

**UNIVERSAL PRIMARY EDUCATION  
(U.P.E) IN CONTEMPORARY UGANDA:**

**Right or Privilege?**

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## ACRONYMS/ABBREVIATIONS

CEDAW	Convention on the Elimination of all forms of Discrimination against
CRC	Convention on the Rights of Children
DEO	District Education officer
EFA	Education For All
EFAG	Education Funding Agencies Group
EFAG	Education Funding Agency
ESCC	Education Sector Consultative Committee
ESIP	Education Strategic Investment Plan
ESR	Education Sector Review
FGD	Focus Group Discussions
GDP	Gross Domestic Product
GNP	Gross National Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDT	International Development Target
ILO	International Labour Organisation
MDGs	Millennium Development Goals
MISR	Makerere Institute of Social Research
MoES	The Ministry of Education and Sports
NGO	Non Governmental Organisation
ODA	Official Development Assistance
PEAP	Poverty Eradication Action Plan
PRSP	Poverty Reduction Strategy Papers
SFA	Schooling For All
SWAP	Sector Wide Approach
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UNICEF	United Nations International Children's Emergency Fund
UPE	Universal Primary Education

## **SUMMARY OF THE PAPER AND MAIN RECOMMENDATIONS**

**Educational opportunities in Africa have grown considerably since the 1950s, particularly with the involvement of the private sector at all levels of the education system. The opportunities have been enhanced by international and regional guiding instruments and principles to ensure equitable education for all. Apart from being signatory to a host of legal instruments, Uganda has also set up a rich base of legal instruments, policies and bodies related to education, such as the 1995 Constitution of the Republic of Uganda which establishes education as a right for all; the Poverty Eradication Action Plan (PEAP); the Local Government Act; Vision 2025; the National Gender Policy; the Education Policy Review Commission Report; the White Paper; Education Strategic Investment Plan (ESIP); the Education Act; Education Funding Agencies Group (EFAG); Education Sector Consultative Committee (ESCC), and the Education Sector Review (ESR) process. Uganda established Universal Primary Education (UPE) in 1997 within a decentralized framework and adopted a funding strategy through the Sector-Wide Approaches (SWAPs). The Government has also tried to increase funding to primary education. However, with such a rich environment what is not clear is whether these developments have resulted in marked achievements in the substance of education rights at the primary level and even where the set targets have been met, whether those achievements are sustainable.**

**This working paper assessed the progress Uganda has made towards realizing the education rights of children in the first seven years of schooling. Its point of departure is 1987 when the country acceded to the ICESCR. More specifically, we examined the legal instruments and policies related to rights education; Uganda's strategies towards the realization of children's right to Education; Uganda's progress towards the realization of the rights in education; and Uganda's progress towards the integration of human rights education into its Primary school curricula.**

**A case study of Mpigi district was employed utilising mostly qualitative data generated from Uganda Education Statistics Abstracts for the years 2002 and 2004. Ten focus group discussions were conducted with pupils in four primary schools and 20 key informants were interviewed.**

**The study indicates that although Uganda is signatory to most of the international and regional instruments related to education, implementation and respect of the frameworks still poses a problem. An analysis of case law noted that a number of cases had been decided in various jurisdictions around the world. However, in Uganda such cases are scanty. The study established that although the law imposes on both parents an obligation to provide their children with education, in most cases, single mothers are unable to pay the fees. There was not a single case where a husband, ex-husband or father claimed maintenance or school fees from a wife, ex-wife or mother of a child. The**

government has tried to provide primary education leading to increased enrollment. However, it has not met all the obligations laid out in the international instruments and has not ensured availability, accessibility, acceptability and adaptability of education. The government has not provided compulsory education, scholastic materials, structures and an environment that promotes quality education. Regardless of the State's actions or lack thereof, there has been no single case or complaint raised against the state for breach of this duty. This fact arises out of limited knowledge on the rights and entitlements of children as regards to education.

In conclusion, the right to education generally, and free and compulsory education in particular, has been adequately provided for in international, regional and constitutional instruments. Uganda has seen a minimal level of litigation at all levels of our courts right up to the highest court in the land, bringing to the fore the issue of the justiciability of various aspects of this right. Although the right to education has been litigated in a number of cases, these are not substantial enough to match the abuses that occur that prevent pupils from realizing their right to education. Furthermore, the education system has become highly examination-oriented, which has greatly affected the quality of education in the country. Whatever achievements have been made have been realized within the context of economic reforms that are informed by neoliberalism. Such successes are assessed in terms of macroeconomic targets and poverty reduction with little consideration for the human rights aspects at the micro level. Those achievements have also been realized on the basis of heavy foreign funding including budget support, thereby exacerbating the foreign debt and putting in question the sustainability of the achievements in the long run. Therefore, although the State is progressively implementing schooling for all, the gaps in implementation should be addressed if quality education is to be realized.

The study makes the following recommendations:

- The State should re-examine its position on UPE *vis á vis* the provisions in both the international and regional instruments, e.g. provision of trained staff, scholastic materials, school infrastructure within required mileage, etc.
- The State should put measures in place that address female, gifted and disadvantaged children to enable them realize their education rights.
- The State needs to plan for free and compulsory education and to enact a law to that effect. Furthermore, the State should address the terms of service of the teachers so that their rights in education are fulfilled.

- **There is need for human rights education within the UPE curriculum so that pupils are aware of their rights.**
- **The State needs to emphasize the respect of rights in education and in this regard laws should be made outlawing such practices as corporal punishment.**
- **More emphasis needs to be put on education for individual development, rather than the mere passing of examinations.**

## **I. INTRODUCTION**

### ***1.1 A Background Note***

Educational opportunities in Africa have grown considerably since the 1950s. For example, there have been marked increases in enrollment from primary school through to the tertiary level. These increases have followed initiatives at the international level in setting up guiding instruments to ensure equitable education for all. The International Covenant on Economic, Social and Cultural Rights (ICESCR) that was adopted in 1966 and came into force in 1976 addresses, amongst other issues, the right to education. Uganda ratified the ICESCR in 1987. The Convention on the Rights of the Child (CRC) was adopted in 1989 and came into force in 1990. Like the ICESCR, the CRC ensures the rights of the child including provisions to guarantee rights to education. It emphasizes measures to promote free primary education and ensure financial support. In 1995—at the World Summit for Social Development in Copenhagen—a consensus was reached to put people at the centre of development. Among the ten commitments made, two emphasized equality and equity between women and men; and universal and equitable access to education.

The Uganda Government has put together a number of strategies to promote the right to education. The number of schools have increased over the years, for example 13,371 out of 15,339 registered primary schools responded to the 2004 school census, of which 10,876 (81.3%) were government schools, 1,521 (11.4%) were private schools and 937 (7.0 %) were community schools. Thirty-seven (or 0.3%) did not indicate ownership. The majority (46%) of pre-primary schools that responded to the census were privately owned; 36% were affiliated to government aided primary schools and 15% were community schools. Out of 3,645 registered secondary schools 1,969 responded to the school census of which 38% were government, 39.7% privately and 1.52% community owned.<sup>1</sup> Until 1997, government policy on education was to subsidize school fees at 50% for primary education, 65% for secondary boarding schools and 25% for secondary day schools. In 1997, the government started Universal Primary Education (UPE) where both girls and boys would access primary education and benefit equitably. Consequently, government has been increasing its spending on education. For example, education's share of the 2004/05 Gross Domestic Product was 24.1% and 31.2% of the National Discretionary recurrent budget. The new developments in education have led to increased enrolment at both primary (from 2.7 million in 1997 to 7.6 million<sup>2</sup> in 2003) and secondary levels.<sup>3</sup>

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<sup>1</sup> For details see Ministry of Education and Sports (2005); Uganda Education Statistics Abstract 2004.

<sup>2</sup> Id.

<sup>3</sup> The government has recently introduced Universal Secondary Education (USE), with dramatic consequences. See Carol Natukunda & Fortunate Ahimbisibwe, 'USE Schools Overwhelmed,' *New Vision*, February 20, 2006 at 1.

## **1.2 Problem Statement**

The 1995 Constitution of the Republic of Uganda establishes education as a right for all. In addition, in its report of 2004 the Uganda Human Rights Commission (UHRC) makes the point that the state has an obligation to establish sufficient schools, hire required teachers and provide quality education as laid down in the international rights instruments. The state provides Universal Primary Education (UPE) and has increased its spending to try to meet the demands of primary education. With Universal education provisions in place since 1997, what is not clear is whether these developments have resulted in marked achievements in the substance of the right to education, rights in education and human rights education at the primary level and even where the set targets have been met, whether those achievements are sustainable. This working paper assessed the progress Uganda has made towards realizing the education rights of children in the first seven years of schooling since 1987 when the country acceded to the ICESCR. More specifically, we examined the legal instruments and policies related to education rights; Uganda's strategies towards the realization of children's right to Education; Uganda's progress towards the realization of the rights in education; and Uganda's progress towards the integration of human rights education into its Primary school curricula.

## **1.3 The Methodology of the Working Paper**

A case study design of Mpigi district was used in order to assess education rights within a peri urban/rural environment context. The case study design<sup>4</sup> was used to learn from the particular context of Mpigi district, Uganda's progress in realizing the right to education. Although Mpigi district may not represent all the districts in the country, for example the war ravaged areas of Northern and Eastern Uganda where education rights are most violated, nonetheless the district has fairly good examples of worse off and better off schools. The case study allowed for the collection of sufficient data. Focus Group Discussions (FGDs) and interviews were used as the main method for data collection. Five schools were selected for the study. Effort was made to include a wide diversity of the schools we have, representing government-aided, private, single sex schools, day and boarding schools. The study population included male and female pupils in the selected primary schools. A total of 10 (5males and 5 females) focus group discussions of participants ranging from 8 to 12 were conducted with the pupils to discuss the various aspects of the right to education covered by this study. The schools were purposively selected according to the criteria to ensure various categories are fulfilled. Key informants were selected by identifying those who are knowledgeable in the areas of education rights and directly involved in the system and process of education. Twenty six key informants included district authority (1), school teachers/officials (6 males and 9 females), FAWE Official (1), local leaders (2 males and 1 female), and parents (4 males and 3 females).

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<sup>4</sup> See Yin (1984) and Stake (2005).

Data were collected using interview guides for the key informants and the focus group discussions. Focus group discussions were used due to the capacity of this method to generate large quantities of data from a large group of people in a relatively short period of time.<sup>5</sup> In addition, focus groups “allow for emergence of dynamics that open up possibilities for constructing effective histories.”<sup>6</sup> In this study we aimed at documenting the progress that Uganda has made in realizing the children’s education rights, hence focus group discussions served the purpose of generating that information. Further focus groups made it possible for the school children to debate and discuss their rights to education candidly. Data was triangulated by observation and pictorial collection methods as tools that enhance our understanding of the context under investigation.<sup>7</sup> Primary qualitative data was organized into clusters of themes according to categories of rights. Secondary data of mostly a quantitative nature (statistics) were identified from Education Abstracts for the years 2002 and 2004 produced by the Ministry of Education and Sports (MOES) in order to highlight issues in the right to education and rights in education. Thus, descriptive statistics were generated in accordance with the objectives of the study.

## **II. THE RIGHT TO EDUCATION:**

### **A CONCEPTUAL AND LITERATURE REVIEW**

The UDHR 1948 states that the right to education is for all people, elementary education should be free and compulsory and that the higher level of education would be accessible to all on the basis of merit.<sup>8</sup> Between 1976 and 1990 a series of International Covenants and Conventions were promulgated which provide a comprehensive legal basis for required measures to protect and deliver human rights. The Universal Declaration of Human Rights, the ICCPR and ICESCR, constitute the International Bill of Human Rights. Collectively, they provide for compulsory and free primary education and they also emphasize the right to non discrimination in education.

#### ***2.1 International Instruments & Rights Education***

The ICESCR is the seminal treaty that provides in Article 13 for the right to education. At the same time, the instrument creates obligations on the part of, amongst others, States Parties to the Covenant. The Limburg Principles is a UN document that spells out the nature and scope of the obligations of states parties to the ICESCR. Amongst other things, it points to the fact that while the full realization of the rights recognised in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately, while others become justiciable overtime. Such progress in the realisation of the rights must involve popular participation at the level of formulation, application, and review of national policies. The principles

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<sup>5</sup> See. Kamberelis and. Dimitriadis 2005.

<sup>6</sup> Id. at 892.

<sup>7</sup> See Collier and Collier 1986.

<sup>8</sup> See Article 26.

underline the need for special attention to the non-discrimination and equality principle in the assessment of the States Parties' compliance with their obligations under the covenant. The meaning of the provision "to achieve progressively the full realisation of the right" is elaborated and is shown to require states to move expeditiously towards the realisation of the rights, and certainly this can not be interpreted as implying for states the right to defer indefinitely efforts to ensure full realisation. Moreover some obligations such as the prohibition of discrimination under the covenant require immediate implementation.

Progressive achievement also exists independently of an increase in resources. The principles also elaborate on what constitutes a violation by a state party, including the idea of margin of discretion afforded by the Covenant to a state party in selecting the means of carrying out its objects. On the preparation of submission of reports the principles stress the timeliness and quality of reports. The preparation should provide the opportunity for a broad public discussion of goals and policies designed to realise the rights and to review the adequacy of relevant national policies vis-à-vis the scope and content of the right in question. On reporting the legal steps taken, the principles point out that States Parties should not merely describe any relevant legislative provisions, but should also specify the judicial remedies, administrative procedures and other measures adopted for enforcing the rights, and the practice under those remedies and procedures.

Against the above background, there are several works that deal with the various aspects of the right to education. For example, Kenneth King discusses the shift in the donor agenda in regard to education since the end of the Cold War.<sup>9</sup> He contrasts, the adoption of the International Development Targets (IDTs) and Millennium Development Goals (MDGs) on the one hand and the introduction of new modalities of delivering aid through Sector-Wide Approaches (SWAPs) and direct budget support on the other. He traces the metamorphosis from the World Conference on Education for all in Jomtien which had a much more ample education agenda involving universal primary schooling, progress on early childhood, adult literacy and non formal skills development. This conception was later to be narrowed down from education for all (EFA) to schooling for all (SFA) by the donor determination of the global education agenda shifting to primary education for all children. The rearticulated goal came to be access to and completion of primary education, especially by girls as the core agenda, and disregarding early childhood education, non-formal skills and tertiary education. This global agenda on education was then redefined in the mid-1990s within the international development targets of the OECD/DAC focusing on just two aspects of education: universal primary education by 2015 and the elimination of gender disparity in primary and secondary education by 2005. At the same time, this global agenda stressed the necessity of self reliance of developing countries.

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<sup>9</sup> King, 2004.

The 2000 Forum on Education in Dakar, Senegal, reaffirmed the support of education for all and affirmed that the lack of resources would not thwart that goal. Bilateral and multilateral agencies would mobilise resources for the purpose. Shortly after the Dakar meeting in the same year, the Millennium Development Goals were elaborated and agreed. With the MDGs, according to King, came the donor agenda with its narrower idea of education for all: UPE by 2015 and gender equity in primary and secondary education by 2005 has prevailed, enhanced by the SWAPs approaches, as well as direct budget support replacing donor project approaches. These approaches are in many cases being placed within the planning context of Poverty Reduction Strategy Papers (PRSPs). Not only is the idea of education for all narrowed, but these agendas are hardly owned in the South. Furthermore, they lack the dimension of long term sustainability. Hence the end of self-reliance and the emergence of the world's new 'welfare states' for education. 'Welfare, states' not in the sense of a state that takes responsibility for health, education etc.... but a state that is dependent on welfare from the world community for years. In this respect the author mentions the budget support of a number of countries including that of Uganda, which are running upto 50%. These arguments raise important issues with regard to Uganda's PEAP, the SWAP-strategy (education inclusive), the sustainability of whatever may be achieved and the very idea of the right to education being reduced simply to the right to schooling.

On its part, the Convention on the Rights of the Child (CRC), (1989) contains the most comprehensive set of legally enforceable commitments concerning both rights to education and to gender equality. The CRC contains strong guarantees of the right to education. It reaffirms the right of every child, "without discrimination of any kind" to free and compulsory primary schooling, and states that the higher levels shall be "accessible to all." It also protects the child from exploitation that would interfere with education.<sup>10</sup> Implementation of the rights to education and to gender equality within the instrument is patchy and the process of reporting placed on governments has been avoided by about one third of states.

In the State of the World's children of 1999, UNICEF observes that over 40 million children do not attend school. Gaining access to education by many children in Africa remains a struggle. UNICEF's 1998 report on *Making the Right to Education a Reality. From Africa Recovery* highlights the level of commitment that African governments require in order to realize the right to education. It is further noted that Sub-Saharan Africa needs to spend an extra \$1.9 billion a year in order to attain universal primary enrolment by 2010.

## **2.2 The Ugandan Educational Environment**

As Special Rapporteur on the Right to Education, Katarina Tomasevski's report assesses progress in the realisation of the right to education especially UPE that was initiated in 1997. It also appraises the prospects of reducing the financial obstacles

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<sup>10</sup> Article 3.2/32.2.

impeding access to school, reviews the interpretation and application of human rights obligations throughout the education process and analyses the possibilities for mainstreaming human rights and gender in education, especially primary education. The report applies a human rights impact assessment to debt relief, structural adjustment and aid policies and also applies what is described as the “4 ‘A’ Scheme”: availability, accessibility, acceptability and adaptability, to analyse the human rights obligations corollary to the right to education. The report notes that although many NGOs work in the area related to the right to education, few explicitly address the right thus exacerbating the paucity of conceptual and analytical work necessary for its promotion and protection. It is also noted that human rights work in Uganda has mainly focused on civil and political rights and while the work on development in the country has grown, the conceptual linkages between human rights and development have yet to be forged. The Education Policy Review Commission Report of 1987 and the White paper that followed it form the basis for today’s education strategy.

Tomasevski’s report addresses the issue of Aid and human rights—both its positive and negative aspects. It is noted that considerable change has taken place recently in Uganda, transforming debt relief, structural adjustment and Aid from being hostile to human rights to being ‘human rights friendly.’ Nevertheless, Uganda’s debt burden is seen as constraining options for the allocation of resources, pressurising economic development toward exports and foreign investment, making education dependent on donor support. The servicing of debt diverts resources from addressing human rights issues. Furthermore, the conditions attached to macro-development strategy preclude the recognition of human rights, especially the right to education. The report faults the government’s instrumentalist conception of the right to education as merely a means to bring about growth required for poverty reduction.<sup>11</sup> Such conception does not accord with international human rights. That is why human rights require a micro-level analysis separated from the macro-development framework. The report also closely examines corporal punishment, the situation of pregnant school girls and the orientation and purpose of education in Uganda.

The report recommends the definition and operationalisation of the right to education and human rights in education, the enactment of the legislative basis that specifies rights and duties, freedoms and obligations in education. The focus needs to go beyond the present stress on availability and accessibility of primary schooling to embrace mainstreaming human rights and gender in education. Human rights issues in the sector of education such as the absence of teachers’ collective voice in professional and public debates about education, the reality or rather the lack of, trade union freedoms of primary school teachers, also need to be addressed. While the government has ratified most human rights treaties relevant to education excepting the ILO conventions compliance with its reporting obligations is unsatisfactory. Amongst other things, the reporting process should be utilised for stock taking.

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<sup>11</sup> King and Hill. 2002.

In its 2004 report, the Ministry of Education and Sports (MoES) recounts the reforms in education, particularly Universal Primary Education, and recognizes education as a right for every citizen. While the report talks about availability and accessibility of education, no mention is made of acceptability and adaptability, nor of the rights in education and human rights education.

Joseph Eilor's analysis of the main features of SWAPs in the Ugandan education sector. It is noted that prior to 1996 the relationship between external funders and the Government of Uganda as far as funding, technical support and policy dialogue was characterised by a one-on-one approach without an overall strategic education policy framework.<sup>12</sup> The introduction of UPE accelerated policy dialogue between the external funders and government and also a substantial strategic shift from the project-funding culminating in the Education Strategic Investment Plan (ESIP). On the one hand the external agencies established the Education Funding Agencies Group (EFAG) and on the other the Ministry of Education and Sports established the Education Sector Consultative Committee (ESCC) to facilitate the process of policy dialogue. The two structures were then enhanced by the semi-annual Education Sector Review (ESR) process. At the macro-level measures were enhanced further by the introduction of PEAP in 1997. The study assesses the external support within ESIP, its delivery through budget support especially as far it relates to capacity development, reduction of transaction costs, strengthened partnerships and cooperation, invitation and utilisation of education sector studies for policy formulation, improvements of education service delivery, sustainability of education sector programme and poverty reduction.

The study made a number of findings. Among them, it pointed out that there still exist institutional and human resource capacity gaps at all levels. Although downsizing has resulted from public sector reform, the report noted that there has been a substantial transfer of transactional costs to districts and an enlargement of the responsibilities of district officers which they find problematic. The management of budget support flows by the Ministry has led to a shift of the workload of the planning department from the planning and management of education to the planning and management of Official Development Assistance (ODA) flows through the semi-annual sector services. External support agencies agree that the ESR process has strengthened the partnership and co-operation between the parties, but there is disagreement about the bargaining power over priorities and strategic policy. Ugandan officials do not perceive that they are in control. The government prefers all external support to be channeled through the budget support mechanism while some agencies still undertake project interventions. Approximately 60% of the financing for primary education comes from external sources. The large flow of external support has accentuated Uganda's dependence on such financing which raises issues of sustainability.

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<sup>12</sup> International Institute of Educational Planning, UNESCO 2004.

Concern is expressed in the report about the continuous feedback and accountability regarding the overall management of the education SWAP demanded by stakeholders, which has led to the proliferation of education sector studies and research whose findings, however, have had a minimal impact on policy formulation. There is a substantial increase in inputs such as qualified teachers, classrooms, equipment and instruction materials, and improvements in curriculum has decreased gender disparities; in spite of this, there was an initial worsening of quality of education as the expansion in enrolments strained greatly the physical capacity of the primary education system. Note is made of the disproportionate emphasis on the addition of classrooms rather than the establishment of new schools, leading to the very large size of schools which is not conducive to the improvement of quality or access through the reduction of home-to-school distance. Against this background, the report also points out that the retention of children in school especially for girls in the upper grades is problematic. There is lack of local flexibility in the curriculum that would make education more attractive to pupils so that they remain learning. To compound the problem, national standardized examinations make this flexibility difficult. Finally, the report notes that the education SWAP through UPE has directly contributed to poverty alleviation removing the burden of paying school fees and providing employment opportunities, and improved overall financial management and strengthened the links between educational policy and the broader national goal of poverty eradication.

The National Report on *The Development of Education in Uganda at the Beginning of the 21<sup>st</sup> Century*<sup>13</sup> identifies the main challenges confronting the new century as globalization, modernization, the information age and knowledge-based economic competition in the global market for which quality basic education should prepare people. It highlights the reforms in education geared towards the achievement of EFA and the MDGs, and states that the main policy and investment thrust is on increasing equitable access to quality basic education through UPE Programmes. Following on the 1995 Constitution all laws governing education are under review to match with policies at the macro and micro levels. The organization, structure and management of education are also being re-oriented to the national and international goals of education. According to the report, UPE marks a shift from exclusive elitist education to mass and inclusive education for all in line with EFA and MDG targets. It is claimed that the strategy of government and private sector partnership in the provision of education has improved resource investment especially at post-primary level. The report notes the rise in enrolment between 1997 and 2003 in primary school from 2.7 million to 7.3 million; the percentage of girls enrolled in primary schools was 47% in rural areas and 49% - 50% in urban schools while 85 of school going age children are thought to be enrolled in primary school. To enhance quality in delivery of basic education a holistic approach and a decentralized model of governance and management of primary education has been adopted. The report then sets out the elements in the UPE policy and programme package, which include the following items:

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<sup>13</sup> Ministry of Education 2003.

- Enrolment of all children of school going age;
- Waiver of tuition fees and development charges;
- Training, recruitment and paying of teachers' salaries;
- Construction of school buildings and provision of required infrastructure;
- Supply of core text-books and other instructional material;
- Meeting daily school requirements by providing cash and resources, and
- Sponsorship of examination candidates at PLE.

The report also points out the need for capacity building and the mobilization of all stakeholders in support of the UPE programme in order to ensure accountability and efficiency in school management and resource utilization. It also advised that there should be targeted partnerships with funding agencies, NGOs and the private sector for financial mobilization, technical assistance and capacity building. The report mentions various quality control measures and assessment, including the establishment of a new Agency: the Education Standards Agency (ESA) which has replaced the Inspectorate of Schools. Among the major achievements identified are, the increased access by girls' to basic education, more and better trained teachers, more classrooms, schools and furniture, more learning materials, and a higher enrolment of children with special needs. The significant education management reforms are identified as the increase in policy dialogue, partnership building and participation by civil society, for example in the Annual Sector Review with donors and stakeholders. The report identifies the major challenges as Continuing gender imbalance, the inadequate opportunities for the poor and for persons with disabilities, and the large numbers at primary and secondary school level as compared to physical facilities, teachers, instructional materials, quality as compared to quantity of education. It particularly noted that there was a need to improve education for disadvantaged communities, including children in conflict areas, and that the impact of HIV/AIDS impact has led to considerable trauma and stigma arising out of the death of pupils, teachers and parents.

A Review of the 2005 Gender Parity Millennium Goal in Uganda and Proposed in Uganda and Proposed Strategies for Achieving This Target,<sup>14</sup> sought to establish the extent to which Uganda has moved towards the achievement of the 2005 gender parity goal in education. In relation to primary schools the report found that there was awareness and appreciation of the existence of gender inequalities and the gender gap in education. This was reflected in an upward trend in the gross enrolment since 1997 when UPE was introduced and the percentage of girls has steadily risen: 48% in 2000, 49% in 2001, 49.4% in 2002 and 49.3% in 2003. In relation to retention, repetition, drop-out and completion rates, the gender gap is widening after Primary level 4 rising to a gap of 10% in P.7 due to underage, repetition and drop out. Completion rates stand at around 60%, while girls' survival rates are a few percentage points lower than that of boys. The Review also noted that girls tend to repeat less often boys, however, the majority (boys and girls) do not perform well. The Review pointed out that there were reports of teachers being "abusive", unfriendly, unsupportive, discriminatory and harassing girls were known but unreported.

Chapter 9 of the Uganda Human Rights Commission Annual Report of 2004 discusses issues in the Right to Education particularly the scope, the obligations of the government and the current status towards the realization of the right to education. The chapter puts an emphasis on free and compulsory primary education for all children; the progressive introduction of free secondary education for all; equal access to free higher education on the basis of academic capacity; intensification of fundamental (basic) education; and prioritization of equal access of education for the girl child. The Commission emphasizes the obligation of the state: “to establish a ‘sufficient’ number of public schools, hire the required number of qualified teachers and provide for the quality of education as laid down in international human rights law.”<sup>15</sup> Furthermore, the report notes that the government has an obligation to ensure availability, accessibility, acceptability and adaptability of educational institutions. The report further gives a brief critique of UPE, and of secondary and post secondary education, and makes recommendations towards improving the quality of education and realizing the right to education. The report, however, does not explicitly or otherwise address human rights in education or human rights education. This is rather surprising in view of its mandate to monitor the State’s compliance with human rights obligations. It is also oddly silent on Uganda’s compliance with its reporting obligations.

### **2.3 Education for Development**

The major aim of the Ministry of Education and Sports (MoES) is to provide wider access to quality education. The Ministry formulated the Education Strategic Investment Plan (ESIP) 1997–2003 framework and ESIP II framework. Through ESIP and *Vision 2025* government made a commitment to addressing education as a development priority. The Poverty Eradication Action Plan (PEAP) 2004/05–2007/08—Uganda’s key development strategy paper—does not emphasize education as a right, but instead focuses on its capacity to contribute to economic growth. The PEAP treats education as a resource that contributes to human capital development, leading to higher incomes and sustained economic growth. The PEAP gives the examples of health outcomes associated with schooling such as lower fertility rates and utilizing health services. The PEAP further notes that education plays a role in strengthening civil institutions, building democracy, empowering women and protecting the environment, and highlights the government’s commitments in achieving the Millennium Development Goals through increasing funding for the number of children from primary to secondary schools and those going for vocational training after senior four; and reducing funding for the number students going into higher education. However, the PEAP states that achieving the targets will depend on the availability of resources, and how the resources are used. By making such a statement, the government was clearly positioning itself strategically so that failure to deliver is blamed on the lack of resources.

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<sup>14</sup> Kwesiga 2003.

<sup>15</sup> Uganda Human Rights Commission, 2004, at 135.

## **2.4 Gender and the Right to Education**

Education and building a human resource base have been recognized as central to sustained national development.<sup>16</sup> Discussing the gender gap in education, the Global Campaign for Education: An International Coalition of NGOs and Trade Unions, stated that because education is so crucial to improving health and increasing incomes, the girl's education goal has a domino effect on all the other MDGs. The gender gap in education and limited girls' right to education are identified with the persistence of poverty in most developing countries. To move them from the corridors of poverty into the corridors of power, women and girls need education. Educating girls requires more than getting them into school; other girls' rights have to be promoted as well.

CEDAW (1979), the Vienna Declaration and Program of Action (1993), the International Conference on Population and Development (1995), and the Beijing Declaration and Platform For Action (1995) reaffirm state parties mandate to provision and guaranteeing gender equality in education. Various global studies have demonstrated that education yields substantial benefits to individuals, their families and to society. King and Hill have explicitly argued that after accounting for inter-country differences in GPD (or GDP per capita), countries with higher levels of women's education, experience more rapid economic growth, longer life expectancy, lower population growth and an overall improved quality of life. Scholars argue that investments in girls' education particularly those directed towards equality also benefits boys; educated women tend to make independent personal, political and economic decisions with respect to health and encourage children (both girls and boys) to attend school. Furthermore, educated mothers tend to be healthier and to raise a healthier family because they tend to marry later and drastically reduce the risk of developing infections and dying during childbirth. It is also argued that educated women take advantage of economic, social, and political opportunities and resources.<sup>17</sup>

In Uganda, the right to education of the girl child has historically been affected by a complex interaction of political, social, household, economic and community factors. Kwesiga<sup>18</sup> notes that formal education for women started later than that of men, and women's access to education was limited by the number of educational institutions available to them from the beginning. The current study will examine education rights from a holistic perspective so as to address issues of gender and other vulnerable groups within the context of the operation of the system of UPE.

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<sup>16</sup> Commonwealth Secretariat , 2001.

<sup>17</sup> Id.

<sup>18</sup> Kwesiga, 2002.

## **2.5 Education Rights in Legal Instruments and Policies**

### **2.5.1 The International Instruments**

These instruments provide for the right to education in its various aspects. Because they have been made over a period of time, they differ from each other in certain aspects by way of emphasis, focus as well as breadth of coverage. The Universal Declaration of Human Rights provides for the right to education. It stipulates that elementary or fundamental education shall be compulsory and free. According to the declaration technical and professional education shall be made generally available and there shall be equal accessibility, on the basis of merit, to higher education. The Declaration also sets out the purpose of education: the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the promotion of understanding, tolerance and friendship among all national social and religious groups, as well as the maintenance of peace.<sup>19</sup> The Universal Declaration of Human Rights is now part of international customary law. In addition, Uganda has ratified the human rights treaties relating to education. In chronological order, these include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985, the International Covenant on Economic, Social and Cultural Rights in 1986, the Convention on the Rights of the Child in 1990, the International Covenant on Civil and Political Rights in 1995 and the African Charter on Human and Peoples Rights in 1986 and the Charter on the Rights and Welfare of the African Child in 1994. The ICESCR provides for the right to education which should be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.<sup>20</sup>

Article 13 of the ICESCR provides for compulsory and free primary education for all, secondary education which shall be generally available and accessible to all; such education includes its different forms such as technical and vocational secondary education. Higher education is to be made equally accessible to all by progressive introduction of free education. Article 13 also provides for fundamental education for those who have not received or completed the whole period of primary education. The same article provides for the continuous improvement in the material conditions of teaching staff. Article 13 also recognises the liberty of parents/legal guardians to choose for their children schools, other than public schools and to ensure the religious and moral education of their children in conformity with their convictions. The article also alludes to the liberty of individuals and bodies to establish and direct education institutions.

On July 5, 1976, the Organisation of African Unity adopted the Cultural Charter for Africa. In Part III which covers National Cultural Development, the Charter sets

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<sup>19</sup> Article 26.

<sup>20</sup> Article 13 (1).

out the basic principles governing national cultural policy as well as the priorities, among which are: (a) the transcription, teaching and development of national languages with a view to using them for the dissemination and the development of science and technology; (b) the recording, conservation, use and dissemination of information on oral tradition; and, (c) the adaptation of educational curricula to development needs and to the National and African cultural and social realities. The Charter also sets out the following methods best suited for attaining cultural development objectives, amongst others:

- (a) The introduction of African culture into all national education systems.
- (b) The introduction and intensification of the teaching in national language in order to accelerate the economic social political and cultural development
- (c) ...
- (d) The training of competent staff at all levels; and
- (e) The concrete and effective establishment of links between the school and national realities as well as the life of the people, a link which should be apparent in the school curriculum and structures.

Apparently there is no adherence to many of the above provisions in the case of Uganda. For one, Uganda has no national language and there has also been no consistent policy on teaching in local languages. The current policy has not been fully implemented. The link the Charter establishes between the school and national realities and the life of the people which should be reflected in school curricula and structures is particularly pertinent to the issue of acceptability and adaptability of education as aspects of the right to education.

The African Charter on Human and Peoples Rights generally states that: “Every individual shall have a right to education.”<sup>21</sup> The Convention on the Right of the Child is more or less in the same terms as the Covenant. It provides for the right of education for the child on the basis of progressive achievement and equal opportunity. It also provides for compulsory and free primary education, and availability and accessibility of secondary education, and accessibility of higher education to all. In addition to the above, the Convention provides for the availability and accessibility of educational and vocational information and guidance. States parties are also obliged to take measures to encourage regular attendance at schools and the reduction of drop-out rates. It also obligates states parties to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the Convention itself. According to the Convention, States parties shall promote and encourage international cooperation especially with regard to the elimination of ignorance and illiteracy in the world, access to scientific and technical knowledge and modern teaching methods. Particular account shall be taken of the needs of developing countries.

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<sup>21</sup> Article 17.

The Convention also spells out the objects of the education of the child. Many of these objects are as set out in the Universal Declaration Human Rights. In addition to these however, the convention sets out the following objects regarding the education of the child: The development of respect for the child's parents, his or her own cultural identity, language and the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own, and the development of respect for the natural environment.<sup>22</sup> The African Charter on the Rights and Welfare of the child spells out the right in much the same manner as other treaties in terms of the rights, the objects of education and the specific obligations of States Parties. In addition to these, the Charter spells out other specific objects of education:

- The preservation and strengthening of positive African morals, traditional values and culture;
- The preservation of national independence and territorial integrity;
- The promotion and achievement of African Unity and Solidarity;
- The development of respect for the environment and natural resources, and
- The promotion of the child and understanding of primary health care.

In terms of the appropriate measures States Parties must take, the Charter adds that they must take special measures in respect of female, gifted and disadvantaged children in order to ensure equal access to education for all sections of the community.

### **2.5.2 The 1995 Uganda Constitution**

The Uganda Constitution makes provision for the right to education. This is expressly stated in Article 30: *All persons have a right to education*. In addition to Article 30, Article 34 refers to the right of children and states: "A child is entitled to basic education which shall be the responsibility of the State and the parents of the child."<sup>23</sup> In addition to these provisions in the bill of rights, the National Objectives and Directive Principles of State Policy provide that the state shall promote free and compulsory education, take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible and that individuals, religious bodies and other non-governmental organizations shall be free to found and operate educational institutions if they comply with general educational policy of the country and maintain national standards.<sup>24</sup> These objectives shall guide all organs and agencies of the State, citizens, organisations and other bodies and persons in applying and interpreting the constitution or any other law and in taking and implementing policy<sup>25</sup> However, with the introduction of Article 8A, it appears that the directive principles now have the full force of the substantive provisions of the Constitution and are probably justiciable.

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<sup>22</sup> Article 28.

<sup>23</sup> Article 34 (2).

<sup>24</sup> See Objective XVIII.

<sup>25</sup> Id., Objective I.

The Constitution also makes provision for academic freedom in institutions of learning.<sup>26</sup> The other provisions of the Constitution which relate to education include Articles 167 and 168 which respectively set up, and prescribe the functions of the Education Service Commission. Article 189 provides that District Councils shall have responsibilities of any functions and services not specified in the Sixth Schedule to the Constitution. In relation to education the Sixth Schedule only lists “Education Policy” as a function of central government, which implies that a great deal of education services are actually decentralized. On the other hand, the Fifth Schedule states that one of the functions and services of regional governments (tiers) is secondary education and tertiary institutions except national universities and other national institutions. At present, there are no regional governments in place. Lastly, in relation to human rights education, Article 52 (1) stipulates as one of the functions of the Human Rights Commission, to establish a continuing programme of research, education and information to enhance respect of human rights. Although international and regional instruments to which Uganda is a party provide for free and compulsory education neither the Constitution nor any legislation makes primary education compulsory. There is also no legislation expressly providing punitive measures for parents who do not ensure that their children attend school.

### **2.5.3 Legislation**

Section 3 of the Children Act<sup>27</sup> provides that the welfare principles and the children’s rights set out in the first schedule to the Act shall be the guiding principles in making any decision based on the Act. Paragraph 3 of the schedule to the Act provides that in making any decision affecting a child, a court, authority or person making the decision shall have regard in particular to, *inter alia*, the child’s educational needs. Paragraph 4 sets out the rights of a child and Paragraph 4(c) stipulates that a child shall have a right to exercise all the rights set out in the United Nations Convention on the Rights of the Child and the Organisations for African Unity Charter on the Rights and Welfare of the African Child which may not be expressly set out in the Act itself. Section 5 of the Act stipulates the duty of a parent, guardian or any person having custody of a child to maintain that child and in particular this duty gives a child the right to education and guidance. Under Section 9 of the Act, it is the duty of both the parents of children with disabilities and of the state to take appropriate steps to ensure that those children are afforded facilities for their rehabilitation and equal opportunity to education.

The Education Act<sup>28</sup> relates mainly to the regulation of formal education, the registration and licensing of teachers and other connected matters. It has no direct provisions guaranteeing the right to education. However, Section 7(4) empowers the minister to cause to be prepared educational development plans geared towards the promotion of educational services in the country. The University and Other

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<sup>26</sup> Article 29 (1) (b).

<sup>27</sup> Cap. 59.

<sup>28</sup> Cap. 127.

Tertiary Institutions Act<sup>29</sup> provides for the regulation of the establishment, administration and standards of Universities and other institutions of Higher Education. Section 24 of the Act sets out the functions of a public university which include among others: the provision of higher education, promotion of research and learning; dissemination of knowledge and giving opportunity of acquiring higher education to all persons including persons with disabilities wishing to do so regardless of race, political opinion, colour, creed, or sex, and the provision of accessible physical facilities to the users of the Public University.

Section 28(1) stipulates that admission to a Public University shall be open to all qualified citizens of Uganda; while S.28(3) provides that the Admission Committee of a Public University shall take into consideration affirmative action in favour of marginalised groups on the basis of gender, disability and disadvantaged groups. Likewise, admission shall also take into account persons with special talents in sports, music and other social activities for their enhancement.<sup>30</sup> Section 156 of the the Penal Code Act makes it a crime to desert a child. It provides that any person who, being a parent, guardian or other person having lawful care of a child under 14 years and being able to maintain that child, willfully and without reasonable or lawful excuse deserts a child and leaves it without means of support commits a misdemeanour.

#### **2.5.4 The Right to Education in Case Law**

The case law presented here both from within Uganda and outside elaborates on various aspects of the right to education, and highlights the justiciable aspects of the right in order to throw more light on the different elements of the right that have been deemed enforceable in a court of law. Many of the cases raise issues of rights in education and this demonstrates the indivisibility of rights, especially as regards economic, social and cultural rights on the one hand and civil and political rights on the other. The right to education has been litigated in a number of cases, however, there is more litigation involving rights in education. For example in *Dimanche Sharon & Ors. v. Makerere University*<sup>31</sup> the Petitioners claimed that Makerere University's policies and regulations of scheduling lectures, mandatory tests and examinations on the Sabbath was inconsistent with and contravened Articles 20, 29 (1) (C), 30 and 37 of the Constitution in the case of the petitioners who practiced the Seventh Day Adventist Christian Faith. They claimed that the policies imposed an unconstitutional burden on them by virtue of their faith and undermined their constitutionally guaranteed right to Education under Article 30 of the Constitution. It was held that University regulations were non-discriminatory and equally applied to all people at the University for seven days a week; that the regulations were reasonable and necessary in order to run an institution such as Makerere University. The court further held that the University had tried as much as possible to accommodate and minimise the infringement on the petitioners' rights. It was also

<sup>29</sup> Act 7 of 2001.

<sup>30</sup> Sec. 28 (4).

<sup>31</sup> Constitutional Petition No.1 of 2003.

held that University education was not synonymous with Makerere University; that the right to secure such education in institutions not maintained by the state was unquestioned, and that there were abundant alternatives to Makerere both within and outside the country, including those that specifically catered for particular religious faiths.

On appeal to the Supreme Court in *Dimanche Sharon & Ors. v. Makerere University*,<sup>32</sup> it was held that the rights and freedoms of the individual in respect of religion or education enshrined in the constitution are not absolute. They are enjoyed within certain acceptable limitations envisaged by the Constitution itself and also in the context of a person's own duty to society. At a time when there is a stated national objective to give citizens access to university education at affordable costs and there was clear evidence that Makerere University's policy was promoting that objective, there was a need to balance the rights of individuals with the national good or the public interest so that reasonable accommodation is accorded to both concepts. The court alluded to objective XVIII of the National Objectives and Directive Principles of States Policy which are supposed to help the court in interpreting the constitution, and concluded that the right to education which is enshrined in Article 30, as well as the Universities and Other Tertiary Institutions Act on which Makerere University's policy and regulations were based must be looked at within the context of Objective XVIII. Consequently, the court found no violation of the Appellant's rights to education or religion.

Various aspects of human rights in education have been addressed in litigation in a number of other countries. In the famous case of *Brown v. Board of Education*,<sup>33</sup> the US Supreme Court held that,

*In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs are by reason of the segregation complained of deprived of the equal protection of the law guaranteed by the Fourteenth Amendment.*

The Court cited with approval a finding by the lower court in Kansas to the effect that: "Segregation of white and coloured children in public schools has a detrimental effect upon coloured children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law therefore has a tendency to [retard] the educational and mental development of Negro children and deprive them of some of the benefits they would receive in a racially integrated school system."

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<sup>32</sup> Constitutional Appeal No.2/2004.

<sup>33</sup> 347 U.S.483 (1954).

A number of other court decisions in the United States have addressed the issue of content of teaching from a rights approach in relation to the issue of the theory of evolution and “creation science.” In *Epperson v. Arkansas*<sup>34</sup> for example, the United States Supreme Court invalidated an Arkansas statute that prohibited the teaching of evolution. It was held that the statute was unconstitutional because the First Amendment to the US Constitution did not permit a state to require that teaching and learning must be tailored to the principles or prohibitions of any particular religious sect or doctrine. *Segranes v. State of California*<sup>35</sup> held that the California State Board Education Science Framework—which included in it an antidogmatism policy—gave sufficient accommodation to the views of the plaintiff and that the class discussion on evolution did not prohibit either his or his children’s free exercise of religion. In *Mclean v. Arkansas Broad of Education*<sup>36</sup> it was held that an Arkansas statute requiring public schools to give balanced treatment to “creation science” and “evolution science” was in violation of the Establishment Clause of the US Constitution and declared that “creation science” was not in fact science.

Similarly in *Edwards v. Aguillard*<sup>37</sup> the US Supreme Court held unconstitutional Louisiana’s “Creational Act.” The statute had prohibited the teaching of evolution in public school, except when it was accompanied by instruction in “creation science”. The court found that by advancing the religious belief that a supernatural being created humankind, the Act impermissibly endorsed religion; and that the provision of a comprehensive science education is undermined when it is forbidden to teach evolution except when creation science is also taught. In *Webster v. New Lenox School District*<sup>38</sup> the same matter was addressed from the point of view of the teacher’s rights. It was held that a school district may prohibit a teacher from teaching creation science in fulfilling its responsibility to ensure that the First Amendment’s establishment clause is not violated and that religious beliefs are not injected into the public school curriculum. In other words the teacher’s free speech rights had not been violated. Similarly in *Pelozo v. Capistrano School*,<sup>39</sup> the Court of Appeal held that the teacher’s right to free exercise of religion is not violated by a school district’s requirement that evolution be taught in biology classes.

Somewhat similar issues have been litigated in Japan but in respect of the content of textbooks. Litigation has challenged the Japanese government’s textbook censorship based on revisionist approaches to the issues of Japanese militarism and aggression, rape and the use of Chinese and Korean so-called “comfort women” during the Second World War.<sup>40</sup> In *Saburo Lenapa*’s case, the court avoided the

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<sup>34</sup> (1968)393 U.S. 97.

<sup>35</sup> 1989 Sacramento Superior Court #278978.

<sup>36</sup> 1982) 529 F. Supp.1255.

<sup>37</sup> (1987)482 US.578.

<sup>38</sup> [#122, 917F. 2d 1004.

<sup>39</sup> (1994) 37F,3<sup>rd</sup> 517, 1994.

<sup>40</sup> See Court Cases, Citizen Groups, and the Unresolved Issues of War.

<http://www.jca.apc.org>, accessed on October 6, 2006.

issue of the unconstitutionality of the state textbook screening, but ruled more specifically that Japan's school textbooks should include descriptions of the suffering Japan's past aggression had caused its neighbours and that such inclusion constituted a positive education consideration.

In England, there has been litigation related to the statutory duties of local authorities. In *X (Minors) v. Bedfordshire County Council*,<sup>41</sup> various appeals arising from different cases were heard by the House of Lords. In the *Bedfordshire* cases five plaintiffs claimed damages for personal injury arising out of a breach of the statutory duty and negligence by the defendant Council. They claimed that between 1987 and 1992 they had suffered parental abuse and neglect and that the Council had received serious reports of such treatment but had failed to adequately investigate the matter or to protect the plaintiffs from further harm. Other plaintiffs claimed damages for negligence and also a breach of statutory duty arising under the Education Act 1944 and the Education Act 1981. The plaintiffs—who had special learning difficulties—claimed damages alleging that they had been in need of special educational provisions but that the council had wrongly advised their parents and failed to diagnose that they suffered from a special learning disorder.

It was held that a breach of a statutory duty did not, by itself, give rise to any private law cause of action, but such a right may arise where on its true construction, the statute imposed a duty for the limited class of the public and there was a clear parliamentary intention to confer a private right of action for breach on members of that class. The Court also stated that there was no general rule for ascertaining whether a statute conferred such a right of action, but that the absence of another remedy for breach and a clear intention to protect the limited class were indications that a private right of action existed and the mere existence of some other remedy was not necessarily decisive. Furthermore, the court was of the view that no private right existed and that a plaintiff basing his or her claim on a careless exercise of a statutory duty had to show the existence of circumstances giving rise to a duty of care at Common Law.

On the specific facts in the *Dorset* case, the House of Lords held that the aim of the Education Act of 1981 was to provide an administrative machinery for the benefit of society as a whole to help one disadvantaged section of society. Since the Act provided its own detailed machinery for securing that the statutory purpose was performed, the defendant authority owed no Common Law duty in the exercise of the powers and discretions specifically conferred = on it by the Act and the claim based on the alleged duty of care was rightly struck out. However, where the authority offered a service, such as psychological advice to the public, even though the power to do so emanated from a statute, it came under a duty of care to those using the service to exercise care in its conduct. Moreover, the educational psychologists held themselves out as having special skills and were, like any other professional

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<sup>41</sup> [1995] 3 WLR 15.

bound both to possess such skills and to exercise them carefully. Consequently, the defendant authority was vicariously liable for the breach of such duty.

While the above cases dealt with the local authorities' liability in damages in private law, other cases have addressed the issues of sex discrimination and taking into account irrelevant considerations in decision making. For example, in *Regina v. Birmingham City Council Ex parte Equal Opportunities Commission*,<sup>42</sup> the Birmingham City Council had a statutory duty to provide secondary education. In carrying out the duty, the Council provided selective secondary education in independent, single-sex grammar schools for 5% of the children at the age of 11. Selection of the schools was based on examination results. However, because there were more grammar schools for boys than for girls more places were available for boy pupils. As a result, a girl pupil required higher marks in the entrance examination to gain a grammar school place than did a boy. Although the council had a policy of promoting equal opportunity between the sexes, they were not able to remedy the imbalance as the grammar schools were voluntary-aided schools whose founders would not agree to admit pupils other than by selection. The Equal Opportunities Commission brought proceedings by way of judicial review alleging that in carrying out their statutory duty the Council were discriminating against girls within the meaning of the Sex Discrimination Act 1975 and were therefore in breach of that Act and the Education Act 1944.

The Court of Appeal held that the result of the education policy of the council was to treat girls less favourably than boys by depriving some girls of the option of attending a selective school that would have been available to them had they been boys. This was discrimination under the Sex Discrimination Act 1975, and in exercising its powers under the Education Act, the Council was discriminative and acted unlawfully by operating the system of selective education. The court further held that there can be discrimination under the Sex Discrimination Act without there being any intention to discriminate.

In *Regina v. East Sussex County Council ex parte Tandy*,<sup>43</sup> the applicant was unable to attend school due to an illness. The local education authority at first provided her with five hours of home tuition per week. As a result of a reduction in government funding, the Authority made a policy decision to reduce home tuition to three hours a week. The applicant sought judicial review of the decision on the ground that the Authority had taken into account an irrelevant consideration, i.e. the availability of resources. It was held that "suitable education" under the Education Act connoted a standard to be determined purely by educational considerations, namely, efficiency and suitability to the child's age, ability, aptitude and needs. There was nothing in the Act that made availability of financial resources a relevant consideration to the question of what constituted "suitable education," and the local authority was not

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<sup>42</sup> [1988] 3 WLR 837.

<sup>43</sup> [1998] AC 715.

permitted to avoid performing a statutory duty on the ground that it preferred to use its available resources for other purposes when Parliament had imposed a statutory duty as opposed to a statutory power to provide suitable education and hence the scarcity of resources was not a legitimate reason for the failure to perform that duty.

The tribunal of the Uganda Human Rights Commission has entertained a number of cases relating to the right to education. In *Mpondi Emmanuel v. Chairman, Board of Governors & 2 Ors*,<sup>44</sup> the complainant claimed that the respondent board and two school teachers had violated his right to education. He alleged that the two school teachers had severely beaten him and that his sponsor had set as a condition that he would only avail school fees if the school either punished the errant teachers or indicated a specific action to be taken against them. As a result, the complainant child was sent away from school for the non-payment of fees. The issue was whether the teachers' and the school's action of sending away the complainant three days before term officially closed for non-payment of school fees had a disruptive effect on the education of the complainant. The Tribunal held that the disruption of the complainant's education was a direct result of the unlawful beatings and the dismissal, which was not due to the fault of the complainant. Consequently, the complainant was awarded damages for the violation of his right to education.

In *Rebecca Tibetsigwa v. George Lukoda*<sup>45</sup> the complainant who had co-habited with the respondent and had 5 children with him, alleged that when the children got to higher classes the respondent refused to pay fees. Earlier, the matter had been reported to the Uganda Human Rights Commission and a memorandum of understanding under which the respondent had agreed to pay fees had been signed. The Tribunal considered Article 34 of the Constitution, which guarantees the right of a child to education and makes it a responsibility of the parents and the state. They also considered the welfare principle as stated in the Children Act. They found that the respondent had breached all his duties under these provisions, thereby violating his children's right to education. He was ordered to immediately pay the school dues for the children. The Tribunal also awarded exemplary damages for his violation of Article 34, which conduct the Tribunal found high handed as the respondent had the means and ability to pay the fees.

On the basis of Article 34, the Uganda Human Rights Commission has ordered fathers to pay for the education of their children in *Kaifumba Estolia v. Bareberaho Ezekiel*,<sup>46</sup> in *Alice Nabuloli Opolot v A. Z. Kanga*<sup>47</sup> (where the father had even pleaded inability to pay the fees having lost his job); in *Eva Nanwanye v. Itaaga Bosco*<sup>48</sup> and

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<sup>44</sup> Complaint No.210 of 1998, UHRC.

<sup>45</sup> Complaint No.UHRC/J/LOG41/2003.

<sup>46</sup> Complaint No. UHRC/MBA/32/2002.

<sup>47</sup> Complaint No. UHRC/MBA/32/2002.

<sup>48</sup> Complaint No.187 of 2004.

in *Susan Kaasa v. Major Godfrey*<sup>49</sup>; *Mirembe Margaret v. Dr Tumwine Mukubwa*<sup>50</sup> and *Rose Namande Kaduyu v. George Mugisha*<sup>51</sup>

In all these cases, the Commission noted that the duty is on both parents to provide their children with education. In most cases, however, the mothers were unable to pay the fees and the fathers who had the ability had abdicated their duty to do so. There was not a single case where a husband, ex-husband or father claimed maintenance or school fees from a wife, ex-wife or mother of a child. Furthermore, the Commission observed that under Article 34, the duty is on both the parents and the state. However, there has so been no case or complaint raised against the state for breach of this duty.

*Ruth Lwetutte v. Epainetu Lwettute*<sup>52</sup> differs from the other cases in that although the Commission found the father was in breach of his duty under Article 34 of the Constitution and S.5 of the Children Act, it could not order remedies because the mother had not proved the financial means of the respondent i.e. an alleged pension, and also did not know his whereabouts. According to the Tribunal:

*Any orders made against the respondent would not be able to be effected because his whereabouts are not known. The tribunal will not make orders in a vacuum. Although the respondent has to maintain his children and he has breached this duty the complaint has no remedies available to her.*

There is a species of case law both in the United States of America and in various European Union countries that involve dress codes and uniforms in schools. These obviously raise many human rights issues relating to education, and involve both the right to education as well as rights in education. For example, *In R (Begum by her litigation friend, Rahman) v. Headteacher and Governors Denbigh High School*,<sup>53</sup> the House of Lords ruled on the challenge by the respondent of the school dress code. The respondent insisted she should be allowed to attend school clothed in a jilbab, a long coat-like garment. On whether this contravened Art. 9 of the European Convention on Human Rights providing for the manifestation of one's religion or beliefs, the House of Lords ruled that:

*the school uniform policy and its enforcement has ... a legitimate aim and is proportionate. The legitimate aim was the proper running of a multi-cultural, multi-faith, secular school. The limitation was also proportionate to the legitimate aim pursued ... and was*

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<sup>49</sup> Complaint No.UHRC/J/LOG –12/2002.

<sup>50</sup> Complaint No. UHRC 149 of 2004.

<sup>51</sup> Complaint No. 197 2003.

<sup>52</sup> Complaint UHRC/J/LOG18/2003.

<sup>53</sup> [2006] UKHL 15.

*specifically devised with the advice of the Muslim Community. Although it appears that there is a body of opinion within the Muslim faith that only the jilbab meets the requirements of its dress code ...*

On the right to education, the House of Lords found that there was no breach since the interruption of the respondents education was a result of her unwillingness to comply with a rule to which the school was entitled to adhere, and her failure to secure prompt admission to another school where her religious convictions could be accommodated.<sup>54</sup>

Likewise a British Muslim teacher named Aisha Azmi brought a discrimination test case in an employment tribunal claiming discrimination on religious grounds for her suspension (and eventual dismissal) from a school for refusing to remove her veil while teaching. Her dismissal was upheld.<sup>55</sup> In *Tinker v. Des Moines Independent School District*<sup>56</sup> the issue was whether students had the right to wear black armbands to school as a statement of protest against U.S. policy in Vietnam. The court upheld the students' right to expression of a social, political or economic nature unless it could be shown that a particular behaviour would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school which was not the case here.

The latter case of *Canady v Bossier Parish School Board*<sup>57</sup> acknowledged that students have a constitutional right to free expression, and a person's choice of clothing can be a constitutionally protected form of expression. However, the court held that the right to free speech was not absolute and a school uniform policy may satisfy constitutional requirements on four conditions, namely, the school board has the power to make such a policy; the policy promotes a substantial interest of the board; the board does not adopt the policy to censor student expression, and the policy's incidental restrictions on student expression are not greater than necessary to promote the board's interest.

In *Cope v Girton Grammer School Ltd*,<sup>58</sup> a 15 year old male student tied his hair back in an attempt to comply with the school uniform policy. The school insisted he would not be allowed to attend class unless he cut his hair. The school uniform policy provided: 'Hair must be well brushed in a neat, appropriate and conventional style. It must be held back if worn in a longer style. Boys shall have hair to collar length at a maximum.' The student complained to the Equal Opportunities Board arguing that the school's policy discriminated against him on the grounds of sex; that a girl with the same length of hair would not be prohibited from attending school. The Board agreed on the issue of discrimination and granted an interim

<sup>54</sup> Similar decisions involving the hijabs have been reached in France and Germany.

<sup>55</sup> See the Guardian <http://www.guardian.co.uk>, (accessed on October 20, 2006).

<sup>56</sup> 393 U.S. 503.

<sup>57</sup> see <http://exic.uoregon>

<sup>58</sup> (1995) EOC92-680.

order restraining the school from excluding the complainant from class.

### **III. THE STATE OF CHILDREN'S RIGHTS TO EDUCATION IN UGANDA: AN EMPIRICAL INQUIRY**

#### ***3.1 Introduction***

Education is important and “so crucial to improving health and increasing incomes, and the girls education goal has a domino effect on all of the other millennium development goals.”<sup>59</sup> In many areas, girls and minority children are denied access to education or, in some cases minority children are placed in separate, inferior schools. It is not unusual for school officials to participate in acts of intolerance towards a particular group because of the group's gender and religion. There are fewer girls in primary schools than boys. Gender disparities exist at all levels of education. Even when girls do attend school, they are more likely not to finish their education. In many cases, they are subject to sexual harassment and abuse in school settings by school officials, authorities and classmates. Girls who miss out on primary education grow up to become the women who make up the illiterate adults.

In Uganda, the children Act states that a child has a right to be educated and guided (that is to be shown the proper way to behave) by his or her parents, guardian or custodian.

As far as children's rights to education are concerned,

- All children have a right to education
- Education should help children develop to their full potential and to develop respect for human rights and the natural environment.
- Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children.
- Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programs
- Eliminating gender disparities in primary schools and achieving gender equality in education, with a focus on ensuring girls full and equal access to and achievement in basic education of good quality.
- Improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all especially, in literacy, numeracy and essential life skills.

This section presents the results of the study in terms of the right to education whether the boys and girls have generally easy access to primary education; rights in education- what happens to the boys and girls who have access to education, is the school environment conducive to learning and human rights education – whether or not the school curriculum includes teaching of the children's rights.

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<sup>59</sup> The gender gap in education, [http://www.choike.org/nuevo\\_eng/informes/1247.html](http://www.choike.org/nuevo_eng/informes/1247.html), down loaded on 5-31-2005, Montevideo, Uruguay.

### **3.2 The Right to Education**

Uganda's education structure runs on a four level single-track system namely pre primary, primary, secondary and tertiary levels. With the exception of pre-school, all these levels are under the Ministry of Education and Sports. Until 1997, government policy on education was to subsidize school fees at 50% for primary education, 65% for secondary boarding schools and 25% for secondary day schools. In 1997, Government introduced Universal Primary School (UPE) where four children per family were entitled to free education. However, the four child access to primary education faced problems of enforcement and termed as *boona basome* better known as "education for all" became the more appropriate measure. With UPE, the state meets the costs of enrolment, teaching and part of the costs for school construction. The households meet the costs for uniforms, books, school meals and contributions towards construction and maintenance<sup>60</sup>.

The right to education involves the availability of functioning educational institutions in sufficient quality; schools should be accessible to all without discrimination; acceptable in form and substance to all, and flexible or adaptable to the needs of society. The child's right to education in any setting is the mandate of both the states parties by ensuring the availability of formal education to the masses and parents and by ensuring that they encourage the children to go to school and provide them with the necessities of schooling life. In addition, the states parties should create an environment where the education system is acceptable and adaptable by the masses. This section assesses these rights within the context of UPE in Mpigi district.

#### **3.2.1 Availability of Education**

According to UNICEF, primary education is the most important component of basic education. States parties fulfill the availability of education by actively developing a system of schools including classrooms, delivering programmes, providing teaching materials and training teachers and paying them domestically competitive salaries.

##### **A. Availability of Infrastructure**

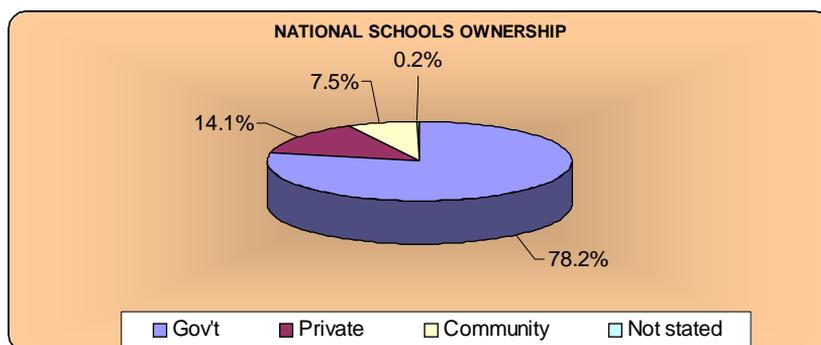
Availability or the state provision of the necessary infrastructure is crucial to the realization of the right to education. The infrastructure includes classrooms, seating and writing facilities, etc. In Uganda, the state owns the largest number of schools in the country, for example in 2002, 78.2 % of 13,332 primary schools were government owned, 14.1% were privately owned and 7.5 % were community owned as shown in the graph below:

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<sup>60</sup> See McGee 2000: 85-106.

FIGURE 1

NATIONAL PRIMARY SCHOOLS BY OWNERSHIP



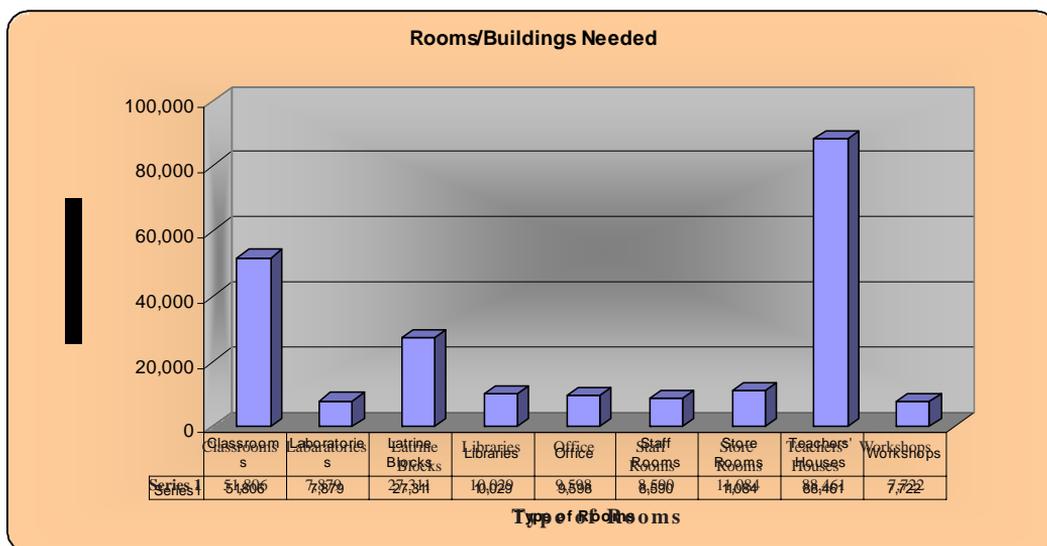
Source: Uganda Education Statistics Abstract, 2002

In the 2004 Education Statistics Abstracts of 13,371 schools, 81.3% were government owned; 11.4% were private schools and 7.0% belonged to the community. As the largest owner of schools, it would seem that the state is fulfilling its mandate to provide education for the masses. However, some of the schools had inadequate space; teachers and teaching materials. The state needs to address the requirements in the school system for the children to realize their right to education. In addition to ownership, the state aids many schools. The number of government-aided schools increased from 10,086 in 2002 to 10,460 in 2004 and those receiving partial support from government decreased from 1,156 to 655, while those not aided by government increased from 2,050 to 2, 208.<sup>61</sup> Of the total number of schools, government aided were the largest, although some get partial funding. Thus it would seem that government has attempted to play its role in the provision of basic education. However, the details on the number and quality of buildings, sanitation facilities for males and females, trained teachers who are well remunerated, the availability of teaching materials and modern facilities such as computers, show that the state has not adequately met its obligation for the provision and protection of the child's rights to education.

Most of the respondents in Mpigi district were of the view that the district has a substantial number of schools, although the structures were inadequate. In the words of the Secretary for Children Affairs, LCV: "We need more classroom structures to be built in the district." It was observed that a number of schools had fewer classrooms than was required. The problem of adequate space is nation wide as shown in Figure 2:

<sup>61</sup> For details see Ministry of Education and Sports, 2005.

**FIGURE 2**  
**SUMMARY OF TYPES OF SPACE NEEDED AT NATIONAL Level**



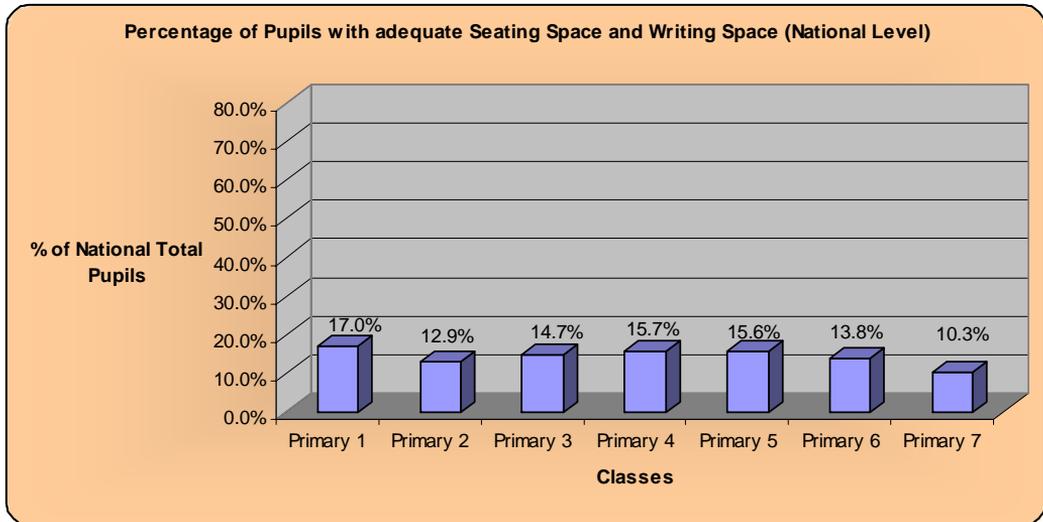
Source: Uganda Education Statistics Abstract, 2002

In terms of *seating space*, the situation is wanting; in 2002 the highest percentage of students with adequate seating space was 70 in Primary Seven and the lowest of 30% in Primary One. Both figures reflect the enrolment figures in the lower classes and progressive dropout rates from the lower to the upper classes. According to the 2004 Abstracts, the situation of seating and writing space has not changed. Primary 1 had the lowest percentage of about 30 of students with enough seating space and Primary 7 had increased to 80%. In Primary 6 and 7, quite a number of students would have dropped out, thus giving a higher percentage of students with adequate seating space. In the lower classes it is crucial that the pupils have adequate seating space to allow effective learning. According to the 2002 Abstracts, lack of space and very poor classroom conditions in lower classes may be responsible for children losing interest in school and taking on other activities like trading.<sup>62</sup>

The situation was not any different for seating and writing space. In 2002, space was highly inadequate in the lower classes and progressively increased in the upper classes. The number of pupils with adequate seating and writing space was about 543,069 in Primary 1 and 330,106 in Primary 7. In 2004 the situation had changed a little with about 638,096 pupils in Primary 1 and 403, 294 pupils in Primary 7 with adequate seating and writing space. It has been observed that a number of schools provide seating facilities however crude. Note the percentages in Figure 3 below are relatively small indicating a high number of pupils without seating and writing space. Quite clearly, in terms of availing education, the state needs to address the infrastructure situation.

<sup>62</sup> Uganda Education Statistics Abstract 2002.

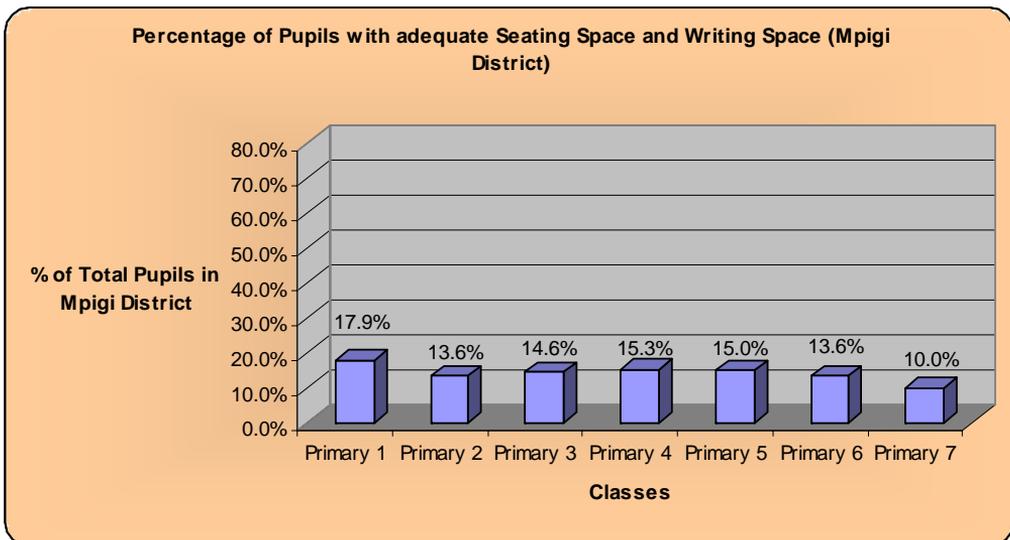
**FIGURE 3**  
**ADEQUATE SEATING AND WRITING SPACE**



Source: Uganda Education Statistics Abstract, 2002

However, for a pupil to learn to write properly requires a chair and a desk or a bench with a writing facility. Mpigi district is no different; the status of seating and writing space is the same as the national level.

**FIGURE 4**  
**SEATING AND WRITING SPACE FOR MPIGI DISTRICT**



Source: Uganda Education Statistics Abstract, 2002

In Mpigi, Primary 1 had the highest number of pupils (14,204 and 16,330 for 2002 and 2004 respectively) with adequate seating and writing space and Primary 7 had the lowest number of pupils (7,961 and 10,080 for 2002 and 2004 respectively). Seating and writing space were noted to be in great demand in almost all the schools. But given that a number of pupils would have dropped out by Primary, the proportion of pupils with inadequate facilities would be smaller than in the lower classes.

**TABLE 1A**

**SELECTED DISTRICTS SHOWING PUPILS WITH ADEQUATE SEATING AND WRITING SPACE**

District	2002					
	P1 Space	P1 Enrolment	P7 Space	P7 Enrolment	Total Space	Total Enrolment
Mpigi	14,204	36,539	7,961	11,570	79,537	54,312
Kabarole	7,742	23,884	4,003	5,264	42,636	98,892
Mbarara	13,327	98,210	17,402	21,098	121,342	36,145
Lira	9,570	41,362	10,522	16,487	72,144	214,695
Gulu	8,999	33,387	7,265	9,991	66,556	150,349

**TABLE 1B**

**SELECTED DISTRICTS SHOWING PUPILS WITH ADEQUATE SEATING AND WRITING SPACE**

District	2004					
	P1 Space	P1 Enrolment	P7 Space	P7 Enrolment	Total Space	Total Enrolment
Mpigi	16,330	33,411	10,080	11,917	91,729	142,711
Kabarole	11,630	23,110	4,682	5,952	59,352	102,584
Mbarara	18,428	88,658	18,271	19,463	167,991	304,883
Lira	8,262	50,844	12,983	19,807	79,395	265,542
Gulu	10,690	35,784	9,320	10,618	84,117	162,688

Tables 1 A & B show selected districts and classes of pupils with adequate seating and writing space against the enrolment. Examining 2004 total space against total enrolment, it is clear that the districts are challenged in providing pupils with seating and writing space; for example Lira had a total of 265,542 enrolled pupils but only 79,395 (not even half of the enrolled pupils) had adequate space and 186,147 without. In Mbarara 136,892, Gulu 78,571, Mpigi 50,982 and Kabarole 43,233 pupils lacked adequate seating and writing spaces. How are these pupils expected

to learn? How can they concentrate on the lessons? The problem of inadequate space is spread nationwide and the state has a big challenge to address the obligation of availing education to the masses.

Prior to the introduction of UPE, schools had relatively adequate spaces for pupils as enrolment was low. Historically, the government and the private sector including the religious organizations built schools in both rural and urban areas. The number of religious based schools decreased as most of them became government aided. The responsibility for the provision of education falls directly on the state and the parents, although some primary schools have been constructed by private individuals. In this respect, communities have often organized themselves and put up structures or renovated schools through community development efforts. Among the schools visited, Mapeera Memorial School was a clear example of schools with inadequate space. The school had one building structure for the entire school as shown in the photograph below. The one structure cannot house classes (Primary 1 through 7), a staff room, head teacher's office, a library, etc.; hence the environment is definitely not conducive to learning.

### **PICTURE 1**

#### **SINGLE STRUCTURE SCHOOL OF MAPEERA MEMORIAL SC.**



Apart from the availability of the physical structures, some of the existing structures in four of the schools were old and would be considered hazardous to the pupils. In the four schools, Kammengo, Ggoli Boys, Mapeera and Mpigi Central most of the structures needed urgent renovation and incomplete structures needed finishing. In one of the schools, there was a particular concern about classes that were not cemented. The following pictures show the state of some of the schools visited

**PICTURE 2**  
**STRUCTURES THAT NEED RENOVATION**



Some of the structures were overcrowded with little or no ventilation. Safety precautions like fire escapes were non-existent. The learning environment cannot be separated from the living environment. The pictures above show the crowded nature and quality of the dormitories for boarding pupils. The pupils who sleep in the iron structure must get affected by both heat and cold. In addition, the beds looked uncomfortable:

**PICTURE 3**  
**A & B LIVING ENVIRONMENT FOR PUPILS**



Some of the problems in the schools are related to corruption in the system or the misappropriation of funds meant for such activities. In 2006, the Inspectorate of Government (IG) highlighted the challenges of realizing UPE objectives in a paper entitled *Tackling Corruption in UPE* as follows: Ineffective/non existent Finance and School Management Committees; failure to properly account for UPE funds on time by head teachers; instances of shoddy work in the construction of classrooms; embezzlement, and the diversion of UPE funds to unauthorized expenditures among others. Although the IG made a number of recommendations on how to deal with the problem, a number of schools had been affected and children's right to education impacted upon.

**B. Latrine Structures**

Four out of the five schools visited had dilapidated latrine structures. For some schools there was no clear provision of separate latrines for girls and boys. In one of the schools, facilities/latrine structures for the girl child were non-existent and the female teachers had to use facilities for the boarding section of the school.

**PICTURE 4**

LATRINE STRUCTURES



The issue of sanitation and hygiene is obviously still a problem in many schools. The sanitary facilities are so old and not well maintained. For example, one of the

schools had 4 latrines for the whole school and nothing specific for the girls and female staff. In such situations the girl child is disadvantaged the most. Girls in their menstruation period would not want to use such structures. The lack of privacy and proper support at school with such facilities has resulted in girls not attending school during their monthly periods and for some ultimately dropping out of school. As noted by a male key informant:

*Boys and girls use the same latrines/urinals. Those who are shy keep away from school. There is need to separate boys' latrines from those of girls. The situation is bad to the extent that we the teachers are forced to rush to those toilets of the boarder pupils.<sup>63</sup>*

Inadequate and poor latrine structures have previously been reported to be one of the causes for girls dropping out of school. Problems of the above nature prevent children from enjoying their rights to education. One of the objectives' of Uganda's Poverty Reduction Strategies Paper (PRSP) is to reduce drop out rates and raise completion rates. It can be argued that the government has not achieved this objective. However, providing latrine structures and other sanitary facilities would go a long way to addressing this objective. On the other hand, one can argue that since the achievement of UPE objectives are progressive in nature the government achieved increasing enrolment relative to dropout rates.

Attempts at solving some of the sanitary and related problems have been made. For example, in Mpigi district a program had been introduced two months prior to conducting this study:

*...to meet the girls' needs in relation to provision of pads, soap and water for taking care of themselves at school during the monthly periods. The district program is increasing retention through the Improved Literacy and Learner Friendly Schools in Uganda Project through which changing rooms are constructed in schools and girls are taught to make their own pads.<sup>64</sup>*

*Some schools have also taken measures to counteract these constraints for example they have put up shelters for the grown up girls to take care of themselves during monthly periods. These measures have made girls comfortable to be at school during their monthly periods and have reduced on absenteeism.<sup>65</sup>*

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<sup>63</sup> Interview with Male Director of Studies-Mapeera Memorial Primary School.

<sup>64</sup> Interview with Secretary for Children Affairs/Vice Chairperson LC V.

<sup>65</sup> Interview with Male teacher at Ggoli Boys Primary School.

*The majority girls are provided with enough sanitary pads. Some girls feel shy to come to school when they are in their monthly periods. We have a first aid box and basins that the girls can use during their monthly periods. The toilets are enough for both girls and boys and the urinals are clean. The environment is good for learning for both boys and girls.*<sup>66</sup>

Although some schools try to provide sanitary facilities for the girl child, however, the supplies were inadequate as they stocked for emergencies and not for regular supply. If the pupil cannot afford to buy them or does not know how to make them, the girl child will still keep away from school until her period is over. It was reported that the pupils who lack sanitary towels claim to be sick and do not attend school. In some schools, in addition to the sanitary facilities not being enough, the few that are available are still in a very poor state. The limited number of latrines is a big problem to the girls' privacy and lack of sanitary materials for girls affects pupil performance, and impacts on their rights to education.

### **C. Availability of Water**

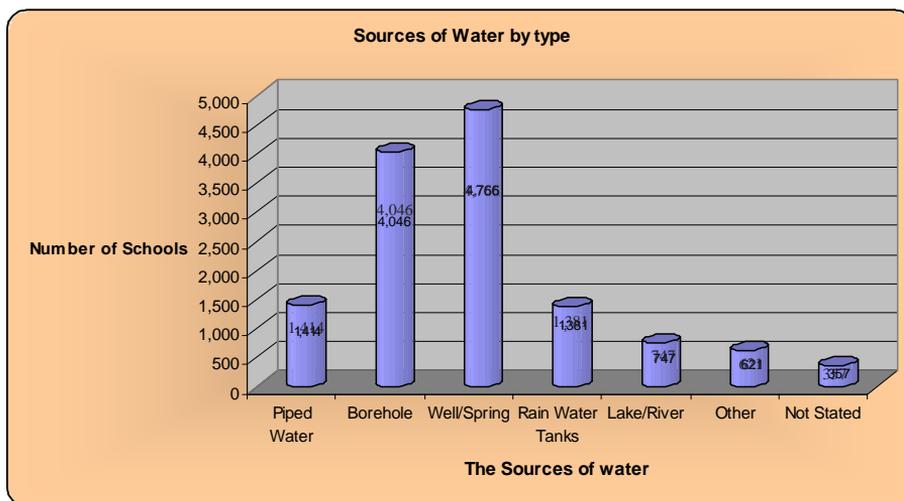
Provision of safe drinking water adds to the school infrastructure and part of the school environment that makes it hygienically possible for the pupils to learn. Provision of safe drinking water in some schools remains a problem. According to the 2004 Abstracts, about 706 schools nationally use river/lake water that may or may not be safe for drinking. The most common source of water for primary schools nationwide is well/spring (333.24%) followed by borehole (28.63%).<sup>67</sup> Fetching water in most schools is usually the job of pupils, and it is done at the expense of attending classes. Such cases are common in schools that do not have access to piped water and school children fetching water is an abuse of their right in education.

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<sup>66</sup> Interview with Senior Lady, Tabiro Primary School.

<sup>67</sup> Uganda Education Atatistics Abstract, 2004, at 65.

**FIGURE 5**  
**SOURCES OF WATER**



**Source: Uganda Education Statistics Abstract, 2002**

As far as sanitation and hygiene is concerned, the schools have put up facilities for pupils to wash their hands. The schools that were visited displayed messages of hygiene and sanitation emphasizing the importance of preventing and controlling the spread of germs/disease in the school. This is a very important aspect of education which produces an all round citizen who is liberated from the vicious circle of ignorance, poverty and disease.<sup>68</sup>

**PICTURE 5**  
**A YELLOW CONTAINER**  
**(JERRY CAN) FOR WASHING HANDS**



**PICTURE 6**  
**A BOY WASHES HIS HANDS**



<sup>68</sup> Ministry of Education, 1989.

#### ***D. Availability of Scholastic Materials***

One of the objectives of the PRSP is to raise the cognitive skills of primary school graduates. Scholastic materials are crucial if this objective is to be realized. The results show that at the national level, the most textbook copies in 2004 were reported for Primary 4 with an average of 238,475 copies to 1,045,514 enrolled pupils; P3 with an average of 214,217 copies to 1,150,525 enrolled pupils and P5 with an average of 187,725 copies to 923,709 enrolled pupils.<sup>69</sup> At the national level, schools seem to have textbooks that might be shared among pupils adequately. However, the picture is different on the ground with individual schools depending on the schools capacity to secure books. On the other hand, if the average number of books are examined against the total number of enrolled pupils in each class and the different subjects—Science, Social Studies, Mathematics, and English—then the copies can not be adequate for the pupils in those classes. Indeed a simple calculation of distributing 238,475 copies to the four subjects equally gives a sharing ratio of 1 book to 175 pupils.

This ratio cannot be uniform in all the schools. Some schools do not have instructional materials and it is up to the parents to provide for their children, but it is quite clear that the parents may not be in a position to provide them. The majority of the Ugandan population resides in the rural areas; one wonders if the parents have been sensitized on the importance of providing reading materials for their children; another argument is that even if the parents know how important it is for the children to access reading materials, the question would be can they afford to buy the books for their children? Hence the children who can afford to buy books will have an advantage over those who cannot. The state is not meeting it's the obligation of providing "Education for All." This is in spite of the findings of the 1989 Education Policy Review Commission, which stated:

*Without basic inputs, particularly textbooks and other instructional materials, learning is seriously hampered. As a result, the wastage in education due to repeating and dropping out is quite high indicating low gains from whatever the government spends on primary education.*<sup>70</sup>

The Commission further stated:

*The provision of instructional materials, particularly textbooks is the most cost-effective way of improving the quality of primary education. These materials are effective in improving scholastic achievement. Teacher guides and other materials designed to assist untrained teachers in organizing classrooms could also prove to be cost-effective...*<sup>71</sup>

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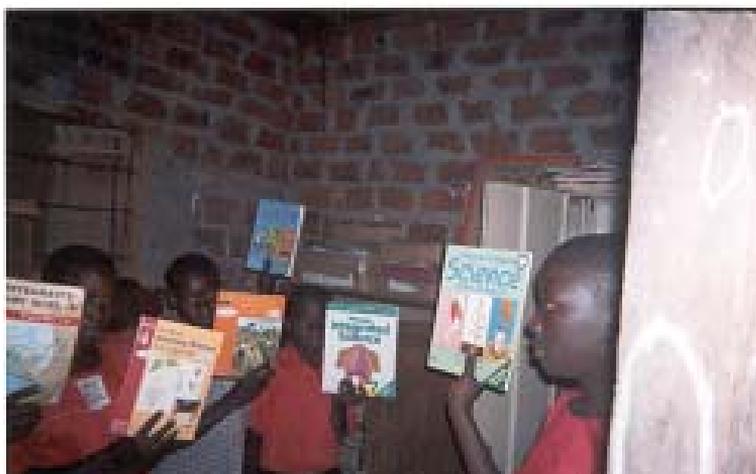
<sup>69</sup> Uganda Education Statistics Abstract 2004.

<sup>70</sup> Ministry of Education, 1989, at 6.

<sup>71</sup> Id., at 6.

In Mpigi district two schools had some educational materials as displayed by the pupils in the picture. However their concern was a lack of library/storage space that further constrains the schools to secure textbooks for pupils.

**PICTURE 7**  
**PUPILS PROUDLY DISPLAY SCHOLASTIC MATERIALS**



**KAMMENGO PRIMARY SCHOOL**

One school was particularly constrained by the few textbooks it had, which are shared at a ratio of 3 pupils per textbook. At least two schools mentioned a lack of libraries to house textbooks, whereas two other schools lamented the lack of books, while another school actually suffered from a lack of current textbooks, as the available textbooks are very old and outside the school syllabus.

### ***E. Availability of Human Resources***

The availability of teachers and other school personnel is crucial to the pupil's success in school. In 2004, the majority of districts had a teacher pupil ratio of 59 and below. Six districts had a ratio of between 60 and 69; Kitgum had a 71 ratio and Pader had a ratio of 82. The district with the best ratio (30) was Kampala followed by Wakiso (33). According to the 2004 Abstract, Mpigi district had a total number of registered pupils of 142,711 and 2,897 teachers giving a teacher pupil rate of 49. From Table 2 below, of the schools that were visited in Mpigi district all but one (Ggoli) have reached the national teacher-pupil target ratio of 1:55.

**TABLE 2**

**TEACHER–PUPIL RATIOS**

School	Teacher-Pupil Ratio	Total No. of Pupils	No. of pupils	
			Females	Males
Kammengo Primary School	1:55	364	193	171
Ggoli Primary School	1:80	541	239	302
Mapeera Memorial Primary School	1:27	173	94	79
Tabiro Primary School	1:40	487	287	200
Mpigi Central Primary School	1:37	550	350	200

Considering the case for Ggoli with 1:80 ratio and Mapeera with a ratio of 1:27, Mpigi district shows the disparities that exist among different schools and districts not only for the quantity but also with respect to the quality of teachers.

Although the above ratios are generally favourable, all the visited schools complained of a shortage of competent teachers. Whereas the Head Teacher of Mapeera Memorial Primary School decried the shortage of competent teachers as greatly affecting pupils’ performance, the deputy head teacher of Ggoli Boys Primary School was of the view that at least they have qualified teachers according the Ministry of Education requirements: “they [teachers] are qualified, that is, Grade IV qualification.”<sup>72</sup>

Nonetheless, there is concern about the inadequate teacher numbers common to both government assisted and private schools as highlighted below:

*Teacher numbers are inadequate; since this particular school is private we tend to lose teachers in the middle of the term which leaves a human resource gap.*<sup>73</sup>

Another head teacher acknowledged the negative consequences that are associated with the inadequate numbers of teachers, stating that, “shortage of competent teachers greatly affects pupils’ performance.”<sup>74</sup>

The lack of competent teachers was raised by the Education Policy Review Commission in 1989 to the effect that the quality of education was affected by an increase in untrained staff from 34% in 1980 to 56% in 1988.<sup>75</sup> Some schools like Tabiro lacked more than teachers as highlighted by the Female Head Teacher below:

<sup>72</sup> Interview with Female Deputy Head teacher, at Ggoli Boys Primary School; Mixed, Day, Government.

<sup>73</sup> Interview with KI - Female acting headmistress, Mpigi Central Primary School.

<sup>74</sup> Interview with KI - Head Master, Mapeera Memorial Primary School.

<sup>75</sup> op.cit, at 5.

*For human resources; we are lacking teachers according to the population of pupils. We also lack the non-teaching staff like the bursar, secretary and a cook for boarding pupils, a matron and a warden. The lack of enough teachers leaves the few tired and overworked. So they fail to complete the syllabus, on the side of the children, the lack of a cook has left some pupils involved in the actual preparation of their food while others are in class studying.<sup>76</sup>*

Lack of matron and warden is a big concern in the welfare of the children. One would ask who monitors and cares for the boarding children and how does the school operate with out a secretary and a bursar? What happens in the rainy season, in heavy and windy rains where and how are meals cooked? In some case the environment under which the children have to cook is a threat to their lives:

## PICTURE 8

### GIRLS PREPARING MEALS



Although provision of food fulfills one of the rights in education, i.e. the right to food, however use of children's labour to provide food contravenes the children's right to education. The children who participate in preparation of food are being discriminated against and miss lessons.

One of the reasons for the shortage of teachers is remuneration and other incentives that are important in providing the children's right to education because of their likely impact on the teacher/pupil relationship. Issues of remuneration can be looked at in the light of rights in education for teachers and these include teachers' rights to adequate pay, and the right to a reasonable working environment. The teachers'

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<sup>76</sup> Interview with KI, Tabiro Primary School.

experiences with whether or not their rights are addressed impacts on the pupils' performance, thus indirectly impacting on the children's rights in education.

If teachers are well paid and motivated, they spend more time teaching and guiding the pupils. However, when teachers are not well motivated, they spend more time sourcing for other means of livelihood, hence devoting limited time to teaching. However, the Senior Education Officer in the district, Secretary for Children Affairs and the Vice Chairperson LC emphasized that the government pays the teachers and salaries are usually received on time. They further observed that the teachers report regularly to the schools and that the presence of teachers encourages the pupils to attend school regularly. Some of the head teachers in schools visited for the study concurred with the Senior Education Officer on salary payment but a number of teachers disagreed on the issue of remuneration and incentives for teachers as evidenced in the text in Box 1.

## **Box 1** **TEACHERS REMUNERATION AND MOTIVATION**

Apart from the salary they earn, there is no other way they are motivated. The inadequate motivation discourages the teachers from diligently performing their teaching role, which extends to the pupils who realize no need of staying in class with no teacher or with a teacher who doesn't adequately deliver.

*KI- Female deputy head teacher-Ggoli Boys Primary School*

We try to pay them in time but nothing can be enough, we do not give them allowances, so they may not do work properly. But this has no hindrance on the pupils' attendance.

*KI- Male Headmaster-Mapeera Memorial Primary School*

It's a school of Pentecostal Christians whereby the school provides breakfast and lunch and gives allowances to heads of departments and end of year party as incentives. The sponsors from Ireland give teachers gifts and the teachers are demotivated by the workload which can affect pupils' performance but not attendance.

*KI- Female Deputy Head Teacher-Tabiro Primary School.*

In terms of payment, all teachers are on the government pay roll. Teachers are given lunch at school, availed with scholastic materials for use as they teach pupils, such as markers, manila papers, chalk, rulers, etc. Motivation improves their performance in class and the pupils tend to enjoy what they are taught by a serious teacher.

*KI- female Deputy Headmistress-Kammengo Primary School*

Motivation is done so well in terms of salary payments, the teachers are paid on time. To observe maximum respect the teachers are given rules and regulations on being hired, which guides their behavior to ensure respect amongst themselves and the rest of the school.

*KI- Female Acting Headmistress - Mpigi Central Primary School.*

According to key informants the state is not meeting its mandate of providing the costs of enrolment, teaching and part of the costs for school construction. The schools are not assessed by the ministry/district administrators to ensure that quality education is delivered.

Are the parents playing their role? Not so, according to a teacher: "the parents too, (are not playing their roles) e.g. they fail to feed their own children." The parents have the obligation to meet the costs for uniforms, books, school meals and contributions for construction and maintenance. One of the parents argued that UPE is not helping them and parents are too poor to meet school expenditure:

*School fees can be a problem because some of us are peasants and when it is not the season of harvesting we fail to raise money for scholastic materials and fees. Moreover in the village they make us pay a lot. So the UPE program is not helping us<sup>77</sup>*

The State and parents are governed by the 1995 Constitution which stipulates that education is a right and that every child has a right to basic education and the 1996 Children's Act that makes the parents' obligation clear; i.e. ensuring that the child has the right to education. However, without providing the necessities that right cannot be achieved.

### **3.2.2 Accessibility to Education**

Primary education as basic education should be accessed by everyone regardless of sex, race and ethnicity. Accessibility to education entails non-discrimination issues as operationalised by UNESCO<sup>78</sup> and in CEDAW. States parties are obligated to monitor educational institutions, programmes, spending patterns and other practices. Among the schools visited there was consensus that the monitoring of schools is inadequate. This has caused rampant corruption as earlier indicated. Whereas UPE has made it possible for boys and girls to attend primary education, girls are still constrained by institutional/environmental factors that among other things, include the lack of proper sanitary facilities and social-cultural factors and practices such as assigning girls cooking, fetching water and sexual abuse.

Another tenet of accessibility to education is the issue of physical accessibility in which schools are said to be within safe physical reach or reasonably convenient geographical location. Preferred primary schools would be those within the neighborhood of the children's environment. In 1989, the Education Policy Commission had recommended the location of schools within 4 kilometers. However, 4 Kilometers to school in the absence of a free transport system to pick and drop off children at school is still a long distance for young children to cover. The distance the children have to walk to school generated mixed results from the school that were visited. Some key informants like teachers and parents were of the view that:

*... Children move very long distances to school, which makes them tired. It takes long for them to settle in class and they may not concentrate on school attendance. They also frequently move outside the class due to hunger, tiredness.<sup>79</sup>*

Distance to school certainly interferes with the child's right to access education. Even if they access the school, their performance is affected by the time they spend

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<sup>77</sup> Interview with Male Parent-Tabiro Primary School.

<sup>78</sup> UNESCO (1960) UNESCO Convention Against Discrimination in Education

<sup>79</sup> Interview with Male regular teacher-Ggoli Boys Primary School.

in the morning and evening traveling to and from school as emphasized by a Tabiro parent and Kamengo teacher:

*Although my child has no problem with the distance to the school because we live close to the school, distance to school is a big issue as far as school attendance is concerned for those who come from far. Pupils reach school tired and the concentration is low. When it rains, the problem gets much worse. Some pupils may not be able to go to school because they can't withstand the rain. Girls specifically get disturbed on their way by idle men.<sup>80</sup>*

*In most cases, pupils reach the school when they are tired, they therefore tend to dodge classes, and sometimes they hide on their way to school. In this case there is a threat of accidents along the way, but through regular counseling and guidance we are overcoming it.<sup>81</sup>*

The Chairperson Kammengo sub county was of the same view:

*The distance affects them, mostly when it rains. Sometimes they can reach school when they are tired and cannot concentrate. Some if partially weak decide not to go to school because of the distance factor with a feeling that they may not make it to school. Girls on their way to school get disturbed by idle men and boys. So before they finish their journey to the school, they have already been disturbed as some do not reach school and those who do are already exhausted.<sup>82</sup>*

Distance also affects communication between the teachers and the parents thus making it difficult for parents to monitor the children's performance, the parent would have to forego the day's work in order to visit the school: "Most of the pupils come from over 3km away from school. Therefore, it's not easy for parents and teachers to keep on communicating."<sup>83</sup> Attendance is highly affected by distance particularly during the rainy season:

*It affects their attendance. Not all pupils are in boarding section, there are those who walk long distances and in the rainy season there is a high rate of irregular attendance, sometimes they reach home when they are tired and fail to revise their books. Therefore, it affects their academic performance.<sup>84</sup>*

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<sup>80</sup> Interview with Male parent-Tabiro Primary School.

<sup>81</sup> Interview with Male teacher-Kammengo Primary School.

<sup>82</sup> Interview with LCIII Chairman-Kammengo Sub-County.

<sup>83</sup> Interview with Male Teacher-Kammengo Primary School.

<sup>84</sup> Interview with Female teacher-Tabiro Primary School.

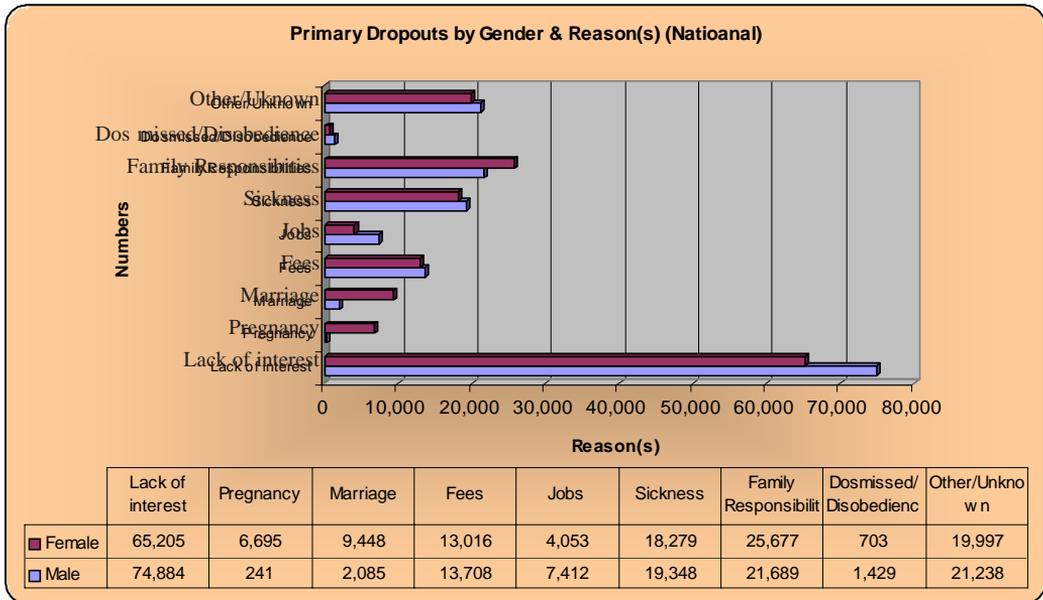
As earlier indicated, issues of distance combine with security/sexual harassment or defilement to the disadvantage of the girls:

*They really get affected especially those from far places who miss morning lessons. Some pupils have to use public transport to school to catch up with the school time-table. Others are accompanied by parents to school for security purposes.*<sup>85</sup>

*Girls are heavily affected in their attendance except a few schools, which have been assisted by Makerere Institute of Social Research (MISR) to make sanitary towels. Girls are affected more than the boys, they have no bathrooms, and toilets have no shutters, which can greatly prevent them from attending school. Urinals and toilets are inadequate for pupils. A point of emphasis here is that this mostly affects the girl child's attendance of school.*<sup>86</sup>

UPE or not, the rate of drop out is still high for both boys and girls at the national level, as is demonstrate in the following graph:

**FIGURE 6  
PRIMARY DROPOUT RATES BY GENDER AND REASONS**



**Source: Uganda Education Statistics Abstract, 2002**

Note the areas where girls were affected more than the boys, namely; Pregnancy, Marriage & Family Responsibilities.

<sup>85</sup> Interview with Male teacher-Mpigi central primary school.

<sup>86</sup> Interview with Senior Education Officer (DEO)-administration.

Although economic accessibility affects both girls and boys, girls are affected more in cases where the parents can only afford to pay building fund, buy scholastic materials and uniform for one child, the boy is favoured over the girl child.

In light of the above, how far then has government progressed in addressing the right to education? Although UPE was introduced as one of the ways of implementing “Schooling for All” and the Sector Wide Approaches provide funding for UPE, gaps in the education system are still visible. This is so in spite of the Uganda Human Rights Commission emphasis on the obligation of the state “to establish a ‘sufficient’ number of public schools, hire the required number of qualified teachers and provide for the quality of education as laid down in international human rights law” and to ensure availability, accessibility, acceptability and adaptability of educational institutions.<sup>87</sup> These obligations have not been fulfilled. Gaps still exist in school space vis a vis the number of registered pupils; school structures are not only limited in capacity but are in a sorry state, educational/instructional materials are inadequate, and both the quality and quantity of teachers remains a major problem.

### **3.3 *Rights in Education***

Rights in education involve all those rights whether civil, social, economic or cultural within the context of education. They involve the rights of pupils, teachers, etc. These include freedom from torture and inhuman treatment or punishment, freedom from discrimination, the right to food, health, right to culture, etc. For the teachers it would involve the right to work, to adequate remuneration, etc. The research also looked at these rights. Their status is also discernible from the discussion on the right to education; hence the majority of these rights have been discussed in the previous section.

#### **3.3.1 *The Issue of Punishment***

Corporal punishment can destabilize children and prevent them from concentrating on their studies. It can lead to school drop out and it can also have physical and psychological implications on the child. Corporal punishment violates Article 24 of the Uganda Constitution which provides for human dignity and protection from inhuman or degrading treatment or punishment. In general, corporal punishment was reported as a none issue in the schools visited, although some students mentioned certain instances where their friends were punished. Some Key Informants did acknowledge that corporal punishment affects pupils’ attendance of school and also their performance.<sup>88</sup>

Local leaders were of the opinion that corporal punishment still takes place especially in urban schools:

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<sup>87</sup> The Uganda Human Rights Commission Annual Report , 2004, Chapter 9, p. 135.

<sup>88</sup> Interview with the Senior Education Officer (DEO)-Administration).

*... Pupils in urban schools have no other way in which they can be punished apart from caning. However, the caning should be regulated in terms of numbers of strokes, and the parts of the body to cane.*<sup>89</sup>

Mapeera and Tabiro schools discipline the children in various ways:

*We reprimand and give them manual work as punishment. When punishment is so frequent and severe on the pupils, some lose interest. But it can also positively impact on the pupil by improving his/her performance if the punishment was given for the right reasons.*<sup>90</sup>

*We punish pupils with what we call incentives like cleaning the compound, cleaning of toilets and classes. We also give them punishments like sitting on the floor instead of the chair/bench. Sometimes the wrongdoer can be made to be isolated for a whole day. With that kind of punishment, they can not stop attending school because we don't cane them at all.*<sup>91</sup>

Ggoli Boys Primary School still cane the children, although they consider 1-5 canes not to be a serious matter:

*There are no longer heavy punishments for the pupils, which could discourage their school attendance. They give simple punishments like 1-5 canes or fetching a 10-litre jerry can of water.*<sup>92</sup>

The Deputy Head Teacher at Kammengo Primary School was of the opinion that the abolition of corporal punishment has had a negative effect on the children's discipline:

*Corporal punishment was abolished, which has caused more harm than good. The pupils have become unruly, can respond anyhow to the elders, generally disrespect school rules and regulations. It has led to deterioration of pupils' school performance, the teachers are also overworked.*<sup>93</sup>

According to several of the pupils interviewed, punishments exist at schools, for instance digging anthills; fetching water for school; sweeping the school compound; digging, slashing the compound within the class time table.<sup>94</sup> The *Male FGD at Kammengo primary school* indicated that fetching water, digging, slashing, uprooting stumps, picking rubbish, heavy beating are still common occurrence at their school.

<sup>89</sup> Interview with Secretary for children affairs-Vice Chairperson LC V.

<sup>90</sup> Interview with Male headmaster-Mapeera Memorial Primary School.

<sup>91</sup> Interview with Female deputy head teacher-Tabiro Primary School.

<sup>92</sup> Interview with Female deputy head teacher-Ggoli Boys Primary School.

<sup>93</sup> Interview with Female deputy headmistress-Kammengo Primary School.

Other punishments include:

*digging in school gardens/teachers' gardens, collecting firewood for the school kitchen, denial of meals, digging and fetching water while other pupils are studying thus the child misses class.*<sup>95</sup>

Others stated that there was,

*...caning especially on the back, digging large pieces of land, denial of food at school as a punishment, sweeping a large classroom. One of children was beaten (in)to comma last year 2005 she is not studying up to now.*<sup>96</sup>

Tabiro and Mapeera reported similar punishments. These types of punishments can expose pupils to other dangers for example digging ant-hills may cause sickness/fatigue /health complications, thus affecting school attendance. Slashing bushes around the school can expose the pupils to accidents such as snake bites which can incapacitate the pupil's attendance. Heavy beating causes fear in the child and discourages school attendance. In some instances, heavy beating has resulted in the death of students in secondary schools or has resulted in coma or paralysis. Only a few rights based organizations take up such children's right abuses.<sup>97</sup>

More child friendly disciplinary actions were also mentioned:

*Sweep the class; sweep the compound, they don't cane, they don't punish us but just encourage us to move away/avoid bad peer groups, they don't cane us but make us carry cow dung... mop the office, carry firewood, they just counsel and advise not to do it again...*<sup>98</sup>

### **3.3.2 The Right to Practice One's Religion**

It is quite clear that the it is a central right for many pupils. On the influence of religion on schooling, key informants were of the view that: "... there is no problem with religion."<sup>99</sup> As per a head-teacher:

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<sup>94</sup> Male FGD at Ggoli Boys Primary School.

<sup>95</sup> Id.

<sup>96</sup> Female FGD at Tabiro Primary School.

<sup>97</sup> One prominent actor in this area has been the organization Raising Voices. See [www.raisingvoices.org](http://www.raisingvoices.org) Among its publications are *Creating Safer Schools: Lessons Learned; Strategies for Action* [October 2006], and *Violence against Children: The Voices of Ugandan Children and Adults*.

<sup>98</sup> Female FGD, Mpigi Central Primary School.

<sup>99</sup> Male headmaster at Mapeera Memorial Primary School);

*Though most of our teachers are Catholics and Born Again, they treat every denomination well; there is total freedom of worship i.e. Moslems on Fridays are allowed to go to the mosque. We can tell pupils not to criticize each other's religion.*<sup>100</sup>

Freedom of worship was reported in all the schools visited and no religion related problems were reported.

### **3.4 The Question of Rights Education**

On the part of the children, there was no clear understanding of children's rights, as most of the children considered a child's education on rights to be the school rules and regulations. Some of the rights were highlighted in the school rules and regulations. A number of pupils knew that they had a right to access school requirements such as: "books, pens, uniforms, school bag, school fees, shoes and stockings, and school furniture."<sup>101</sup>

The female focus group in Mapeera had broader ideas on pupils' rights:

*...[W]e are aware of the rights to education particularly the rights talked about: playing every day, the right to have a uniform, to be disciplined, to be attentive in class, right to lunch, right to follow school regulations, to report at school very early, and to love your teacher.*<sup>102</sup>

The pupils reported being protected from hindrances to school attendance such as bad groups, they also reported that they got to know of the right to education through seeing other children going to school; through the media (radio), and also through parents who tell them stories of school attendance of their times. None of the focus group discussions mentioned being introduced to children's right during class time. Most of the children get their information about their rights from the teachers; their parents and peers and clearly there is some confusion about rights and duties on their part.

## **IV. THE NEO-LIBERAL AGENDA AND THE RIGHTS BASED APPROACH: A RECAP**

As much of the literature reviewed and the case-studies analyzed demonstrate, the right to education in Uganda cannot properly be assessed outside the socioeconomic context in which it operates. On the other hand, in order to reassert the primacy of the right as against the neo-liberal agenda, the rights based approach is indispensable. Uganda undertook Structural Adjustment Programmes (SAPs) in the mid-1980s. The programmes introduced privatisation, deregulation and the unbridled

<sup>100</sup> Interview with Female deputy head teacher-Tabiro Primary School.

<sup>101</sup> Mixed female (Day and Boarding) FGD at (Tabiro Primary School.

<sup>102</sup> KI; female FGD at Mapeera Memorial Primary School.

operation of the market economy. However, the processes introduced went hand in hand with increased indebtedness and a high cost of debt-servicing. The net effect was that resources that would have been directed to the provision of social services were directed to debt servicing, and hence the withdrawal of the state from their provision. Instead, there has since been preoccupation with macroeconomic stability. The microeconomic aspects that concern the individual—not as object, but as the subject of economic processes—have been ignored.

In regard to the sector of education, the approach to economic policy has specifically entailed a number of aspects. The state largely withdrew from the provision of education generally and much of it has been commodified either directly, as in the case of the better quality primary and secondary schools or indirectly as regards the private support and basis of nominally public universities. This has resulted in the plummeting of the quality of education. Free primary education was introduced in this context. Hence, its preoccupation has been with numbers—enrolment, attendance, buildings, as well as with the narrow instrumentalist link to poverty eradication outlined in the PEAP. But the market economics which perpetuates poverty has levied its toll on education in terms of its quality. The policy is truncated in nature, in that there is a failure to link primary education to the rest of the education system of which it is only a foundation. This has distorted the whole education system into an examination-oriented undertaking not only affecting the quality of education but also breeding corruption and a lack of integrity in the whole process, to say nothing about the lack of adaptability of education because of the common standard examination system. There is no right to choose relevant content and methods. The teaching in local languages is made difficult so that pupils are not taught consistently either in the local or the English language. It has also resulted in a narrow education agenda of *school for all* instead of education for all.

Furthermore, rights in education such as teachers' pay, their participation in decision making about education, non-discrimination, and the quality of life in the school environment are ignored. In addition, the pupils' awareness of their own rights within the school context and beyond is questionable. The neo-liberal agenda which is really part of the negative aspects of globalization is an important aspect of that process is the weakening of the state's ability to provide basic social services and its increased dependence and lack of autonomy. This is clearly shown in the external funding of Uganda's budget by over 50%, budget support and the Sector Wide Approaches in whose participation government civil society and other stakeholders feel marginalized by the donors who set the agenda. This too is amply reflected in the education sector. The other element of state failure that clearly shows up in Uganda is the inability of the state to exert its control over the whole of its territory. This aspect of state failure impacts directly on the right to education and on primary education in particular. This is clearly the case in Internally Displaced Peoples (IDPs) camps in Acholi and in NGO initiatives to provide education in Karamoja where conventional schools are hardly possible because of the itinerant nature of

the population, which is largely due to the failure of the state to ensure such public goods as law and order.

It is important to underscore the point that the neo-liberal agenda has had essentially similar effects on education even in countries such as the U.S. The deregulation of economies, trade liberalization and the dismantling of the public sector result in governments developing “economic policies that emphasize economic growth and property rights over social welfare and personal rights.”<sup>103</sup> Within the neo-liberal agenda education is “reshaped to become an arm of national economic policy.” Some of the effects of this have been identified as standardization of tests which coerce teachers to “teach toward the test” resulting in simplified and degraded teaching and learning<sup>104</sup>. Hence a “shift from intellectual activity towards dispensing packaged fragments of information from an upper level bureaucracy.” This situation is succinctly described.

*The neo-liberal state through the rise of standards, assessments and accountability aims to restrict educators to particular kinds of thinking [which] conceptualizes education in terms of producing individuals who are economically productive. Education is no longer valued for its role in developing political, ethical, and aesthetic citizens. Instead the goal has become promoting knowledge that contributes to economic productivity and producing students who are productive and compliant. Educational policy has shifted emphasis from input and process to outcomes, from liberal to vocational, from education’s intrinsic to its instrumental value, and from qualitative to quantitative measures of success.*<sup>105</sup>

The rights based approach on the other hand transcends the instrumentalist and quantitative aspects of education. Education is not only a right in itself but access to it may lead to access to other rights such as health. It is a public good as well as essential to socialization and social cohesion as well as the protection of children against early marriages, child labour and others. There are rights involved in education such as the right against discrimination, segregation etc. Hence it is not enough to look at the quantitative aspects of education i.e. availability of education. The qualitative aspects of education must entail the quality of teachers who should be regarded as bearers of rights themselves, accountability so as to avoid harmful indoctrination, acceptability of education to the people and adaptability to local circumstances such as the use of indigenous language. The needs of children – must be the primary consideration rather than that of the state or parents. Consequently the right to education must also entail rights in education as well human rights education to enable children to appreciate themselves as possessors of rights.

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<sup>103</sup> Hursh, 2006.

<sup>104</sup> Id.

<sup>105</sup> Id.

## **V. CONCLUSION**

The right to education generally, and free and compulsory education in particular, has been adequately provided for in international, regional and constitutional instruments. There has also been a minimal level of litigation at all levels of Ugandan courts right up to the highest court in the land, bringing to the fore the issue of justiciability of various aspects of this right. Free primary education (UPE) was introduced in 1997 and has resulted in increased enrolment in terms of numbers, but not necessarily retention of both boys and girls; building structures have not matched the numbers enrolled in the primary schools. Is the government fulfilling its mandate to provide primary education? According to one of the schools this is not the case:

*The facilitation is inadequate. No school libraries, the pupils come to school without scholastic materials, they do not have lunch at school, and some are sickly yet the medical services are inadequate. The problem is top-bottom; the government promised UPE yet it doesn't facilitate the school with the necessary materials that is fees, scholastic materials, and the teachers' salaries come late. All in all the government is not playing its role.*<sup>106</sup>

Although government has tried to provide primary education, it has not met all obligations as laid out in the international instruments. For example, the international and regional instruments emphasise the provision of free and compulsory education but neither the Ugandan Constitution nor any legislation makes primary education compulsory. Hence, Uganda has not provided compulsory education. Not all school going children enroll in school, and those who do enroll eventually drop out. Moreover, the numbers progressively decrease as you proceed to the upper levels of primary classes. There is also no legislation that provides punitive measures for parents who do not ensure that their children attend school. Although the right to education has been litigated in a number of cases, these are not substantial enough to match the abuses that occur that prevent pupils from realizing their right to education. Furthermore, the education system has become highly examination-oriented, which has greatly affected the quality of education in the country. Therefore, although the State is progressively implementing schooling for all, the gaps in implementation should to be addressed if quality education is to be realized.

Whatever achievements have been made have been realized within the context of economic reforms that are informed by neoliberalism. Such successes are assessed in terms of macroeconomic targets and poverty reduction with little consideration for the human rights aspects at the micro level. Those achievements have also been realized on the basis of heavy foreign funding including budget support, thus exacerbating the foreign debt and putting in question the sustainability of the achievements in the long run. Lastly, but not least, the children under the UPE programme as the supposed subjects of the rights to education show little awareness

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<sup>106</sup> Interview with KI at Kammengo Primary School.

of their rights and continue in the absence of human rights education and with limited human rights consciousness to be merely the objects of the process meant to provide for their right to education.

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