

**EDUCATION IS THE KEY TO ALL CHILDREN RIGHTS- Presenting the violation of the child's right to education as a violation of all other children's right. – Jjuuko Adrian<sup>1</sup>**

**“A man without education is equal to an animal”<sup>2</sup>**

**Synopsis;**

This paper is basically aimed at portraying the right to education as a “**super right**”. A right that gives vent to all other children's right. In it is an examination of the right to education and how its violation leads to the violation of all other children's rights. It adopts a thematic approach in order to clearly analyses the underlying issues.

It goes ahead to analyse how far Uganda has gone in realizing the child's right to education and consequently all the other children's rights.

**The Notion of Children's Right;**

Children's rights are a subset of the general concept of human rights, except that for them, they basically deal with specific group-children.

The special recognition of children's rights as a special class of rights begun with the founder of Save the Children, Eglantyne Jebb, who wrote in 1923 that;

*“I believe we should claim certain rights for children and labour for their universal recognition”<sup>3</sup>.*

She thus drafted the **Declaration on the Rights of the Child**, which was adopted by the League of Nations in 1924.<sup>4</sup>

Next came the **Declaration of the Rights of the Child 1948**. Then on 20<sup>th</sup> November, 1959, the UN came up with a second declaration. As a result of continued efforts by Jebb's organization- Save the Children, and other stake holders, **1979 was declared the International Year of the Child**.

From then it was just a matter of time before children's rights became entrenched in treaty law, and thus binding upon states. In **1989**, the draft text of the **Convention on the Rights of the child (CRC)** was submitted to the General Assembly of the UN, and was adopted without any modifications. It entered into force on the 2<sup>nd</sup> day of September, 1990. It is the most widely ratified international treaty.<sup>5</sup>

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<sup>1</sup> The author is the Executive Director, Human Rights awareness and Pomotion Forum- HRAPF Uganda

<sup>2</sup> 1<sup>st</sup> century Indian philosopher Bhaktruhain in “The Neethishatakam”. Quoted in the Indian case of Krishnan v. State of Andra Pradesh and others [1994] LRC, by Jeevan Reddy J.

<sup>3</sup> See UN Convention on The Rights of the Child (an international Save the Children Alliance Training kit, Fact sheet 2.1

<sup>4</sup> This is what later came to be known as the declaration of Geneva, 1924

<sup>5</sup> Dorothy Nang'wale Oulanyah; Children's rights; challenges to reaching the child. The Ugandan experience. Paper presented at the Human Rights camp 2001, in Kampala

Now, a question arises as to why children's rights must be singled out. Just like women's rights, children's rights are emphasized because of the special nature of the holders of the rights.

Children are defined as "*human beings below the age of 18 unless under the law applicable to the child, majority age is attained earlier*"<sup>6</sup>. The African Child Charter<sup>7</sup>, Uganda's constitution<sup>8</sup> and the Children's Act<sup>9</sup> are all in agreement with this definition.

Children are vulnerable to all kinds of abuse and therefore need special care and attention. They totally depend on other people in order to achieve their objects and purposes. **Elizabeth Lyons**<sup>10</sup> gives a clear illustration of this.

*"Imagine for a moment that your world is controlled by a species whose knowledge and skills is vastly superior to your own. You have known no other world, and your individual survival is totally dependent on their goodwill towards you...Now imagine that these beings are also much larger than you-say about four times your own body weight and height"*

More so children form more than half of the world's population<sup>11</sup>. Yet for millions of children around the world the simple fact that they have rights at all is a mirage<sup>12</sup>.

Unfortunately, throughout history, children have been subjected to all kinds of abuses.<sup>13</sup> This has even been so even when the adults know of the vulnerability of children. In fact the knowledge of this vulnerability instead of causing remorse causes impunity towards the children. This makes the children to be very vulnerable.

More so, the children are more affected by the economic, political and social problems than adults. The World Summit for Children 1990 declared that "*each day millions of children suffer from the scourges of poverty and economic crisis – from hunger and homelessness, from epidemics and illiteracy, from the degradation of the environment. They*

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<sup>6</sup> Article I of the Convention on the Rights of the Child

<sup>7</sup> Under Article 2

<sup>8</sup> Under Article 257

<sup>9</sup> Under section 2 of Cap 59 Laws of Uganda 2000

<sup>10</sup> In "Zero tolerance for violence towards children (2001). Quoted by Ekirikubinza in "understanding children's rights; the case of corporal punishment in rural Uganda". East African Journal of Peace and Human Rights, Vol. 9:1 page 115.

<sup>11</sup> Ed. Sarah Muscroft; children's rights; reality or rhetoric? The UN Convention on Children's right; the first 10 years. Save the Children, UK, London, 1999.

<sup>12</sup> Paraphrased from the statement of Graca Machel. Expert of the UN Secretary General on the impact of armed conflict on children, 1999, in the preface to the Save the Children publication in 7 above.

<sup>13</sup> Human rights watch world report 2002, reported shocking figures of how children's right are violated today.

*suffer from the rare problems of external indebtedness and also from the lack of sustained and sustainable growth in many developing countries, particularly the least developed ones”.*

It is because of this special position of the children in the world order that their protection must be an issue of major concern for all stakeholders. The best way of doing this is through empowering the children and thus reducing on their vulnerability. Education is the best way of doing this, and this is the major premise of this paper. But before delving into the right to education, let us look at the legal regime in Uganda today as regards children.

### **The legal regime on children’s rights in Uganda today**

Uganda has joined the band wagon and put in place legislation to cater for the rights of the child. This was after the ratification of the CRC. The convention lays down guidelines on children’s rights which have been used to draft national legislation the world over. This is what has now happened in Uganda.

The convention was ratified by Uganda and therefore it binds the country. The convention is very comprehensive, and adopts an integrated approach as far as grouping the rights is concerned.<sup>14</sup>.

According to Cynthia Price Cohen<sup>15</sup>, *the convention is a unique document as it not only protects the child’s political and civil rights, but also extends to the child’s economic, social and cultural rights, and also humanitarian rights*. It thus covers a very wide range of rights and also provides for mechanisms of enforcement under international law. The convention has inspired executive, legislative and judicial agitation in Uganda as far as children’s rights are concerned.

The constitution of Uganda,<sup>16</sup>which is the supreme law of the land reflects the provisions of the CRC. Specifically, **Article 34** provides for the rights of the child which it lists down as including; The right to know and be cared for by their parents<sup>17</sup> The right to basic education,<sup>18</sup>The right to medical treatment<sup>19</sup>, The right to be protected from social or

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<sup>14</sup> See Cynthia Price Cotton; UN Convention on the rights of the Child; an introductory note, pp 32, of the Training kit referred to in 2 above

<sup>15</sup> supra

<sup>16</sup> 1995

<sup>17</sup> 34(1)

<sup>18</sup> 34(2)

<sup>19</sup> 34(3)

economic exploitation<sup>20</sup>, and Special protection to orphans and vulnerable children<sup>21</sup>.

The Children's Act<sup>22</sup> provides for the same rights under **section 4**. It recognizes all the rights enshrined in the international instruments, though in a summarized and rather haphazard way<sup>23</sup>.

Any competent court<sup>24</sup> can enforce these rights whenever there is a violation. This is the import of Article 50(1) of the constitution<sup>25</sup>.

Children do not have capacity to sue and thus their interests can only be brought to the attention of the court through a next friend, or any other person. So, Article 50(2) which gives locus to any person or Organisation to bring an action against the violation of any other person's rights, applies more to children than Article 50(1) which gives the right only to the victim.

### **The child's right to education- The super Right.**

The right to education is one of the most important fundamental rights that a child is entitled to. The **C.R.C** recognizes it under article 28<sup>26</sup> and imposes obligations upon states to enforce this right. The constitution provides for it under article 34 *"the right to basic education which shall be the responsibility of the state and the parents of the child"*. The children Act provides for it under **Sec 5(a)**.

As seen above, the right really, extends to cover great horizons. It is all embracing. However what is the education that is envisaged here?

The provisions of the C.R.C make it clear that the education referred to is both formal and informal education. Redson Edward Kapindu<sup>27</sup> defines both formal education and informal education.

*"Formal education is that form of education that is well structured, designed by specialists and gained in schools or other formal learning"*

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<sup>20</sup> 34(4)

<sup>21</sup> 34(7)

<sup>22</sup> Cap 59 law of Uganda 2000. at first it was known as the Children's statute

<sup>23</sup> The act deals with adiversity of issues and gives little attention to the rights of the child themselves.

<sup>24</sup> The issue of competent court was resolved in the case of Ismail Serugo v. Attorney General

<sup>25</sup> Article 50(1) provides that "any person, who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation".

<sup>26</sup> It is an elaborate statement of the status of the right to education

<sup>27</sup> In "The role of education system in promoting unity and reconciliation in Polarized Rwanda." East Africa Journal of Peace and Human Rights Vol. 12:1, pp 120.

A human rights perspective EAJPHR Vol 12:1 2006 at no.

*institution according to the country's foreign policy. It is normally awarded with a certificate”.*

On the other hand, informal education is the *“education organized by society outside the formal learning environment. One gets this type of education through agents like the family, the neighbourhood, peers, religious organizations, formal institution and civil society groups which civil education objectives, the media, among others.*

So, education should not be looked at through narrow spectacles. It covers a very wide area that is why I call it **“the super right”**. It embraces really every other child's rights.

Now, to show that education is indeed a super right, we shall examine the value attached to education by the international community and then show the impact education has on the enjoyment of all other rights.

**Article 29** of the CRC shows its importance. It provides that education should be directed towards the development of the child's personality, talents and mental and physical abilities,<sup>28</sup> his cultural identity, language and values,<sup>29</sup> and should be aimed at preparing the child for responsible life in a free society in the spirit of understanding peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.<sup>30</sup> It even embraces the environment.<sup>31</sup> This means that the right to education embraces most other rights. So it can stand alone and support all other rights, including the right to life.

Save the children (U.K) in their 2000 report state that education in the broadest sense of the term- is a fundamental human right. The denial of this right may affect the enjoyment of other rights.<sup>32</sup> The fundamental nature of the right to education has never been questioned.

It is one the rights listed in the international bill of rights, a set of human rights documents that are considered as the most important under international law<sup>33</sup>. Under the UDHR, the right to education occupies Article 26 which proudly declares that “every one has the right to

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<sup>28</sup> Article 29(1) (a)

<sup>29</sup> Article 29(1) c

<sup>30</sup> Article 19 (1) d

<sup>31</sup> Article 29 (1) e

<sup>32</sup> Save the children; Denied a future? The right to education of Roma, Gypsy and Traveller children, first draft, March 2000.

<sup>33</sup> These are the Universal Declaration of Human Rights 1945(UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

education”<sup>34</sup> that is self explanatory. The ICESCR provides for it under Article 13.

The placing of the right to education in these instruments shows its fundamental nature<sup>35</sup>.

The courts have also interpreted this right as a very important right of the child.

In the Indian case of **Krishnan v. state of Andra Pradesh<sup>36</sup> and others, Mohan J** affirmed the fundamental nature of the universal right to education. He stated the purposes of education;

*“The fundamental purpose of education is the same at all times and all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit.*

*Education is a preparation for a living and for life, here and here after”.*

It has been recognized as an extension of the right to life, in most jurisdictions. However, India has gone a step ahead in recognizing this aspect of the right to education. **Jeevan Reedy J** expressly recognised this in **Krishnan v. state of Andra Pradesh<sup>37</sup>**. He said;

*“...that the right to education has been treated as one of the transcendental importance in the life of individual has been recognized not only in this country since thousands of years, but all over the world”.*

He had earlier said

***“...the right to education is implicit and flows from the right to life”.***

The explanation of this holding lies in the fact that life has to be enjoyed in a meaningful way. Life is not about the animalistic living of a human being, but rather about the dignity and quality of the life.<sup>38</sup>

Now with that said, it is obvious that if the right to education, now has the status of the most important right, the right to life, thus it is as fundamental as the right to life itself.

In fact I would say; **The right to education is as big as the right to life and perhaps even bigger.**

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<sup>34</sup> See; Joel Springer (Ed); The Universal Right to education; Justification, definition and guidelines: Lawrence Erlbaum Associates, Publishers, London 2000.

<sup>35</sup> FW Juuko and Constance Kabonesa illustrate this in “UPE in contemporary Uganda; Right or privilege”. HURIPEC Working Paper 8, May 2007

<sup>36</sup> (1993) 4 L. R.C

<sup>37</sup> Citation see footnote no. 34 above

<sup>38</sup> See the case of Tellis v. Bombay Municipal Corporation, [1987] LRC Const. 351, especially the judgment of Chandrachud CJ.

Still, the right to education is more ancient than most other children's rights. Communities the world over have had ways of ensuring that their children learn the art of living. Thus it has been greatly observed since time immemorial. Perhaps no other words than those of the 1<sup>st</sup> century Indian scholar, Bhaktruhain<sup>39</sup>, immortalize this right;

*“Education is the special manifestation of man;  
Education is the treasure which can be preserved without fear of loss;  
Education secures material pleasures, happiness and fame;  
Education is the teacher of the teacher: education in God incarnate;  
Education secures honour at the hands of the state not money”*

In all societies, one finds a system of initiation of their young into the rigours of adulthood. Though no degrees, certificates or diplomas were awarded, the completion of this period of education would be marked by an initiation ceremony.<sup>40</sup>

Education features prominently in **The Millennium Development Goals**. Goal 2 calls for every boy and girl to complete primary schooling.<sup>41</sup> This shows the high regard in which the international community recognizes the importance of this right.

So, now, fast forward to how the violation of the right to education is a violation of all other rights.

Before this however, we have to settle for one or the other methods of grouping these rights. Note must be taken of the fact that children's rights recognized in CRC are devoid of an agreed upon method of categorization. As already noted above, the CRC presents a variety of these rights. It goes beyond the usual civil, political vs. economic social rights dimension. It also includes other rights that cannot fit in this standard grid.

Attempts however have been made to group these rights. NGOs have, for pedagogic reasons sometimes presented them in 3 categories. These are; the right to have one's basic needs met, the right to protection against exploitation and discrimination and finally, the right to express one's opinions and have them respected.

However, here we shall adopt the opinion of the Committee on the rights of the Child. The committee grouped the substantive rights into the following categories;

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<sup>39</sup> This was still in his book Neethishatakam(supra)

<sup>40</sup> See The African Child

<sup>41</sup> See UNICEF; The state of the world's children, 2006. Excluded and Invisible. UNICEF, 2006.

1. **Civil rights and freedoms.** These include; the rights to a name, identity, the right to stay with one's parents, freedom of expression, access to information, freedom of association and peaceful assembly, freedom of thought conscience and religion, right to privacy, special protection for vulnerable children, and finally freedom from cruel, inhuman and degrading punishment. These rights are provided for in articles; 7, 8, 13, 17, 14, 15, 16, and 37(a) respectively.
2. **family environment and alternative care rights;** these are; the right to be cared for by parents or guardians in collaboration with the state, the right to stay with the parent, right to an adequate standard of living, special protection by the state for deprived children, the child's best interests in adoption proceedings, protection from child trafficking, protection from all sorts of violence, and access to rehabilitation for abused children, and also the rights of children under state control. These rights are enshrined in articles, 5&18, 9, 10, 27, 4, 20, 21, 11, 19, 39, and 25 respectively.
3. The next category is **basic health and welfare rights.** According to the commission these are; right to survival and development, rights of disabled children, the right to the highest attainable standard of health, child care services for children of working parents, and the right to achieve the highest standard of living attainable. These rights are covered by articles; 6:2, 23, 24, 26, 18:3 and 27:1-3.
4. **The right to education and leisure and cultural activities;** these of are Articles; 28, 29, and 31.

We are thus going to analyse the right to education in light of these categories of rights.

### **Civil rights and freedoms**

These correspond to the first degree rights in general human rights jurisprudence.

These children's rights just require the state to refrain from doing certain acts. They do not necessarily require resources to enforce, so basically any child would enjoy them even without education.

However, the lack of education greatly affects them because one would not have the confidence to demand for these rights. It is well known that states and more specifically African states are egregious violators of

human rights<sup>42</sup>, and so to achieve any rights from them, would be through a bitter struggle.

The human rights Watch<sup>43</sup> puts it that;

*“With limited capacity to participate as equals in civil society they (children) are ill equipped as adults to define their rights and to save these rights for their own children.”*

More so, even where these rights are observed, the uneducated children are left out. This is done due to the stigma attached to illiteracy. They are considered to be worthless and so cannot be part of the group that can enforce the observance of rights. In other words they are excluded and invisible.<sup>44</sup> Here the right to freedom from discrimination is the right basically violated. The Child Rights Caucus 2001<sup>45</sup> observed that; *“education is a basic human right of all children. It is a valuable tool through which one can shape the values of society and combat discrimination”*

Thirdly, no body or government will be willing to respect the rights of uneducated children. First of all, they themselves are rarely aware of the existence of such rights. Secondly, all the governments are well aware of the “importance” of such people, it will violate rights their rights at will. These people have no bargaining power. Such children will develop into what Karl Marx would refer to as the lumpen proletariat<sup>46</sup> and this explains why most unpopular governments base on such people to cling to power<sup>47</sup>.

So basically, when the right to education is violated children will not enjoy their civil and political rights. The Human Rights Watch<sup>48</sup> summarises it better;

*“The denial of economic and social rights such as the right to education ... often bars individuals from the effective enjoyment of their civil and political rights”, while UNICEF puts it that “civil and political rights... only acquire substance and meaning for people who have been educated”<sup>49</sup>.*

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<sup>42</sup> Makau wa mutua;

<sup>43</sup> In world report 2002, children’s right

<sup>44</sup> UNICEF; the state of the world’s children, 2006; excluded and invisible.

<sup>45</sup> This was in their statement entitled; ‘A child Rights Agenda for the coming decade’. This was during the UN General Assembly Special Session on Children, 20/10/2000.

<sup>46</sup> Karl Marx; The Communist Manifesto

<sup>47</sup> Save the children(UK), also connects this to the lack of education. It states that such people are unaware of our common humanity which forms the basis for democracy and human rights. This is in their 2000 publication; Denied a Future? The right to education of Roma, Gypsy and Traveler Children. First draft, March, 2000.

<sup>48</sup> World Report 2002

<sup>49</sup> In “The State of The World’s children report 2006”, above.

## **Family environment and alternative care rights**

These are a rather specialized group of rights. They are concerned with the welfare of the child within the family setting. Children are oft times the weakest members of the family and therefore they have to rely on some one older in the family for their well being.

The family is the nucleus of society. Traditionally, each member of the family has a role to play. By highlighting these rights the committee wanted to streamline the role of the child within the family setting.

At the same time the state is also enjoined to ensure the observance of these rights and provide for a kind of appropriate family setting for children who have been deprived of their rights to a family.

Education also comes into fore play when these rights are mentioned. This is because of its remarkable significance;

The family is the smallest embodiment of the whole society. The way people are treated in the family also reflects on the general situation in the country. It will be observed that a repressive government is also reflected in the family setting.<sup>50</sup> Therefore the same way that uneducated people are discriminated upon in the general society is replicated in the family. An uneducated child in an elite household will be an outcast.

The school also serves as a meeting place for all children in society, and therefore deprived children who attend school are more likely to be catered for by the state than those on the streets. So being in school enables children deprived of family, to easily access alternative care from the state.

It is also to be noted that children who have not attained an education are more prone to violence than those who are educated.

On violence, educated children can speak out, and also are in a better position to know how to seek help and redress. They can easily access the probation and child welfare offices in their districts, and can also seek advice from their colleagues at school, and also go to court where possible<sup>51</sup>. In fact apart from this, also the parents or who ever metes out the violence usually develop second thoughts about doing it to an educated child. **Robert Bolt**, in his play, **A Man of all seasons**,

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<sup>50</sup> Remember the marginalization of women and children in Napoleon's France, and in most pre colonial African societies.

<sup>51</sup> The case of Mpondi v. Nganwa High school, UHRR 1(1999-2002) illustrated the possibility of such an action. Though Mpondi was not a child, he was a student, but nevertheless he managed to bring a case of corporal punishment to the attention of the courts. Children can easily emulate him. In the case of Mbuga v. Uganda, a child complained to the police about a school head who used a spear handle while punishing him. The educator was prosecuted.

illustrates this in a scene where, Lady More tells her husband to beat up their daughter Margaret More and the saintly sir Thomas More refuses. The scene goes like this<sup>52</sup>;

**Lady Alice**; oh- why you do not beat that girl

**More**; no no, she is full of education and it's a delicate commodity

**Alice**: mm! And more' the pity!

**More**; yes, but it's there now and think what it cost.

One may however argue that in fact most violence to children is meted out from the school setting. This is true, as most findings suggest. The **Uganda Law Reform Commission** recently published its study report on domestic violence and also agrees with this suggestion<sup>53</sup>. Some teachers and parents still believe that "*one cannot educate a child without a stick*".<sup>54</sup> However, it is the ability to speak out that we are concerned with here. Uganda has so far recorded a number of cases filed by children against their teachers, the most remarkable one being, Mpondi v. Nganwa High School<sup>55</sup>, where a student (though not a child) was awarded compensation. Cases of uneducated children doing the same are unheard of.

They are also more prone to child trafficking. This has been observed in Uganda recently, when reports of Karamajong children being sold to traders emerged<sup>56</sup>.

Still, it should be noted that the likes of the parents or guardians are not necessarily the likes of the children under their wardship<sup>57</sup>. However, in most cases the interests of the guardian override those of the child in the family. Uneducated children are not empowered to stand up and express their likes and dislikes. The school environment on the other hand gives the child freedom to speak out on whatever issue.

This therefore gives them a chance to access the basics in the family, which would otherwise have been denied them by the all knowing and omnipotent parent. So, the best interests of the welfare of the child principle which forms the backbone of the convention is best observed with the collaboration of the children themselves.

### **Basic health and welfare rights**

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<sup>52</sup> Scene picked from Act One, page 19 of the book. Published by Hienemann Educational Books Ltd, Londo, 1981

<sup>53</sup> LAW COM PUB. NO Of 2006, A study report on domestic violence; Kampala, April,2006

<sup>54</sup> This is also confirmed by Ekirikubinza in; understanding children's rights; the case of corporal punishment in rural Uganda. East African Journal of Peace and Human Rights, vol.9, No. 1, 2003

<sup>55</sup> UHRR 1(1999-2002)

<sup>56</sup> Karamoja has very few children attending school.

<sup>57</sup> Save the Children (training kit supra)

This is the category that is most akin to the social economic grouping in general human rights jurisprudence. These rights are concerned within the general well being of the child but also basically stress the importance of the right to a basic health.

Children's welfare is basically the responsibility of the parents and the state<sup>58</sup>. These rights require resources to be realized. So they require the active participation of the state in their enforcement.

Starting with **the right to basic health**. This is another fundamental right not only of children but also of all human beings in general. However, education also features prominently in the enforcement of this right.

For starters, basic health features prominently in the schools curriculum. This gives an educated child an edge over his uneducated colleagues. Primary health care is a skill grasped from the classroom. Children get to know of the causes of disease, and how to manage disease, and also how to avoid disease. In this age of HIV/ AIDS<sup>59</sup>, condom use and other safe methods of sex are taught. The abstinence campaign mainly features in schools. Still, the state finds it easier to administer health services like compulsory immunization within a school setting, than without it.

For the economic rights, most Africans consider education as an investment and therefore a sure ticket to the world of employment. It is obvious, that the more educated one, is the more likely they are to get good jobs. The less educated get nothing completely. Their standards of living remain very low.

This has a direct bearing on the child's right to life, as it has been observed that violation of the right to education is a violation of the right to life.

Such children are far less likely to survive in this corporate and capitalist "free" world.

**Justice Warren of the U.S Supreme Court**<sup>60</sup> said;

*"Today education is perhaps the most important function of state and local government....it is required in performance of our most basic responsibilities, ...in these days it is doubtful any child may reasonably be expected to succeed in life if he is denied the responsibility of an education".*

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<sup>58</sup> This was observed as far as basic health concerned in the South African case of Minister of Health v. Treatment Action Campaign and others, 2002 10 BCLR 1033

<sup>59</sup> According to the Human Rights Watch, Reaching children with appropriate information on HIV transmission and care for those with AIDS is arguably the most effective means of combating the epidemic over the long term. World Report, 2002

<sup>60</sup> In Brown board of education 98 LED 873

Education also provides the best protection against the use of child labour<sup>61</sup>. The definition of child labor as contained in **ILO Convention 138 on Minimum Age for Employment** (1993), bases on compulsory school age.<sup>62</sup> Child labour is one of the most common banes in society. Children who do not go to school are most likely to be used in this kind of labour. Compulsory education on the other hand is seen as undesirable by most rural societies because it reduces their labour force! Children are not supposed to be engaged in labour meant for adults. The convention only admits light labour. So, education is indispensable if this right is to be achieved.

The rights of the disabled children also fall under this category. Children are vulnerable, but disabled children are much more vulnerable and disadvantaged. Now to this add illiteracy, and you get dehumanization. Education thus becomes the only way through which the rights of the disabled children can be respected.

Education opens hitherto closed alleys and headways for these disadvantaged children. With education these children can compete equitably with their more advantaged colleagues. They are given a chance to air out their views and also to share in the knowledge in the world. So, the solution to the marginalization of disabled children is simple - give them an education.

For the social rights denial of the right to education dehumanizes the child to the extent that it loses its social identity.

This is because education itself is a creator of social classes. People tend to relate with only their equals in terms of education.

None cares, as to what they want and so such rights like health are a forgotten relic, fit for the museum, along side all other children's rights..

**The human rights Watch** once again explains;

*“Children are especially vulnerable to this dynamic. They frequently do not benefit from the progressive realization of economic and social rights, to the contrary, often discrimination in health care and other services.”*

So as human rights only accrue to human beings, these “animals” as these children are referred to, have no claim to them.

The importance of education in this regard is perhaps best summarised by Save The children UK in their 2000 publication, **Denied a Future**<sup>63</sup>. They write; *“the holistic character of the right to education is undeniable. Its effective realization provides an essential means of access to an*

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<sup>61</sup> IPEC; Reflections on the past, pointers to the Future. Geneva; ILO, 1994, 34.

<sup>62</sup> Stated in “By the sweat and toil of children; the use of child labor in American imports”. A report of the committees on Appropriation, US Congress. Published by the Bureau of International Labor Affairs, US Department of Labor, July, 15,1994

<sup>63</sup> Already referred to above

*adequate standard of living. It ensures the access to knowledge required by individuals to develop all their faculties to improve the quality of their lives, to take clear sighted decisions and to continue to learn, in order to live a dignified life within a democratic society”.*

### **The right to education, leisure and cultural activities**

The right to leisure is guaranteed to an educated child. The school setting (for both formal and informal education) has standardized leisure periods, in which a child gets a chance to rest and be at ease. There are also all kinds of recreational facilities that can be accessed at school. The right to play and enjoy leisure is so crucial to a child’s development, and in fact it is one of the ways through which education is imparted. According to the **Declaration adopted by the World Summit for children**<sup>64</sup>, *“the children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and cooperation. Their lives should mature, as they broaden their perspective and gain new experiences”.*

Therefore not taking a child to school would be robbing a child of his childhood. UNICEF puts it thus, *“for these children, childhood as a time to grow, learn, play and feel safe is in effect meaningless”*<sup>65</sup>

Regarding cultural rights such children rarely enjoy any as they are usually cast out in the group. Educated people have their own culture and identity, which rarely admits the uneducated.

**Justice Warren** still explains;

*“today it [education] is the principal instrument is awakening the child to cultural values...”*

That again settles it; outcasts have no culture and no identify to talk of. Still, education in itself is a vehicle for transmitting culture hence enhancing cultural identity. For ethnic and cultural minorities, the right to education is a vital means of safeguarding and strengthening their cultural identity, including the right to use one’ own language.<sup>66</sup>

Basing on the above discussion, it is clear that education will remain the key to the realization of all other rights by the children.

So states should ensure that every child attains at least fundamental primary education.

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<sup>64</sup> September, 1990

<sup>65</sup> UNICEF; the state of the world’s children, 2006; excluded and invisible, pp 1

<sup>66</sup> See Denied a Future? The right to education of Roma, Gypsy and Traveler Children. First draft, March, 2000. save the Children, UK.

So it is time to appraise where we stand in Uganda today as far as this super right is concerned. This appraisal will also help us to determine whether Uganda is really doing what it covenanted to do when signing the CRC in 1990 – enforce children’s rights;

### **Uganda and the state of the right to education today**

In 1995 the Uganda government, of course under donor pressure, came up with the Universal Primary Education(UPE) programme, under which it meant to provide quality elementary education to all children in Uganda. This was a great step towards realization of the child right to education, at least on paper. UPE has been greatly criticised, to such an extent that its catch phrase- **bonna basome** (education for all) has been changed jokingly to “**bonna bakone**” (stagnation for all).

Now the government has come up with universal secondary education, and people are optimistic about how well it will fare since the same problems that defeated UPE still subsist, albeit at an elevated level. Nevertheless, the CRC provides for progressive realisation of such rights, and at least we are making headway<sup>67</sup>.

This paper is going to approach this progress from a different angle. We are going to look at what the state has done for all kinds of children, and also look at the kind of education bring imparted, to measure our success in these endeavors; remember Article 29 of the convention specifies five goals of education, including "the development of the child's personality, talents and mental and physical abilities to their fullest potential," "the development of respect for the child's parents, his or her own cultural identity, language and values, for 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 preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendships among all peoples, ethnic, national and religious groups and persons of indigenous origin."<sup>68</sup>

**The facilities available;** some of the students have no classrooms, and so study under tree shades. According to the **Uganda Education Statistics Abstract 2005**<sup>69</sup>, which is based on **Annual Education Census 2005**, the classroom to pupil ratio is 1: 79 in government schools. The minimum ratio however is 1: 60. Still it must be noted that these statistics are based on averages, so they do not necessarily reflect

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<sup>67</sup> For a thorough illustration of how far Uganda achieved by way of UPE see Juuko and Kabonesa(supra)

<sup>68</sup> See Human Rights Watch State of the world Report 2002

<sup>69</sup> Published by the Ministry of Education and sports in March 2006. It is currently the latest data on education.

the situation on the ground. Also the data is representative as it is based on a specific group of respondents. The statistics also show that the overall text book to pupil ratio is 1.8: 1.<sup>70</sup> It is basically the rural schools that lack the basic facilities required in education, yet incidentally, 81.8% of all primary schools in Uganda are rural<sup>71</sup>. What quality of education is expected out of such conditions?

It is also important to note that Uganda is basically promoting only formal education and neglecting informal education. Matters of culture are neglected at school and instead foreign cultures and languages are adopted. Most children spend most of their time at school, and so miss out on the traditional education which is imparted at home through the informal means like story telling and solving riddles. Remember, the requisite education is supposed to be of both types. The ministry of education only stresses the role of formal education. Scarce data exists on the steps taken to enhance informal education.<sup>72</sup>

**School intake v school dropout rates;** despite the fact that very many children enrolled both under UPE and USE, the rate of drop out is alarming. According to the statistics, enrolment in primary one nearly doubles the output in primary seven. In 2005, primary one intake was 36,840, while the number in primary seven was 12,872.<sup>73</sup>

Still, the other issue of concern is the number of children who do not enroll in school at all. These efforts are appreciated; however, it is ironical that the number of children out of school is still great. This does not need a rocket scientist to discern. A simple sojourn into Kampala will reveal hordes of children languishing on the streets. Even in the countryside the situation is the same, but here the children are mainly employed in looking after the home and the property incidental thereto.

The intake rates aside it has to be noted that getting children into school is only the beginning. Keeping them there and at the same time making them acquire the requisite skills is what I most important. It is a fact, the UPE graduates are in fact the scum of the earth. Some come out of primary school without even knowing how to properly spell and formulate their own names, let alone constructing proper sentences in English or even their local languages. It is not a matter of spending 7 years in elementary school, but rather what one achieves out of those seven years.

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<sup>70</sup> Table P28

<sup>71</sup> Table P4

<sup>72</sup> For example the Statistics Abstract 2005, is only about formal education.

<sup>73</sup> The difference shows that if the same number entered P1 seven years ago, then the rest had dropped out of school.

**Gender parity**; for education to be meaningful both sexes must be educated. Gender parity in education is **Goal number 3 in the millennium development goals**. Children have the right to freedom from discrimination in education. This right flows from the nondiscrimination provisions of the **Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination**. It is explicitly **guaranteed in the Convention against Discrimination in Education**.

Despite this however, as **The State of the World's Children, 1999** noted "*Girls crowd these ranks disproportionately, representing nearly two of every three children in the developing world who do not receive a primary education.*" This generally remains true. However, for Uganda, The statistics show that at least we are on the road to achieving this parity in primary education. In government schools, out of a total of **6609677** pupils in such schools, there are **3337040** male and **3272637** females. This makes the difference between the sexes **64403**.

This is quite remarkable in a society like ours which is patrilineal to the core. But however, it is not all about the number of girls in school but what they gain out of school at the end of the day. Girls fall in a special category of children- the invisible children. The state must ensure that there is no bullying and that the girls are not taken advantage of by their male teachers. The prohibition on discrimination in education is not progressive but rather absolute. The Committee on Economic, Social and Cultural Rights has observed that, the right to freedom from discrimination in education "*is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.*"<sup>74</sup>

**The curriculum content**; the questions to ask ourselves here are; Is what is taught in our schools today important for the well being of the child? Article 29 of the convention specifies five goals of education, including "the development of the child's personality, talents and mental and physical abilities to their fullest potential," "the development of respect for the child's parents, his or her own cultural identity, language and values, for 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 preparation of the child for responsible life in a free society, in the spirit of understanding,

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<sup>74</sup> See Human Rights Watch supra

peace, tolerance, equality of sexes, and friendships among all peoples, ethnic, national and religious groups and persons of indigenous origin.<sup>75</sup> It should not be education for education's sake Does our curriculum cover these?

A look at the curriculum of Uganda's school reveals quite a number of unnecessary topics. For example, we put more emphasis on European history than African history. I used to be angered by the persistence of my primary four teachers in insisting that John Speke discovered the source of the Nile. Even if it were true, which it is not, what is the relevancy in that to my day to day living?

It is only of recent that the government woke up from its long held slumber, and introduced a new curriculum, which is thematic. This curriculum seeks to make education more meaningful for its recipients. Let us keep our fingers crossed. But still, the education remains more theoretical than practical, and also too exam based.

Still the language of instruction matters. It has been observed that children from ethnic and linguistic minorities face additional barriers as they struggle to learn the language of instruction.<sup>76</sup> In Uganda until recently, the language of instruction has been only English, but now this is no longer the case, as lower primary pupils have to be instructed in their indigenous languages. English is a language that flew over 4000 kilo metres to Uganda, how can a Karamajong pupil be expected to grasp it in nursery school, let alone learn the rigors of the formal education system? Using indigenous languages serves dual purposes; it imparts quality education and at the same time develops the indigenous languages and cultures. Deculturalisation through education is all around us today, and it reminds one of the title of **Fanon Frantz's** popular book, **Black skins, White masks.**

Also look at the **investment in education.** It is great to note that despite the insistence on the scourge of privatization, it has barely found its way into primary education. The private sector rarely thinks of the quality of education that the pupils attain, they are more interested in making profits, and so they end up cheating in exams and also overloading the students. Education thus turns into a burden for the children.

The statistics show that the government owns most primary schools. It owns 83.3% of all primary schools, while the private sector owns 11.1%<sup>77</sup>. However, the trend is slowly but steadily changing. The education sector in Uganda is proving to be one of the most profit making ventures in the country, only next to churches. Quality should not be sacrificed at the altar of profit making.

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<sup>75</sup> Human Rights Watch; World Report 2002

<sup>76</sup> UNICEF 2006, supra

<sup>77</sup> Table P1

After that then the other question is **whether our education system caters for all children**. There are some children who are invisible. These include; orphans, street children, children with disabilities, children in detention and also children in conflict areas. Do these also enjoy their right to education? If not, how far has the government gone in trying to ensure their education? Though they are invisible, they are also children, as important as the daughter or son of the president. What is funny is that these invisible children are also literary speaking, the most visible. For example street children are always there on the streets in full view of every body, but in fact the only time they are seen is when an important event like CHOGM I going to take place, and only then for purposes of their being disposed off to the country side or in prisons!

The government recently came up with a policy on these “ **educationally disadvantaged children**”.<sup>78</sup> This policy has an extensive definition of such children. It provides that they are also as important as other children and thus advocates for special education for them. If well implemented, the scheme will make our invisible children visible, but having lived in Uganda for over 20 years, I doubt whether it will be implemented.

### **General conclusion**

So it is upon you and me to accord the respect and observance of children rights through availing education to Ugandan children. Of course as educated people, we can achieve this. We have the power to change this. The government should be held accountable, and the key to children rights should be accorded to each and every child. Let us emulate the spirit of the world Education For all Conference 1990 theme song<sup>79</sup>.

Education is the right of all  
For you and for me  
Its action time and time is now  
Let's all heed the call  
Join us, come with us, we are on our way,  
To education for all....

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<sup>78</sup> It is officially called the Basic Education Policy for Educationally Disadvantaged Children, written by the Ministry of Education, September, 2006.

<sup>79</sup> See EFA theme song. Final Report; World Conference on Education for all; meeting basic learning needs. New York. Inter agency Commission for the World Conference on Education for all, 1990 pp21

