THE STATE OF THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH IN UGANDA

EMERGING ISSUES

Submission to the universal periodic review of Uganda

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Jointly submitted by: Civil society organizations working to advance the realization of the **right to the highest attainable standard of health** in Uganda

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Organizations that endorse the report

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2. Anti-corruption Coalition Uganda (ACCU)
3. Asha Rayzan Foundation (ARF)
4. Bridge Builders Uganda
5. Center for Health, Human rights and Development (CEHURD)
6. Coalition for Health Promotion and Social Development (HEPS- U)
7. Family life Education program, Busoga Diocese (FLEP)
8. Heart sounds Uganda
9. Human Rights awareness and promotion forum (HRAPF)
10. Human rights network Uganda (HURINET)
11. Initiative for Social and Economic rights (ISER)
12. Inspire Health Uganda
13. International Community of Women living with HIV/AIDS eastern Africa (ICWEA)

14. National Union of disabled persons of Uganda (NUDIPU)
15. National community of women living with HIV/AIDS (NACWOLA)
16. OLYAKI Nutrition Health and Life style support Uganda
17. Reproductive Health Uganda (RHU)
18. Save for Health Uganda
19. Transform Uganda
20. Uganda Islamic Aids Network (UIANET)
21. Uganda National Health Consumer's Organization (UNHCO)
22. Uganda National Network of Aids Service Organizations (UNASO).
23. Uganda Network on Law, Ethics and HIV/AIDS (UGANET)
24. Uganda Youth and Adolescents Health Forum (UYAHF)
25. Uganda Youth Alliance for Family Planning and Adolescent Health (UYAFPAH)
26. United Citizens Child Support Organization - Uganda (UCCSOU
27. Vijana Na Children Foundation Uganda
28. White Ribbon Alliance for Safe Motherhood Uganda (WRA-U)
29. Youth plus policy Network

KEY WORDS: Health; mental health, health insurance, budget allocation, discrimination in health care setting, Adolescent health; discrimination; contraceptive information; unsafe abortion; palliative care

I. EXECUTIVE SUMMARY

1. In accordance with Human Rights Council Resolution 5/1 of June 18, 2007, this report is jointly submitted by civil society organizations working to advance the enjoyment of the right to the highest attainable standard of health in Uganda. The compiling of the report has been a consultative process from different Civil society organizations spearheaded by the **Center for Health, Human Rights and Development (CEHURD)[1],** a not for profit research and advocacy organization that ensures that laws and policies are used as principal tools for the promotion and protection of health and human rights, with coordination from **Human rights Network Uganda and Action group for Health, Human rights and HIV/AIDS.**

2. The government of Uganda commitment to the realization of the right to the highest attainable standard of health through ratifying regional and international instruments[2], enactment of legislations, and accepting several recommendations during the previous Universal periodic Review (UPR), but a lot remains deserving.

3. This report highlights the following key issues of concern

A. Legal and policy framework: Uganda's Constitution lacks an explicit provision on the right to health; HIV /AIDS prevention and Control Act has contentious clauses; the Mental Health Bill and National Health Insurance Bill have not been enacted into law.

B. Discrimination in the health care setting: Persons with disabilities and sexual minorities are not adequately considered in the health care policies which limits their access to health care services.

C. Consistent inadequate budget allocation to the health sector, the state has not adhered to the Abuja Declaration of committing 15% of its national budget to the health sector**.**

II. KEY ISSUES

A) LEGAL AND POLICY FRAMEWORK

i. Non availability of the Right to highest attainable standard of Health in Uganda's Constitution

4. Uganda's failure to award specific recognition to the right to the highest attainable standard of health in its Bill of Rights, has arguably contributed to the rights poor implementation and enforcement in practice. This is regardless of the ratification of the International Bill of Rights[3]and formulation of policies that require a legal provision to operationalize.

5. **Recommendation:** The state should amend the Constitution to provide for the right to the highest attainable standard of health

ii. Absence of a health insurance law

6. While Uganda accepted recommendations to create a health insurance scheme for the poor in the previous UPR, the Ministry of Finance, Planning and Economic Development has never issued a certificate of financial implication to the draft Bill. This has halted the cabinet from discussing the draft Bill and tabling the same before Parliament for debate. This has left to up to 37% of poor households experiencing catastrophic payments for health care[4] yet cost is one of the barriers to accessing health care in Uganda.

7. **Recommendation:** The State should expedite the process for the enactment of the National Health Insurance Scheme Bill.

8. **Recommendation:** The National Health Insurance Bill should adequately provide for insurance cover for all categories of the population.

iii. Contentious clauses in the HIV Prevention and Control Act 2014

9. Studies estimated that over 1.5 million Ugandans were living with HIV/AIDS in 2014, representing 7.3% of the total adult population,[5] a marked increase since 2005.During the previous UPR, Uganda accepted recommendations aimed at advancing quality health care for all and ensuring a prevention of HIV/AIDS preference.

10. Despite that, the president assented to a contentious HIV and AIDS Prevention and Control Act with an aim of "preventing and controlling HIV". The Act which contains several contentious provisions will increase stigmatization and discrimination, which will consequently hinder the public health response to a recent increase in the HIV prevalence rate in Uganda. These clauses include mandatory testing (section 13), criminalization of transmission of HIV (section 41 and 43) and disclosure without consent (section 18).

11. **Recommendation**: The HIV/AIDS Prevention and Control Act should be called back to Parliament and clauses relating to criminalization of transmission of HIV, disclosure without consent, and mandatory testing removed or amended.

iv. Archaic Mental Health law.

12. Uganda has a Mental Health law that was passed was enacted in 1938 and last revised in 1964. A National Mental Health Amendment Bill however has been in the process of its completion for the last 10 years. To date therefore, the old archaic law of 1964 has not been repealed!

13. This law is outdated, not in line with contemporary issues in mental health care, does not conform to the human rights language in the Convention on Rights of persons with disabilities and does not promote and protect the rights of persons with psychosocial disabilities both within the health care context and in the community.

14. **Recommendation**: The New Bill on mental health should be expedited but MOST importantly written to ensure that it conforms to international human rights frameworks, such as the UN Convention on the Rights of Persons with Disabilities and Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991).

B. DISCRIMINATION IN THE HEALTH CARE SETTING

i. Access to information and informed decision making to persons with disabilities

15. During the previous UPR the government accepted recommendations aimed at mainstreaming disability in health programming and campaigns and ensuring access to health information for all. The Convention on the Rights of Persons with Disabilities which Uganda is party to allows access to health information in forms that are accessible to all including Braille, tactile, large print, and accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes without additional costs. This has not been done in health facilities without which people with disabilities cannot make informed decisions to the enjoyment of the right to health

16. **Recommendation:** The state should ensure provision of free access to health information to people with disabilities in all accessible formats including Braille, tactile, large print, accessible multimedia as well as written, audio, plain-language and human-reader.

ii. Impediment on access to health care by LGBTI and sex workers.

17. The archaic laws[6] that criminalize "carnal knowledge" against the order of nature impede access to SRH services by LGBTI persons. Almost all health policies in Uganda apart from the National AIDS strategic plan 2015-2020[7] do not recognize the health needs of LGBTI persons. UNAIDS in its THE GAP report, notes that LGBTI persons are both left behind and most at risk populations. The HIV prevention rate of Men who have sex with Men (MSMs) stands at 13.7% which is way above the National HIV prevalence rate which stands at 7.3%[8]. The exclusion of this population from health policies has thus greatly impacted their access to SRH services including access to HIV treatment and counseling.

18. **Recommendation**: The state should develop and implement Programmes aimed at addressing the social gender stereotypes and norms that tolerate and accept violence

against sexual minorities and review health policies to include specific programs targeting sexual minorities and ensure friendly health services.

C. RECURRENT INADEQUATE BUDGET ALLOCATION TO THE HEALTH SECTOR

19. Uganda committed to allocating 15% of its national budget to the Health sector in line with the Abuja declaration and this recommendation was accepted during the previous UPR. The state has however not adequately implemented this recommendation and the health sector remains severely underfunded.

20. The overall budget to the sector has slightly increased from UGX 1,283.808bn in FY 2015/16 to the projected budget for FY 2016/17 of UGX 1,481.97bn[9]. In addition, considering the forecast spending for National Development Plan II (NDP II), the FY 2016/17 budget falls short of the NDP II public costing by UGX 485.084(25%)[10].This inadequate allocation subsequently impacts on access to quality health care services by poor and vulnerable populations of Uganda.

21. **Recommendation:** Government of Uganda should progressively allocate funds annually to the Health sector to meet the Abuja commitment in order to promote, protect and fulfill the enjoyment of right to the highest attainable standard of health by poor and vulnerable persons in the country.

D. STRENGTHEN ACCESS TO PALLIATIVE CARE SERVICES IN UGANDA.

22. Palliative care is essential to the realization of the right to the highest attainable standard of Health. Estimates by the government reveal that slightly over 10% of individuals in need of palliative care can access it.[11] Of these, most only receive medical palliative care and the provision of psychosocial or spiritual care is often unavailable yet effective palliative care requires a holistic approach.

23. The inadequate provision of and access to palliative care reflects the lack of a national policy to guide the development and sustainability of palliative care service delivery. Although steps have been taken by the Ministry of Health to enact a provisional policy, this process has stagnated for more than twelve months with no clear explanation why the policy has not been discussed and passed by the Ministry of Health.

24. **Recommendation**: The government should strengthen palliative care at all levels by fast tracking the National Palliative Care Policy.

E. ACCESS TO HEALTH CARE SERVICES

i. Access to quality sexual and reproductive health services by adolescents

25. Although the government is commended for establishing policies to address adolescent access to SRH services, including the Adolescent Health Policy Guidelines and Service Standards, and National Minimum Healthcare Package, implementation of these policies is yet to be realized.

26. Bridging the gap between service delivery and implementation of the policies is important. Inadequate access to sexual and reproductive health services results in an affiliated rise in maternal morbidity and mortality, higher HIV/AIDS rates amongst adolescents and greater drop-out rates among school-aged girls. In Uganda, 1 in 4 girls aged 15-19 has already given birth or is pregnant with her first child and 14% of young women have their first sexual encounter before the age of 15[12].

27. **Recommendation**: The government should develop concrete plans with a line budget aimed at implementing reproductive health policies that impact on the realization of sexual reproductive health rights for young people.

ii. Inadequate access to contraceptive information and services

28. Although the Government has made efforts to improve access to family planning information and services, the unmet need for family planning for women in Uganda stands at 34%[13]. In addition, while the use of modern contraception increased from 15% in 2007 to 26% in 2011, majority of women and girls still do not have access to contraceptive information and services. Further, the use of, and access to, contraception among women also varies depending on geographical location, level of education and income level. According to the 2011 UDHS, 46% of married women living in urban areas used some method of contraception, as opposed to only 27% of married women located in rural areas. In addition, 44% of married women with a secondary level or more of education used contraceptives as compared to only 18% of those with no education.

29. **Recommendation**: The government should make SRHR information available and accessible to the public and implement the policies related to the same.

iii. Restrictive legal environment for access to safe abortion services.

30. Uganda's legal framework lacks clarity with regard to provision of abortion services. The constitution (Article 22 (2)) allows for termination of pregnancy as may be prescribed by

law. The authorizing legislation, the Penal Code Act both gives authorization and restriction on provision of abortion care that leads to confusion and possible misinterpretation. As a result, medical practitioners are sometimes arrested by police and charged under the Penal Code Act for procuring an abortion even when they are providing post abortion care. This criminalization has also perpetuated gender stereotypes, marginalized and disempowered women and opened them to possible criminal liability. This makes some of them opt for clandestine abortion methods that can lead to death.

31. In June 2015, the Ministry of Health issued the "Standards and Guidelines for the Reduction of Maternal Morbidity and Mortality from Unsafe Abortion in Uganda," (S&Gs) with the aim of strengthening mechanisms to address unsafe abortion. These mechanisms include reducing the number of unwanted pregnancies through sensitization and health education talks; increasing access to family planning; and as a secondary prevention, increase access to Comprehensive Abortion Care (CAC) services." If implemented effectively the S&Gs are expected to improve the quality of medical care services by providing clear guidance on the provision of safe abortion services and the management of unsafe abortion as well as educating health workers and policy makers.

32. Human rights bodies have found that both restrictive abortion laws and the failure to ensure access to abortion when it is legal are incompatible with international human rights obligations, amounting to violations of the rights to life and health, the right to be free from cruel, inhuman and degrading treatment, and the right to be free from discrimination. Particularly Uganda has ratified the African Charter on Human and people's rights on the rights of Women in Africa (Maputo Protocol) with a reservation to article 14(2) (c) which requires states to authorize medical abortion in cases of rape, incest and where the pregnancy threatens the life or health of the women or the fetus. This reservation greatly impacts on women's rights to access safe abortion services.

33. **Recommendation:** The state should amend the penal code act to remove provisions that criminalize abortion and widen circumstances under which abortion services should be accessed including in cases of incest, defilement and rape.

34. **Recommendation:** The state should develop clear plans aimed at re-instituting and implementing the standards and guidelines for reduction of morbidity and mortality from unsafe abortion and train health service providers on the same.

[1] www.cehurd.org

[2]Including the International Covenant on Economic Social and cultural Rights, African Charter on Human and people's rights, African Charter on Human and people's rights on the rights of women in Africa, Convention on elimination of all forms of discrimination against women, Convention on the rights of persons with disabilities, Convention on the rights of the child among other

[3] International Covenant Economic, Social and Cultural rights (ICESCRs), the Universal Declaration on Human rights (UDHR) and the international covenant on civil and political rights (ICCPRs)

[4]Uganda Health sector performance Report 2014/2015.

[5]UNAIDS, "Uganda: HIV and AIDS estimates (2014)," available online at http://www.unaids.org/en/regionscountries/countries/uganda.

[6] Including sections 145 and 46 of the penal Code Act cap 120

[7] See generally, Ministry of Health " National HIV and AIDS Sector Strategic plan 2015/2016-2019/2020

[8]Hladik, W, Barker, J.et al, 2012, HIV infection among men who have sex with men in Kampala, Ugandan respondent driven sampling survey available at http://www.ncbi.nlm.nih.gov/pmc/aticles/PMC3364961/.

[9] Government of Uganda, Ministerial Policy statement 2016/2017

[10] ibid

[11] Draft National Palliative Care Policy Uganda, 31 March 2015.

[12]Uganda Demographic and Health Survey 2011.

[13] ibid