



Civil Society Statement on the International Specialized Hospital of Uganda (ISHU) at Lubowa.

On 12th March 2019, the Parliament of Uganda approved Promissory Notes¹ worth **US\$ 379.7 Million***²** (approximately UGX 1.3 trillion) to finance a project agreement that was signed by the Government of Uganda and FINANSI/ROKO Construction SPV Limited for the design, construction and equipping of the International Specialized Hospital of Uganda (ISHU) at Lubowa, Wakiso District. The hospital will **PURPORTEDLY** provide highly specialized medical care services for the common ailments currently being referred abroad at very high cost. Under the project Agreement, FINANSI/ROKO Construction SPV Limited will operate the facility for 8 years, before handing it over to the Government of Uganda³.

Indeed, Uganda's Health Sector faces a number of challenges ranging from a huge disease burden (both infectious and non-communicable diseases), limited infrastructural facilities, to limited financial and human capital. According to the Ministry of Health, there is a high prevalence of diseases like Malaria (29.5%), Pneumonia (26.9%), Acute-Diarrhea (3.8%) HIV (6.2%) among others⁴. Furthermore, there are still high levels of Maternal mortality (336 deaths per 100,000 live births)⁵ and Infant Mortality (22 deaths per 1000 live births)⁶. In addition, the sector faces a challenge of insufficient supply of human and financial capital. In fact, the Ministry of Health notes that there is a gap of 219 Clinical Specialists and 550 Support Cadres at National and Regional referral levels in the public sector; with the National Staffing level at a 27% deficit (45,029 out of the 61,796 approved posts are filled in the public sector)⁷. It is also key to note that the sector also faces a challenge of an inadequate health infrastructure. For example, there are 39 Districts which lack hospitals, including those that deserve special attention because of their geographical location (Island and mountainous districts like Buvuma, Kalangala, Namayingo, Mayuge and Namisindwa), including medicine stockouts and less functional Specialised Units (Mulago Specialized Hospital, Heart and Cancer Institutes) among others. This is also coupled by limited financing to the Health sector despite the critical targets set therein the Health Barometer **(See Annex 1)**.

Although the Government of Uganda has played a major role in improving the health sector through among other aspects including undertaking efforts to boost the health workforce, and improving on the physical infrastructure of key regional hospitals and more importantly, the specialized hospitals of Mulago complex, including the cancer and heart institutes, it is falling far short in addressing the challenges therein the Sector.

It against this background that we would like to voice our concerns regarding the Government's proposal and parliament's approval of Promissory Notes not exceeding US\$ 379.7 Million (approximately UGX 1.3 trillion) to FINANSI/ROKO Construction SPV Limited for the financing of the design, construction and

¹ A Promissory Note commits government to pay an amount equivalent to its face value when its maturity period comes due.

² In addition, taking the figure submitted to Parliament (US\$ 379.71), the amount current is estimated at US\$ 522,038,000. This has been attributed to the rise in the Libor rate (The London Inter-bank Offered (Libor) Rate is an interest-rate average calculated from estimates submitted by the leading banks in London).

³ Brief to Parliament by the Minister of Finance, planning & Economic Development on the proposal to issue Promissory Notes not exceeding us\$ 379.7i million to FINANSI/ROKO construction SPV Limited for the financing of the design, construction & equipping of the International Specialized Hospital of Uganda at Lubowa

⁴ Ministry of Health Annual Health Sector Performance Report for FY2017/18.

⁵ <https://observer.ug/news/headlines/58169-rates-down-but-uganda-s-maternal-mortality-still-high.html>

⁶ https://www.newvision.co.ug/new_vision/news/1469793/priority-health-issues-2018

⁷ Ibid.

equipping of the International Specialized Hospital of Uganda (ISHU) at Lubowa. It is our concern that the decision arrived at is not right due to a number of reasons as stated below:

- 1. The process of Approval of financing the facility:** We note with concern that the project agreement arrived at on December 2018 between the Government of Uganda and FINANSI/ROKO Construction SPV Limited did not follow the right process of granting Contracts Public Private Partnership (PPP) arrangements as provided for under the Uganda Public Private Partnership (PPP) Act, 2015. While the Act provides for a PPP Committee and Unit respectively, with their specific functions, there is no clear indication that the Committee and the Unit were consulted at the initial stages of the project Agreement. The Act under Article 7 provides that the Committee shall among other functions: *oversee the monitoring and evaluation by contracting Authorities of a PPP from commencement to post completion stage.* The Act also, under Article 11.2 (k) provides for a PPP Unit whose function, among others, is to *review and assess requests for Government support in relation to the project and advise the Committee on the support that should be accorded in relation to the project.* We are therefore concerned that the process was undemocratic and hurried, that a unilateral advice of the Attorney General was followed sign the Agreement, which contradicts the processes provided for in the PPP Act 2015.
- 2. Lack of transparency in award of the Agreement:** We are concerned about the democratic deficit surrounding PPP projects in Uganda in general and the ISHU-Lubowa in particular. PPPs are laden with promises of efficiency in provision of services, risk taking and provider of financial resources in provision of services. However, we are specifically concerned that in the case of the ISHU-Lubowa, the Government of Uganda is absorbing the largest proportion of the risks. This is unfortunate! Whereas it is projected that when operations commence, revenues to cover all the expenses shall be generated from patients (projected at US\$159.63 million in the 1st year and expected to increase to US\$262.3 million in the 11th year)⁸, it is surprising that the citizens, nor their representatives were not consulted. We feel that in this case, the rights and interests of the citizens of the Republic of Uganda have not been given full attention but that instead, the process has sought to promote and protect the interests of the Private Sector only.
- 3. Value for Money:** A careful reading of the report to Parliament by the Committee on the National Economy, and the subsequent Minority report reveals that there have been variations between the original amount of the Agreement and the actual amount agreed on. According to the Project Works Investment Agreement (PWIA) the initial cost of the project was estimated at US\$ 345.2 million, of which US\$ 249.9 million was for construction works while US\$ 95.3 million was for cost of financing. However, subsequently, the amount for cost of financing was revised upwards to cost an estimated US\$ 557.9⁹. Like reiterated by the Uganda Medical Association, this is way above market rates. It is also key to note that FINANSI/ROKO Construction SPV Ltd have received 100% funding from the government, and a guarantee to be safeguarded from any risks whatsoever. This is contrary to Article 3 (a) of the PPP Act 2015 which calls for *“ensuring value for money, by optimal allocation of risks to the private parties and maximization of the benefits to be obtained from expertise and financing by private parties”*.
- 4. Implications to the health sector financing:** The Ministry of Health, which will be the owner of the hospital, will pay the SPV through its annual budget during the 8 years of operations, an annual fee to cover the provided services and repay the initial investment (including the interest rates)¹⁰. We are therefore concerned that this will have far reaching implications on the country’s health sector

⁸ Report of the Committee on National Economy on ISHU, pg.13.

⁹ Report of the Committee on National Economy on ISHU, pg.10.

¹⁰ Ibid

financing. The annual national budgetary allocation to the health sector is still far below the minimum requirement of the Abuja declaration by the African Union countries in which they pledged to set a target of allocating at least 15% of their annual budget to improve the health sector. In fact, for the FY2019/20, the annual national budgetary allocation to the Health Sector has been reduced to 8.9% from 9.2% in the FY2018/19. Furthermore, according to the brief to Parliament on the State of the Health Sector, the Health Sector requires vast resources, both financial, infrastructural and human to be able to achieve the Universal Health Care targets (**see Annex1 attached**). We are therefore concerned that the project will erode the fiscal space for the, which will have negative implications to health service delivery due to constrained operation budget.

5. Impact on Uganda's indebtedness: As at end of June 2018, Uganda's total public debt stock (both domestic and external) amounted to USD 10.7 billion (equivalent to Ushs.41, 326.1billion)¹¹. As a result of this, 11.4% of the Budget for the FY2019/20 will go to loan servicing, a trend which is not sustainable. According to Parliament, 50% of the loans sampled totaling Shs3.9 trillion will expire in 2020. If government is to service the loans as projected in the next financial years, it would require more than 65% of the total revenue collections¹². Therefore, the issuing of promissory notes for the ISHU-Lubowa, like advised by the Committee on National Economy might lead to further fiscal distress leading to a reduction in allocations to other key public sectors such as the education and transport hence leading to increased borrowing. This will worsen the already worrying national debt, with its attendant implications on the already deepening and widening tax burden on Ugandans.

6. Problematic Investor-State Dispute settlement (ISDS) provision therein the agreement: Like stated by the report of the Committee on National Economy, it has not been noted, the Agreement arrived at provides for arbitration in the London Court of International Arbitration, in case of breach of the contract by the Government of Uganda. The provisions for ISDS has popularly been included in Bilateral Investment Treaties (BITs) to allow for investors to sue their investment host states in case of failure of the state to meet their contractual obligations. According to the OECD, such arbitration cases cost on average US\$ 8 million. In the past, few companies ever used ISDS provisions to sue governments. But by July 2018 the figure had grown to 855. Successful settlements have become extremely lucrative not only for the companies investing in a country but also for the small, secretive group of lawyers representing them¹³.

Our demands:

In light of the above concerns, we would like to make the following demands:

- Government should do a Cost Benefit Analysis of terminating the agreement to construct the ISHU now or of continuing with the project. This is given the concerns of value for money; the already existing health sector challenges; and the country's current economic situation i.e. its macroeconomic instability, already high indebtedness, among others.
- The PPP Act 2015 should be implemented /operationalized so as to ensure that the PPP Committee and PPP Unit are able to perform their roles stated therein the Act. This Act however, should also be reviewed to prioritize on addressing the democratic deficit therein the PPP Procurement process, through ensuring involvement of citizens, to inform the decision on a proposed PPP Project.
- The State should rethink its role in PPPs. More importantly, efforts should be geared towards putting in place People-First PPPs. A People First PPP is a long-term contractual relationship between the

¹¹ National Budget Framework Paper FY2019/20

¹² <https://www.parliament.go.ug/news/3016/over-half-govt-revenue-pay-public-debt>

¹³ <https://www.seatiniuganda.org/publications/downloads/247-international-investment-agreements-an-advocacy-guide-for-csos/file.html>



Public and private sector, where delivering value for people is the core objective, there is commitment to serving and protecting the community, and the project is developed with real interests of people in mind.¹⁴

- Government should avoid entering into agreements that subject it to Investor-State Dispute Settlement (ISDS) in Courts of International Arbitration. This is given the high costs involved, erosion of State Autonomy, and the current push against ISDS.
- A Robust monitoring and evaluation framework with adequate baselines and key performance indicators be established with performance specifications in the concession agreement adhered to. Such a framework is essential in defining the key performance indicators based on specific, measurable, and achievable principles.
- Furthermore, Government should secure funding to complete rehabilitation of Mulago national referral hospital and improving functionality of regional referral hospitals to ensure that majority of Ugandan who are able to access services at the Lubowa hospital can still be able to access the same services at the national or regional referral hospitals

¹⁴ United Nations Economic Commission for Europe Guiding Principles on People-First PPPs.

Annex 1

State of the Health Sector financing

Item	Issue	Amount required
Health Infrastructure	Need to revamp Mulago NRH (Upper Mulago)	80 Billion UGX
Health Infrastructure	Completion of works for Mulago Specialized Hospital	36 Billion UGX
Health Infrastructure	Operationalization of Mulago Specialized Hospital	76.1 Billion UGX
Health Infrastructure	Operationalization of Mulago Specialised Women & Neonatal Hospital	53.8 Billion UGX
Health Infrastructure	Regional Specialized Paediatric Surgical hospital-Entebbe	21 Billion UGX
Health Infrastructure	Establishment of Specialized Units at Mbale; Masaka; Mubende, Gulu & Arua Hospitals	48.4 Billion UGX
Health Infrastructure	Butabika NMRH: Need for additional specialized medicines	6.2 Billion UGX
Health Infrastructure	Uganda Cancer Institute: Need to address training of specialists, procurement of specialized cancer equipment and construction of a Centre of excellence.	38 Million USD (Loan Acquired)
Health Infrastructure	Uganda Heart Institute: Need to construct a stand-alone Centre of Excellence.	331 Billion UGX
29 Constituencies don't have Health Centre IV's	Construction of Health Centre IV's in the 29 Constituency	145 Billion UGX
6937 Health Facilities in Uganda	45% Public; 40% Private for Profit; 15% Private Not for Profit	
Health Infrastructure in Karamoja region	Upgrading Health Centre (HC) IIs to IIIs and constructing HC IIIs where they do not exist	10 Million Euros (<i>loan being followed up</i>)
Health Infrastructure in Island and Mountainous Areas	Construction of Hospitals in Districts of Kalangala, Namisindwa; Buvuma; Namayingo; Mayuge	31.3 Billion UGX
Consultants and Specialists	Need to recruit Specialists	5.4 Billion UGX
Specialists and Super Specialists	Need to train Specialists and Super Specialists	57.69 Billion UGX
Emergency Medical Services in the Country	Need to finance the EMS Strategic Plan	155.3 Billion UGX (for the first 2 years)
Vaccines	Need to avert the pending stockout of vaccines nationwide	5.6 Billion UGX

Source: Ministerial Statement to Parliament on the State of Health Service Delivery in Uganda as at 12th March 2019.