

Interdependences between access to education and equal economic chances: legal issues and the example of Uganda.

Gloria Kembabazi*

Abstract

This paper examines interdependencies between access to education and equal economic chances with a focus on Uganda spotlighted through legal lenses. Interestingly, access to education does not only interact with equal economic chances as a cause-and-effect relationship but rather as an interdependency. This paper gives a full background of education as a sector in Uganda and then examines the legal framework before delving into some challenges culminating into a spotlight on the impact of COVID-19 pandemic on education in Uganda. The paper looks at a way forward and makes a conclusion on what is pertinent.

A. Introduction

Education is big determinant for future outcomes and one's life trajectory. One's access to education itself is often determined by their economic status. This is therefore an especially critical factor in examining education in a lower income country. The relationship does not only flow from education and its impact on equal economic access but also on how prevailing economic circumstances impact education access and quality.

This paper examines education from a standpoint of formal education, the kind of training for skills transfer and knowledge sharing leading culminating into one joining a specific career or profession. Ultimately, one's career or professional activity becomes their main economic activity and source of income. It is no secret that gainful employment is the link to a source of living for most. Hence, the link between education and economic chances is interlinked not only as a causal relationship but also an interdependent one, one can lead to the other and vice versa.

I. The landscape in Uganda

The layout of formal education is designed in a 7:4:2 system. This means seven years of primary education, then six years of secondary level education split into four years of ordinary level education and two years of advanced level education, commonly known as O' and A' levels, respectively. From there one can head on to tertiary institutions or

* The author is a Ugandan lawyer with a specialisation in regional integration law. She holds an LLB (UCU), PgDLP (LDC), LLM (UDSM), and LLM (Uni.LU). She can be reached on glorinice@yahoo.com.

university studies. The National Council of Higher Education (NCHE) indicates that there are 47 universities, 9 of which are public, 9 degree-awarding institution and 207 other tertiary institutions.¹

The providers of education are both private and public, allowing for international providers whether separately as fully fledged international schools or in partnership with local providers of education. Universal Primary Education (UPE) and Universal Secondary Education (USE) exist and are most commonly purely government or public schools. The government also enters into partnership with some schools to provide support, known as government-aided schools. This is common among what is termed as traditional schools, most of which were started in the colonial times and continue to exist today with government support.

There are fully public and fully private schools and often the quality varies within both and it takes keeping an ear on the ground to know which schools are the best. A lot of parents and guardians also make the decision on where to take their children based on financial factors as Uganda is largely, a school fees paying country – a critical factor when it comes to the economic relationship with education. This also may be a requirement as often government schools may request parents to top-up on the school fees given that what is received from government may not suffice for all of the school needs and activities.

B. Legal framework

The preamble to the Constitution of Uganda, among the social and economic objectives, stipulates that the State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

Paragraph XVIII of the Preamble to the Constitution lays out the educational objectives specifically (i), the State shall promote free and compulsory basic education (ii) the State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible. (iii) Individuals, religious bodies and other nongovernmental organisations shall be free to found and operate educational institutions if they comply with the general educational policy of the country and maintain national standards.

Article 30 of the Constitution guaranties the right to education.² It provides, ‘All persons have a right to education.’ Uganda, therefore, recognises within its Constitution a right to education. In examining the right to education, we must also consider that access as a right which is not accessible, only exists as a right on paper. According to Lewin, access

1 *Daily Monitor*, 87 % Graduates Can’t Find Jobs, <https://www.monitor.co.ug/uganda/news/education/87-graduates-can-t-find-jobs-1691574> (Accessed on 14th August 2022).

2 The Constitution of the Republic of Uganda, 1995 as Amended.

to education includes: on-schedule enrolment and progression at an appropriate age, regular attendance, learning consistent with national achievement norms, a learning environment that is safe enough to allow learning to take place, and opportunities to learn that are equitably distributed.³

Article 34 (2) of the Constitution under rights of children stipulates that a child is entitled to basic education which shall be the responsibility of the State and the parents of the child. This makes it a joint responsibility of both the State and the parents of a child to ensure that the child's right to education is respected. This also suggests that while the right to education is guaranteed for all, it is especially protected for children as there is a provision specifically for them. The government, for its part towards meeting this obligation, introduced Universal Primary Education (UPE) in 1997. Today, around 4 out of 10 young children aged 3 to 5 years attend early childhood education, showing marked progress from 2011 that saw 2 out of 10 children enrolled.⁴ Similarly, 8 out of 10 children aged 6 to 12 years attend primary school and more than 1 in 4 attend secondary school.⁵

Relevant is Article 21 of the Constitution which provides for equality and freedom from discrimination and specifically stipulates, in paragraph 4, that nothing herein shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society. In terms of the relationship between education and economic factors this is especially important so that those who maybe unable to afford school fees, for instance, can still be protected in as far as their right to education is concerned.

Furthermore, Article 40 of the Constitution provides for economic rights which include under paragraph (1) the obligation for Parliament to enact laws: (a) to provide for the right of persons to work under satisfactory, safe and healthy conditions; (b) to ensure equal payment for equal work without discrimination; and (c) to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. Paragraph (2) is to the effect that every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.

When it comes to socio-economic rights though, these are often hampered by the concept of progressive realisation which recognises that some States from a resource perspective are not able to ensure certain rights in a short period of time.⁶ This is a factual

3 *Keith M. Lewin*, Educational access, equity, and development: planning to make rights realities. *Fundamentals of Educational Planning* 98, 29. UNESCO-IIEP Paris: 2015. Available on <https://learningportal.iiep.unesco.org/en/glossary/access-to-education> (Accessed on 15th August 2022).

4 *UNICEF*, Education, <https://www.unicef.org/uganda/what-we-do/education> (Accessed 15th August 2022).

5 *Ibid.*

6 *United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR)*, General Comment No 3 The Nature of States Parties Obligations UN doc E/1991/23 (1990), Para 9.

consideration where certain States are not able, often for economic and financial reasons to ensure the provision of certain measures that would ensure the observance of certain rights.

Relating to education, there are also other constitutional frameworks beside the bill of rights, such as highlighted below:

Article 167 of the Constitution establishes the Education Service Commission and its functions are stipulated in Article 168 of thereof as including: advising the President on matters in relation to the education service, appointment and disciplinary control of persons in the education service from the rank of heads of department and above. This provision ensures that there is a neutral body overseeing the top persons in education service of the country.

Article 171 of the Constitution further provides that the President may, after consultation with the appropriate service commission, establish offices in the public service of the Government of Uganda. Such public service offices can be deduced to include those relating to education. Article 172(1) a) further states that the President may appoint persons to hold or act in any office in the public service of Uganda of the rank of head of department or above, including confirmation of appointments, the exercise of disciplinary control over such persons and their removal from office. Here it is not clear whether there would be a conflict of authority in relation to Article 168 wherein it gives similar powers to the education service committee – perhaps these are shared functions.

Important to note is that Sixth Schedule No. 4 of Article 189 of the Constitution is to the effect that education is an area of cooperation among districts. In Uganda this is especially important as there are many districts and often the choice of school may be dependent on many factors that often culminate in choosing a school or educational institution outside one's resident district, for instance. In higher education especially at university level this is also important as these types of institutions are not as many and require inter-district movement and co-operation.

Under the seventh schedule No. 21 of Article 193 of the Constitution is to the effect that education policy is a function and service for which the government is responsible. This means that education policy must be set by the government. In recent years there have been many developments by government to revise the education syllabus for instance. Uganda now has a new curriculum for lower secondary.⁷

Overall, the legal framework can be said to be strong and enabling to education. However the law does not operate in a vacuum and there are some challenges faced by the education sector, generally speaking.

C: Challenges and the state of affairs

There is a high rate of school dropout. This is due to many factors one of which is the cost of education. Costs associated with education account for 6 out of 10 people leaving

7 *Parliament Watch*, Uganda's New Curriculum for Lower Secondary: Will it Meet Learners' Skill Needs, <https://parliamentwatch.ug/blogs/ugandas-new-curriculum-for-lower-secondary-will-it-meet-learners-skill-needs/> (Accessed 12th January 2023).

school, and pregnancy accounts for 8 per cent of girls who left school in the studied year.⁸ According to the United Nations Children's Fund, (UNICEF), only one in four children who start primary school makes it to secondary school and 32 % is the retention rate to Grade 7.⁹ While student population tripled between 1997 and 2014, by 2003 only a third (1/3) of children who had enrolled in primary school in 1997 had reached the 7th grade.¹⁰ There is a historical trend.

There is also a challenge of teacher absence whereby more than 60 % of teachers are not in the classroom teaching in over half of all Uganda's public schools.¹¹ This often due to the fact that teachers often have to supplement their work earnings and as such may be committed in multiple endeavours hence leaving room for absence.

There is also no uniform or standardised quality of education across the populace. Given the disparity in economic and financial capacities across the country, some schools are often not up to the task of providing a high-quality education. This can be seen in the revelation that only 40 % of students are literate in primary 6, the second last class for primary education.¹² This is supported by the finding that only about 50 per cent of the children in Primary 3 were proficient in literacy and numeracy in a 2018 survey conducted by the Government.¹³

Access is also a challenge, it remains inequitable. This can be on terms of distance between schools, remoteness of some areas, and or lack of an adequate supporting infrastructure from roads, to school buildings and materials. Matters of access also span inequities such as those that are faced by persons living with disabilities. UNICEF reports that the secondary level enrolment of the richest 20 per cent of the population (43.1 %) is five times that of the poorest 20 per cent (8.2 %). In geographical terms, the highest Secondary Net Enrolment is seen in Kampala (52 %) and lowest in Acholi (7 %).¹⁴

Some of the other challenges underpin the interplay of violations of human rights within the context of education services or educational spaces. For instance, in terms of sexual and reproductive health rights violation underpinned by sexual abuse of pupils or students. The right to personal dignity violated through corporal punishment, a harsh school environment and learning conditions. Often such abuses of rights lead to the already discussed challenges such as school dropout. Some of such violations at the intersection of rights were heightened by the pandemic and this is further discussed below:

8 UNICEF, Education, <https://www.unicef.org/uganda/what-we-do/education> (Accessed 15th August 2022).

9 UNICEF, Quality of Basic Education, <https://www.unicef.org/uganda/what-we-do/quality-education> (Accessed 15th August 2022).

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

13 *Ibid.* No. 8.

14 UNICEF, Education, <https://www.unicef.org/uganda/what-we-do/education> (Accessed 15th August 2022).

I. Impact Of COVID-19 On Education in Uganda

Uganda had one of the longest school closures during the pandemic, perhaps arguably the longest one ever recorded. It is estimated that school closures disrupted the learning of over fifteen million children and over sixty-seven thousand five hundred primary and secondary schools and other educational programmes were closed.¹⁵ The pandemic was a shock globally, and Uganda's government acted swiftly to prevent spread and control the pandemic in the early days, The country went into lockdown as soon as the first positive patient was identified at the airport. This situation was a classical case of the interaction of the right to education and other rights, in this case primarily the right to health, and the right to freedom of movement.

D. Way forward

The legal framework is supported by an institutional framework. Within the institutional framework, there are concerted efforts by multiple players: UNICEF, Ministry of Education and Sports, Ministry of Gender, Labour and Social Development, Ministry of Local Development, District Local governments when it comes to education in Uganda and its interrelationships with other sectors. The most important factor in boosting education is related to employment as a factor of economic chances. Households that earn higher are able to afford a better and complete education for their children who in turn can then go on to use that education to improve their economic chances. High quality employment also has ripple effects on the economy as well as the overall socio-economic and political stability of the country.

The National Planning Authority (NPA) statistics show that 700,000 people join the job market every year but only 90,000 get something to do, hence 87 % remain unemployed making it 9 out of 10. Twenty percent of those who find jobs are underemployed. Only 27 % in higher education are in science and technology training against the 40 % recommendation. In the workplace, 1 out of 5 workers is underutilised.¹⁶ The number of youths entering the job market is expected to grow up to one million by 2030.¹⁷ The factors affecting the job market in Uganda boil down to deteriorating access to jobs, deteriorating quality of jobs and rapid growth of the labour force.¹⁸

15 *UNICEF Uganda*, 2020 Annual Report, Available at <https://www.unicef.org/uganda/media/9996/file/UNICEF%20Uganda%20Annual%20Report%202020.pdf> (Accessed August 15th 2022) Pg. 17.

16 *Daily Monitor*, 87 % Graduates Can't Find Jobs, <https://www.monitor.co.ug/uganda/news/education/87-graduates-can-t-find-jobs-1691574> (Accessed on 14th August 2022).

17 *Daily Monitor*, How Technology can Transform the Ugandan Job Market, <https://www.monitor.co.ug/uganda/magazines/jobs-and-career/how-technology-can-transform-the-ugandan-job-market--3616758> (Accessed 15th August 2022).

18 World Bank Group, 'Jobs Strategy for Inclusive Growth in Uganda' Feb 2020.

The government has job creation projections that are geared towards addressing the employment question. For example, the Government plans to build at least 25 industrial parks across the country and estimated to employ 400,000 and the Oil and Gas industry is expected to create between 100,000 – 150000 jobs.¹⁹ These jobs if and when created would reduce the unemployment rate and also improve the economy.

In the same way many families are one bill away from poverty, so are many families one education away from a better-quality life. Many of life stories, especially in lower income areas can be turned around with a single person's education.

E. Conclusion

Education by itself is not enough, there is a need for expansion of employment opportunities, both for blue collar and white-collar jobs – to take full advantage of all skills including those gained outside of formal education. This is also especially in terms of ensuring quality employment that can support a good quality of life, which in turn can lay the foundation for the education of the ones who come after them. Ultimately, this becomes an economic question as to how can we build economies that support education, employment and overall better life quality for people. It is also especially important as Uganda has a majority young population whom the government should plan for as demographic dividend to avert a potential demographic time-bomb.

¹⁹ *Ibid.* No. 17.