of development plans and programs that affect them.<sup>29</sup> To realize the foregoing objective, the state is to be guided by the principles of decentralization<sup>30</sup> and the devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.<sup>31</sup> In this regard, the districts have been endowed with political and financial powers. Additionally Article 180 of the Constitution proclaimed the local government as the highest political authority within its area of jurisdiction and bestowed it with legislative and executive powers. Section 4 provides that the system of local governments be based on the district as a unit, with lower local governments and administrative units under it.

In terms of service delivery, Government has captured the essence of decentralisation and devolution as a means of providing for Ugandans through assigning service delivery to local entities in the following words

*Decentralisation is a democratic reform, which seeks to transfer political, administrative, and financial and planning authority from centre to local government councils. It seeks to promote popular participation, empower local people to make own decisions and enhance accountability and responsibility.*<sup>32</sup>

The Constitution further endorses the concept of decentralization as a principle of democratic governance. Article 176(2) (b) and (c) states that:-

- i. Decentralization shall be a principle applying to all levels of local government and in particular, from higher to lower level government units to ensure peoples' participation and democratic control in decision making;

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<sup>27</sup> Objective II (i) of the Constitution of Ugandan 1995.

<sup>28</sup> Objective IX of the Constitution of Ugandan 1995.

<sup>29</sup> Objective X of the Constitution of Ugandan 1995.

<sup>30</sup> Decentralization is commonly viewed as the transfer of legal and political authority from the central government and its agencies to field organizations and institutions, including the authority to plan, make decisions and to manage public affairs. See Ng'ethe, 1998.

<sup>31</sup> Objective II (iii) of the Constitution of Ugandan 1995.

<sup>32</sup> GoU, Decentralisation Secretariat, 1994.

- ii. The system shall be such as to ensure the full realisation of democratic governance at all local government levels;

Accordingly, the LGA provided the framework for an implementation strategy that designated and gave effect to local authorities to become the primary service providers in their various localities. The Preamble to the Act emphasises that the law is intended to give effect to the decentralisation and devolution of, *inter alia*, services. This model of governance shifted primary responsibility for the planning, management and implementation of services from the central to local authorities. The desired end product of decentralisation has been identified as "... a long term sustainable public service below the national level that delivers goods and services in an effective and efficient manner, addressing issues of poverty and sustainable growth with equity, whilst sustaining peace and stability."<sup>33</sup>

The link between poverty, public service delivery and economic and social rights cannot be overemphasized. Poor people are the ones most likely to be affected by the absence of even the most basic public services. However, it would be fallacious to view poverty as a purely economic phenomenon caused by a lack of income or the means of production. Increasingly, poverty is being tied in to the lack of access to equal opportunities, inequitable distribution of resources and the marginalisation and disempowerment of certain groups. The inability of people to access institutions and mechanisms that promote equity and avail opportunities for development capacity in order to overcome structural and other barriers to the enjoyment of rights, is wider than the traditional economic constructions of poverty. As stated by the UNDP, "... if income is not the sum total of human lives, a lack of income cannot be the sum total of human deprivation."<sup>34</sup> In this sense, the appropriateness of the diverse interventions designed by government becomes the focus of scrutiny to assess whether human rights considerations are underpinned in their logic.

The Poverty Eradication Action Plan (PEAP) provides the overarching architecture for addressing poverty in Uganda. It attempts to look at poverty holistically, including human rights notions in its conceptualisation of poverty eradication.<sup>35</sup> It sets out five pillars, namely: Economic Management; Production, Competitiveness and Incomes; Security, Conflict Resolution and Disaster Management; Good governance and Human Development. Under the Public Sector, Decentralisation as a cross cutting issue is identified as a key component in contributing to good governance in the country. The importance of locating decentralisation under the good governance pillar in the PEAP is also underscored by Government in light of the multilayered and multidimensional aspect of poverty.<sup>36</sup>

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<sup>33</sup> MOLG, 2004 at 2.

<sup>34</sup> UNDP, 2000 at 73.

<sup>35</sup> PEAP.

<sup>36</sup> *Id.*, at 3.

The pillar on Good Governance and Human Rights in the PEAP falls into the controversial 'generation' mode of demarcating human rights into categories of rights. Under the section on Human Rights, the PEAP strongly focuses on civil and political rights protection and realisation.<sup>37</sup> Economic and social considerations are then addressed under a separate pillar entitled 'Human development,' with an emphasis much more on growth and poverty reduction rather than rights. The PEAP then highlights economic and social issues within the context of challenges to human development such as education, health, nutrition, water and sanitation, HIV AIDS, sports, culture, gender mainstreaming and empowerment of women and the rights of vulnerable groups. There is no allusion to economic and social rights, although it can be argued that the successful implementation of the PEAP would result in these rights being realised. Nonetheless, failure to incorporate human rights norms and considerations into development activities has certain implications for the strategies and process issues in the realisation of human rights. In addition, a disjointed and selective approach to applying human rights protections is to be avoided, as human rights are indivisible and interconnected. Despite the polemics, certain economic and social rights cannot be realised in isolation of civil and political rights.

The efficacy of the PEAP in effecting Poverty eradication and uplifting human eradication is still suspect, more so as reviews of the Poverty Reduction Strategy Papers, drawn from the PEAP indicate that the desired results are yet to be realised.<sup>38</sup> The PEAP indicates that income poverty by 2003 had risen, with those below the poverty line rising to 38% and a marked increase in inequality noted.<sup>39</sup> Other detractors of the PEAP are that it fails to involve the perspectives of the people for whom it projects in its planning processes and is rather ambiguous in creating binding commitments for a broader range of human rights protections.<sup>40</sup> Nonetheless, it provides a programmatic and thematic basis for evaluations by elaborating targets and priority action areas for government.

The PEAP has attempted to incorporate the Millennium Development Goals (MDGs) in its Result and Policy Matrix. Certain MDGs intersect with the PEAP, such as safe drinking water, sanitation, improving the lives of slum dwellers, halving poverty by 2015, UPE, Gender parity in the field of education by 2015, halting the spread of AIDS and malaria by 2015, halving malnutrition by 2015, reducing under five mortality and maternal mortality by 2015. The Poverty Action Fund (PAF) began in 1997 is also geared towards implementing services by the local governments in the areas of primary education, agricultural, roads, primary health, water and sanitation, roads and the environment.

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<sup>37</sup> *Id.*, at 147-184.

<sup>38</sup> Oloka-Onyango, 2004 at 25.

<sup>39</sup> PEAP, at xv.

<sup>40</sup> Oloka-Onyango, 2006 at 27-31.

The UN Millennium Declaration<sup>41</sup> indicates the resolve of the international community to foster relations and capacities that will address the niggling and persistent problem areas in the economic, social and cultural arena.<sup>42</sup> Keeping in mind the challenges that developing countries are facing in the wake of globalization, especially economies in transition,<sup>43</sup> the Declaration focuses specifically on development and poverty eradication, and firmly adopts a rights based approach as it highlights the need for the promotion of human rights, democracy and good governance and the need to protect vulnerable groups. In touching on the specific plight of Africa, the states resolved to take special measures to address poverty and eradication and sustainable development through specific strategies.<sup>44</sup>

The Millennium Development Goals (MDGs) address many pertinent issues that have plagued the continent and Uganda. The eight Goals are an aspirational message and strategy to eradicate the following specific economic and social problem areas; extreme poverty, universal primary education, gender equality and empowerment of women, child mortality, maternal health, HIV AIDS, malaria and other diseases, environmental sustainability and global partnership for development. There are set targets for remedial action towards achieving these goals as well as indicators that provide a useful monitoring and evaluative basis for all partners and actors in development.

However, against the above backdrop, Government plans lack consistency in purpose, strategy and mission. Several planning strategies have been drafted to combat poverty, but have led to a proliferation rather than the integration and rationalization of these processes. Vision 2025 is a long-term vision for the achievement of certain goals, and formed the basis of the 2000 revised PEAP. Its idyllic theme “Prosperous People, harmonious nation and beautiful country” is part of the anti poverty strategy and serves as an overarching planning framework from 2000 for the next 25 years. The current PEAP document barely makes an allusion to the 2025 vision and seems to have focused solely on the new kid on the block; the Millennium Development Goals.

### **2.3 Decentralisation mechanisms in the promotion of Economic and Social Rights**

Section 4 of the LGA identifies the local government structures, which comprise of district or sub county councils in a rural area; city or city division councils in a city; municipal or municipal division councils in a municipality, or Town councils in a town. Under Section 46 of the Local Government Act, administrative units comprise of the county, parish and village in rural areas and the parish, ward or village in urban areas. The powers of the District Council are exercised, at least theoretically,

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<sup>41</sup> A/RES/55/2.

<sup>42</sup> See, Art. 4.

<sup>43</sup> Art. 5.

<sup>44</sup> Art. 28.

in accordance with the right of the people to participate in decision making as provided by the Constitution of the Republic of Uganda, 1995. At District level, these powers are exercised through executive committees<sup>45</sup> and the standing committees<sup>46</sup> to whom the District Council delegates consultative and planning powers.<sup>47</sup> The Executive committees initiate and formulate policy for approval by the District Council. The standing committees are constituted in thematic sectors and they monitor and evaluate performances of sectors under their financial responsibility. They also receive the budgets of departments under their responsibility and make recommendations for the integration of these budgets into the Council budgets. They scrutinize monthly expenditure returns, tender awards by the Contracts Committees, and quarterly reports to recommend appropriate action by the Council.

Although the District/City Council is the planning authority of the District,<sup>48</sup> the Municipal/Town Council and the Sub-county Councils also formulate, and execute their own development plans, facilitated by the District Planning Authority (DPA). The DPA is supported by the Technical Planning Committee (TPC), which coordinates and integrates the sectoral plans of the lower local governments prior to submitting them to the District Council.<sup>49</sup> To enable Local governments mobilise the resources required for effective service delivery, they are empowered to collect revenue in the form of charges, fees and taxes and allocate it to prioritized and approved budget lines.<sup>50</sup> In addition, the fifth schedule to the LGA provides for other sources of revenue collection. Traditional sources of income have been graduated tax, market dues and property taxes. The general mandates of the Local Government Councils relating to economic and social rights are detailed in the Second Schedule to the Local Government Act, 1997 and include:

### ***i. Education Services***

The Act mandates the local governments to provide education services, which cover nursery, primary, secondary level; trade, special education and technical education. (Second Schedule; for District Councils, Part 2 Function 1, for Urban Councils, Part 3 Function 1(c) (d) (e) and for Lower Local Government Councils, Part 4 Function 1). City or Municipal Councils may provide education services not devolved to the foregoing bodies.

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<sup>45</sup> Composed of the chairperson; the vice chairperson; and, such number of secretaries not exceeding five as the council may determine.

<sup>46</sup> *Id.*, Section 23.

<sup>47</sup> Section 18 and 27 provide for the role of the Executive Committees at District and local council levels respectively.

<sup>48</sup> Section 36 of the Local Government Act, 1997.

<sup>49</sup> *Id.*, Section 37 (2).

<sup>50</sup> *Id.*, Section 81. See also the 5<sup>th</sup> Schedule to the Act which details the sources of local revenue, assessment, procedure, distribution of grants to lower councils and the borrowing powers. The District/City Councils and Municipal Councils retain 50% of the revenue collected, while the Sub-county remits 35% of the revenue collected in their jurisdictions. Of the revenue collected by the Sub-county Councils, 5% is distributed to the County Councils while the Parish Councils also take 5%. The Village Councils get 25% of total revenue collected.

**ii. Medical and Health services**

The Act directs the local governments to provide medical and health services. These include: hospitals, medical education and training; health centers dispensaries, and other medical sub-centers; control of the spread of disease; and, environmental sanitation (Second Schedule; for District Councils, Part 2 Functions 2 & 7, for Urban Councils, Part 3 Function 1(y) and for Lower Local Government Councils, Part 4 Function 7). City or Municipal Councils may provide medical services not devolved to the foregoing bodies.

**iii. Water Services**

In liaison with the Ministry responsible for natural resources where applicable, local governments are to provide water services. Urban Councils are enjoined to supply water in their locality, outside the jurisdiction of National Water and Sewerage Corporation, as provided in the Second Schedule to the Act, Part 3 function 1(x).

**iv. Road Services**

Local governments are charged with a duty to provide road services including the construction, rehabilitation and maintenance of roads not under the authority of the central government. Urban Councils are mandated to alter, cultivate, and maintain works, paths, culverts, bridges, road drains and watercourses on roads.

Other bodies that provide much needed services in the District include the District Service Commission; the Contracts Committee; the District Land Board and the Local Government Public Accounts Committee.<sup>51</sup>

**2.4 Where Does Responsibility to Fulfil Rights Lie?**

Who is ultimately responsible for the realisation of economic and social rights; central or local government? Who bears the mandate and liability to discharge this duty? Many a Ugandan has asked this question. Answers have not been clearly forthcoming as the two primary actors constantly shuttle back and forth accusations about where blame is to be attached. This study argues that central government has not ceded its powers and functions in absolute terms, but has merely devolved its powers to local governments in very specific and limited areas. The centre remains the primary obligator in ensuring that public service provision functions in such a way as to protect and promote economic and social rights. It must play a fundamental and pivotal role to enable the local governments execute their devolved functions within the confines of the decentralised powers and functions. Central government also retains core and residual functions that lay the basis upon which Ugandans can realise their rights even outside decentralisation, as outlined in the Second Schedule of the LGA. Undisputedly, Central Government is the primary duty bearer for the realisation of all rights. In this context, it is useful to carry out an analysis of how government has organised itself to ensure that local governments vicariously execute its mandate effectively and democratically.

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<sup>51</sup> All these are provided for under Section 18 of the Act.

Government is responsible for initiating programmes and policies, and to monitor, and coordinate these as they apply to Local Governments.<sup>52</sup> Schedule 2 of the Act, Part 11 (14) identifies among others the functions and services of government as including making national plans for the provision of services and coordinating plans made by local governments. A reading of this schedule indicates that Government is in charge of setting policy, and providing programmes and services in specified sectors. In this sense, government is responsible for providing the blue print for sectors services, priorities and management, which sets the pace and tone for the local governments in their mandated areas of operation. Coupled with the primary mandate to mobilise and allocate resources, it becomes clear that Central Government is the primary driver of the human rights and development process.

It has been established by Government (in a non-binding and ambiguous way) that local governments constitute an integral part of the national public sector and 'are subsidiaries without being subordinate.'<sup>53</sup> The LGA is rather reticent in defining the relationship between Central and Local Governments in terms of concrete mandates and targets. The LGA largely focuses on inspection, monitoring capacity and coordination aspects of the relationship. In this regard, it states that the coordination and advocacy for local governments is the responsibility of the Ministry of Local Government.<sup>54</sup> It also mandates line ministries to inspect, monitor, and offer technical advice and assistance, support supervision and training within their respective sectors in order to ensure the implementation of national policies.<sup>55</sup> Despite this, information received from the District Education Office (DEO) in Gulu for example indicated that the line Ministry rarely inspects their work.

Section 99 of the LGA infuses a human rights approach to decentralisation, obligating central government agencies to ensure that a modicum of rights is incorporated by the local governments' modus operandi. It enjoins the inspection of local governments by line ministries and other state organs to promote adherence to principles of good governance. Good governance, is often regarded as a by word for human rights, participation and inclusion of people in their governance, and has gained popularity as a strategy for human rights oriented development action. The PEAP however obscures this simple concept with the following rambling explanation:

*The National Programme and Action Plan on Democratic Governance in the context of the PEAP in 1997 defined good governance as the efficient, effective and accountable exercise of political, administrative and managerial authority to achieve society's objectives including the welfare of the whole population, sustainable development and personal freedom.*<sup>56</sup>

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<sup>52</sup> Section 98.

<sup>53</sup> Ministry of Local Government, 2004 b, at 3.

<sup>54</sup> Section 96.

<sup>55</sup> Section 97 and 98.

<sup>56</sup> PEAP, at 115.

An optimist could read into this definition norms of inclusion, equity and openness. Its bland jargon and welfarist slant may not however provide a very useful evaluative basis for whether local governments are using their mandate to meet the economic and social rights of the populations under their leadership.

Problems have been observed in the uncoordinated and parallel service delivery between Line Ministries and the Ministry of Local Government.<sup>57</sup> In addition, the rational and effective integration of local government structures such as sector committees and units at the various levels into the work of line Ministries is yet to be achieved.<sup>58</sup> Further, quality time that should be spent by local governments on service delivery is instead diverted towards the plethora of uncoordinated accountability and supervisory modalities that are required by various line ministries<sup>59</sup> by and donor conditionality. The PAF also sets up specific monitoring and accountability mechanisms that further complicate the accountability functions of the local governments.

Concerns have been raised about the extent of Government's willingness to effect meaningful devolution of power in certain key aspects. The PEAP notes the unusually high presence of central government representatives (Resident District Commissioners), which trait is uncharacteristic of decentralised systems.<sup>60</sup> The effects of this megalomaniac form of devolution will be retraced in other areas of this paper.

## **2.5 Asserting the Most Appropriate Government Level**

The question is whether the rationale for the identification local governments as the best service provision model has been vindicated in the Ugandan experience, or whether the centre should resume its functions as the sole service provider. Scholastic opinion points out the shortage of literature to determine the level of government that can best deliver public services, and whether decentralisation increases social welfare.<sup>61</sup> Without a firm empirical basis to support this position, most international actors involved in health care find centralised health care inappropriate for promoting primary health given the need for community participation.<sup>62</sup> A study conducted in Uganda provides empirical evidence that decentralisation may decrease district allocations towards primary health care activities such as family planning materials, malaria control and maternal and child health, while budgetary allocations increased in private goods activities such as civil construction, equipment and vehicles.<sup>63</sup> Although the study was restricted to

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<sup>57</sup> Batega, 1999 at 3.

<sup>58</sup> *Id.*, at 4-5.

<sup>59</sup> Ministry of Local Government (2004) at 19.

<sup>60</sup> PEAP at 143.

<sup>61</sup> Akin, *et al*, 2001 at 27.

<sup>62</sup> *Id.*, at 13.

<sup>63</sup> *Id.*, at 20.

the health sector, it was noted rather significantly that even in this area alone, “...resources seem to be flowing away from societal benefit goods towards the kind of expenditure that benefits health sectors managers and employees.”<sup>64</sup> Evidence of this discrepancy is echoed in official reviews, which point out that the ‘local elites’<sup>65</sup> contractors, teachers and other public servants are benefiting more than the ‘common man.’<sup>66</sup>

The above study warns that based on empirical evidence from 13 districts, fewer resources are being allocated to public sector activities as districts engage longer in the decentralisation process. The reasons tagged to this result indicate the dependence of central government on donor influence and the over-reliance of service consumers on private rather than public goods. This latter symptom may be an indictment of the poor quality of goods that local governments have sometimes delivered, largely caused by the misappropriation of funds earmarked towards qualitative services.

In some districts, it has been noted that the local governments are neglecting to carry out their mandates and shifting the responsibility to sub counties with the arguments that more money exists at this level.<sup>67</sup> The stark rider to this is phrased in the following caution: “Decentralisation is in some cases becoming a mechanism for [sic] state to withdraw from its major responsibility to the community.”<sup>68</sup> In Kampala, sources of revenue in the Local Government Act exist mostly in theory as most of them have been scrapped by the central government. This has negatively affected the revenue collection of the divisions, which are failing to adequately provide the services expected of them. A lot of work has been left to the divisions, which are not well endowed to handle it because of financial and technical constraints. A case in point is Kawempe where the flooding of the roads because of poor drainage channels occurs regularly in Bwaise and Kyebando slums.

Experts and scholars on good governance principles, including intergovernmental agencies such as UNDP<sup>69</sup> and the World Bank<sup>70</sup> increasingly have identified decentralisation as a tenet of good governance due to its propensity to decentralise the democratization process. However, the Committee on Economic, Social and Cultural Rights is careful to take a neutral stand on the appropriate form of government that will meet its obligations to meet economic social and cultural rights, noting only that democracy and human rights should be respected. Specifically, the committee holds:

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<sup>64</sup> Id.

<sup>65</sup> Anok, 2004 at 32.

<sup>66</sup> MOLG, 2004 at 14.

<sup>67</sup> Abigaba, 1998.

<sup>68</sup> Id.

<sup>69</sup> UNDP at 3.

<sup>70</sup> World Bank, 1998 at 13.

Thus, in terms of political and economic systems, the Covenant is neutral and principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist, or a mixed, centrally planned or *laissez faire* economy, or upon any particular approach. In this regard the committee reaffirms that the rights ...are susceptible of realisation within the context of a wide variety of economic and political systems, **provided only** that the independence and indivisibility of the two sets of rights... is recognised and reflected in the system in question.<sup>71</sup>

### **III. THE STATUS AFTER DECENTRALISATION**

The rationale for decentralised governance has been identified in the Constitution and in the Objectives stated under the Local Government Act, but a simple definition is ventured that illustrates perhaps its best benefit as a framework for realisation of economic and social rights: "It minimizes delays in service delivery by shortening the chain of decision making... decision making is sensitive to local needs because they are identified by people at community level who are affected by them."<sup>72</sup> The principle of subsidiarity holds, which states that competences in a particular field should be reserved for the level of government that can best perform them efficiently.<sup>73</sup> It is believed that if institutions of planning, decision-making and service provision are left to the local governments, these units of governance being nearer to the people, can be informed by the rights and aspirations of the people, who as a matter of legal entitlement must be involved in the design and realization of their human rights. In the promotion of their economic and social rights, the way resources are mobilised and allocated towards identified programs is important to all individuals in shaping the services they receive. Proximity to the structures and institution of service delivery is an added advantage of decentralisation as the practical aspects of physical access, communication, information gathering and monitoring is ensured. Human rights considerations of participation, the right to access to information, equality and non-discrimination become significant in this regard, emphasizing the interrelatedness of civil and political rights to economic and social rights.

#### **3.1 The Rights Based Approach**

There has been much recent discussion about the human rights based approach to development, but its essence is best captured in the following statement:

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<sup>71</sup> General Comment No.3 Adopted by the by the Committee on Economic, Social and Cultural Rights at its 48<sup>th</sup> meeting (fifth session) held on 11 December 1000 (E/1991/23 and Corr.1) Annex III Paragraph 8 (emphasis added).

<sup>72</sup> MOLG 2004 at 9.

<sup>73</sup> Africa Leadership Forum, 2005 at 25.<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/E88D7DF75F4FA400C1256B6C0058D137?opendocument>. Accessed 31 December 2006.

*For development without human rights is meaningless. Poverty eradication without empowerment is unsustainable. Social integration without minority rights is unimaginable. Gender equality without women's rights is illusory. Full employment without workers' rights may be no more than a promise of sweatshops, exploitation, and slavery. Development without participation and accountability is undemocratic. The logic of the right to development is inescapable.<sup>74</sup>*

If the above argument is taken as a baseline, then it is imperative that economic and social issues are not perceived as needs but rather as rights. If these concerns are characterised as rights, the state must approach development strategies and goals from a claim-based approach as opposed to a needs based or charitable approach. A right under the international, regional and national legal framework is a legal claim, hence enforceable, while a need is an aspiration, which though quite legitimate, may not necessarily constitute an obligation on the part of the government. Human rights considerations infuse standards that must be met by the undertaking governments.

Regardless, casting the development process as a right provides a basis for assessing whether the development goals, strategies and policies are quantitatively and qualitatively promoting human rights. An analysis of processes of service delivery processes under decentralisation shall be undertaken under four major principles espoused under the HRBAD.<sup>75</sup> These are not alien notions on the local scene, having been popularized in the catchy slogan 'good governance,' and pertain to participation, accountability, non-discrimination and empowerment.

### **3.1.1 Participation**

Participation relates to the institutionalised engagement and involvement of the beneficiaries in development efforts at all crucial stages and levels. In order for participation to be meaningful in process and outcomes, spaces must be created for individuals to engage in consultations, planning, programme identification, analysis and prioritisation. The Constitution highlights the key aspect of popular participation in decision-making processes in order to ensure the full realisation of democratic governance.

The most basic administrative unit of local government is the village council (LC1), which comprises of all persons above eighteen years in that village.<sup>76</sup> All Ugandans are incorporated into their local governments at this level and can participate in the meetings convened by the village executive committees. In terms of direct

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<sup>74</sup> Statement by Mary Robinson, UN High Commissioner for Human Rights (1997-2000) at the Open-Ended Working Group on the Right to Development.

<sup>75</sup> Equalinrights ' What is the Human Rights Based approach to Development? [www.equalinrights.org](http://www.equalinrights.org) Accessed 12 July 2006.

<sup>76</sup> See Sections 46-48 LGA.

involvement in governance and physical proximity to local government institutions, this is the most strategic place for all civic action to begin. A very powerful mandate is given to the councils and committees to “draw to the attention of the District Chairperson, Chief Administrative Officer and Assistant Chief Administrative Officer at county level or the Chief at the Parish level *any matter* that rouses their concern or interest.” (emphasis added).<sup>77</sup> In addition, councils have the powers to participate in monitoring service delivery and facilitating self-help projects for the benefit of the people. It is at this level that the mobilisation of opinions, actions and strategies should be targeted by local government, individuals and civic-minded associations in order to influence the economic and social policies of the local governments.

The LGA further attempts to foster participation and inclusion by creating structures and mechanisms for involvement of the people through the election of councilors, and by setting up consultative processes and fora in the various development planning processes. Individuals are able to participate through their elected representatives and directly at certain levels such as the village council meetings and budget conferences. Executive Committees at lower local government level are mandated to carry out several activities apart from initiating policy and overseeing implementation. They are required to encourage economic initiatives and mobilise human and financial resources to that end, as well as to link the central and district governments to the people.<sup>78</sup> District Executive Committees are supported at the lower local government level by councillors who constitute the various sectoral committees in the area of economic and social rights. These councillors are elected in a representative capacity and ideally, they should provide a useful vertical and horizontal linkage between the people and the local government at various levels. In this way, community members are able to participate indirectly through their elected leaders by delegated and institutionalised debate. Despite the challenges posed by the electoral processes for such leaders, the local bodies tend to reflect the popular will of the people to be represented by certain individuals.

The invaluable role of the councils and councillors in facilitating bottom up planning and consultations cannot be overemphasized. The District Development Plan and the multi-layered Technical Planning Committees must incorporate the views and priorities of the people through their elected representatives at the various tiers of local government. However, the Act does not specifically provide for the functions or required capacities of councillors. In addition, uneasy relations have been noted to exist between the councillors and the staff of technical departments, limiting the opportunity for exchange and the free flow of information that would enhance planning and decision-making.<sup>79</sup> The Local Government Act does not consider educational qualifications a prerequisite for the election of councilors. This in some instances is problematic, especially when it results in disparate levels of knowledge

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<sup>77</sup> See Sections 49-51 LGA.

<sup>78</sup> See Sections 27, and 48-49 LGA..

<sup>79</sup> MOLG, 2004a, at 7.

and skills e.g. the CAO is appointed on technical competence and may be more educated than the district representatives. There are instances where elected representatives are not well qualified to handle the local government projects, which hamper the service delivery in the district. Thus, there is a lacuna in the law pertaining to the minimum qualifications for one to be a member of the council. Central government has often argued against the need for academic qualifications for leadership roles and this argument has some merit given that the local people may have better information about their concerns than any classroom knowledge may provide. In the final analysis, the tedious work of budget planning and analysis and prioritisation is largely premised on technical considerations, which entail certain acquisition of at the very least elementary skills and knowledge, implying that there is more effort required to provide some of these basic skills where they are lacking.

According to various District government personnel interviewed in both Kayunga and Kampala, both districts priorities are grassroot generated. In other words, there is participation of the people at the local level who identify deserving issues and address these to the local government. This is done through village planning meetings, and deliberations are held on priorities, which change from year to year. Through budget conferences and opinion leaders, views of the grassroots community are sought. Planning meetings at the village district level are also held. Respondents in Kawempe stated that they have contributed meaningfully in the development planning process; many of the development issues are well understood by the division inhabitants and have been decided and implemented at the local government level. However, 'consultation fatigue' was pointed out as existing in certain quarters regarding exercises by the district government to seek views on development priorities in Kampala. This occurrence can be explained by the multiplicity and abundance of consultative workshops that occur in Kampala due to its centrality, but should not be applied with a broad brush to other parts of the country. The reason for this fatigue and growing apathy is mainly because people's expectations are raised and then dashed due to the non-fulfillment of set targets or identified priorities. The stark reality is that what services may be delivered may not tally with what the community wants or needs, and the community members are quick to complain about disparities in program implementation. For example, in Kampala it emerged that the community's agenda as shaped by the people is only met as a matter of coincidence if its concerns fall within predetermined government priorities. This makes the people subsequently reluctant to participate in identifying priority areas in planning processes.

The Local Government Budget Framework Papers also provide an opportunity for grassroots participation through the preparatory processes held at the village council level upwards through to the parish, subcounty and the district council. At the budget conferences, individuals, NGOs and CSOs are eligible to attend. In practise, a high non-attendance rate is often registered due to a lack of adequate information and timely publicising of these important processes. Participation is also sometimes compromised by technocrats in the prioritisation development plans who hijack the

opportunity for inclusive and bottom up planning. Councils have also been known to undertake planning and budgeting in isolation of their electorate, further reducing the logic of bottom up planning and the identification of development programs by the targeted beneficiaries.<sup>80</sup>

Given the absence of the state's presence on the ground in many instances, civil society actors have stepped in to bridge the gap between the state and the individuals at the community level. The involvement of civil society organisations and other non-state actors such as NGOs, CBOs has increased the organisation, mobilisation and participation of people in governance, with varying measures of success. Through several innovative avenues, Civil Society Organizations (CSOs) in the districts provide development programs in a cost effective manner. In the process, the local people are involved in participation through various implementation and monitoring activities. These organizations have capacity in the use of participatory development mechanisms that help them reach the grassroot people.

Government has noted the significant inputs of these actors in creating a 'demand driven service delivery.'<sup>81</sup> The work of Local Governments in Gulu and Kayunga has been augmented by CSOs in various useful ways. CSOs provide services in health care and civic education to the community on various vital issues. They also engage in counseling services, agricultural technology transfer; they mobilize communities, sensitize them and pass on knowledge and skills needed to enhance the participation by the communities. In Kayunga, the poor people in the rural areas, for example of Galilaya, are organized into small manageable CBOs in their villages. In turn, these CBOs receive help from the local NGOs who are also funded by the international NGOs like Save the Child among others. However, certain problems hinder CSOs from the effective delivery of services. They face resistance from some of the Line ministries who seem prejudiced against the involvement of CSOs in policy dialogue. At some local governments, their services are deemed as competitive instead of complementary, perhaps because they are loudly critical of the accountability measures of the local government. CSOs also lack funds to substantially cover the various areas of operation. As their activities expand, there is demand for a high level of management capacity and professionalism, which at times is lacking in these institutions.

According to interviewed sources, Kayunga has also been rocked with 'Brief case NGOs' which, according to some perceptions, collect money from the community under the guise of offering better and alternative services to the community services. Some claim to collect money to provide bursaries for the education of orphans only to vanish. Consequently, even when genuine CSOs come up to provide different services, they are seen through the same lenses as the fraudulent ones. This has created obstacles towards service delivery in the district. There is also no proper

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<sup>80</sup> Gariyo (2000), at 3.

<sup>81</sup> MOLG, 2004c at 3.

coordination between the sectors and NGOs and CBOs working in the same area, thus hindering service delivery in the communities. Nonetheless, some organizations have been very influential and have positively affected the service delivery in partnership with the local government. Feed the Children and **several other NGOs** in Kayunga were viewed as being particularly outstanding. They help in educating and feeding children and protecting their rights. Community based rehabilitation efforts have also helped a lot in taking care of the elderly, children, orphans and the disabled.

One shortcoming of CSOs is the overemphasis on service delivery rather than boosting the capacity of local populations to take ownership of the services and demand for local governments to undertake and fulfill their commitments. The shift in donor funding patterns from the bilateral funding of Government and CSOs to basket funding has severe implications for the ability of CSOs to maintain the effective delivery of services. The winds of change dictate that CSOs let local governments undertake service provision while CSOs strategically engage in policy advocacy and monitoring and build strategic partnerships with the communities and local governments.

### **3.1.2 Accountability**

Accountability refers to standard setting through laws, policies and strategic action plans, as well as evaluative mechanisms that will ensure that the development process is open and transparent. It holds rights holders and duty bearers responsible for their different mandates in the development process. To enable this to happen, certain factors must be in place. The people must be able to access vital information about the Local Government's activities, processes and procedures in a user-friendly manner and format. Thus, the burden is on the district administration to avail timely information in appropriate forms to the people at all levels of governance. This is rarely the case and in practise, only the vigilant CSOs will diligently undertake action in this area. Decentralisation is premised on the logic that services are best provided at the local level, and hence assessment mechanisms should be developed at these levels.<sup>82</sup> Under decentralisation, accountability exists at two levels; upward and downward accountability within the district (between the elected and the led)<sup>83</sup> and between central and local government functionaries. Accountability takes into account the political and financial aspects of leadership. The Local Government Objectives as set out in the Act clearly outline the need for financial accountability but is circumspect on political accountability by the leaders to the people. Even regarding financial accountability, the emphasis in the Act seems geared much more towards formal and bureaucratic mechanisms. This approach fails to take into account the requirement for people to be active in evaluating adherence to good governance principles by local governments.

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<sup>82</sup> Anok, 2004 at 24.

<sup>83</sup> Behangana, 2005 at 4.

Various vetting and auditing structures include the Office of the Auditor General, the Contracts Committees, localized Public Accounts Committees and Finance Commissions, Subcounty Chiefs, the Resident District Commissioner and the District Service Commissions. National Laws such as the Public Finance and Accountability Act, the Procurements and Local Government legal regime have in effect set up supra polities that lack strong grassroots linkages to ensure participatory monitoring and auditing by the people. This dislocation serves to distance the ordinary citizen from the accountability process and to bureaucratise what should have been very hands-on procedures by incorporating the direct beneficiaries of local government services. The presence of community members of integrity on such structures would serve a better purpose in promoting transparency in the accountability process.

An insight into how Rubaga Division performs its accounting serves to illustrate the maze of existing bureaucratic accounting methods at the local government level. The Chief Accounting Officer in the Finance Office as well as the Assistant Town Clerk and the Division Finance Officer track funds utilized by the Division. The Division Council demands monthly financial statements including income and expenditure of the Division. Planning units in place at the parish level and division level hold the division level units accountable. The voice of the Council in demanding accountability is hopefully deemed the voice of their electorate. The Council in turn informs the people at the grass roots based on the information obtained from sector committees. Rather than perfunctory technical inspections, the direct involvement of the beneficiaries of decentralisation should be factored into monitoring exercises. It is also important that the recipient of reports and other accountability related information are able to analyse and appreciate the information received. Technical areas such as budgeting and planning as well as knowledge of laws and policies that regulate the local governments limit the ability of the majority to effectively monitor ongoing processes. These limitations are not the preserve of the ordinary man or woman in the district but exist even among councillors, who are largely unaware of the value they are to add in holding the leadership accountable. Understandably, this will result in limiting the ability of the people to monitor the activities in the district and evaluate the progress against projected targets. It has instead been left to NGOs and other crucial actors to train citizens in the various districts on gender and budget monitoring skills.

Political accountability in the decentralisation process has been the subject of lively debate in the past few years. The former problems associated with centrally appointed public officials paying more allegiance to the centre than to the district have however largely been deflected by the placement of appointive powers in the District Service Commission.<sup>84</sup> Nonetheless, some officials are still centrally appointed and tensions have been caused by the centrally appointed officials

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<sup>84</sup> LGA section 56 and 59(1) provide for the powers and functions of this Commission.. The Commission is autonomous and

conflicting with district elected leaders. A recent decision by central government to centralise the appointment of Chief Administrative Officers, who play a pivotal role in the effective coordination and management of public services smacks of giving with the left hand and taking away with the right. On their part, RDCs are perceived to have no work apart from politicking and disrupting service delivery. In addition, one RDC was accused of acting like a miniature President and standing in the way of division work especially when it comes to awarding tenders.<sup>85</sup> Recommendations by respondents were made for the removal of RDCs as they are largely deemed an obstacle to serious local government programmes.

While clashes between the elected and appointed leaders are not unheard of in the various districts, Kampala—considered the icing on top of the political cake due to its exalted status—seems to have more than its fair share of these kinds of tensions. Political interference is hampering effective services. This tension between the authorities caused by the usurpation of power hinders service delivery to the community and if delivered at all, what is delivered is shoddy and lacks ownership. Interference from the centre is such a hindrance for Kampala divisions in carrying out service delivery, especially when their discretion is tampered with. One respondent called for the complete devolution of powers if the decentralization system is to work to perfection.<sup>86</sup> To quote another respondent's expression of frustration:

*There are pockets of weakness in the system. The powers are given by the law and then tomorrow the same powers are taken away by the mere speech of the President; [sic] case in focus is the scrapping of a statutory provision for collecting of taxes like graduated tax.<sup>87</sup>*

Examples of such conflicting interests abound. One respondent argued that the law should be amended to give more powers to the local divisions in Kampala. Town clerks are perceived to have divided loyalties between the appointing authority at the City Council and the division where they are posted. There have been clashes in instances where the Town Clerk disregards Division Council resolutions and adopts those from the City Council even when it is not applicable in the particular division in question. In Kampala, the local government at Division level finds it difficult to supervise contractors especially in the area of road construction.<sup>88</sup> This stems from the fact that the conditional grants which are mainly provided for such works are monopolized by the District Council which even decides which company is to do a particular piece of work in the division. This renders supervision that much more difficult, and yet the Division is actually liable to account for these funds.

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<sup>85</sup> Interview with Division Chairperson on 15<sup>th</sup> November 2006.

<sup>86</sup> Interview with Division Chairperson on 12<sup>th</sup> November 2006.

<sup>87</sup> Id.

<sup>88</sup> Interview with the Chairperson, Works and Technical Services Committee held at the division headquarters on October 29<sup>th</sup> 2006.

It was quite instructive to discover that in Kampala and Kayunga districts, challenges as basic as a lack of transport has effectively limited the ability of technical offices to monitor activities. The districts lack adequate funds and transport facilities to facilitate supervision, monitoring, and coordination of activities in the area of health, education and technical works. In Kayunga, shortcomings curtailing service delivery in the finance and planning sector were identified by personnel involved in planning processes. CSOs help in facilitating the local people to hold their leaders accountable, ensure and establish a follow up to the resources like funds to reach the intended beneficiaries. Several national and local CSOs have effectively played the watchdog function especially in fighting corruption in local government.

The current and diverse legislation on decentralization is also a source of confusion within the local government system, and thus affects the situation of accountability. The legislation that empowers the local government authorities to pass their own ordinances and byelaws has not been effectively pursued by local governments, which in many instances lack the capacity to draft comprehensive ordinances and byelaws. There are principal Acts, rules and regulations of various laws that have not been adequately reconciled with the decentralization setup, such as those relating to local revenue and procurement. This makes coordination between various departments at local and central government level quite difficult. The schedules of the Trade (Licensing) Act of 1969 regulating trading centers and trading licenses and hawkers' licenses are outdated and the fee set up is inapplicable to the current economic situation.<sup>89</sup> The Local Government (Rating) Act, Cap 242 outlines property rates for urban local governments, which is inconsistent with the Local Government Act. These laws pose challenges for urban councils in administration and collection of taxes. The Local Government Rating Amendment Bill, 2003 is yet to be approved. In terms of procurement, several laws are yet to be harmonised in light of the LGA. The NAADS procurement procedures under the NAADS Act contradicts Local Government Procurement procedures. The Markets Act of 1942 that regulates the establishment and management of markets is not aligned to the Local Government Act and the present mandates of Local Governments.<sup>90</sup> The central management of projects providing agricultural services at local government level is inconsistent with the current set up of decentralized agriculture services.

The Local Government Public Accounts Committee of Parliament attempts to ensure resource efficiency and accountability through the services of internal and external auditors. In addition, the District Council and other politicians monitor the implementation of government programs. The Inspectorate of Government (IG) also inspects the programs of local governments. However, the communities have not had the capacity to engage with the various local government institutions, and rarely do groups or individuals ask for accountability for resources allocated to the district. Communication and information linkages and mechanisms are minimal between the Councils and grass root people.

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<sup>89</sup> MOLG, 2004b.

<sup>90</sup> Id.

### **3.1.3 Non Discrimination**

Although poverty is at the heart of the failure to realise many economic and social rights, poverty eradication measures cannot be the sole solution to the achievement of these rights. Such an approach would fail to address the structural barriers that disadvantage certain populations. These groups at risk are, despite their best efforts, disenfranchised from the preponderant forms of the attainment of rights within the context of equality, globalization, the free market, and non-interventionist economic policies of government. To cater for socially vulnerable groups, social justice policies of government. To cater for socially vulnerable groups, social justice considerations are required that take into account the equitable and sometimes redistribution aspects of inclusion in order to enable accessibility to such groups. Non-discrimination here is not limited to a formal understanding of the term to mean equal treatment. Rather, it refers to the attainment of equal opportunities and equality of outcomes for the different groups in society. Without special measures being undertaken concerning vulnerable and marginalized groups, neutral laws and policies cannot serve to meet the rationale behind non-discrimination as a human rights protection. Vulnerability is defined by the Government as ‘the condition of people at risk of becoming poor, or of other misfortunes such as violence or natural hazard.’<sup>91</sup> This definition reflects the poverty paradigm that very much dwells on needs, as opposed to a focus on the disempowering conditions that vulnerable persons find themselves with; vulnerability is not a condition but a situation.

The Constitutional provision for inclusion of all marginalised groups on elected and appointed bodies has served to include vulnerable groups on the local government bodies too.<sup>92</sup> Vulnerable groups have structures for representation at all the local government levels to enable them pass on their views and interests to the policy makers in the district. Keeping in mind the imperative for affirmative action measures for such groups, an enabling environment in principle has been created for the non-exclusion of populations at risk in determining their collective and individual destinies.<sup>93</sup> The LGA makes space for women, the youth, children and persons with disabilities, which can facilitate their inclusion in program planning, implementation and supervision.<sup>94</sup> Elected representatives of special groups constitute councillors, who are supposed to provide useful linkages between their constituency and crucial district consultative and planning processes.

Local governments often plan for the needs of vulnerable groups half-heartedly. For example, in order to balance the opinions and interests of the various interest groups in the community, Kawempe division compares the work plan for each category against available funds and the time required to achieve the set goals. Sometimes however, many of the interests of special interest groups are simply

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<sup>91</sup> Ministry of Gender, Labour and Social Development, 2006.

<sup>92</sup> Objective VI, 1995 Constitution.

<sup>93</sup> See, Article 32 of the 1995 Constitution.

<sup>94</sup> Section 24 LGA.

ignored. The division has nevertheless devised certain mechanisms to incorporate the concerns of vulnerable groups, however inadequate. Meetings of the chairpersons of the different interest groups are held with the sector heads every six months. Needless to say, a lot can happen in a period of six months, and it is unlikely that with the current budget processes and cycle this time span will enable significant inputs into the planning process. To promote and protect the economic, social and cultural rights of all citizens, the Local governments must of necessity ensure that resource allocations and program planning, design and implementation operate on a basis of non-discrimination. In Kawempe, it was candidly revealed by local government personnel that budgetary considerations and the availability of funds influence which interest group will be catered for, in keeping with conditional grants modalities. Important Constitutional protections such as the Rights to Access to information will ensure that concerned actors and stakeholders have information from the local governments that can be used to build a case against their exclusion.

Article 32 of the Constitution rather unhelpfully identifies groups that have been marginalised; unhelpful because sometimes to list is to limit, hence the preference of developing criterion for identification. The named categories; gender, age, and disability were interpreted to mean women, children, the youth, the elderly and the disabled, and this group has since been cast in stone. To this effect, policies have been developed in this very rigid categorization, ignoring other marginalised groups such as minorities and other vulnerable groups. Most victims of marginalisation also suffer from multiple forms of marginalisation e.g. in Kampala, most marginalised women in Rubaga division are also single mothers.

The field visits elicited wider categories of marginalised groups. The vulnerable groups identified in Kayunga district include disabled persons, those affected by HIV, orphans, women, youth and elders above 60 years. Vulnerable groups in Gulu include orphans who have mostly been rendered to this status because of the civil war, despite attempts to integrate them into other households. The district also has a significant incidence of formerly abducted children and child mothers, some of whom were conceived during captivity or in the IDP camps, or dropped out of school due to a lack of adequate facilitation. There are also persons affected by HIV/AIDS and persons with disabilities, many of whom were disabled by the conflict, by either landmines or rebels, while some were born disabled. Gulu district has categorised vulnerable persons widely and variously depending on the actors involved. Under the Disaster Management policies of the District, the definition of vulnerable groups are those categorized as child-headed households or elderly-headed households without any other social support, widows and widowers with children older than 10 years and under 18 years; child mothers headed households without a supporting spouse; the medically impaired, amputees; and terminally ill persons with dependents who are under 18 years. While capturing some of the most affected populations or those at risk, this definition is inadequate to deal with the magnitude of defenceless and needy people in the district.

According to a respondent of the Kampala Central Works Committee, the vulnerable include the destitute from Karamoja; apparently, they do not know what they want and the division too does not know what they want! The Karimajong who are flocking the city to escape the insecurity in the region are often resettled but choose to return to the streets, perhaps due to the deplorable resettlement conditions they escape from.

The plight of Persons with Disabilities (PWDs) was highlighted as an outstanding issue in Kayunga. This group is often neglected at the family and community level and not accepted in the community. The parents of disabled children keep them indoors and out of sight, hence depriving them of the opportunity to participate in community and public affairs. Thus, even if there are any public services geared towards them, it is hard for this group to access them. Such services include health, education and community rehabilitation programs. The Persons with Disability Act, 2006, highlights the promotion of the dignity and equal opportunities for Persons with Disabilities. The acceptance and inclusion of PWDs in all sectors of government and the community are encouraged in order to promote and integrate disability issues into all economic, social and development policies and programs. In addition, under Section 37 the Act emphasises the participation by PWDs in public life and to be voted into political process and fully participate in decision-making processes. Section 3, which outlines the objectives of this law, is very soft and promotional. The language in the Act is not couched in the context of legal entitlements and goes into promotional mode. For example, Section 5 on the right to quality health and education, states that 'Government shall promote the educational development of PWDs through the encouragement of *inclusive education*.' (Emphasis added).

Children's rights protection in Uganda displays the results of dexterity in human rights advocacy and lobbying. What economic and social rights were not adequately given to adults in the Constitution was cleverly reintroduced into the Children's law by a strong children's rights lobby group, drawing heavily from the Convention on the Rights of the Child. Considering that a person spends the first 17 years of their lives eligible to benefit from this law, important awareness strategies should be devised to enable parents to claim these rights for their children. However, despite the strong protections in this law, local governments—for reasons related to a low awareness of the law and a lack of capacity to implement its progressive developments—have failed to live up to their expected roles. The Children Statute endows children with the right to shelter, education, immunization, adequate diet, clothing, shelter, medical attention freedom from violence and abuse<sup>95</sup> harmful customary practises<sup>96</sup> and freedom from economic exploitation.<sup>97</sup> Children with disabilities are entitled to appropriate treatment and facilities for their rehabilitation

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<sup>95</sup> Section 7, Children Act.

<sup>96</sup> Section 8, Children Act.

<sup>97</sup> Section 9, Children Act.

and equal educational opportunities.<sup>98</sup> In addition, children with disabilities are to receive assistance to enable them grow with dignity and develop their potential and self-reliance. A Probation Officer in each district is appointed to ensure that the welfare and the best interests of the child are taken into account in the districts' service delivery mechanisms. In addition, a member of the Local Council Executive Committee at the Village level is designated to protect children from child abuse, especially concerning the protection of inherited property.<sup>99</sup> Registration of orphans and children with disabilities in a village with a view to their protection is also a mandate of this council. As can be seen, in this way children's economic and social rights can be protected.

Government programmes such as UPE have improved the plight of the child by taking into consideration the special learning needs of specific groups. To enable vulnerable groups access the same opportunities as other groups, Kampala district provides bursaries to needy children. For example, in the past financial year, the fund gave out 15 million shillings worth of bursaries to 177 primary pupils and 45 needy students of secondary school. Marginalised children's groups in Gulu have been able to access educational institutions to a certain extent. Before its advent, less than 90,000 children were in primary schools; however by 2005, 174,000 children had enrolled in UPE, 46% of them girls. Before UPE, girl child enrollment was less than 30%. However, the School Facility Grant provided by the Central government to cater for school furniture and building classrooms, is insufficient to cater for all the district's needs such as promoting accessible buildings for children with physical disabilities.

CSOs have not been as active in promoting children's rights outside Kampala despite an enabling environment for doing so. In isolated examples, efforts of strong civil society-local government collaborations such as the Child Rights Education and Support Services (CRESS) in Mpigi and Wakiso have been very useful in bridging the capacity gaps faced by Local Councils. Although several NGOs in Kampala provide awareness on rights, they tend to focus predominately on civil and political rights. Nonetheless, some of these organizations cater for the street children and abandoned children, including particularly the girl child. Through a Memorandum of Understanding, FIDA (U), ANNPCAN, Hope After Rape and the Local Governments of Mpigi and Wakiso have undertaken measures to train community based support groups in the area of education, paralegal and counseling services to ensure that a holistic approach is taken towards the protection of the rights of the child.

The youth have not fared as well under decentralisation, despite their inclusion on local government structures. This may be attributed to their transitional status, which creates certain ambiguities in the applicability of policies that relate to children

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<sup>98</sup> Section 10, Children Act.

<sup>99</sup> Section 11 (3), Children Act.

or adults. The youth face many challenges as revealed in the field studies. Many vulnerable youth in Kayunga are doubly vulnerable in the case of the orphans who were left behind by parents who died because of HIV/AIDS. There are limited numbers of youth heading or working in Government departments. The youth are not strategically positioned to exert influence on the district agendas because of their small numbers on the representative committees.

The majority of the youth in the all the three districts reviewed are jobless. This leaves them idle and prone to habits like drug use and sexual promiscuity, leading to teenage pregnancy and dropping out of school. Numerous unemployed youth in Kampala have resorted to drug use, with little intervention from the divisions. However, attempts have been made to cater for this group. The Local Government in Kayunga is providing advisory services to the Youth Councils to use the funds allotted to them for income generating projects.

Kawempe division is urging the youth to form groups or cooperatives for easy accessibility to self-help project funds. The division is also in the process of constructing markets to provide employment for the vulnerable groups and the targets in this project; the youth, women and Persons with disabilities to enable them access the same opportunities as others.

Women in Uganda comprise a numeric majority but are considered a vulnerable group for diverse reasons. It is well established that poverty in Uganda has gendered undertones and is not an accident of history. The subordinate status of women in many Ugandan societies has resulted in unequal power relations that have limited the ability of women to harness their full potential and break out of the poverty cycle. Unfortunately, efforts to protect women's rights through legislative means have not proved successful despite strong lobby efforts, and women continue to be oppressed under several gender-neutral laws that fail to take into account their specific needs and concerns. The exaltation of culture in the districts under review has resulted in the subordination of women's rights. It has negatively influenced various issues concerning women, including girl child education, decision-making powers and family relations. Women are often denied participation especially when it comes to the household levels, where they hardly contribute to meaningful decision-making process. They are burdened with not only the house chores but also with income generating activities. Though they labour, the returns from the sale of the subsistence produce are rarely realized by the woman. Rather, the male household heads more often than not take the entire share.

In Kampala, even though the society is slightly more cosmopolitan than Kayunga or Gulu, the fate of women was not found to be much different. Cultural tendencies rein in women's participation to the extent that even in the finance sector committee meetings in one division, some women will not stand up to talk for fear of being rebuked by the men. This has limited the incorporation of their concerns into local government planning sessions and consequently, they may not be provided for

adequately in the service delivery. However, one respondent had no kind words for women's input into the planning and development process, saying,

*They suffer from poverty; their minds are ridden with poverty and nothing more! Their liberation is far from being realized if they do not see themselves as moving out of the situations perturbing them.*<sup>100</sup>

Women in Rubaga division are marginalized in the political arena and have failed to significantly influence service delivery structures in the division in their favor. They also lack adequate income to afford the services like health, which are costly and often out of their reach. Self Help projects like the popular *nigina* are becoming vehicles for awareness on relevant laws and development projects. Many homemakers in Kayunga have no accessibility to productive assets like land. Even widows in most cases cannot claim ownership of the deceased husband's property because under traditional clan norms they are aliens. This practice is prevalent in parts of Kayunga like Bbale and Galilaya sub counties in pastoral communities. Illiteracy levels among the women are also high. The local government has undertaken gender sensitive adverts to encourage women to apply for the various jobs available in the Local Government. It is also availing women with information to empower them to form various groups, mainly income generating associations, so that they can access loans. This is being done through the women councilors who represent their interests. The women are also being recommended for salary loans as a means of empowering them economically. The same benefit is being extended to People Living with HIV AIDS (PLWHAs) to help them boost their incomes.

In an innovative move, the Kayunga local government has taken certain precautions to mainstream marginalised groups into development projects. Kayunga plans to utilize the District Land Board to assist vulnerable/marginalized groups to access land leases for agriculture production in order to elevate their income levels. Implementers of projects in the districts are reminded to cater for vulnerable groups, which they must include in their project proposals. It must be shown how vulnerable groups will be benefit from the project proposals. The district planner also takes into account the welfare of marginalized groups while planning for the districts. In Kampala central division, discrimination was noted as being leveled against vulnerable groups especially women with physical disabilities. When they go to the health care centers especially to deliver, they are treated by the nurses to derogatory remarks about their sexual and reproductive rights. However, it was noted that this discrimination varies from one health center to another and depends on the financial standing of the disabled woman. Those with monetary means find their path is smooth. The victims of this discrimination have submitted complaints to their PWD representatives on the council who in turn report to the sector committee on health, but little progress has been registered regarding the plight of disabled women, who are doubly marginalised.

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<sup>100</sup> Interview with the Chairperson of the Finance Committee held at Rubaga Division headquarters on November 12<sup>th</sup> 2006.

### **3.1.4 Empowerment**

Empowerment suggests the expansion of peoples' capabilities and choices "...the strengthening of the ability of the people to participate in decision making about national democratic development and to exert demands on the state and its servants."<sup>101</sup> The competence and capability of the primary local government actors and rights holders to participate in the development process and in the shaping of government policies and services is crucial. This should apply to the district chairpersons, councillors, secretaries and executive committees at the various levels, as well as all beneficiaries in the district. The LGA does not make specific reference to the capacity building requirements of Local government elected leaders. This has largely been a matter of local initiative, with the likelihood of disparate outcomes in the various districts. For example, in Kampala, although capacity-building seminars are occasionally organised, councillors often do not show up without the motivation of allowances.

The aptitude of councillors to cope with their important mandates in service delivery has not been adequately built up, despite attempts by the Ministry of Local Government to organise related capacity building workshops. Councillors lack commensurate skills in contrast to their broad mandates and this has affected their perception of their roles and how the communities interface with them.<sup>102</sup> There exists no reliable data upon which planning and budgeting for the district can be supported. There is also poor attitude evidenced towards attending the village community planning sessions, as most people tend to think that role is the preserve of local leaders. This reduces the intended design and outputs of local and grassroots based participatory, consultative processes.

In the same regard, it is necessary for the people involved in influencing local government development agenda in any sector to adopt certain organisational models and acquire relevant information packages, skills and resources. This is vital in enabling them to make meaningful interventions and contributions to the development process and boost the enjoyment of their economic and social rights. In the provision of the services, Kampala has organised capacity-building workshops, for example training school management committee members of government schools. It is through such fora that the community express themselves on pertinent issues affecting the education sector.

Critical levels of collective action and consensus are yet to be effectively realised due to the lack of required capacities and capabilities to affect this. It is expecting too much to think that a nation that suffers high illiteracy rates and is divided along ethnic, social and other artificial borders will automatically attain the required psyche and skills to enable meaningful mobilisation and organisation. However, there have been small but significant moves towards this goal. Although it is precisely in the

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<sup>101</sup> Auprich, 2000 .

<sup>102</sup> Anok, 2004 at 47.

urban areas that one would expect apathy to collective social action, in Kampala central division, there have been situations where people have lobbied and changed the community agenda. One illustration of this is the combating of flooding in the slum areas where the central division is undertaking much needed work due to organised public outcry. The division has diverted funds to ensure the channels are renovated in Kagugube, Kisenyi I, II, and III.

Kawempe has a community services sector called the “Poverty Alleviation and Social Services’ that mobilizes and organizes the youth, men, women, and the PWDs in the division and to reduce gender inequalities among the men and women. It co-ordinates and partners with the NGOs and CBOs programmes in partnership to empower and facilitate the different social groups in the division. Some of these NGOs include Plan International, ActionAid and AMREF. In provision of the services, it provides capacity-building activities such as sensitization on domestic violence, workshops on leadership for the division women councillors and planning workshops organized for the PWDs. In this way, it facilitates participation and the exchange of views to the district. In Kayunga, capacity building for certain interest groups such as farmers is occurring in the form of loans from the micro-finance institutions. Educational radio programmes for farmers are also providing useful information and skills.

To ensure that the women access the same opportunities as the other groups, Kawempe division supports women’s groups in various income generating activities. The women are also being encouraged to attend adult literacy classes. In a bid to implement the Children’s Act and to promote children’s rights and freedoms, the division provides workshops for parish leaders and parents on the enforcement of the statute. Empowerment of vulnerable groups like the youth, women, and the elderly is also emphasized through skills training workshops conducted in various parishes of the division. This helps to equip knowledge and skills to the disadvantaged groups and their leaders and to increase participation in the development programs of the division.

The Uganda Human Rights Commission has been mandated to carry out civic awareness and arm citizens with information, although evidence would support the deduction that it has been overwhelmed by the magnitude of this mandate and is yet to achieve significant gains in this area. Rather, the Civil Society actors have attempted to valiantly equip the communities with appropriate messages and skills to enable them acquire basic skills and information about their rights.<sup>103</sup> Within

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<sup>103</sup> For example in Kampala, the Belgian Development Agency organizes youth seminars in partnership with the youth councilors on the divisions and also funds sanitation related operations in the city. AMREF International helps in improving sanitation, works with the communities to put up toilets for example in Kalerwe, and Makerere II, and sensitizes people on their right to health. Others include Action Aid Uganda which promotes Gender and development issues in poor communities, Concern World Wide works with communities to provide water and toilets in Central Division. Pride Africa and FINCA Uganda have been instrumental in empowering the people economically with loans to small scale business ventures.

their limited financial means, these organizations have come up with measures to enable such groups to access the same opportunities as others. NGOs have offered invaluable support in mobilising resources towards equipping the capacity of people to take key decisions and advocacy strategies geared towards making the local governments live up to their obligations.

Finally, the issue of resources is key a factor in the empowerment equation. Local governments receive resources in form of grants, both conditional and unconditional. The former, if at all received, take inordinately long to reach the district and most times falls far below projected costs, such that that it cannot meet the planned ventures to completion. Conditional grants make up the largest proportion of funds received from central government. These are however tied to a particular project. The fact that they are conditional undermines the discretionary powers of the local government to allocate them to priority areas, as illustrated by Kayunga's experience.

Kayunga district receives unconditional grants, conditional grants and Graduated tax compensation, the latter since the graduation tax was abolished by the President, leaving the revenue or tax base too low for local governments to adequately provide for their development projects. However, the promised graduated tax compensation from the central government falls far below what the district used to collect from individuals under the graduated tax regime. This has greatly affected the service delivery ventures of the local government in Kayunga since it cannot now adequately fund its projects. Moreover, Kayunga does not receive an Equalization grant. It has, according to the district leaders, used the conditional grants effectively i.e. investing in infrastructure and capacity building.<sup>104</sup> However since these grants are earmarked for particular projects the local government has no autonomy over this money despite the fact that it is well placed to determine which services in the district demand priority in implementation.

The preceding background allows us to turn to a more focused examination of the main obstacles confronted by the districts in promoting and protecting economic, social and cultural rights. In doing so, I begin with a review of the situation in Gulu District, which—on account of the long-standing insurgency in Northern Uganda—presents issues that are slightly different from those in Kayunga and Kampala.

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<sup>104</sup> Interview with Joseph Mukasa, Chief Administrative Officer of the district held at the district headquarters on 29<sup>th</sup> August, 2006.

#### **IV. INSECURITY AND DECENTRALIZATION: THE SPECIAL CASE OF GULU DISTRICT**

While poverty as a phenomenon is not geographically or ethnically selective, in Uganda it has assumed notorious dimensions in conflict areas with devastating consequences in the regions. Insecurity aggravates vulnerability and increases factors of marginalisation that contribute to and escalate the incidence of poverty. In such settings, poverty becomes more or less institutionalised. This calls for concerted interventions in terms of post war reconstruction efforts and heightened levels of scrutiny in affected areas to ensure non-recurrence and to mitigate human rights violations. The field visits to Gulu confirm that unfortunately, Government's efforts in Gulu do not exhibit the required standard of vigilance.

Gulu is perhaps unfortunately best known in its capacity as one of the worst war ravaged districts in Northern Uganda. For approximately 20 years, in a bid to discredit and destabilize the Government of Uganda, the Lord's Resistance Army has waged a civil war in the district that has targeted the people, physical infrastructure and governmental administrative units. Over 80% of the population has been forced into Internally Displaced Persons (IDPs) Camps.<sup>105</sup> Unavoidably, service delivery mechanisms and structures as provided for in the legal and policy framework have been overstretched and distorted in several aspects.

Gulu comprises 15 lower local Governments i.e. 11 sub counties, 4 divisions, 2 counties, 69 parishes and 233 villages.<sup>106</sup> While it had a certain degree of decentralised authority from 1962, this was not entirely democratic.<sup>107</sup> The Local Government Act of 1969 resulted in Gulu losing important resources arising from taxes, licenses and dues and hence inadequate funds for provision of services.<sup>108</sup> Gulu has not benefited from the decentralised system of governance under the NRM dispensation due to insurgency in the region.<sup>109</sup> Respondents interviewed revealed that until 1996, about 80% of the people have been living solely in the IDP camps and some people were even living in unprotected camps. Because of the insurgency, people lost all agricultural and livestock production inputs and tools, resulting in a shortage of food. Unlike in the past where families could sustain themselves with food obtained from subsistence agriculture, currently over 90% of the population depends on food from the World Food Programme (WFP), resulting in malnutrition and stunted growth in young children. Access to land is a problem because of the displacement of people, leading to a shortage of available land for

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<sup>105</sup> Gulu District Local Council Development Plan at 4.

<sup>106</sup> *Id.*, at 11.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*, at 12.

<sup>109</sup> *Id.*

<sup>110</sup> See, PEAP, at 136.

farming. The little available land is exhausted from overexploitation of the soil's nutrients. Although the Local Government authorities and NGOs are providing improved seeds to those who can access land, environmental degradation hampers the desired outputs. Due to insecurity in the area, the community fears to rear animals, although the Northern Uganda Social Action Fund (NUSAF) and other programmes are boosting animal populations. Livestock were lost in the past two decades, yet livestock farming was a major means of livelihood for many.

Lack of or a limited access to arable land due to insecurity in the district is leading to low productivity; food insecurity, limited incomes and consequently poverty. In general, the failure to harness natural resources has accelerated poverty in the district. The physical infrastructure has been affected significantly, especially roads and buildings. New roads were opened up i.e. security roads, to provide access to the army, which roads are closely patrolled by the army and detach points established nearby. Community roads were also opened with the support of other agencies. However, the local executive committees of councils lack resources to maintain these roads. The burden has fallen to the sub county and county to maintain these roads. Non-state actors, stakeholders and partners are not willing to maintain physical infrastructure as this is not a priority area. Money from the central government is only given to maintain feeder roads.

The right to medical services and basic primary health care in Gulu is largely illusory. There are few functional health units, most of them having been shut down due to rampant insecurity. The health workers, in contrast to the schools, however remained in the countryside where there was some form of protection from the prevailing insecurity. In the past few years, two to three health centers have been upgraded and maternity units constructed. Through agencies and partners like NGOs and intergovernmental agencies like UNICEF, basic drugs are always made available in the few functional health centres. The Aids Support Organisation (TASO) provides counseling and the treatment of HIV/AIDS. 100 % of the Local Government funds allocated to purchase drugs and supplies are fully used up to meet the overwhelming demand for health care in the district.

Poverty indicators peculiar to Gulu were identified by respondents as insecurity, social and physical isolation of the war victims; poor environmental sanitation and environmental degradation (close to the IDP camps poor waste management was observed), soil erosion and the depleted vegetation cover near the camps for fuel wood, construction and clearing bushes for security reasons. According to the District Health Office, the doctor/patient ratio is very high, although figures were not available for scrutiny. Doctors operate from relatively secure areas, which are the urban areas. Some doctors have also left the district to pursue higher learning, hence aggravating the shortage of available personnel. However, Community health workers and other resource persons are engaging with surveillance agencies to aid service delivery in the outskirts of the district and detect outbreaks of cholera and, meningitis, especially in the camps.

Ill health in the camps is a primary cause and consequence of poverty. The District Health Office pointed out that according to a recent nutrition survey, there is malnutrition in the camps (about 5 percent are wasted, 165? percent are underweight and 30 percent are stunted). Congestion and poor environment in and near the IDPs camps fosters conditions for ill health to the people of the district. IDPs camps are therefore a threat to good health. The cost of medical treatment places additional burdens on poor households particularly in families with many children. Poor health affects people's ability to work and support the family and decreases production, leading to a lack of food, poor nutritional and further health problems. The plight of IDPs' poor health is also attributed to inadequate nutrition mainly affecting children, and unclean drinking water. High HIV/AIDS rates pose the greatest challenge to the health and well-being of the people in the District through rising medical expenditures, and care for orphans and widows. This epidemic has also hit the traditional labour intensive agricultural systems very hard; as a result, HIV/AIDS has contributed significantly to household poverty. It is feared that overcrowding in the camps and the poor income status of the IDPs and limited productive activities have direct bearings on the high HIV/AIDS infection rate in the district. Other factors behind the high infection rates are associated with increased social hardship, poverty and insecurity.

Water and sanitation is also one of the priority areas being addressed by government. A visit to one of the urban IDP camps, Unyama, was very insightful in formulating impressions on the constraints facing the people in regards to healthy living conditions. The camp has a population of about 20,429 people, which is approximately 7,000 households. The Camp is divided into four zones and it is estimated that each household contains on average six people. The entire camp has eight boreholes and initially each borehole was meant to serve 300 people. Sanitation is very poor, whereby most households are situated very near pit latrines, with a distance of only about one to two meters separating the two. There are a few latrines around because of the limited space. The ratio of latrines to households is 1:6. The congestion in the camp has resulted in poor sanitation. Partners like World Vision and Save the Children have played a significant role respectively in the resettlement of people and providing food, in order to decongest the camps, but this can only happen within existing government resettlement programmes. Cholera outbreaks are experienced in the camps on a regular basis and yet there is no single health centre in the camp itself. There is one health centre about 2 kilometers from the camp, but it is not effective compared to the number of people that seek its services.

Limited access to safe water has direct consequences on poverty. Women and children in the IDP camps spend several hours in a day fetching water and this effectively prevents them from engaging in activities that are more productive. Because of the extraordinary efforts sometimes required to fetch water, children, particularly girls, may be taken out of schools or report late for learning. This has long-term implications for household poverty and development. The economic costs

of ill health are both direct and indirect. There are direct costs in terms of having to pay for treatment, and indirect cost in terms of diminished productivity and missed educational opportunities. This is illustrated by the costs of treatment and time spent in looking after the sick. As a result, the productive capacity of the entire households is dramatically undermined by the sickness of just one member.

Among the five broad policy priorities in the Government strategy contained in the Education Strategic Sector Investment Plan (ESSIP) 1997 – 2003, the highest priority was given to operationalising universal access to primary education. The district of Gulu has four tertiary institutions, 22 vocational schools, 44 secondary schools, 25 nursery schools and 240 primary schools. However, sources pointed out that in Gulu, UPE has not even reached some areas because of the conflict. The phenomenon of displaced schools is unique to Gulu and other conflict areas, where the premises of the schools shift due to insecurity near the permanent structures. In addition, an enabling environment for a public/private sector partnership in the delivery of educational services at all levels particularly in post–primary sub-sectors was to be created under the ESSIP, but the conflict has rendered this impossible.

The social-cultural systems of the people have degenerated; the institutional memory of the cultural norms—chiefs, elders and parents—has been depleted through death or abandonment of the area. Consequently, those who should be grooming children in acceptable social norms and the ways of the community are not available to fulfill this invaluable role. The former cultural structures and systems for informal but crucial education on the customs, norms and traditions are fast dissipating. This has affected the moral aspects of the people's way of life, the impact of which is already reaching alarming proportions. Coupled with the plight of the majority of the population being trapped in the artificial set up that is the IDP camps, idleness and a lack of alternative recreational activities has in some instances resulted in the use of chemical substances especially by the youth. This also accounts for some of the noted cases of rape and defilement and an increase in sexually transmitted infections and re-infections, including HIV/AIDS. Lack of privacy in sexual matters due to confined living conditions contributes to immorality in the youth, and has in some cases spawned 'sugar mummies' and rape cases.

There is a feeling of powerless and disempowerment in the camps which arises from the distortion in family dynamics. Traditionally under Acholi culture, family settings did not depend on relief items like food and clothing, but rather on self-sustenance. The incidence of street children is unprecedented, but arises when heads of household cannot afford to take care of their own immediate family. Social and cultural identity is paramount in shaping the identity of the individual's and community's psyche. Access to land and women to marry, heritage systems, kinship and clan ties have disintegrated as camps residents have been removed from ancestral lands and from the guidance of cultural chiefs and elders. The societal organization of the people has been seriously dismantled and undermined by the artificially and externally induced restructuring caused by living in the camps.

Equalization grants are provided to certain districts as an equitable measure to enable them to catch up with the more advanced districts in the socio-economic arena. However, these form a very small proportion of funds received by the district. A startling revelation in the PEAP informs that no allowance is made for increasing resource allocations for insecurity despite the obvious implications for the increased costs of public service administration.<sup>110</sup> It can be argued that Government has not taken all appropriate measures to effectively equip the local government in Gulu to cope with the magnitude of socioeconomic and cultural rights violations activated by the insurgency.

General Comment 3 takes into account the plight of vulnerable groups even in the context of severe resource constraints, advocating for the adoption of low cost programs. In this regard, key to alleviating resource constraints required for human rights protection is international assistance and development cooperation. Together with the World Bank and donor support, Government has put in place programs to help deal with service provision in affected areas in Gulu. In 1992, The Northern Uganda Reconstruction Programme was established to deal with the post conflict reconstruction concerns of Northern Uganda. In this regard, funds were geared towards public infrastructure and services, and promoting participation by NGOs, CBOs, the private sector and other development actors.<sup>111</sup> Thus, despite hostility towards NGOs, Government has placed a serious mandate into their hands in including them as primary stakeholders in service delivery and it is hoped that their inclusion will infuse human rights approaches to sustainable development in the region. However, NURP was developed when Uganda was still under centralized governance and suffered the problems of centralized governance<sup>112</sup> as earlier mentioned in this paper. The Northern Uganda Social Action Fund (NUSAF) is intended to rejuvenate the community's ability to identify their own concerns and to act accordingly. It circumvents the local governments and works through communities directly in the programme areas of community development initiatives, vulnerable group support, community reconciliation and conflict management and Institutional Development.<sup>113</sup>

While the development- partner approach adopted in the NURP and NUSAF is desirable, this is only a part of the solution. CSOs may not necessarily be adequately equipped to provide services to a largely marginalized group recovering from the debilitating effects of the insurgency. There is the risk that the CSOs and other actors may lack the technical capacity or skills to appropriately identify and engage the relevant interventions or strategies required, given the magnitude of the problem. Further, given the prevalent view in the region that there is a proliferation of NGOs and donors whose activities are unharmonised,<sup>114</sup> it must not be taken for granted

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<sup>111</sup> PEAP, at 111.

<sup>112</sup> Ministry of Finance, Planning and Economic Development, 2003 at 35.

<sup>113</sup> *Id.*, at 112.

<sup>114</sup> *Id.* at 116.

that the target group will view NGOs as the legitimate duty bearers and may rebuff well intentioned efforts by development partner. Government is the primary actor and driver of the rejuvenation process in Gulu and must provide the impetus for policies and resources geared towards enabling the citizens in this area recover from the socio-economic effects of war. It must exercise diligently its coordinating, monitoring and oversight functions at all times in order to ensure that human rights are promoted by all stakeholders.

## **V. ADDRESSING THREATS TO DECENTRALISATION, SERVICE DELIVERY AND THE REALISATION OF RIGHTS**

This part of the paper analyses the prevailing and looming challenges that have the effect of inhibiting local governments from effectively meeting their mandates in service delivery. It considers the situation in the districts of Kayunga and Kampala, highlighting the differences and similarities in order to draw a number of broad conclusions with respect to the issue of service delivery. Some possible solutions are offered in this regard that should serve to address areas in which crucial reforms can be undertaken in the short to medium term.

### **4.1 Failure to provide Qualitative Service**

This section provides a snapshot view of the state of service delivery in Kayunga and Kampala, and some of the challenges faced in providing meaningful services. It is not meant to be an exhaustive itinerary of what services are actually provided, and is organised thematically under the various rights that are under consideration in this paper.

#### **4.1.1 *The Right to Education***

##### **A. Kayunga District**

UPE is one of the key achievements that Uganda has registered in the past decade. Undoubtedly, the UPE policy has greatly improved enrollment in primary schools. In Kayunga, the following view was expressed: "Gone are the days when children of school going age would go to fish and rear the cattle, today children are attending the various schools in the parishes of the district."<sup>115</sup> Notwithstanding the transformation introduced, UPE is not without its share of problem areas for local governments. UPE has not been decentralised nor been effectively mainstreamed under decentralisation. The lack of control or adequate mandates by local governments over policies from central government in the education sector has resulted in uncoordinated planning and unrealized qualitative targets. Concerning primary education, Kayunga district has received funding from the School Facilities Grant (SFG) and the Local Government Development Fund (LGDP) as well as the African Development Bank (ADB) and the Government of Northern Ireland. USAID

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<sup>115</sup> Focus Group Discussion of the District Councilors held at Country Summit Hotel Kayunga on 30<sup>th</sup> /08/2006.

is also facilitating the local government in Kayunga to adequately provide for education services to the community. However, the District Chairman expressed concern that there is a tendency (an unwritten law governing UPE) by government to automatically promote pupils to the next level regardless of performance. This has compromised the quality of education in the district in particular and the country in general.

The implementation constraints surrounding the UPE programme poses serious challenges to the local governments. The right to education is being compromised with the emphasis on numbers rather than on the quality of education. Available statistics show that by 2003, the total pupil enrollment in the UPE programme in Kayunga was 114,154.<sup>116</sup> Unfortunately, out of the total, the number of pupils able to access adequate sitting and writing space is minimal; only 56,658. The statistics also show that the pupil teacher ratio stood at 1:54 in 2004.<sup>117</sup> Lack of infrastructure in schools has created a poor learning environment and inhibits the extent of qualitative and pedagogical methodologies that the teachers can employ.

The teaching staff in Kayunga has faced a number of limitations, both internally and externally influenced. As observed by one respondent, the ceiling on the recruitment of teachers as a matter of government policy has aggravated the shortage of teachers. The district is also constrained by the lack of adequately trained teachers; most of the serving teachers are diploma holders and few have degrees. Service delivery in the field of education has been greatly hampered by the constant absenteeism of teachers, causing failure to complete the syllabuses in time for examination of the students. Corruption has also been manifested through political interference, which is evidenced by the transfer of teachers to more lucrative postings. Ultimately this affects the quality and quantity of services delivered. Accessing the education as a service is one thing; the quality of what is accessed is another. Accessibility without quality renders the service defective. This in a way contributes to the poor performance of Primary Leaving Education (PLE) candidates from the district.<sup>118</sup> The table below giving the performance of PLE candidates is quite instructive in this regard:

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<sup>116</sup> Kayunga District Development Plan at 104.

<sup>117</sup> Id. at 105.

<sup>118</sup> Interview with the Mr. Galiwango Ahmed Kizito, the District Education Officer held at the District Headquarters in Kayunga on 30<sup>th</sup>/08/2006.

**TABLE 1**  
**PLE RESULTS FROM KAYUNGA FROM 2001-2006**

YEAR	DIV I	DIV II	DIV III	DIV IV	DIV U	DIV X
2001	66	892	768	785	1849	802
2002	149	165	898	1884	1884	749
2003	266	1288	1131	763	1403	711
2004	91	1709	1126	1185	1709	749
2005	51	1573	1755	1068	1709	881
2006	136	1950	1392	926	1170	632

While UPE is a partly government funded program which eases the burden of fees payable by the parents and caretakers of pupils, the fund does not cover scholastic materials. Afternoon classes have been found to be tedious and not very fruitful due to failure by parents to afford lunch for pupils. Some parents are too poor to provide their children with scholastic material like pens, books etc., which are obstacles to the effective enjoyment of this service.

### **B. Kampala**

Kampala district has 855 primary schools; 10 % of these schools are government run, 84.8 % are privately owned while 4.9% of them are community owned schools. There are 257 secondary schools 6.6% of which are government run, 85.1% are owned by the private sector while 8.3% are managed by the community; the partnership of NGOs and the religious bodies. With 109, Rubaga division has the highest number of secondary schools, Makindye has 83, Kawempe 53, and central division has 24. With the advent of UPE, there has been an influx of students into these various schools. The number of enrolment in the district totals to 172,071 pupils; 83,397 are boys, 88,674 are girls. The number of pupils is beyond the education planners' expectations in the district, resulting in the over crowding of pupils in a single class. This is the case in several schools and compromises the quality of education. Several complaints have been forwarded to the divisions about overcrowding, especially in the government-aided schools but the divisions lack sufficient funds to expand the school premises. The district also lacks land to enable it build more school premises.

Several problems are also associated with the cramped school environments. There are not enough sitting facilities for the pupils and many primary schools in the district lack adequate furniture. Despite the efforts by the local government of Kampala to improve the teachers' housing facilities, they are still inadequate. The sanitation conditions in many schools are appalling and a disincentive to effective learning. Most private schools that have mushroomed in recent years are not delivering quality services. There is concern that the private service providers have turned education entirely into a commercial venture. Most of teachers in these schools are unqualified;

some are actually students in higher institutions of learning. Those that are qualified receive little pay and many a time lack the morale to carry on according to accepted professional standards. The study findings indicate that most of the schools are or were actually residential houses that have been turned into classrooms and are not well suited to accommodate students.

NGOs such as Plan International provide financial support to needy students at both secondary and primary levels. It also donates furniture to schools and has been involved in the construction of energy saving stoves in schools, carrying out awareness programs and workshops on the rights of the girl child. Several other NGOs in Kampala are promoting children's rights in schools, such as FIDA (U) and ANNPCAN.

### **4.1.2 The Right to Health**

#### **A Kayunga**

Health care remains at the top of the agenda of Kayunga. One of the district's Medium Term goals is to promote accessible and customer friendly primary health cares services to the Kayunga community.<sup>119</sup> There is at least one health center in all the sub counties in Kayunga. The district also boasts of six ambulances, one of which serves at the main hospital while the five help at the various lower health units in the district. Two hospitals have been built i.e. Kangulumira and Bbale hospitals. However, a lot remains to be done as some sub counties have only one health unit, which hampers accessibility of health services in such areas especially given the ever-increasing population. Pre and Post natal health is especially at risk as pregnant women cannot easily access health facilities because they are few and far in between. Poverty too has taken a toll in the district such that even where health services are available and adequate, the community cannot easily access them because of the costs of drugs. Usually, these are too expensive especially for the people living in the deeper rural areas. There is also a shortage or in some instances, a total lack of drugs. The health sector has been hit by lack of funds to implement some of the health programs at the district. This is mainly because the revenue base is too low to sustain these activities. Nevertheless, some support has come from development partners, both technical and financial, such as the Walter Reed Project and the Global Fund.<sup>120</sup>

It was reported that some health workers in the district are not active and tend to neglect patients. A lack of staff housing facilities means that they live far from health centers and come late to work. One councilor was of the belief that a contributing factor to the indifference is attributed to the hours that they devote to their own private clinics. Another view presented related to the complementary role of herbalists, with the feeling voiced that they should be promoted under the sector

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<sup>119</sup> Kayunga District Development Plan (2005-2008) at 1. This forms one of the four overall development goals of medium plan of the District.

<sup>120</sup> Id. at 15.

of health services delivery; they should be motivated and funded, because they help immensely in providing the community with local herbs at cheaper prices to the village people.<sup>121</sup>

Kayunga district has been hard hit by the HIV/AIDS scourge. To combat this, the district has been greatly assisted by the different CBOs and NGOs that are on the ground in the district. Some of these NGOs have been instrumental in distributing condoms to the communities especially the youth. They have also helped in the awareness campaigns of the community about the HIV/AIDS scourge and how to avoid it, embracing those living with HIV/AIDS through counseling services on positive living, as well as sensitization through the employment of drama. The district has operationalised HIV/AIDS control projects in keeping with the central government's strategies of combating the disease. This has been done under the supervision and directives of the District HIV/AIDS committee. However, the people in the district do not fully utilize even the existing opportunities for health care. There were instances cited where despite the availability of health facilities, people do not resort to them e.g. health centers are available but women don't access them for antenatal services, preferring to resort to traditional birth attendants. There seems to be suspicion that is deeply ingrained in the communities over the appropriateness of existing government services. The district has undertaken awareness creation on existing medical services although the rate of attitude change among the people is slow.

## **B. Kampala**

The Health sector in the district is divided into the Curative health services, the Preventive services and the Health Inspectorate. Kampala district has 758 private clinics, 465 drug shops, 10 KCC clinics, 27 dispensaries, 7 nursing homes, 5 health centers and 13 hospitals. The district also has 140 static health delivery points in the various divisions.<sup>122</sup> The hospitals in the district are overwhelmed by the numerous patients that flock them from the surrounding districts of Wakiso and Luweero among others. Being a national referral centre, Mulago handles more patients than its available services can manage. To a certain extent, the private sector and NGOs have aided in reducing the need for health services. Kampala City Council operates several health centers and clinics, and each division has at least one clinic. Kampala central division has however been hit by the rampant mushrooming of clinics some of which do not have the qualifications to operate let alone the qualified doctors necessary to run them. There is also the problem of burgeoning juice factories and drug shops of questionable standards.

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<sup>121</sup> Focus Group discussion of district councillors, sub-county chairpersons and sub-county chiefs held at Country Summit Hotel in Kayunga on the 30<sup>th</sup> August, 2006.

<sup>122</sup> Kampala City Council Three Year Development Plan 2006-2009 at 26.

Mass immunization exercises in Kampala are carried out successfully because of good co-ordination.<sup>123</sup> Investments in health care such as construction and renovation have improved the quality of health care in Rubaga division. Sensitization and training of the people on community health has been conducted in 13 parishes of Rubaga division.<sup>124</sup> The Health Sector for Rubaga division has put in place programs like volunteer counseling and testing of HIV/AIDS. Reproductive services are available and catering for adolescents to guard against contracting HIV/AIDS. Nonetheless, people are still ignorant of the primary health care.

The divisions hold seminars and workshops to sensitize the people on various trends like the AIDS/HIV scourge. It is through these platforms that the people are able to pass on their views about the health services being rendered in the division. However, few people attend these seminars being that this is a business area; most people always claim to be busy. It was found out too, that the division identifies the needs of the community and works with the relevant officers to translate these into policies and targets, which in turn guide the division management. In partnership with the Ministry of Health, the World Health Organization, and the Malaria Consortium, the district council is undertaking the training of policy makers and health care workers on the new national anti-malarial drug policy.<sup>125</sup> This drug has been rolled out to other health centers in Kampala district. The district provides an expanded program on immunization project for children gratis. This helps to alleviate the plight of indigent mothers who would not otherwise afford such health services.

The KCC health infrastructure has not yet been developed to meet the numerous demands of the community. A major challenge for the district is the delay in obtaining crucial central government funds, which if they come at all, are usually less than those budgeted for. The services provided at the KCC health centers and the divisions have been greatly compromised because of inadequate funding. Furthermore, the district lacks a substantive health database for effective planning of satisfactory service delivery for the community.<sup>126</sup> There is no facilitation for the District Director of Health Services and the Division Health Offices for transport to carry out inspections to inform future strategies on health care in the district.

### **4.1.3 Economic Rights**

#### **A Kayunga**

Agriculture is the backbone of the economy and remains the main source of income for the communities in the district. To this effect, the local government in Kayunga is undertaking various agricultural programs among which are Plan for the Modernization of Agriculture, (PMA) and the National Livestock Productivity Improvement Project (NLPPI). Price fluctuations in agricultural products and cash

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<sup>123</sup> Interview with the Division Chairperson on 12<sup>th</sup> November 2006.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> City Council of Kampla District Development Plan (2006-2009) at 119.

crops have hit farmers hard, particularly those upcoming, since they cannot be assured of a stable income from farming. Evidence of this is the vanilla boom, which was greatly affected by the drastic plunge in world prices in recent years, rendering growing of the crop a non-profitable venture. Farmers complain about the lack of ready markets for their produce, yet they are pressured by the local government, in partnership with the Central government, to undertake particular economic projects e.g. vanilla farming and the rabbit-rearing project. Farmers were told to rear rabbits and only found out later that there was no market for this product; the same fate applied to vanilla.<sup>127</sup> The local government has done nothing to rectify the situation and encourage farmers.

Many farmers have not been exposed to new technologies via demonstration farms, and those that have been exposed have not been able to access these new technologies considering that they are not affordable. The extension worker/farmer ratio is low; the sub counties have only one field extension worker each to provide the required extension services. This lack of work force has rendered the local government incapacitated to provide vital services. Most farmers are poverty-stricken and find it expensive to buy high quality seeds and other inputs like hoes. According to a Councilor interviewed, if decentralization cannot procure such simple machinery for farmers like hoes at cheaper prices, or provide seeds free of charge as a form of subsidy, by necessary implication this sector has not reaped from its benefits. Even the loans they would have acquired to purchase such requirements are hard to access considering that the farmers have no collateral and are scared off by the exorbitant interest rates.

The major objective of the National Agricultural Services (NAADS) is poverty reduction in accordance with the PEAP policy.<sup>128</sup> Among others, NAADS has also provided services like sensitization programmes for farmers on the pertinent issues vital in the agricultural sector of the district and how best they can improve and benefit from the activity. Nonetheless, respondents pointed to the paucity of such sensitization efforts and it was alleged that Government agencies ask for money to sensitize the farmers.<sup>129</sup> The relevant district personnel are also too few to effectively meet their mandate. The work force available to fulfill the possible services that the local government should render is not readily available. For example, there only 6 field agricultural officers in charge of the sub-counties, with facilitation of only 4 motorcycles for transportation which sometimes break down, thus hindering the field trips of these field workers. To penetrate and reach the farmers at the grassroots and adequately provide the services they offer NAADS has come up with the Farmers' Institutional Development Initiative (FIDI). The District Farmers' Forum (DFF) serves as a platform to co-ordinate, evaluate and monitor the farmers'

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<sup>127</sup> Focus Group discussion of District Councilors and sub-county chiefs held at Country Summit Hotel Kayunga on the 30<sup>th</sup> August, 2006.

<sup>128</sup> Interview with Mr. Ali Lule, NAADS Officer, Kayunga District on 30<sup>th</sup> August, 2006.

<sup>129</sup> Focus Group discussion of district councilors, sub-county chiefs at Kayunga on the 30<sup>th</sup> August, 2006.

activities. In this way, the farmers are involved in planning for the various agricultural activities in the district. In essence, there is participation by farmers and they can thus shape the 'agriculture community' agenda for their views. Sometimes their views are taken on board and those that merit implementation are undertaken.

NAADS is working towards the commercialization of agriculture in order to ensure a transition from the subsistence cultivation that most of the farmers in the district are currently engaged in. Despite the skepticism of some respondents, NAADS is seeking to achieve this through the identification of profitable enterprises or marketable produce that is on demand both nationally and internationally so that farmers can embark on these. It also caters for special interests groups through their programme of service delivery at the district level. NAADS is also involved in Gender empowerment and participation. For example, in all NAADS structures, women are targeted, and at least one out of every four farmers NAADS links up with must be a woman. Women have also been empowered with the expertise to help them start up income generating activities to uplift them economically. So far NAADS is working in the sub counties of Galilaya, Kitimbwa, Busaana, and Kangulumira in this regard. Accountability has been effectively achieved through the Farmers' Forum at each level to the district. This forum makes decisions and reports. It has powers to contract on behalf of the farmers. NAADS works on behalf of the farmers and is accountable to the farmers. Through farmers' associations, farmers demand of it services that may be lacking at the ground level.

#### **4.1.4 Water and Sanitation**

##### **A Kayunga**

The water and sanitation situation in Kayunga was found to be wanting despite the efforts of the local government in providing basic services in this sector. The different sources of water used in the district include springs (56), shallow wells (out of 138, 126 are functional) boreholes (out of 342, 303 are functional). Five hundred and thirty (530) houses have accessibility to potable (piped) water but of these only 335 have a functional water supply.<sup>130</sup> There are 459 functional pivotal point water sources in the district providing safe water to the locals. Out of the 308,907 people projected as the district population, only 137,700 people have a share of this safe water. 46% of the urban part of the district has safe water while safe water coverage in the rural areas is 44%. The safe water coverage in the district in its entirety is 47%.<sup>131</sup>

Eighty-eight point nine percent (88.9%) of the district's water sources are functional and therefore of use to the communities. It was established that 53% of the people (that is 17,207) drink and use unsafe water from the streams, water holes and other unsafe sources. River Sezibwa in the East, Lake Kyoga in the north and Lake Victoria in the south provide alternative sources of water. Local communities have

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<sup>130</sup> Kayunga District Development (2005-2008) at 79.

<sup>131</sup> Id.

often resorted to these natural resources for water, especially those that live within their reach.<sup>132</sup> It is believed that at least each village has a borehole. However, the quality of water from the boreholes is generally bad. In some areas, examples were given where out of the 10 boreholes built; at least five break down in less than a year. Interviews highlighted the perception that the available water sources, mainly the boreholes are frequently contaminated. There is poor waste management around the water sources as animals too are grazed around these sources. The situation is worsened by failure on the part of the community and the leaders in the localities to sensitise on how to sustain and preserve the available water sources. There are Parish Development Committees in every parish that work as watchdogs and pressure or lobby as well as demand for more safe water related services from the local government to their parishes. Views are collected from village to district level on how to achieve this. However, there is skepticism from the people as to whether their views reach the district.

## **B. Kampala**

The deteriorating living conditions in slum areas like Kisenyi demand the timely and appropriate provision of services in order to combat the diseases related with congestion. The high incidence of patients in central division health units is due to poor sanitation because of ineffective solid waste management. Poor drainage systems also breed mosquitoes mainly in the slum areas of the division. Most of the patients that visit the health centers in the division are victims of malaria and HIV/AIDS. Rubaga has been hit by the uncontrolled and rampant growth of slum areas caused by high populations, which exerts a lot of pressure on the limited available sanitary health services. The continued disposal of solid human waste into the surrounding streams and rivers not only blocks the drainage channels, causing flooding, but also contaminates the waters, leading to an increase in disease.

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<sup>132</sup> Interview with Mr. Mukasa Maira Joseph, the Chief Administrative Officer of Kayunga District held on the 29<sup>th</sup> August, 2006.

## VI. CONCLUSIONS AND RECOMMENDATIONS

One pertinent question remains from the preceding analysis: *do Local Governments fully appreciate their role in ensuring that Ugandans realise their economic and social rights?* Furthermore, does the ordinary Ugandan have this perception, in order to place due demands on the government for the attainment of these rights? Views persist in the local government that economic and social rights are in effect economic processes rather than inherent human rights. In one illustration, a highly placed Administrative Officer stated that production should be highly prioritized to improve household income, which consequently will improve the ability of people to access education and health.<sup>133</sup> According to him, the main objective of local government is to spearhead and enhance production services in the district in order to economically equip the community. With a sound economic base, other services can be easily achieved. This view ignores the fact that the obligation to promote the rights of citizens remains at all times primarily vested in government.

The LGA does not give adequate information on how it will use the democratic space granted to the people to fulfill their entitlements. Indeed, the LGA is not a human rights-oriented document and reads rather like a manual on how to set up local governments rather than what its self-proclaimed objectives profess, namely how to democratize governance through the participation and involvement by the people. It is difficult to even catch glimpses of what rights accrue to citizens in the LGA, or what rights are being promoted in the decentralisation of government functions. There is also a disjointed approach in the constitutionally legally restricted economic and social rights and the wider recognition of rights under the second schedule to the LGA, which undertakes to provide services relating to health, housing, food, and clean water.<sup>134</sup>

References in the LGA to 'self-help' and 'projects' do nothing to alleviate the obscurity surrounding the understanding of what citizen's entitlements are within the decentralisation set up, and raise the specter of a welfare rather than the rights based approach to development. What comes across strongly is a sense that Local Government structures are replicating Central government inadequacies in providing relevant, timely and appropriate services that will be enable Ugandans realise their rights. Arguments by Local Governments about resource constraints limiting meaningful implementation smack of the usual excuses made by central government.

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<sup>133</sup> Approximately 96% of the people of Kayunga base their livelihood on subsistence agriculture. Coffee remains the main cash crop in the district as well as commercial fruit growing. In addition fishing activity is undertaken along the Nile and Lake Kyoga as well as livestock and fish farming.

<sup>134</sup> Albeit indirectly through the administration of Mailo land and scrutinising of building plans. The Children's Act that also provides for the right to shelter charges the Council and the LC in charge of Children's affairs to protect the rights of children.

Do Ugandans appreciate that economic and social rights are inherent, inalienable entitlements or are they bound in the needs or 'gift' culture? Increasingly, more individuals are beginning to wake up to the fact that corruption and financial mismanagement of their taxes occurs at the expense of what they are lacking i.e. good schools, houses, and appropriate medical care. While this is an indirect way of assessing appreciation of this category of rights, it shows a linkage to the understanding that the non-realisation of these rights is not due to a lack of capacity by government but poor governance that erodes what they should be enjoying. Lack of knowledge of rights and low civic awareness is a deterrent to human rights advocacy; as such, many people may not be able to articulate human rights in formal terms as understood in national documents and international instruments. Nonetheless, it has been noted that ordinary people are aware of the areas in which their lives are affected by the lack of enjoyment of these rights.<sup>135</sup>

Decentralised service provision in Kampala has unique problems that call into question the viability of this form of administration. Central government has repeatedly called for Kampala to enjoy a special administrative status that is set above the other districts. Appropriate analyses should be conducted to ascertain what are the best public service reforms or models in Kampala would serve to alleviate the exigencies of decentralisation in Kampala.

The above analysis has demonstrated that local government structures are engaged in service delivery provision to enable the communities enjoy certain basic economic and social rights. Local Governments are working to meet their mandates, despite the shortcomings in their organisational capacity to fully implement the services they are charged with. It can be said that local governments have 'taken steps' to ensure that at least minimum services that avail basic protection of rights are being undertaken. General Comment 3 requires an irreducible core of attainment of economic and social rights. The Committee enjoins states parties to ensure the widest possible enjoyment of rights within the country's resource context. Each of the rights that a state undertakes to fulfill on behalf of its citizens must be met in a minimum essential level e.g. essential primary health, basic education, shelter and housing to the maximum of available resources. It can also be said Uganda has evidenced forms of this in various stages of incubation or progression under decentralisation.

Decentralisation has achieved measures of success in some of the areas under review. It has particularly made modest gains in facilitating democratic participation and participatory decision making in the development process. The advantage of basing service provision on the decentralisation model is that interventions are customised according to the peculiarities of a district. A uniform approach in programme identification and strategy in all districts would run the danger of entrenching inequalities and skewed development patterns, as a review of the three

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<sup>135</sup> Oloka-Onyango 2006, at 3.

districts has illustrated. It would also fail to take into account the specific concerns and issues of the people based on their particular circumstances as they relate to the realisation of their rights. However, while the services provided may necessarily vary in content and scope, the specific rights to be promoted and protect remain the same.

The various government interventions put in place under decentralisation indicate that government is committed to ensuring that principles of good governance are adhered to at the diverse levels of administration. However, it still remains unclear whether government has a clear, coherent and sustainable plan to progressively promote economic and social rights through its decentralisation framework, or whether their attainment will be an unforeseen but fortunate by product. Despite this lack of clarity, civil society actors can still use national and international human rights norms and standards to ensure that the processes and strategies engaged promote the obligation to protect, respect and fulfill the rights of all Ugandans to live a better life in all respects.

Flowing from the above analysis and conclusions, several recommendations can be made with respect to the better improvement of the approach to the realization of economic and social rights at the district level. In the first instance, it is necessary for the local governments to diversify investments and sources of revenue for the sustenance of service delivery, and various motivational factors for local government personnel. The capacity of local governance personnel to engage in service delivery must deliberately be built up, especially focusing on budgeting, information development and communication skills, gender analysis, lobbying and advocacy skills, program monitoring and rights-based approaches to development. At the same time, Central Government should disburse allocated funds in time, and should increase the funds for unconditional and equalization grants, especially in war torn areas like Gulu. Local governments should have a say in how conditional grants are earmarked to ensure that the priority programmes in the district inform what conditional grants should be used for. In similar vein, Local Governments should be insulated from the politics of central government by being granted more fiscal autonomy in the determination of sources for and collection of local revenue. For decentralization to work well, the existing relationship between the centre and the local government must improve. Central government must carry through its commitments to cede powers in defined areas and allow the local governments to perform.

While the local government structures have to some extent created a space for the involvement of citizens in shaping local development agendas, the structures and processes are yet to develop to the point where critical participation in decision making and accountability happen. Local governments should develop awareness and information dissemination mechanisms in user friendly forms and avail these regularly in order to build the capacity of citizens to engage in governance issues. These could include outreach efforts through various media such as radio, rallies

and meetings. It is also important for accountability processes and procedures to be disseminated well in advance in order to promote interest in and preparatory activities by all key actors.

For a long time, the potential synergy between CSOs and Local Governments has gone untapped due to mutual hostilities. Nonetheless, it is indisputable that in the attempt to bridge the gap between government and the citizenry in order to realize economic and social rights, CSOs have developed best practices in the area of capacity building and participatory appraisal methods. As in the case of Mpigi and Wakiso referred to earlier, Local Governments should consider undertaking more formal engagements with CSOs in their various governance structures and processes in order to reach the communities and to mutually reinforce each other's work in the promotion and realisation of economic and social rights.

The targeting and involvement of all interest groups as well as vulnerable populations at risk must be built into the activities and development plans of local governments, and adequate resources allocated towards them. Local governments must move beyond the governance structures established to involve marginalized and vulnerable groups and address the structural barriers that prevent the equal enjoyment of rights by all citizens. This can only be done with the substantial involvement and participation of such groups, and within the framework of an equal opportunities baseline. It is also incumbent on the Central government to make relevant policies and laws that will ensure the effective inclusion and involvement of all people in the enjoyment of their economic and social rights.

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