

# A Right to Health Analysis of Uganda's National Health Insurance Scheme Bill

## PARLIAMENTARY POLICY BRIEF

*This Parliamentary Policy Brief provides a right to health analysis of the Government of Uganda's proposed National Health Insurance Scheme (NHIS) Bill No. 27 of 2019.<sup>i</sup> The brief is based on an analysis of the provisions of the bill and measures these against the binding and authoritative standards of the right to health in international human rights law. The brief also considers Uganda's constitutional obligations and the extent to which this bill responds to these obligations. In light of the global COVID-19 pandemic and the tremendous challenges it poses for the Ugandan health care system, the brief makes recommendations on how the NHIS could respond to these challenges.*

### 1. INTRODUCTION

The Government of Uganda has developed a National Health Insurance Scheme (NHIS) Bill No. 27 of 2019 to establish the National Health Insurance Scheme. This bill provides for the objectives and functions of the scheme and also has provisions for financing mechanisms under the scheme and also provides for beneficiaries and categories of services to be provided in the scheme.

Some of the emerging issues in the proposals made under the bill include;

1. The failure of the bill to provide for universal access to care for all residents in Uganda as defined under the Registration of Persons Act. Under the bill, access to health care is linked to contributions and relationships with the contributors as opposed to the health care needs.
2. Overall the commitment for Government Sector Funding is missing in the Bill, the government contribution towards the scheme will be key in growing the base of the scheme. The foundation for rolling out a national health insurance scheme should be grounded public funded, responsive quality essential packages of services that are universally accessible to all residents.
3. The bill also proposes a large board which we believe will affect the success of the proposed scheme. Such a large board comes with challenges of conflicts of interest and accountability to the population is always a challenge. It is important that the proposed board focuses on a set of skills and the separations of powers principle if its to be efficient. The board should also have a separate reporting channel from the accountability channel.

### 2. RECOMMENDATIONS FOR PARLIAMENT'S CONSIDERATION

In the following section, this brief provides recommendations for amending the key clauses to the NHIS Bill to ensure that they conform with the key principles of the right to health.

#### 2.1. Who qualifies under 'contributors'?

The NHIS Bill proposes creating a NHI Fund subsidised by "any person who has attained the age of 18 years and who is ordinarily resident in Uganda."<sup>ii</sup> In the case of salaried employees, payments to the fund are made by monthly wage deductions and employer contributions,<sup>iii</sup> while self-employed people pay an annual contribution to the fund.<sup>iv</sup>

#### Recommendation 1:

- a. The National Health Insurance Scheme should provide cover for all residents in Uganda as defined under the Uganda Registration of Persons Act of 2015
- b. Amend the definition of contributor's spouse to include common-law and customary marriage;
- c. Amend the definition of contributor's 'child' to 'children,'
- d. Amend the definition of 'children' over 18 years to a separate category of beneficiaries identified as 'dependents.'

#### 2.2. Who qualifies as 'indigents'?

The other primary beneficiaries of this scheme are 'indigents' who are defined in the Bill as "poor orphans and other poor vulnerable children, poor older persons, poor persons with disabilities, poor destitutes and poor refugees who are registered as such under section 26."<sup>v</sup> From a right to health perspective, the focus in the

definition of indigents on particularly vulnerable populations is commendable. However, the definition also excludes anyone from this definition who is poor but not an orphan, vulnerable child, older person, person with disability, destitute or refugee. In this regard the principles of non-discrimination, core obligations and priority to vulnerable groups offer important guidance.

#### Recommendation 2:

*The definition of indigents should be amended to focus on all poor people and vulnerable and marginalized populations, not simply the identified groups.*

### 2.3. A stratified scheme between contributors and indigents

There are also concerns from a human rights perspective about a scheme which differentiates between ‘contributors’ and ‘indigents’ given that in 2018, the poor in Uganda made up anywhere between 21.4% to 41.7% of its total population of 42.72 million.<sup>vi</sup> The definition of indigents therefore affects anywhere between approximately 9–18 million people in Uganda, creating multiple problems in implementing the NHI Scheme as proposed.

#### Recommendation 3:

- a. *Rather than offering a stratified scheme for ‘contributors’ and ‘indigents’ the NHIS should aim to assure universal health care for all Ugandans, with a particular focus on ensuring that all (not simply some) vulnerable and marginalized populations can access the scheme.*
- b. *Instead of basing membership to the scheme on qualification as a contributor or indigent, the Scheme should instead offer membership to all Ugandan residents.*

### 2.4. Affordability and out of pocket expenditure on health

A primary objective of the NHIS Bill is to remedy the very high out of pocket expenditure which Ugandans experience, estimated at 41% of total expenditure on health. Out of pocket expenditure on health is defined as “household spending on medicines, health products, out-patient and inpatient care services (such as medical laboratory services) that are not reimbursed by a third party (such as the government, a health insurance fund or a private insurance company). It excludes household spending on health insurance premiums.”<sup>vii</sup> Under the right to health principle of affordability, equitable payment for health-care services suggests “either that health services, at least basic health services, will be provided free of cost or that poor and disadvantaged groups will be heavily subsidized.”<sup>viii</sup>

#### Recommendation 4:

*The NHIS Bill should reduce out of pocket health care payments in an equitable manner that focuses on removing these wherever possible, with a priority on removing such payments for essential care that falls under core obligations*

*under the right to health and eliminating them completely for low-income and other disadvantaged groups.<sup>ix</sup>*

### 2.5. Affordability and financing of the NHIS

The NHIS will be financed primarily through contributions made by employees defined as both salaried and self-employed people. The Bill does not specify what this contribution will be, other than to indicate that it “shall be at such rate, depending on the total income of the person liable to make a contribution, as the Board, in consultation with the Minister and the Minister responsible for Finance, may determine.”<sup>x</sup> Overall the commitment for Government Sector Funding is missing in the Bill, the government contribution towards the scheme will be key in growing the base of the scheme. The foundation for rolling out a national health insurance scheme should be grounded public funded, responsive quality essential packages of services that are universally accessible to all residents.

#### Recommendation 5:

- a. *The commitment for Government public sector funding should be made explicit in the bill. The bill should have provisions that describe the expected revenues from government.*
- b. *The rate proposed for contributions should be assessed in terms of its impact on people’s ability to meet other essential needs such as purchasing food, paying rent or mortgages, paying for education etc., as well as on household expenditures.*

### 2.6. Affordability for self-employed people

Another key area that is unclear in the Scheme is who fits into the category of the ‘self-employed.’ There are pressing human rights questions about who will be liable to contribute to the scheme and about the affordability of such premiums given that 74.8% of Uganda’s workforce fits into the category of ‘self-employed’,<sup>xi</sup> that only 3% of the workforce are classified as ‘employers’,<sup>xii</sup> and that 47.3% of the working age population are outside the labour force.<sup>xiii</sup> When 25% of people who are self-employed face limited financial resources,<sup>xiv</sup> the imposition of compulsory premiums is potentially highly inequitable.

#### Recommendation 6:

- a. *Define who is considered ‘self-employed’ and exclude workers in the informal sector, people who are under-employed and people who face limited resources from paying high monthly premiums and penalties for non-payment.*
- b. *Standardize penalties for non-payment between employers and the self-employed.*

## 2.7. Financing of the NHIS and maximum available resources

The NHI Scheme will be financed entirely through compulsory pooled pre-paid contributions made by contributors to the scheme. This is in line with WHO recommendations that universal schemes be financed in this way (rather than through out of pocket spending).<sup>xv</sup> However WHO has also consistently emphasized that public financing of universal health coverage should not rely on contributor premiums alone, and that states should increase public spending on health from a variety of sources.

### Recommendation 7:

*The Ugandan government should not rely only on individual contributions to fund the NHIS. It should increase domestic health funding through a range of sources, including increasing domestic spending on health by at least 1-2% of GDP, securing additional international funding for health, increasing the efficiency of revenue collection, reprioritizing government budgets, and introducing innovative financing (such as tobacco or alcohol taxes).*

## 2.8. Are the services offered sufficient from a human rights perspective?

Under the NHIS Bill, every “contributor and a spouse and child of a contributor are entitled to all the health benefits specified in Schedule 1.”<sup>xvi</sup> Schedule 1 sets out eleven categories of health care services. The Schedule further specifies which of these services will be available at health centres III, health centres IV, general hospitals and referral hospitals. These services are not sufficient from a human rights perspective as a package of benefits covered under the NHIS. Important guidance on this should be drawn from both the right to health and international guidelines on UHC:

### Recommendation 8:

1. Finalize the schedule of benefits based on a participatory consultation that takes into account the health concerns of the whole population, with particular attention to the health needs of vulnerable or marginalized groups.
2. Gaps in essential areas should be remedied including child immunization, ART treatment for HIV, and access to essential medicines, commodities and supplies including mama kits and new born resuscitation devices.
3. Greater specificity is required with regard to essential medicines to be provided outside the specified areas, and with regard to what communicable and non-communicable diseases will be addressed.
4. Medicines and Services for neglected tropical diseases including Bilhazia, Sleeping sickness, elephantiasis, trachoma, liprosy, liver blindness and snake bites anti vernoms should be included.

## 2.9. Exclusion of pre-existing conditions

The NHIS Bill has a range of exclusions which raise human rights , including that benefits under the scheme “do not include treatment or the supply of medicines where the health care provider did not diagnose the illness or injury or prescribe the medicine.”<sup>xvii</sup> This provision threatens to effectively exclude all pre-existing illnesses, injuries or prescriptions diagnosed before the initiation of the Scheme or by non-accredited or new health care providers.

### Recommendation 9:

*Remove the exclusion of pre-existing illnesses, injuries or treatments in article 26.2.a from the Scheme. Alternatively, allow such diagnoses to roll over into the operation of the NHIS.*

## 2.10. Representation on the Board of Directors

The NHIS Bill indicates that a Board of Directors will be the governing body of the scheme, and responsible for the general direction and supervision of the Scheme.<sup>xviii</sup> The Bill indicates that the Board will have 11 members with relevant qualifications in relation to health, business or finance. In principle we think that the large board as currently proposed under the bill will affect the success of the proposed scheme. Such a large board comes with challenges of conflicts of interest and accountability to the population is always a challenge. It is important that the proposed board focuses on a set of skills and the separations of powers principle if its to be effecient. The board should also have a separate reporting channel from the accountability channel.

### Recommendation 10:

- a. We propose that the board should comprise of five skilled and eminent resident persons with a CEO of the fund as the Ex-officio.
- b. The nominating authority should take into consideration the qualifications of the proposed members, there professional rank and competence. The nominating authority should be separate from the appointing authority.
- c. Ensure a balanced representation on the Board of Directors of health and community interests.
- d. Add representation of a human rights advocate/legal to ensure that legal and human rights considerations are taken account of, alternatively create a human rights committee to advise the board.

## 2.11. Regional Health Insurance Appeals Tribunals

The scheme indicates that regional health insurance appeals tribunals will be established to hear complaints from “both contributors and health service providers.”<sup>xix</sup> Contributors may lodge complaints regarding violations of their rights, “wilful neglect of duties by an officer of the Scheme which results in loss to the contributor, or any other reason that tends to undermine, delay or defeat the objectives [or] functions of the Scheme.”<sup>xx</sup> These

mechanisms are commendable in light of the principle of accountability which requires that people negatively affected by health care decisions should have access to effective judicial or other appropriate measures. However, they also have a range of gaps and areas requiring clarity: (a) Why are indigents who are primary beneficiaries under the scheme excluded from these claims? It would be inequitable to limit remedies under the scheme to a significant proportion of beneficiaries.

#### Recommendation 11:

- a. Enable all beneficiaries of the scheme, including 'indigents', dependents and children to lodge complaints under the Scheme;
- b. Clarify that the rights which all people benefitting the scheme can claim include domestic and international human rights to health.
- c. Domestically incorporate Uganda's ratified international human rights treaties to ensure that they are domestically enforceable.

### 2.12. Participation under the NHIS Bill

The principle of participatory decision-making requires that health policy, plans and programs must be created in a "participatory and transparent process."<sup>xxi</sup> This also requires that health policies should not just assess population health concerns from epidemiological data but should also seek and include "people's expressed priorities."<sup>xxii</sup> As a primary health care initiative that will have significant implications for all Ugandans, the NHIS Bill in particular requires a high degree of consultation and participation.

#### Recommendation 12:

The Ugandan government should engage in a broad process of consultation to ensure that the NHIS Bill reflects the Ugandan people's expressed priorities regarding their health. This process of consultation should include all key stakeholders, with a particular focus on vulnerable and marginalized groups.

### 2.13. The NHIS Bill and COVID-19

The Ugandan government's duties under the right to health are not lifted during the breakout of epidemics and pandemics like COVID-19. Instead the principles of core obligations and shared responsibility require the state to prioritize people's ability to access essential health care services during a pandemic, including through accessing international funding to support same.<sup>xxiii</sup> The UN Committee on Economic, Social and Cultural Rights confirms that in the context of COVID-19, states must "make all efforts to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups. Allocation of resources should prioritize the special needs of these groups."<sup>xxiv</sup>

#### Recommendation 13:

The NHIS Bill should be prioritized for adoption during COVID-19, with access to essential health care for all Ugandans given high political and economic priority.

## CONCLUSION

The NHIS Bill is a welcome initiative to realize the right to health of all Ugandans. We hope that the recommendations in this brief are considered in order to make the Scheme a more equitable and human rights compliant initiative capable of assisting the Ugandan government to realize its duties under the right to health.

## END NOTES.

- i. Government of Uganda, National Health Insurance Scheme (NHIS) Bill No. 27 of 2019, 9 August 2019, Bills Supplement No. 10, Bills Supplement to the Uganda Gazette No. 38, Volume CXII (NHIS Bill).
- ii. NHIS Bill, article 21.1.
- iii. NHIS Bill, article 21.2.a and 22.1.
- iv. NHIS Bill, article 21.2.b.
- v. NHIS Bill, article 2 on interpretation, p7.
- vi. World Bank Data on Uganda, accessed online: [https://datatabank.worldbank.org/views/reports/reportwidget.aspx?Report\\_Name=CountryProfile&id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=UGA](https://datatabank.worldbank.org/views/reports/reportwidget.aspx?Report_Name=CountryProfile&id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=UGA)
- vii. World Health Organization, 2019 Monitoring Report: Primary Health Care on the Road to Universal Health Coverage, 2019 Geneva, p27.
- viii. Chapman, 2016, p3.
- ix. This recommendation is adapted from that made in World Health Organization, "Making fair choices on the path to universal health coverage: Final report of the WHO Consultative Group on Equity and Universal Health Coverage," 2014, p36.
- x. NHIS Bill, article 21.3.
- xi. Uganda Bureau of Statistics 2018, The National Labour Force Survey 2016/17 – Main Report, Kampala, Uganda, p.iv.
- xii. Uganda Bureau of Statistics 2018, The National Labour Force Survey 2016/17 – Main Report, Kampala, Uganda, p.ii.
- xiii. Uganda Bureau of Statistics 2018, The National Labour Force Survey 2016/17 – Main Report, Kampala, Uganda, p.iii.
- xiv. Uganda Bureau of Statistics 2018, The National Labour Force Survey 2016/17 – Main Report, Kampala, Uganda, p.xii.
- xv. World Health Organization, 2019 Monitoring Report: Primary Health Care on the Road to Universal Health Coverage, 2019 Geneva, p25.
- xvi. NHIS Bill, article 26.1.
- xvii. NHIS Bill, article 26.2.a.
- xviii. NHIS Bill, article 8.1.
- xix. NHIS Bill, article 45.1.
- xx. NHIS Bill, article 45.2.
- xxi. General Comment No. 14, para. 43.f.
- xxii. Sridhar et al, 2015, p3.
- xxiii. See for example, United Nations Committee on Economic, Social and Cultural Rights, "Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights," 6 April 2020, UN. Doc. E/C.12/2020/1, para. xxiv.
- xxiv. United Nations Committee on Economic, Social and Cultural Rights, "Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights," 6 April 2020, UN. Doc. E/C.12/2020/1, para.14.