



# **THE PUBLIC HEALTH (AMENDMENT) BILL 2021**

**SUBMISSION TO THE HEALTH  
COMMITTEE OF PARLIAMENT  
22 FEBRUARY 2022**



## **I. ABOUT THE ORGANIZATION**

The Initiative for Social and Economic Rights (ISER) is a Non-Governmental Organization, established in 2012, seeks to promote the effective understanding, monitoring, implementation, accountability, and full realization of Economic and Social Rights (ESRs). ISER holistically works on social economic rights but in its day to day operations has four programs: the right to health; the right to education, Business and Human Rights, Economic Inclusion and Fiscal Policy. It uses community engagement, research to support system reform, evidence-based advocacy, and strategic litigation to realise these rights. ISER is an ardent advocate for the adoption and use of a human rights-based approach to healthcare service delivery and has actively engaged in advocacy for the right to health especially for vulnerable groups including the poor, and Persons with Disabilities (PWDs). ISER’s right to health program focuses on realizing the right to health and universal health coverage with a particular focus on vulnerable groups.

ISER strongly supports the introduction of fit-for-purpose legislation for the promotion and protection of public health. ISER considers that a properly tailored Public Health Act has the potential to greatly increase transparency, citizen participation, accountability, and strengthen our public health system. As highlighted in our recent publications on COVID-19<sup>1</sup>, we were concerned that most provisions in the the Public Health Act 1935 were outdated and irrelevant.

## **II. POSITIVE ASPECTS OF THE BILL.**

ISER appreciates being afforded the chance to provide early feedback on the proposed Bill.

We believe the Bill is a significant improvement to the 1935 archaic law as it incorporates many of the health and human rights safe guards that we have been advocating for. Some of the positive aspects of the Bill include;

- Repeal of provisions relating to venereal diseases
- Collapsing the Immunization Act into one part on mass vaccination
- The Bill under clause 21 underscores the primary role of the government in managing epidemics. This provision seeks to restore public trust.
- Expanding the definition of medical officer to include persons in employment of the Kampala Capital City Authority, local government and the central government.
- We also accept the powers and duties conferred onto the medical officer.

---

<sup>1</sup> Initiative for Social and Economic Rights (ISER), ENOUGH IS ENOUGH, RECLAIMING PUBLIC SERVICES IN UGANDA, A Peoples Manifesto, May 2021, available at: [https://iser-uganda.org/images/downloads/Reclaiming\\_public\\_social\\_services\\_A\\_Peoples\\_Manifesto.pdf](https://iser-uganda.org/images/downloads/Reclaiming_public_social_services_A_Peoples_Manifesto.pdf), last accessed 21 February 2022.

### III. SALIENT CONCERNS WITHIN EXISTING BILL

Clause	Content	Comment	Proposal
8 (b)	Substituting for ‘mission’ or ‘missionary institution’ with institution of higher learning	Institution of higher learning is limiting and excludes vocational institutions which are not classified as institutes of higher learning	Adopt instead ‘learning institutions’
11 (1)	‘... a medical officer shall secure an order of court authorizing the destruction of the beddings, clothing or article’	Securing a court order in real time is a challenge given the protracted judicial system. Also, the order is granted ex-parte which may abuse due process of law or may be subject of forgery from the medical officer	A police order or a recognized professional body is ideal and practical to cure protracted court processes
13 (a) and (b)	‘to be confined in that hospital or place until the medical officer or medical practitioner, as the case maybe, is satisfied that the person is free from infection or that the person may be discharged without being a danger to the public’	Forced hospitalization or confinement is not an effective measure to control and mitigate a public health threat and violate patient’s rights as outlined under the Patient’s Charter. The state should at all times protect a person’s right to privacy, dignity and autonomy.	Provide for other more human-centered measures like stay-at-home or quarantine as opposed to forced hospitalization. The provision should be guided by public health principles of legality and proportionality.
30 (a)	All	Unnecessary repetition	Consider ending at ‘... by the Director General of Health Services’
Clause 39 1 (a) (b) a) “a local government council shall where instruct by the minister,	1. Use of strong language ‘shall’ depicts compulsory vaccination	1. Despite the scientific benefits of vaccination, compulsory vaccination should not be	1. Vaccination to be compulsory where the benefits out way the risks and where its safety and

<p>issue a notice posted in public place in the local government, requesting all persons within the local government, specified in the notice, to undergo inspection and vaccination as the case may be”</p>	<p>2. Narrow provision to modes of communication</p> <p>3. Medical officer has discretionary powers to issue a waiver</p>	<p>imposed where the risks outweigh the benefits, or in absence of its efficacy.</p> <p>2. We commend the government for promoting access to information in the community. However, it should be considered that written notices are limiting given the illiteracy level. We suggest an addition of alternative means of communication like community megaphones and village health teams</p> <p>3. The medical officer has wide discretionary powers and this is subject to abuse.</p>	<p>efficacy is proved.</p> <p>2. Provide for other communication channels that provide clear guidance and materials in formats and language relevant to the specific needs of recipient communities.</p> <p>3. Explicitly provide clear guidelines to ensure authorities operate within the law and respect the core principles of human rights.</p>
--	---	---	--

ISER considers that the Bill should be revised to include the following safeguards;

#### **A. Expressly define public health**

The term public health is defined differently by different public health practitioners, researchers and activists. Our submission, however, does not seek to offer an explicit definition as such but rather offer guidance to this Honorable house. We note, that, the proposed amendment falls short of defining public health yet it remains a contested issue. Partially because, certain eventualities are identified as public health concerns and require government instead of individual intervention. The current coronavirus pandemic, for instance, does not respect race, national borders and community boundaries, is viewed as a public health issue. Hence, given the various considerations for amending the 1935 Public Health Act, defining what qualifies as public health is paramount for citizen participation, governance and accountability. We provide some prepositions from a literature review for your reference;

- a. what we, as a society, do collectively to assure the conditions in which people can be healthy  

(Institute of Medicine 1988)<sup>2</sup>
- b. the science and art of preventing disease, prolonging life and promoting health through organised efforts of society  

(Acheson 1988)<sup>3</sup>
- c. Government intervention as ‘public health’ involves public officials taking appropriate measures pursuant to specific legal authority ... to protect the health of the public... The key element in public health is the role of the government—its power and obligation to invoke mandatory or coercive measures to eliminate a threat to the public’s health.  

(Rothstein 2002)<sup>4</sup>
- d. Unlike the previous authors that offer a clear definition, Childress et al<sup>5</sup> list characteristics of public health as; the promotion of health and the prevention of disease and disability; the collection and use of epidemiological data, population surveillance, and other forms of empirical quantitative assessment; a recognition of the multidimensional nature of the determinants of health; and a focus on the complex interactions of many factors—biological, behavioural, social and environmental—in developing effective interventions.

In drawing up a definition, ISER proposes that a holistic definition be adopted. One that considers the social, economic and environmental underlying issues that may compromise population health whilst emphasizing government’s primary role. On this note, ISER is persuaded by Rothstein’s preposition in his book, “*Rethinking the nature of public health*” where he maintains government intervention as the defining

---

<sup>2</sup> Institute of Medicine. THE FUTURE OF PUBLIC HEALTH. 1988

<sup>3</sup> Acheson, D. Public health in England. 1988

<sup>4</sup> ROTHSTEIN, M. (2002). ‘*Rethinking the Nature of Public Health*’. Journal of Law, Medicine & Ethics, 30: 144–9.

<sup>5</sup> Childress, J. F., Faden, R. R., Gaare, R. D. et al. (2002). ‘Public Health: Mapping the Terrain’. Journal of Law, Medicine & Ethics, 30: 170–8

characteristic of public health<sup>6</sup>. Rothstein further suggests that government action may require imposing restrictions on individual liberties as to protect and promote health of the public. Coronavirus lockdown measures and travel restrictions are classic examples.

## B. Vaccination as a public good

Over the past years, vaccination against infectious diseases like smallpox has significantly saved millions of lives worldwide as it provides protection to both the individual and the wider community through herd protection. In essence, Paul<sup>7</sup> suggests that where herd protection exists, it is unlikely for an infected person to pass on the disease to others during the infectious period of the disease, although, different infectious diseases will require different percentages to attain herd population. In brief, vaccination scores as a private and public good. Rawls proposes that for a good to qualify as “public” it must be indivisible, that is, no individual can claim to have singly achieved it but rather a collective effort.

At the time of this writing (21 February 2022), about 10.38 billion doses have been administered globally. Meaning, approximately 61.8% of the world has received at least one dose of the COVID-19 vaccine. Of these, only 10.6% of people in low-income countries have received at least one dose<sup>8</sup>. More specific to Uganda, 15million doses have so far been administered, of which, 2.22million, that is 4.9% of the population are fully vaccinated. This coverage points to the profound inequities in the pace of access to COVID-19 vaccines. Indeed, the Bill under Clause 31 and Clause 39 highlight the importance of vaccination as a public good.

### Our moral obligation to vaccinate

Imagine, an individual opts out of the vaccination program. Does such an individual owe any moral obligation to their respective community? To appreciate the relevance of such a scenario, there is need to explore whether or not vaccination is capable of attaining herd protection. Meaning, disease like tetanus, because of their bacterial nature only accrue private benefits while as other like coronavirus brings about a common good. Second, to approach it through the *non-maleficence* principle. Beauchamp et al provide a literal meaning to non-maleficence as “do no harm”.

In an effort to attain herd protection through vaccination<sup>9</sup>, policy makers ought to explore whether or not determine ethical issues. Dawson, in his book, “*ethics, prevention and public health*” argues that herd immunity is a public good.<sup>10</sup> To approach such complexities, there is need to question; is it unethical not to vaccinate; what appropriate policies should the state implement; what is the appropriate fine/penalty for non-vaccination; what about a section of

---

<sup>6</sup> *Ibid*, no. 4

<sup>7</sup> Paul, Y. (2004). ‘Letter: Herd Immunity and Herd Protection’. *Vaccine*, 22: 301–2.

<sup>8</sup> OUR WORLD IN DATA COVID-19 VACCINATION, available at: <https://ourworldindata.org/covid-vaccinations>, last accessed 14 February 2022.

<sup>9</sup> Herd immunity, also, known as population immunity, is a situation where enough people in a community are immune from a certain infectious disease and therefore those who are not vaccinated are indirectly protected.

<sup>10</sup> Dawson, A. *Herd Immunity as a Public Good: Vaccination and our Obligation to others*. Oxford University Press, 2007, Pg 1-19

the population who with reasonable justification opt out of the vaccination program; among others.

The harm can be created intentionally, failure to reduce risk, or by omission to perform an act. In this context, non- vaccination may cause harm to others. Some infectious diseases may warrant legal mandates (see next section).

With relevant information and accessible vaccination centers, we have a moral obligation to vaccinate against serious infectious diseases as to mitigate causing harm to others through our own actions and inactions. Conversely, in event that non-compliance has low risks to the community, mandatory vaccination is not plausible.

### Legal considerations

As seen from previous sections, vaccination policies raise both ethical and legal issues partially due to the tension between individual human rights and collective rights.

We note that this particular provision is drawn in light of the on-going coronavirus pandemic. Legally, an individual enjoys an inherent right to freedom of choice and privacy but such rights are subject to limitation and the state with ethical justification like promotion and protection of population health may restrict their full enjoyment.<sup>11</sup> Thus, when deciding whether or not to mandate massive vaccination, the state must balance existing tensions between public and private interests vis-a-vis desired outcomes.

Uganda's context and experience over the past two years into the pandemic have shaped the present discourse in interesting ways. The pandemic has among others, caused intolerable pressure on the public health system. This notwithstanding, widespread misinformation about the safety and efficiency of available vaccines has compromised people's willingness to vaccinate. This misinformation is in part due to government's handling of COVID-19 vaccination. Initially government was silent about COVID-19 vaccination as we mentioned in our policy brief, *The COVID Vaccine and Uganda: 12 Questions to Policy Makers*.<sup>12</sup> Patchy communication about the vaccines bred mistrust since many were exposed to conspiracy theories and government only begun substantively communicating about COVID vaccination when vaccines had already arrived. The vaccination process was mired with scandal due to allowing a mostly unregulated private sector to administer, for example people receiving water rather than the vaccine. This also affected the public's trust. Finally, the roll out where long waiting lines, vaccines sometimes not being there at health facilities also affected the willingness of people to get vaccinated.

---

<sup>11</sup> UN General Assembly. UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR). 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>, last accessed 15 February 2022. Article 29 (2), "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society"

<sup>12</sup>ISER (2021) *The COVID 19 Vaccine and Uganda: 12 Questions to Policy Makers*. [https://www.iser-uganda.org/images/downloads/The\\_COVID\\_19\\_vaccine\\_and\\_Uganda\\_12\\_questions\\_to\\_policy\\_makers.pdf](https://www.iser-uganda.org/images/downloads/The_COVID_19_vaccine_and_Uganda_12_questions_to_policy_makers.pdf)

Before making COVID- 19 vaccination compulsory, it is imperative that government address the missteps that got us here. To increase vaccine uptake and restore public trust, the state must urgently adopt customized information to hesitant segments of the population taking into account cultural and religious considerations and using cultural and religious champions, improve access to vaccination centers whilst addressing existing barriers like requirement of a national identity card as a sole identifier to avoid excluding millions of people.<sup>13</sup> Despite the Ministry’s directive to allow other forms of ID following litigation initiated by ISER and Unwanted Witness, we continue to see government officials require national ID.<sup>14</sup>

Should government choose to impose compulsory vaccination, it must be a last resort, evidence-based and financial penalties must be appropriate. This is pertinent because while rights can be limited, the limitation must be necessary and proportionate. The following considerations should be assessed.

- 1) One way to think about this is whether what can be achieved with compulsory vaccination can’t be achieved with less coercive measures.<sup>15</sup> Mandatory vaccination does not have to be truly compulsory where failure to adhere requires criminal sanctions. Mandatory vaccination can instead limit individual choice where vaccination is a condition of, for example, attending school or working in a particular sector or attending particular events.
- 2) Another key consideration is whether the public health objective would be difficult to achieve without a mandate. This would vary depending on the nature of the epidemic. With COVID-19, individual vaccination only goes so far since to achieve herd immunity, vaccination is critical. Is it the case that a substantial number of people in Uganda are able to get vaccinated but merely unwilling?
- 3) Before imposing a mandate or truly compulsory vaccination, the law must require that the vaccines must meet a high evidentiary threshold for safety particularly when merely authorized for emergency or conditional use given the limited and evolving evidence. If this is not expressly required, the population can be coercively exposed to a potentially harmful product which open the State up to liability. ISER’s monitoring

---

<sup>13</sup> ISER (2021), Government’s requirement to have National ID before receiving COVID19 vaccine will exclude millions, [https://www.iser-uganda.org/images/downloads/Government\\_requirement\\_for\\_National\\_ID\\_to\\_exclude\\_millions.pdf](https://www.iser-uganda.org/images/downloads/Government_requirement_for_National_ID_to_exclude_millions.pdf)

<sup>14</sup> Civil Society Drags Government To Court Over Requirement To Have National Id Card Before Receiving Covid 19 Vaccine, [https://www.iser-uganda.org/images/downloads/COVID19\\_vaccine\\_and\\_IDs-ISER\\_Press\\_Briefing.pdf](https://www.iser-uganda.org/images/downloads/COVID19_vaccine_and_IDs-ISER_Press_Briefing.pdf)

<sup>15</sup> World Health Organization. COVID-19 and mandatory vaccination: Ethical Considerations and Caveats. Policy Brief, 13 April 2021, available at: <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1>, last accessed 15 February 2022.

work found that communities, particularly older persons are concerned about safety and efficacy.

- 4) Before imposing the mandate, there must be evidence that the vaccine is efficacious in the population for the specific public health goal for which the mandate is being imposed. For example, if the public health goal of the mandate is to break the chain of transmission, the vaccine must be shown to be able to do that or if it to prevent severe hospitalization, credible data on the vaccine's efficacy on that must be available. This would require tracking local data on the efficacy and safety of those that have received before imposing the mandate.
- 5) The guarantee of safety must be accompanied with a no- fault compensation, particularly for vaccines not fully licensed. In case there is any harm, the person should not have to resort to lengthy court processes to get compensation.
- 6) Before imposing compulsory vaccination, the government must make sure it has adequate supply that is reliable, reasonable and free of charge for every eligible member of the public to access. Without this guarantee, the mandate would defeat equity purposes by overburdening the poor, exacerbating inequities and would be ultimately ineffective.
- 7) Moreover, the WHO guidance notes mandatory vaccination policies permit a limited number of exceptions recognized by legitimate authorities (e.g., medical contraindications). However, there must be strict scientific limits to conscientious objection, particularly if they threaten the public health of others.
- 8) The law should state that government/Ministry of Health should be required to frequently re-assess the mandate to ensure it remains necessary and proportionate to achieve public health goals especially considering safety and efficacy.
- 9) There must be transparent and participatory decision making in coming up with the mandate that involves the opinions of those that will be affected.
- 10) Will compulsory vaccination threaten public trust? The danger to compulsory vaccination is people falsifying information like earlier this year when government mandated COVID vaccination cards as a pre requisite to use public transport where we learned of fake vaccination cards and community reports, the reliability of which we can't guarantee, that even Ministry of Health EVI certificates can be procured by paying someone. Penalties for falsifying information should be higher than penalties for mandatory vaccination so as to deter the provision of false information. The bill is silent on this.
- 11) Should compulsory vaccination be imposed, the penalty must be high enough to incentivize people to get vaccinated.
- 12) There must be investment in traceability systems, monitoring and reporting systems to ensure accuracy of data and clear reporting processes where false data can be flagged

for rectification, for example whether you were vaccinated but the system shows you as unvaccinated.

#### **IV. ADDITIONAL PROVISIONS THAT WOULD STRENGTHEN THE BILL**

##### **Expressly Require Government to Strengthen the Public Health Facilities**

The bill notes that the management of epidemics is the government's responsibility but does not have provisions calling for strengthening of the public health system. COVID-19 has spotlighted the deficiencies in our public health system in respect to planning and implementation of essential public health services. Delayed detection of the virus, coupled with outdated policies, inequitable access to life-saving therapeutics and diagnostics resulted into a rapid spread of the virus. Hundreds of lives were lost but most were preventable through a resilient public system. The capacity to implement policies as a mechanism to optimize public health policy and inform policy issues. In short, as the on-going pandemic has demonstrated that our fate is intertwined, when we leave anyone behind, we risk leaving everyone behind. Policies that foster exclusion pose a threat to the privileged.

The bill should expressly require government to ensure equitable access to quality public health facilities that are equipped to deal with pandemics including with drugs, equipment etc. There must be free at point for end user.

##### **Ensure Access to Information**

Access to relevant information and in accessible formats is critical for advancing public health. Language barriers contributes to poor health literacy and low health outcomes. Taking coronavirus as a prime example, while the Ministry of health disseminated information during the early disease outbreak, such information was for a larger part in English and in urban areas, resultantly, the virus spread to other communities at an uncontrollable speed.

Clause 39, for instance, provides that a local government shall through a public notice placed in a public place notify the public to undertake vaccination or revaccination. ISER commends the framers for this forward- thinking provision as it promotes access to information, social participation and strengthens good governance.

For efficient and timely communication, however, ISER suggests for a broader means of communication. Local government can utilize existing social accountability structures like community radios, community megaphones, village health teams, health educators, religious and cultural champions among others.

##### **Monitor and Regulate Private Actors In Health**

The increased proliferation of unregulated non-state actors in the health sector has affected health equity. Government's reliance on non-state actors to provide social services like health coupled with declining state investment threatens population health outcomes. Using its past research as a case study<sup>16</sup>, ISER maintains the view that to prevent exploitation, unfair extortion

---

<sup>16</sup> See: The Initiative for Social and Economic Rights (ISER), PROFITEERING OFF A PANDEMIC, Private Sector and Health Services in Uganda during COVID-19, June 2021. Available at: [https://www.iser-uganda.org/images/downloads/Profiteering\\_off\\_a\\_pandemic.pdf](https://www.iser-uganda.org/images/downloads/Profiteering_off_a_pandemic.pdf), last accessed 21 February 2022. Also, Initiative for Social and Economic Rights (ISER), ACHIEVING EQUITY IN HEALTH, Are Public Private Partnerships

and exclusion, explicit legislation is required to regulate private actors' involvement in the provision of public health related goods and services particularly. Particularly in the context of a pandemic, the government must retain stewardship. As we saw during the delta wave a largely unregulated private sector profited off the pandemic sometimes at the expense of life.

## **V. CONCLUSION**

Amending the existing Public Health Act is not only a strategy to formulate policies that respond to contemporary public health concerns, but also and above all, a way to engage in genuine dialogue between policy makers, civil society and communities from across the country. It is not enough to focus on public health through a medical lens, it must be done from a human rights-based approach. It is time to collectively design and implement policies that strives towards a strong public health system that works for everyone.