ICLD
Learning Case

The right to health in Uganda: addressing the tension between duty bearers and right holders to achieve equitable health

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1. Learning Objectives

Primary Objectives:

By the end of this scenario participants/learners will be able to:

- Appreciate the disparities in the enjoyment of the Right to Health between the different sections of the population in their jurisdiction.
- Articulate practical ways how they would work to guarantee the right to health for everyone especially the most disadvantaged in their communities.
- Examine the opportunities within the country's legal framework to guarantee the right to health.
- Identify appropriate actions to reclaim the right to health for all persons regardless of their social economic status

2. Case Description

Dilemma overview

This scenario highlights the health inequities in Uganda's healthcare system. It brings out the contention and tension between claim holders (claimants of rights) and duty bearers (guarantors of rights) in a resource-constrained reality.

It is intended to help learners appreciate how a potential tension may appear or be conceptualized by both sides. It is also intended to invite leaders to reimagine how they might diffuse such human rights tensions while protecting the right to health for all.

Dilemma description

Honourable Waiswa, the local area Member of Parliament from the ruling party, had recently been under pressure from his constituents to resign from his position. The pressure mounted during the recent COVID-19 surge in the area, when hundreds of people lost their lives due to an inability to access adequate healthcare from the local hospital, due to lack of medical supplies especially Personal Protective Equipment which forced health workers to abscond from duty.

At a recent community dialogue, community members heard that Hon Waiswa, who had contracted COVID-19, had been, because of his political status, airlifted to Kampala by the state to a private hospital where he was hospitalized in one of the most expensive wings that only serves the rich and famous in the country. Fortunately, he was able to access the best healthcare, and he recovered. Many of his constituents were not so fortunate and succumbed to the disease. To try to improve the situation, the community held demonstrations over the state of healthcare in their area and highlighted the serious leadership failures and inequities in healthcare access, particularly in comparison to the access of their leaders.

Many constituents claimed the failing system is rooted in the differentiation and hierarchization of health, where the powerful receive high-quality care and the vulnerable receive an unacceptable quality of care. Some cited absent health workers, disappearing public medical supplies (which often turn up in private clinics), and abusive health workers who insult patients while providing care. While appearing on the local FM radio station, the In-charge of the local health centre complained about underfunding, understaffing and absence of both political and financial support from District Leadership. The area Resident District Commissioner (RDC), who served as the Presidential representative, cautioned the local leaders, civil society and the public not to engage in demonstrations, which he viewed as a violation of the Public Order Management Act.

Background

According to the Uganda National Panel Survey report 2019/20 by the Uganda Bureau of Statistics (UBOS) there is deep inequality in health among different socio-economic groups, with the poor typically suffering more ill-health and facing greater economic cost of ill-health than the rich. A number of other non-economic factors are concurrently operating in a complex way, to further ration healthcare in favour of the rich.

The report highlighted that the poorest quintiles were 2.4 times more likely to suffer ill-health than the richest quintiles, with a greater proportion of them lacking access to publicly-provided health services than the richest counter-parts. An example, the infant mortality and child mortality rates were twice as much in the lowest population quintile as they were in the highest population quintile. They (the poorest groups) were four times more likely than the wealthiest quintiles to deliver unattended to, or attended to by traditional birth attendants; and about three times more likely than the richest groups to be attended to by relatives or friends. Similar directions in disparities were consistently demonstrated throughout the report with respect to other indicators. Six in every ten communities (63%) in 2019/20 reported long waiting time as a major concern in accessing services at health facilities which is an increase from 60% in 2018/19. Regarding unavailability of medicines/supplies, 68 percent of communities reported it as a major concern in 2019/20, which is similar to what was reported in 2015/16. The percentage of communities reporting affordability as a major concern (13%) has also remained the same in both survey periods 2018/19 and 2019/20.

3. Instructions

Discussion questions

1. How has the healthcare system failed to promote the right to health?
2. As a leader, what would you do to create/put in place an equitable healthcare system that can guarantee the health rights of all people, especially those that are most vulnerable?
3. The rights to life, dignity and freedom to choose the type of healthcare one wants is essential in ensuring quality healthcare. In your view, is it correct for those whose human

rights have been violated (as in this case) to seek redress? How would they express their concerns/demands for an equitable system?

4. What can the communities and leaders do to promote and defend human rights for all people, especially those that are greatly affected by the human rights violations?

Discussion key

Promoting the right to health

Various international and national frameworks protect the right to health, and Uganda has ratified some of these international and local frameworks.

At an international level

Uganda has ratified a wide range of international and regional human rights treaties related to the enjoyment of the highest attainable standard of physical and mental health ('right to health'), including:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention on the Elimination of All forms of Discrimination against Women (CEDAW);
- the Convention on the Rights of the Child (CRC);
- the African Charter on Human and Peoples' Rights (ACHPR).

International commitments to human rights, including the right to health, provide a guiding framework for legislation, policies and programming at the national level. These instruments provide for progressive realisation so state parties have to move as expeditiously and effectively as possible towards full realisation of the right. States are also required to guarantee non-discrimination in the realisation of the right to health.

At a national level

- The Constitution of the Government of Uganda (1995) provides among its social and economic objectives that the State shall ensure that all Ugandans enjoy rights and opportunities and access to health services.
- While the right to health is not incorporated among its operational articles, the Constitution protects the right to health within other articles of the bill of rights.
- The Constitution includes provisions against discrimination and the spread of infectious diseases and provisions relating to specific groups, such as the rights of women, children, persons with disabilities and minorities.
- The Constitution also protects the right to a clean and healthy environment, which is an underlying determinant of health.
- The Constitution, moreover, emphasises that Uganda's binding international obligations still remain in force and the right to health is one of those obligations. Uganda has also put in place policies that elaborate on the right to health and provide a framework for realising the right to health.

NB: When a country has failed to abide by the constitution and other conventions both nationally and internationally, it has abdicated its duty and responsibility. In relation to the health system, Uganda did not extend the right to health to all Ugandans, and hence, Ugandans' rights were abused.

Roles of duty bearers (the guarantors of rights) in enforcing the right to health

Government:

- The Ministry of Health provides overall leadership, strategic guidance and stewardship of the health sector.
- Since services are decentralised in Uganda, local governments are mandated to extend the provision of health care services to the local levels. Services they should provide include hospitals (not solely referral hospitals); first aid posts; maternal health; control of communicable diseases; rural ambulance services, primary health care services; environment sanitation; health education; and community-based health centres.
- District health offices coordinate the planning, supervision and implementation of the health agenda policies.
- At the facility level, the Patient Charter requires the In-Charge of the facility to receive, investigate and process complaints regarding the quality of medical care.

Quasi-Judicial Mechanisms:

- Uganda Human Rights Commission The Uganda Human Rights Commission (UHRC) has a Right to Health Unit mandated to monitor Government of Uganda compliance with the right to health. UHRC also has a tribunal that hears complaints concerning human rights violations. It has the power to order payment of compensation or any other legal remedy or redress. Complaints regarding the right to health can be submitted by filling in a complaint form online or visiting UHRC regional offices.
- Equal Opportunities Commission The Equal Opportunities Commission (EOC) was created to eliminate discrimination and inequalities against any individual or group of persons on the grounds of race, sex, age, ethnic origin, tribe, birth, creed or region, health status, social or economic standing, political opinion or disability. It takes affirmative action in favor of marginalized groups on the basis of gender, age, disability or any other reason created by history or custom for the purpose of redressing imbalances which exist against them. The EOC has the power to investigate complaints or inquire on its own initiative into any act or omission that is discriminatory or undermines the enjoyment of equal opportunities. A person may file a complaint related to discrimination and marginalisation with the EOC. Complaints can be filed by the following methods: writing a letter; bringing the complaint in person, sending it by post or filling in a form online. The EOC handles your complaints even if you do not have a lawyer. It protects witnesses that appear before it.

Courts:

- Violations of the right to health can also be handled by courts. Uganda's Constitution under article 50 allows a person to go to court to seek a remedy if their rights are violated.
- Through the above mentioned structures/systems, leaders at all levels can seek redress. They can also engage in advocacy to demand better health outcomes from the duty bearers.

Photo 1 midwife using her hands to assess the position of the baby. Health workers in Uganda often work with bare minimum to provide healthcare. Photo credit: Danny Gotto, Innovations for Development.