

FEATURE

Re-Examining the Right to Education for Children with Disabilities in Uganda's 'New Normal'

Tuhairwe Herman and Godfrey Ayeranga

Prior to the Covid-19 pandemic, children with special needs in Uganda were educated in three types of schools – special schools, units in mainstream schools, and 'all-inclusive' schools which allow access to all children whether or not they have disabilities. In March 2020, Uganda recorded its first Covid-19 case, prompting the President to issue a stay-at-home order and declare, inter alia, the closure of all educational institutions (Kiplagat & Kamoga 2020). These institutions have remained closed since then, even though other sectors of the nation gradually reopened. Schools were initially supposed to reopen fully on 27 April 2020, but this was postponed to 4 June and, thereafter, indefinitely (Mukwanason 2020).

Both the President and Minister of Education intimated that schools would not be reopened until a vaccine or cure is discovered (Mukwanason 2020). With the continued closure of schools, the Ministry of Education directed that learning should continue from home and be offered by parents and guardians or through radio and television (New Vision 2020). There was, however, no further coordination or guidance regarding the conduct of the classes. As such, radio and TV stations, which are primarily private-run entities, offer classes at times of their own discretion. In the absence of a nationally timetable or syllabus to follow, teachers follow their own routines and there is no uniform allocation of time. Some topics are inevitably not covered, while others are repeated by the various media channels.

The lessons are focused on students in 'candidate' classes (Primary Seven, Senior Four and Senior Six) who were set to undertake various national examinations later in 2020. The education is also teacher-centred rather than learner-centred. For the entire lesson period, the teacher engages in a monologue with the camera in front of him or her, and there is no opportunity for the learner to ask questions or seek clarification. Without feedback from the learners, it is difficult, if not impossible, to determine the effectiveness of such classes. The teacher's pace, being constant, does not cater for the needs of various students.

To mitigate such issues, some teachers have resorted to contacting parents and caregivers to share educational materials. But this costs money, whereas the TV and radio classes are free. In addition, some of the children are in hard-to-reach areas and are unable to access materials (Murungi 2020).

Even before the closure of education institutions due to the Covid-19 pandemic, children with disabilities were often excluded from mainstream education (Kalibbala 2018). With disability still a source of stigma in most communities (Nangosi 2014), children and their families have not been receiving sufficient support. The classes currently being conducted have excluded children with special needs. In all the lessons taught since March 2020, there has been no consideration of children with special needs. For example, there are no sign language interpreters to cater for learners with hearing impediments (Nangozi 2020). In addition, because teachers have to conduct classes in a short time, they tend to rush through the content, while children with physical disabilities are unable to take notes at the same pace as those without disabilities (Nangozi 2020).



The education is also teacher-centred rather than learner-centred.

Children who have visual impairments require the use of braille devices, computers or other related devices to take notes while in class (Kirk et al. 2006). Francis Dawka (2014) has argued that ‘the use of appropriate technological devices promotes effective inclusion’. Those children who are unable to afford such learning devices at home can only listen but are unable to take notes, and so are left behind – this is all the more so in the case of those with intellectual disabilities. With schools that have such devices having been closed indefinitely, learning for students with visual impairments has more or less come to an end. Studying for such children has been difficult or impossible as it is hard to catch up with other students without disabilities. Even students with mild visual impairments will find that fonts and illustrations on TV may not be large enough.

“ Studying for such children has been difficult or impossible as it is hard to catch up with other students without disabilities.

Aware of the low coverage of TVs and radios, especially in the rural areas of Uganda, the Ministry of Education, with support from UNICEF, printed ‘self-study’ packages and handed them to local council officials for onward distribution to children across the country (Mukalele 2020). None of the materials, however, included any content for children with special needs, something that the Ministry of Education conceded was a ‘big shame’ (Nangozi 2020).

In view of such inequalities, the only children with disabilities who have continued to undertake education are those whose parents or caregivers are able to afford private tutors in their homes, or those whose private schools have reached out to them. Prior to the Covid-19 lockdown, less than 20 per cent of children with disabilities were able to access education (World Bank 2020). However, the pandemic has aggravated inequality with regard to access to education, notwithstanding Uganda’s obligations arising from international, regional and national legislation.

Legal framework on the education rights of children with disabilities

International legal framework: Soft law

The Universal Declaration of Human Rights (UDHR) recognises the right of every person to education, including children (article 26). This provision also applies to children with special needs. Similarly, article 2 of the Sundberg Declaration provides that every disabled person should be able to exercise his or her fundamental right to have full access to education. Article 2 therefore mandates the state to take effective action to ensure the fullest possible participation by disabled persons.

In its General Comment No. 4 (2016), the Committee on the Rights of Persons with Disabilities (CRPD Committee) requests that states actively involve and consult persons with disabilities (PWDs), including children with disabilities, through their representative organisations (OPDs) in all matters regarding the planning, monitoring and evaluation, and implementation of inclusive education policies. It has also urged states to ensure that educational institutions consult with PWDs and ensure that their opinions are given due consideration in the education system (CRPD Committee General Comment No. 7 (2018: 85)).

Furthermore, the CRPD Committee, in General Comment No. 4 (2016: 41), has called upon states to ensure that persons with disabilities are not excluded from education and to eliminate structural disadvantages so as to attain equality as well as effective participation for all PWDs. Therefore, the Government of Uganda should undertake consultation with children with disabilities through their representatives to ensure that their views are integrated in the measures it undertakes to ensure continuity of learning during ‘the new normal’.

Article 1 of the Salamanca Statement, which was adopted at the 1994 World Conference on Education, reiterates the need for states to commit to education

for all persons and recognises the necessity and urgency of providing special needs education within the regular education system. Article 2 of the Salamanca Statement stipulates that every child has a fundamental right to education, that children with special educational needs should have access to the regular education system, and that this system should accommodate them within a child-centred pedagogy capable of meeting these needs. With physical-contact schools closed and education moving to the media and the internet, there is a need to accommodate children with special needs.

Rule 6 of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities highlights the need for the state to give special attention to vulnerable groups of PWDs. Likewise, the CRC Committee, in its General Comment No. 9 (2006: 80), requires states to ensure that all the steps taken to protect and promote the rights of children with disabilities pay special attention to their vulnerability.

Article 3(5) of the World Declaration on Education for All stresses the need to give special attention to the needs of PWDs and to provide equal access to education to every category of disabled persons. In addition, the CRPD Committee in General Comment No. 4 (2016: 24) has urged states to ensure that PWDs have access to education in both private and public academic institutions on an equal basis with others.

The same General Comment (2016: 38) obliges states to ensure that PWDs are able to access vocational training, general tertiary education, adult education and lifelong learning without discrimination and on an equal basis with others; states are also enjoined to identify and remove all the barriers to education that PWDs may interface with. Accordingly, the government should ensure that children with special needs have access to the same study materials as other children by removing the obstacles that may hinder this access.

The CESCR Committee in General Comment No. 5: 35 has called upon states to ensure that youth, children and adults with disabilities have access to equal opportunities when it comes to primary, secondary and tertiary education by ensuring that they have access to the necessary support and equipment and that their teachers are well trained to educate children with disabilities within regular schools. The aim of this is to bring PWDs up to the same level of education as their non-disabled peers.

International legal framework: Hard law

Uganda, as a state party to the Convention of the Rights of Persons with Disabilities (CRPD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC), has an immediate and minimum core obligation to ensure equality and non-discrimination on the basis of disability. The CESCR Committee in General Comment No. 5:15 refers to 'any exclusion, distinction, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of impairing or nullifying the exercise or enjoyment or recognition, enjoyment of economic, social or cultural rights'.

The ICESCR (article 13) and CRC (article 28) recognise the right to education of all children, including children with special needs. The above instruments also oblige states to undertake measures aimed at ensuring that the education received by the children leads to the full development of the children. The CRPD Committee in General Comment No. 4 (2016: 15) has echoed that education must aim at the full development of human potential, dignity and self-worth and the strengthening of respect for human rights and human diversity.

Articles 5 and 24(1) of the CRPD affirm that the right to education should be guaranteed without discrimination and on the basis of opportunity. The CRPD Committee in General Comment No. 6 (2018: 63) has highlighted




Accordingly, the government should ensure that children with special needs have access to the same study materials as other children by removing the obstacles that may hinder this access.

that articles 5(1) and 24 oblige states to remove all types of discriminatory barriers, including legal and social barriers, to inclusive education. Thus, the failure by states to provide students with disabilities and those who experience intersectional discrimination or multiple forms of discrimination with equal access to mainstream school with inclusive and quality education is discriminatory, contrary to the objectives of the Convention, and in direct contravention of articles 5 and 24. Therefore, the Government of Uganda should ensure that students with disabilities have access to study materials which meet their special needs and are not subject to discrimination.

Article 23 of the CRC emphasises the need to provide services while considering the financial resources of parents and their caregivers. The CRC Committee in General Comment No. 9 (2006: 39) enjoins states to develop appropriate policies and procedures aimed at making public transportation safe, free of charge, and easily accessible to children with disabilities, whenever possible, while taking into consideration the financial resources of the parents or others caring for the child.

Regional framework

Article 11 of the African Charter on the Rights and Welfare of the Child recognises that all children have a right to free basic education and secondary education, and obliges all states to progressively realise this right. This right also exists under the ICESCR (article 13(2)a) and CRC (article 28(a)), which require states to make primary education compulsory free and without discrimination.

 **Articles 5 and 24(1) of the CRPD affirm that the right to education should be guaranteed without discrimination and on the basis of opportunity.**

Conclusion

The above provisions are a call to the state to pay special attention to the provision of education to PWDs. These obligations are in place to ensure that such persons are not rejected by the school system simply because of their disabilities. This implies that equal opportunities for access to education should be availed to them, no matter the circumstances.

The current delivery of education through the media has not been inclusive of children with special needs. As basic education is indispensable for employment in many spheres and a precondition to economic independence, the right to education is of specific importance for PWDs. Education is also a central part of the rehabilitation process, since people are able to develop their capacities to become more independent and integrated into the day-to-day affairs of mainstream society. Uganda is considered to be one of the pioneers of access to basic education in sub-Saharan Africa.

The expansion of primary education through the UPE programme has been largely pro-poor and has therefore greatly improved access to education throughout the country. Even in the midst of a pandemic, children with special needs should not be precluded from accessing this education. The learning needs of children with disabilities should be given special attention, so that they can also access quality education even in the midst of a pandemic.

To these ends, the government should ensure that the study materials developed are adapted to the requirements of children with special needs, and are accessible to these children so as to aid in the learning process during the new normal that is remote learning. It should also ensure that children with special needs have access to the relevant devices (such as braille devices) that are used by children with special needs, and that the children are properly accommodated during the learning process in this period of the new normal.

The teachers conducting classes via the media should be trained and guided by the government on how to conduct classes in an inclusive manner while

considering the different needs of the children with special needs, so as to ensure that no child is left behind during this period.

The government should also provide appropriate support to the parents, guardians and caregivers of children with special needs during this period, to ensure that the children receive inclusive education.

Tuhairwe Herman is the Research and Publications Officer of the Law Development Centre, Uganda.

Godfrey Ayeranga is a lecturer and legal research fellow at Cavendish University in Uganda.

United Nations Committee on the Rights of Persons with Disabilities (2016) General Comment No. 4.

United Nations Committee on the Rights of Persons with Disabilities (2018) General Comment No. 6.

United Nations Committee on the Rights of the Child (2006) General Comment No. 9.

World Bank (2020) 'Special needs education in Uganda: Sustainable Development Goal (SDG) #4 Concerns quality and inclusive education'. Available at <https://bit.ly/3f3Di77>

References

Dakwa, FE (2014) 'Inclusion of children with visual impairments in regular schools: A Zimbabwean perspective', International Journal of Academic Research in Progressive Education and Development 3(1).

Hyuha, MA (2020) 'Covid-19: Why we should reopen schools now', Daily Monitor. Available at <https://bit.ly/3tonbJV>

Kalibbala, G (2018) 'Children with deaf-blindness can do better in mainstream schools', New Vision. Available at <https://bit.ly/3r1faYd>

Kiplagat, E & Kamoga, J (2020) 'Uganda's Museveni orders closure of schools, bans public gatherings', The East African. Available at <https://bit.ly/3F73mJ8>

Kirk, SA et al. (2006). Educating Exceptional Children. Boston: Houghton Mifflin Harcourt.

Mukalele, R (2020) 'Homeschooling: Schools, Ministry of Education, publish self-study materials online and print', ICT Teachers Association of Uganda. Available at <https://bit.ly/3HL70u2>

Murungi, P (2020) 'A Kenyan radio, food and bikes: Home-schooling in Amudat', Daily Monitor. Available at <https://bit.ly/3JW6ivY>

Nangozi, Y (2020) 'Covid-19 lockdown: Learners with disability feel the pinch', The Observer. Available at <https://bit.ly/3qY6KB4>

New Vision (2020) 'First Lady speaks out on continuity of learning'. Available at <https://bit.ly/3t6Czub>

United Nations Committee on Economic Social and Cultural Rights (1994) General Comment No. 5.