Public-Private Partnerships in the Health Sector Cannot Guarantee Equity in Access to Health: The Initiative for Social and Economic Rights Takes on the Ugandan Government

Corina Rodriguez Enriquez and Sue Godt speak with Allana Kembabazi of ISER on PPPs and Feminist Struggles.

Corina Rodriguez Enriquez and Sue Godt spoke with Allana Kembabazi about the work of the Ugandan NGO *Initiative for Social and Economic Rights* (*ISER*) to address the growing role of public-private partnerships (PPP) in the country. In a broad discussion, Allana Kembabazi, programme lead on health and economic justice, discussed the growing embeddedness of the model in official development efforts and the impact on people's lives, particularly in health. She highlighted ISER's role in taking the Government to court over the contentious private Lubowa Hospital PPP. ISER has developed a holistic research and advocacy strategy linking the issues of debt, tax and service provision to a campaign to *Reclaim the Public* and Allana reflects on obstacles and opportunities in taking this forward, against a backdrop of COVID-19 and the current debt and cost-of-living crises. The interview took place over Zoom on February 13, 2023. More information can be found on ISER's website. The conversation has been edited for length and clarity.

Corina: *We are interested in understanding the PPP context in Uganda, and specifically its impact on women and broader social-economic justice. We would like to know more about ISER and your work.*

Allana: ISER is an indigenous, Ugandan-founded, nonprofit organisation working holistically around socio-economic rights by applying a human rights lens focused on vulnerable marginalised groups. We have four programmes on health, education, business and human rights, and economic justice. I lead the health and economic justice programmes. Citizen participation and social

accountability are cross-cutting and we apply research, community engagement and monitoring strategies.

ISER initially examined education PPP issues and saw inequities as the Government invested in private schools while public facilities struggled. We began analysing health PPPs in 2016. The health sector is very dependent on foreigners. Like many parts of Africa, early mission-founded hospitals organised themselves – usually by religious group – and later negotiated with the Government to invest in their existing non-state facilities rather than establish new government health centres. Because many were nonprofit, red flags were not immediately raised.

The World Bank's early 1990s assessment of Uganda found that out-of-pocket costs hindered people's access to healthcare. Consequently, the Government officially abolished user fees in public health facilities. Initially, people flocked to the public facilities and the nonprofit facilities struggled to justify getting government money because there was a lot of competition. Over time, however, the Government did not increase support to public facilities; until recently, funding levels were [similar to those of the] 1990s despite population expansion. This led to stockouts, staff shortages and absenteeism, and poor-quality healthcare in public facilities. In response, private for-profit entities emerged, starting in urban areas where people sought alternatives. Rural areas had fewer private facilities because they were not profitable. By now over 50% of the nation's facilities might be private.

Private facilities organised themselves into a healthcare federation and negotiated PPPs with the government. The model was exported to many African countries by entities like the World Bank and was embedded in Uganda's national development plan 2015- 2016 which aimed at galvanising the private sector to help the country attain middle-income status. The Public-Private Partnership Act was passed. Support for PPPs was underpinned by a narrative that they would help to provide better healthcare for our people. What could go wrong?

But an examination of its policies reveals that the health sector had not envisioned for-profit PPPs. While there is some synergy between the Government's mission and faith-based entities that stay true to their mission, some not-for-profits don't act that way in reality. Our research has shown that the poor and vulnerable, especially women, fall through the cracks even in

not-for-profit faith-based PPPs because they still must pay. I've met women who were detained because they couldn't pay. They had to choose between staying at home and dying or going to a hospital and taking their chances. ISER has taken a couple of cases to court demanding that the government pay the women's bills because it is not investing in the public health system.

PPPs do not have one definition. ISER's report on health PPPs notes that although according to the World Bank, the private sector carries some sort of risk, the definition is used loosely. In the Ugandan PPP Act, private entities are supposed to carry the risk; however, it is the Government that carries the financial risk for health PPPs.

More troubling is this continuing narrative that the public sector is very inefficient. No one talks about why it is inefficient. It is just stated as a given. And we [we are expected to] adopt the private model to get things moving.

Corina: *Clearly the PPP discourse is embedded in Uganda's development efforts and development plan around narratives of the inefficient state. What is ISER's assessment of PPPs as a threat or opportunity, given this narrative?*

Allana: We find PPPs to be a threat, particularly in the social service sector. Firstly, the problematic underlying assumption that the public sector is incapable and inefficient raises questions about why we pay taxes if we don't think the Government can deliver services. People pay taxes because they think certain things are a collective good that must be invested in regardless of profit. Secondly, PPPs push these sectors towards being profit-driven, because in any PPP arrangement, the private investor has to recoup its investment. Although profit shouldn't be the driving force in some areas like health, distortions occur when the Government relinquishes its stewardship role to the private sector. For example, many experts prioritise prevention when designing health systems. But prevention doesn't make money, so PPPs prioritise curative services with expensive medicines or vaccine investment, among others. This commodifies health and enables private investors to generate profit.

Some argue that PPPs can work if well regulated. But where has this worked, especially in Africa? We end up with public goods such as healthcare and education transformed into profit-making goods traded in the marketplace,

accompanied by under-investment in the public sector. Based on the universal human rights framework, it is impossible to invest the maximum available resources in the public sector while having PPPs. Even when the private sector brings funding to a health PPP, the government still carries financial risk and must use public money that could be used to address, for example, drug shortages, under-recruitment of healthcare workers, and striking gaps in health facilities and district hospitals. These gaps threaten the poor, especially women, who bear the brunt of inadequate services. Not having health facilities - for example, for antenatal care - brings additional costs when women have to miss work to seek services. A woman giving birth also must buy the health workers' gloves and mama delivery kit etc.

In short, PPPs are a threat because of how they transform the mission of the health sector towards being profit-driven. Certain needed interventions will not be undertaken because they don't or won't help investors make profit. That's a very problematic precedent.

Sue: *Could you summarise the key issues around the contentious Lubowa Hospital PPP? To what extent has the experience influenced public discourse about PPPs in Uganda? How has ISER become involved in this case?*

Allana: There are several key issues:

One, the process itself was done in private without any public participation. The deal only emerged when the investor wanted payment and the Government rushed to Parliament for approval. This is illegal because Article 159 of our Constitution clearly states that Parliament must approve all agreements prior to government execution. Parliament approved this deal although the Minority Report said it was blatantly illegal simply because the Ministry of Finance said the country was already committed to the project and not approving the initial issuance of promissory notes would result in a more costly arbitration case in London.

Two, high public finance costs. Lubowa Hospital initially cost US$379.91 million and required a projected US$69.7 million annually to pay off the investor. In contrast, at the time the project was passed, Uganda had 39 districts without government hospitals. In a stakeholder dialogue with the Ministry of Health and the PPP Unit of the Ministry of Finance, we pointed out the PPP Act and the PPP health guidelines and asked whether this was the best use of our money.

Three, the PPP affects the country's debt burden. Although some financing was generated through private sector promissory notes, there were guarantees that the Government had to meet. Delays have increased costs. While contractors argued that construction halted due to rainfall, the Ministry of Finance asked for approximately USh319 billion for payment. That's why ISER is pushing the Government to add promissory notes to official debt calculation because the Government still has to pay.

There is contested discourse. The Government talked about win-win opportunities providing needed specialised healthcare that the public sector couldn't provide. Pro-PPP advocates have subsequently argued that Lubowa is not a PPP and that "PPPs are good if you design them well". In contrast, Lubowa struck a chord with the public; it was clear that most wouldn't have access to services with this model. We have seen the dangers of commercialising our healthcare. During the 2021 delta wave of COVID-19, private facilities regularly charged an initial deposit of approximately USh20 million before admitting a patient. Yet, according to official government statistics, only 1% of the population earns above USh1 million per month!

ISER decided to litigate because we thought the illegal process set a very dangerous precedent. The law and Constitution clearly state that Parliament must approve these arrangements in advance to ensure public participation. For Parliament to accept that the Government could disregard authority and then rubber stamp decisions reflected governance issues. Our key concern is that there must be stipulated public participation and that the Government must instead invest in public health facilities.

The hardest part of the litigation was obtaining copies of the agreements. We are still awaiting the court judgement. The Government should have picked up on the public opinion and anger last year when Parliament visited the site and found barely any progress.

Sue: *ISER's recent report warned that the country is one shock away from a debt crisis with high payments on debt servicing. To what extent have PPPs contributed to and exacerbated the tying up of public funds that could be used for other things? What is the overall impact of the debt stress on Uganda's social and economic development?*

Allana: I think that the debt situation in Uganda is worsening. We must rethink debt sustainability which solely focuses on the Government's ability to meet its obligations to creditors. We are missing the impact on regular people. We're spending more on debt servicing than combined budgets for health, education, and social protection. That's already a red flag. This leads to underfunded services and a decline in the quality of these services.

The situation is then used to rationalise the need for PPPs. Many argue that PPPs are not debt. However, PPPs hide debt because arrangements are off the books. Government commitments are not calculated as part of official debt and there is also less scrutiny than for proposals to borrow similar amounts from the World Bank.

Members of Parliament need capacity building to really understand the linkages, to analyse budgets, to think about the impact of PPP obligations on our budgets and the Government's ability to deliver social services now and in the future.

Corina: *Your reflections resonate beyond the African context to the broader Global South. We know there is an alternative vision and ISER issued a manifesto in 2021 to strengthen quality, universally accessible, and accountable social services. What obstacles and opportunities have you encountered? What feminist progressive alternatives should be considered in the era of PPPs in Africa? And how can the Government find the resources needed to finance these alternative visions?*

Allana: The Lubowa experience inspired the Public Services Campaign because of the problematic narrative that the public is inefficient. Of course, we have to talk about power; private facilities and their associations are backed by powerful people. The dynamics also play out at global levels through the World Bank and

other strategies using the same old narratives. We've explored options and found that the public health system is the best value for money to reach many people. And when done well, it is underpinned by participation and accountability with the people claiming the right to health rather than just being passive consumers of services. People are increasingly able to link debt, taxation and their services in terms of the social contract.

At ISER's annual Socioeconomic and Cultural Rights Conference last year, the theme was financing, just and inclusive recovery and debt. Government officials and Members of Parliament joined market women and students. And market women were able to link these issues. If the debt burden is not curbed, our children will have no public services and will have to pay.

Can we reshape this narrative that public means poor services and poor quality? Can we think about the fact that this is taxpayer money and that if we invest money we must see tangible results?

While some question whether we really had public services in the first place, many point to better healthcare and education in the early years of Uganda's independence. So, we call it "reclaiming public services"; that is to say, we've forgotten that it is in everyone's interest to have good access and good quality healthcare regardless of people's socioeconomic status. COVID-19 has shown how interconnected we are; we will not be safe if everyone around us cannot access health services.

We met in 2021 and it was electrifying. We held a virtual memorial after losing so many people during COVID-19 because of the dire state of our public health facilities and the failure to regulate the private sector. Many were turned down by private facilities because they didn't have that minimum deposit; or the patients (or bodies) were held hostage due to non-payment of total fees. We also had an oxygen crisis and people just died. We put a call on Twitter saying #EnoughisEnough #ReclaimPublicServices. People from all walks of life joined the Zoom meetings and we all agreed about the future we want for our children and the need to access public services. The manifesto was crafted from the discussions and emerging demands. We realised that a group of committed people joining together can shift things and demand accountability.

How can Uganda finance public services? Uganda has many regressive taxes, and the IMF pushes additional value-added taxes. During last year's cost-of-living crisis, there were calls for fiscal consolidation by the IMF and the Government, along with pushback arguments from ISER that the social sector needs to be ringfenced from austerity measures because it is a form of social protection. If children attend school and receive a meal and parents can take their children to public health facilities, they can try to survive with whatever little is left. But when health and education are increasingly commercialised and there is no government social protection during financial crises, how will people survive?

Our brief on progressive taxation presented alternatives, including curbing illicit financial flows (IFF), which could eliminate development assistance that comes with conditionalities and is sometimes used to further commercialise public services. We also don't agree with tax incentives that refund select taxpayers and in so doing deprive the country of much-needed revenue to strengthen public services. The Government is resistant but has talked about rationalising tax incentives which is a halfway win. The IMF has also called on the Government to rethink some tax exemptions, arguing that the money could finance public services. At least last year, the Government's amended legislation required the collection of beneficial ownership information which helps control IFFs. ISER joins broad international calls about rethinking debt architecture because indebtedness is a system – it's not just a Ugandan problem.

People have an appetite for demanding accountability. We support volunteer community advocates whom we first engaged with as community health advocates; they monitored local health services around drug supply, cleanliness, and service provision. They now monitor economic social rights in their communities. They have attended district budget meetings and worked with local duty bearers, supported if needed by ISER facilitation, litigation, and advocacy for unresolved issues. It became very apparent that monitoring services and budget resources was insufficient. Community advocates needed to link issues like service delivery with tax and public debt, so we are revising our community monitoring tool and building capacity around issues of tax and debt and their relation to public services. This will strengthen communities' ability to engage in district-level discussions on budget, resource allocation and tax collection processes. Community engagement in financing discussions

is important because, during election periods, duty bearers like to turn things like healthcare into political favours. Informed committees can point out that "favours" were in fact included in existing health budgets.

Communities also need to understand debt and its impact. During the COVID-19 pandemic, the IMF provided an extended credit facility following earlier support provided through a Rapid Credit Facility. There was public outcry because ISER's report on COVID-19 funding showed that the initial facility wasn't implemented as planned. People knew Uganda would have to repay the debt despite the misuse of funds. People can now see how our debt burden affects service coverage, noting gaps that could be filled if it was not for debt servicing payments. We are excited to see how this growing engagement transforms our work.

Sue: *ISER's efforts to develop evidence bases and related advocacy and to organise around transforming systems and strengthening the governance and accountability mechanisms demonstrate how seemingly intractable problems can be tackled. What kinds of challenges have you faced in implementing your strategies? What is the collective strength of civil society? And finally, what gives you hope and makes you optimistic about working to bring change?*

Allana: The shrinking of civic space is a challenge. Some NGOs have closed; some face stringent requirements and need MOUs demonstrating district approval of their work. The lack of accurate information is another challenge. As mentioned, we needed the Lubowa agreement before we could initiate litigation, but it was not publicly available. Delayed posting of COVID-19 expenditures on the Ministry of Finance and other government departments' websites hampered real-time accountability. More information was made public when the IMF reviewed the Government for the extended credit facility, so donors had more authority to demand information than the people to whom the Government is accountable.

The strength of civil society is that the right people read. This analytical strength supports great conversations around debt, tax, and alternatives, and can empower communities to better challenge policymakers and to engage with

them around alternatives. This helps us to determine how to add value to the conversation by coming with evidence. It's also good when civil society endorses common goals around public services and brings its unique strengths around budget analysis, taxes, etc. to the campaign.

The media is a strong and useful ally by simplifying material and giving us platforms to ensure public debate. Our report on COVID-19 money got much traction this way.

I am hopeful about young people because they have agency as they see a failed promise in their lifetime and a situation that will worsen. People cannot stay uninvolved since resource allocation affects everyone and their ability to feed, educate and care for their children. I'm hopeful that the young people will make better decisions; we tend to see younger members of parliament being a bit more critical.

Ugandans are resilient and navigated the cost-of-living and COVID-19 crises with barely any support from the Government. The economy was decimated. Last year, the Government said that the best course of action was to wait it out. While Ugandans did everything to survive, they also began to make more demands. They have a very clear picture of the problem. The question is whether they will act, because people are scared of organising in this political environment. But, although feeling intimidated, they are beginning to realise that you have to speak up wherever possible. That gives me hope.