INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

ISER

Facilitating Social Justice

A FALSE PROMISE!

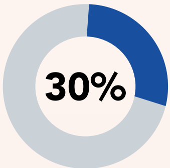
THE LUBOWA INTERNATIONAL SPECIALIZED PUBLIC PRIVATE PARTNERSHIP (PPP) HOSPITAL WILL NOT DELIVER UNIVERSAL HEALTH IN UGANDA

Background context

In 2019, the government of Uganda awarded a 379.71 million dollar contract to FINASI-Roko Special Purpose Vehicle through a public private partnership (PPP), making it the most expensive hospital that will be built in Uganda.

The process leading up to this milestone began in the years between 2014 and 2018 when the government and FINASI/ROKO entered into a series of agreements. The purpose of these agreements was to establish a joint venture between Finasi and Roko, and to outline their responsibilities in designing, constructing, and operating the proposed specialized hospital as part of the PPP initiative. The government undertook to issue promissory notes not exceeding **379.71 million** to the contractor. The government also entered into a direct lenders agreement with the financers identified by the company, effectively granting them rights over the issued notes. In addition, Finasi was granted free land suited at Lubowa- off Entebbe road in Wakiso District and tax holidays spanning eight years.

The agreements mandated Finasi/Roko construct the facility within two years, operate it for six years and then hand it over to the government.



of the Contractual sum has been paid off despite no works being done!

Four years down the road, the Lubowa hospital construction site is at foundation level. Parliament's Budget Committee report[1] of 2022 indicates that in

1 Parliament of Uganda (May 2022), Report of the Committee on Budget on the Annual Budget Estimates for FY 2022/23 [on file].

Construction works at Lubowa Hospital Project
Source: Lubowa Hospital page on Facebook. Last accessed on 4th September 2023.

FY 2021/22 promissory notes worth **US$ 113.25 million** had been issued and paid off, about 30% of the contractual sum despite no works being done. In 2022, the government made a fresh request for an additional USH 319,552,683 to settle another batch of promissory notes associated with the project[2]. Furthermore, in March of 2023, the Ministry of Health put forth a supplementary request for **Shs2.7bn** to supervise the construction of the same hospital.[3]

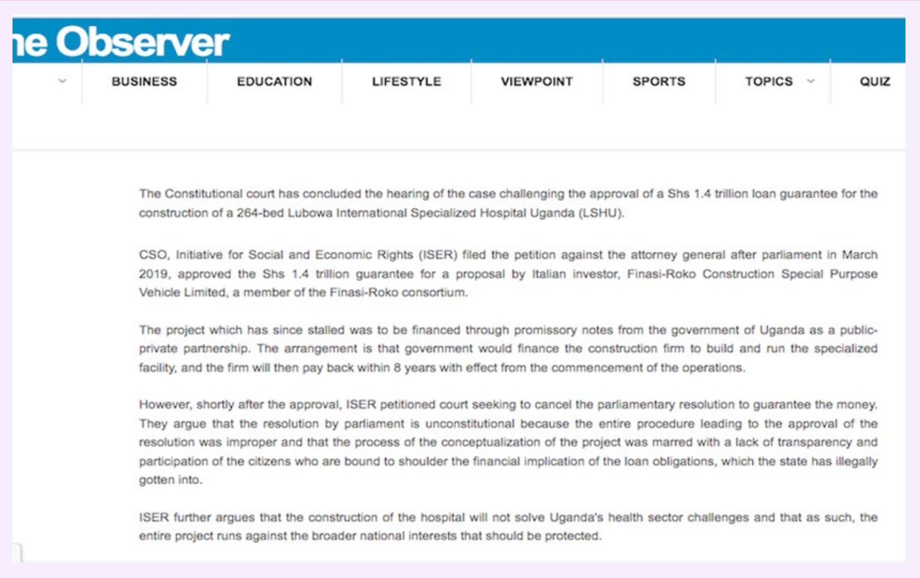
This publication assesses the Lubowa Hospital PPP and whether it can develiver healthcare for ugandans. It recommends the government devote maximum available resources to strengthening and realizing a quality public health system.

Is this Project in accordance with the Law?

Article 159 of the Constitution of the Republic of Uganda provides that before executing any agreements in which the state offers a loan or a guarantee, Parliament is required to approve. However, this provision was not adhered to in the specific case of Lubowa international hospital's development. In this case, it was only later in February 2019, that the then State Minister of Finance tabled a motion before Parliament and urged that Parliament approve payment of the intial batch of promissory notes since the contractor had completed the first construction milestone.

2 Parliament of Uganda (May 2022), Report of the Committee on Budget on the Annual Budget Estimates for FY 2022/23 [on file].

3 https://www.parliament.go.ug/news/6512/shs27-billion-request-supervision-lubowa-hospital-works-rejected



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The Constitutional court has concluded the hearing of the case challenging the approval of a Shs 1.4 trillion loan guarantee for the construction of a 264-bed Lubowa International Specialized Hospital Uganda (LSHU).

CSO, Initiative for Social and Economic Rights (ISER) filed the petition against the attorney general after parliament in March 2019, approved the Shs 1.4 trillion guarantee for a proposal by Italian investor, Finasi-Roko Construction Special Purpose Vehicle Limited, a member of the Finasi-Roko consortium.

The project which has since stalled was to be financed through promissory notes from the government of Uganda as a public-private partnership. The arrangement is that government would finance the construction firm to build and run the specialized facility, and the firm will then pay back within 8 years with effect from the commencement of the operations.

However, shortly after the approval, ISER petitioned court seeking to cancel the parliamentary resolution to guarantee the money. They argue that the resolution by parliament is unconstitutional because the entire procedure leading to the approval of the resolution was improper and that the process of the conceptualization of the project was marred with a lack of transparency and participation of the citizens who are bound to shoulder the financial implication of the loan obligations, which the state has illegally gotten into.

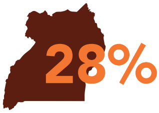
ISER further argues that the construction of the hospital will not solve Uganda's health sector challenges and that as such, the entire project runs against the broader national interests that should be protected.

The Parliamentary Committee on National Economy, in its Hansard report, observed that although Finansi had received the money, the ministry had irregularly flouted the system and created liabilities for the government by entering into the agreement to issue promissory notes to the contractor. Despite this, Parliament later retroactively approved these notes.

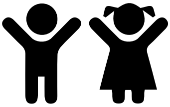
Lubowa will not deliver equitable healthcare

It is the state's position that the specialized hospital is intended to minimize costs for overseas treatment of patients and provide efficient and "more accessible" healthcare to all. The irony is that, save for a cross-section of the privileged, not very many Ugandans travel overseas for treatment because they live hand-to-mouth and struggle to access basic public goods like health and education.

ISER's research has found, another recently established specialised women's hospital PPP, Mulago Women Specialised Hospital, remains unaffordable to the marjority of Ugandans, with prices charged comparable to private facilities despite the fact that it was constructed with loans that have to be paid back by Ugandan tax payers.[4] The high cost of healthcare will make it unaccessible for the marjority of Ugandans who are one medical bill away from poverty and many impoverished.



of Ugandans still live in mud and wattle houses.5 The latest Uganda National Household Survey found the marjority of the population in Karamoja and Bukedi can not afford a pair of shoes![6] Monetary well being is the dominant factor that causes inequality in access to healthcare.[7]



Only 67%

of children can visit health facilities and access medication when needed

4 Why Mulago Women's Hospital Will Do Very Little to Address Maternal and Child Mortality in Uganda, https://iser-uganda.org/wp-content/uploads/2022/07/ISER_Fact_Sheet_Mulago_Fees.pdf (last accessed 13 July 2023).

5 Uganda Bureau of Statistics (2021) The Uganda National Household Survey 2019/20, https://www.ubos.org/wp-content/uploads/publications/09_2021Uganda-National-Survey-Report-2019-2020.pdf (last accessed 13 July 2023); Uganda Bureau of Statistics (2021) The Uganda National Household Survey 2019/20, Power Point Presentation, https://www.ubos.org/wp-content/uploads/publications/06_2021UNHS2019-20_presentation.pdf (last accessed 13 July 2023).

6 Ibid.

7 World Bank. 2022. Uganda Poverty Assessment: Strengthening Resilience to Accelerate Poverty Reduction, https://openknowledge.worldbank.org/server/api/core/bitstreams/6e72f7ce-62ab-4f80-9181-e2b3ee33d833/content.

with significant inequality across groups especially for the poor.[8] The disparities are especially stark alongside income lines.

Despite some progress, Uganda's health system is not effective, universal, or equitable.

Only **48%** of Ugandans are satisfied with the quality of healthcare.[9] As of now, the essential package of health services is underfunded, culminating in stockouts of essential medicines and poor quality of health care. **The money the Government allocated to the Finansi-Roko joint venture could have been utilized to support national and regional referral hospitals 3 times over.**

Ugx 490.5 Billion
2023/24 budget funding for National and Regional Referral hospitals

Ugx 1,386.1 Billion
Funding approval for Lubowa PPP project

Health workers are not yet working in sufficient numbers in rural districts, mothers continue to be at high risk of death due to complications of childbirth and a lack of skilled care.

5% of the Lubowa Hospital total cost could pay allowances for medical interns to enable them to be deployed in public health facilities across the country this financial year.

Most of Uganda's health workforce constitutes of medical interns (young doctors) and senior house officers (graduate doctors who are training to specialize in different medical disciplines e.g gynaecology) and they have been on strike over non payment of allowances. The impact of this has been dire in public health facilities as patients

8 World Bank. 2022. Uganda Poverty Assessment: Strengthening Resilience to Accelerate Poverty Reduction, https://openknowledge.worldbank.org/server/api/core/bitstreams/6e72f7ce-62ab-4f80-9181-e2b3ee33d833/content.

9 United Nations Development Programme, Human Development Report 2013.

delay receiving care. This financial year, a paltry **UShs 22.6 billion** was allocated for medical interns and senior house officers which only covers their prior arrears and does not cover allowances for this financial year. The Ministry of Health urgently needs **UShs 80 billion**[10] **(22, 043,296 USD)** to cover allowances for medical interns this financial year. This is about 5% of what Lubowa PPP hospital would cost.

As Ugandans have been protesting the dire state of public health facilities under #UgandaHealthExhibition and the #ReclaimPublic Services campaigns, many questioned what business government had financing such an expensive hospital given the immediate and neglected needs of public health facilities.

It is quite outrageous that the government is investing billions in a new PPP hospital at the expense of taxpayers' money without addressing glaring deficits in the public health system.

10 https://www.parliament.go.ug/news/6755/gov%E2%80%99t-needs-shs804-billion-pre-medical-interns

Increases the Country's Debt

As ISER has cautioned in its publication, **Uganda's Rising Debt and Public Services,** Uganda is one shock away from a debt crisis. The Lubowa hospital project extends this even further. The project creates both direct and indirect liabilities for the government.

One troubling aspect is the issuance of promissory notes to Finansi/ Roko to date, despite any work being completed. These notes create a debt obligation for the government since they commit to returning a specific amount of money to the contractor at a later date. Essentially, promissory notes are written agreements stating the payment to be made to the holder on a designated maturity date. Consequently, they become liabilities that the government needs to include in its yearly budget and pay off accordingly. As these promissory notes are issued by the government, they become part of the overall public debt.

It is difficult to get public information on how much has so far been issued in promissory notes to Finansi. This makes it difficult to monitor and perpetuates the opacity that was seen at the onset of the PPP deal to establish this hospital. A 2022 parliamentary budget committee report indicates that in FY 2021/22, promissory notes worth **US$ 113.25 million**[11] had been issued and paid off, about 30% of the contractual sum despite no works being done.

In 2022, the government made a fresh request for an additional **UShs 319,552,683 ($87.6 million)** to settle another batch of promissory notes related to the project. Additionaly, in March of 2023,

[11] Parliament of Uganda (May 2022), Report of the Committee on Budget on the Annual Budget Estimates for FY 2022/23 [on file].

the Ministry of Health put forth a supplementary request for **UShs 2.7bn** to supervise the construction of the same hospital.[12]

> Yes, you can patch up a loan request, but I am telling you that it is a bottomless pit and we look on, as Parliament. I think it is high time we put a stop to this, Madam Speaker.
>
> **Hon. THEODORE SSEKIKUBO (NRM, Lwemiyaga County, Ssembabule): ...**

Recent media reports[13] in April 2023 indicated that during a session before parliament, the Ministry of Finance disclosed that the government had issued and paid off 7 Promissory Notes amounting to US$133.5 million. A subsequent amendment to the project works agreement resulted in the issuance of new promissory notes, with 5 of them scheduled to mature in 2023/24. Redeeming these requires that **UShs 227 billion** be set aside from the health ministry's budget.

Defaulting on these notes would expose the government to potential lawsuits. Parliament's committee on national economy has already highlighted that without additional resources being earmarked for the Health Ministry to finance this project, it will erode the fiscal space for the Ministry's non-wage budget,[14] significantly affecting health service delivery. It is worth noting that this PPP incurred debt might be higher than if government had financed the project through traditional means.

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12 https://www.parliament.go.ug/news/6512/shs27-billion-request-supervision-lubowa-hospital-works-rejected

13 https://redpepper.co.ug/grilledmps-quiz-finance-ministry-for-inflating-lubowa-hospital-funds/129671/

14 https://www.parliament.go.ug/cmis/views/5ab4df7f-a946-4ebf-80cc-adc7636bdd0c%253B1.0

Moreover, the project's indirect liabilities have also burdened the government. The agreements stipulated that all payments made by by the government to the contractor had to be in US dollars and not any other currency unit. The shilling has effectively declined 20 percent against the dollar[15] since the project agreements were signed in 2015.

Exchange rate fluctuations since the agreement's signing have significantly increased the costs of redeeming maturing notes, with the government now bearing these expenses instead of the private party involved.

Under Uganda's Public Financial Management Act, the Minister of Finance, Planning, and Economic Development is required to prepare a report on the management of public debt, guarantees, and other financial liabilities, and submit it to parliament annually by April 1. **However, none of the aforementioned liabilities, particularly the promissory notes, have been included in any of the reports presented to parliament, raising even more questions about the government's transparency.**

The Public Absorbs All the Risk

A typical PPP arrangement would have the private sector absorbing the financial, technical and operational risk. This is what was envisioned under Uganda's Public Private Partnership Act, 2010 and

[15] https://www.bou.or.ug/bouwebsite/Statistics/

is similar to the World Bank's own definition of PPPs.[16] This has often been posited as a rationale for/advantage of public private partnerships.[17]

However, in the case at hand, where the total project cost was estimated at **$249.9 million**, the Ugandan government obtained parliamentary approval to issue promissory notes amounting to **$397 million**, covering all potential costs. This approach essentially guarantees a profit for the private contractors while shifting the entire burden of risk onto the public sector.[18]

Initially, the compensation for the construction works was structured on a floating LIBOR basis, tying the interest rates payable to the financiers i.e the Africa Export-Import Bank to market conditions. Surprisingly, FINANSI, the private contractor, managed to shift the responsibility of interest hedging arrangements to the government, effectively making the government cover the costs of hedging. This added an extra $21.7 million in costs for the government.

Furthermore, all tax liabilities under the project were shifted to the government as well. In the agreements, it was stated that the works renumeration to the contractor along with the reimbursement of the financiers, would not include taxes, leaving the government of

16 "Any contractual arrangement between a public entity or authority and a private entity for providing a public asset or service, in which the private party bears significant risk and management responsibility." World Bank (2018

17 ISER(2019) Achieving Equity in Health: Are Public Private Partnerships the Solution?

18 https://debtjustice.org.uk/blog/fears-raised-about-cost-of-ppp-hospital-in-uganda

Uganda liable for all taxes. The agreements went on to mention that the government would be responsible for establishing appropriate administrative measures to ensure that the company is left in no worse position than it would have been in had it not paid, suffered or otherwise borne the cost of any tax. And that such tax neutrality was to be implemented through tax exemption, reimbursement, refund or other mechanisms.

Although PPPs may create an illusion of new funding sources by involving the private sector to take on loans instead of direct government funding, the financing for the project often still relies on government budgets and/or end-users – the difference lies in spreading the payment schedule over an extended period. Consequently, an amount of US$557 million is expected to be deducted from the health ministry's budget over an 8-year period to finance the redemption of these notes upon maturity.

Moreover the penalties for non delivery are less rigorous. The then Permanent Secretary, Keith Muhakanizi, had assured that the government would only issue promissory notes for work completed and certified by the Government's own engineer. However, despite the project failing to move beyond foundation level and failing to meet the project milestones, government continues to issue promissory notes and make payments to the investor. This financing arrangement essentially allowed the investor, Finansi, to secure 100% financing while assuming zero risk.

> "I think the issue of Lubowa is brain-dead; we just have to plug off the life support and we escort it to the mortuary, in my opinion as the chairperson of the committee."

Hon. Charles Ayume, Chairperson, Parliamentary Committee on Health

No Public oversight

There was no public participation as this PPP was being developed. Uganda's Constitution enshrines the right to participation. While participation can be through elected representatives, even this was not done. The process was shrouded in secrecy. By failing to timely lay the project documents before Parliament prior to the signing of these agreements, the public was robbed of its right to participate. Even what was eventually laid before Parliament was incomplete with key information missing. As the minority report by the Committee on the National Economy showed, Parliament lacked access to the Note Purchase Agreement that detailed the terms of financing which would reveal total financial implication of the project to Uganda.[19] This was despite the Direct Agreement referencing this Note Purchase Agreement.

This lack of participation and public oversight was compounded after the project was retroactively approved, and Members of Parliament along with Ministry of Health officials were denied access during their oversight visit to the project site as reported in both media reports and the Parliamentary Hansard of March 1, 2022.

[19] Report Of The Commitiee On The National Economy On The Issuance Of Promissory Notes Not Exceeding USD 379.7m For The ISHU Facitity Project At Lubowa. https://www.parliament.go.ug/cmis/views/5ab4df7f-a946-4ebf-80cc-adc7636bdd0c%253B1.0

THE DEPUTY SPEAKER: Honourable minister, you will need to take those documents to the committee. That is why it is going to the committee for consideration. If the committee finds it incorrect that there is no feasibility study, no design and it is not feasible enough, then the committee will reject it. Therefore, you need to provide all that information to the committee.

3.32

MR THEODORE SSEKIKUBO (NRM, Lwemiyaga County, Ssembabule): Madam Speaker, I witnessed the indignity suffered by this House and Government. After this House approved US$ 1.3

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trillion to Lubowa Specialised Hospital, our Committee on Health went there accompanied by the Permanent Secretary of the Ministry of Health, Dr Diana Atwine, together with the minister, but they were locked out and not allowed to inspect what was going on in Lubowa, having undertaken to do so.

I would like to agree with Hon. Kivumbi that the person who was peddling the health facility at Lubowa is now transacting in coffee. I would like to inform this House that even for our own Lusalira-Kabamba-Ssembabule Road, it is the same person who has taken the contract of that very road. He is everywhere, but nowhere. That is the predicament this country has.

Yes, you can patch up a loan request, but I am telling you that it is a bottomless pit and we look on, as Parliament. I think it is high time we put a stop to this, Madam Speaker.

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CSOs want Lubowa hospital project halted

Aug 07, 2019

On Tuesday, health minister Dr. Ruth Aceng, the permanent secretary in the ministry of health Dr. Diana Atwine and MPs on the Parliamentary committee on the National economy, were blocked from accessing the construction site

Any attempt to demand what is being done with the money requested in multiple supplementary budgets has not been met with sufficient information. Minimal information is provided when government comes to Parliament to demand for it to approve promissory notes.

Public outcry especially after it came to light that not much was happening at the project site during Covid 19 has not been responded to. Despite multiple calls for a value for money audit, this has not been done. There is no comprehensive public statement on how much money has been disbursed.

With regard to public oversight over the money, the requirement to have an escrow account maintained at and by Bank of Uganda was dropped in the Amended Direct Agreement.[20]

[20] https://www.parliament.go.ug/cmis/views/5ab4df7f-a946-4ebf-80cc-adc7636bdd0c%253B1.0

THE DEPUTY SPEAKER: Yes, procedure. Lay the paper and I am referring it to the Committee on National Economy for consideration.

MR SILWANY: Madam Speaker, I would like to thank the honourable minister for the many times he has asked for loans from this Parliament.

In 2018, the then minister, Hon. David Bahati, came to this Parliament and requested for a loan to

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construct Lubowa Specialised Hospital. I remember that time I was the one mobilising Members to support the loan. The minister committed and said the Government was going to give promissory notes.

Madam Speaker, as we speak today, Lubowa Specialised Hospital that was supposed to save us medical tourism is nowhere. This is almost the fourth year. Whereas we are willing to support the Uganda Heart Institute because it touches all of us, wouldn't it be procedurally right for the ministry to first give us accountability of the previous loans that we passed in this Parliament so that we give this loan with confidence that they are actually going to do the work?

THE DEPUTY SPEAKER: Thank you. By the way, this one has just been referred to the committee for consideration; it is not for debate. However, what Hon. Silwany has raised is very pertinent. What happened to Lubowa Specialised Hospital? The House demands to know what is happening to Lubowa Specialised Hospital. Can we have information on what is happening?

As ISER has repeatedly pointed out, PPP projects have huge implications on the public purse and so there must be effective public participation and oversight.

Could this failure to deliver be foreseen?

PPPs in health and other social services have a long and chequered history and often fail to deliver envisioned outcomes. Public-private partnerships in health threaten access to equitable healthcare yet private actors continue to operate with minimal government stewardship and regulation.[21]

- In Lesotho, Queen Mamohato Memorial Hospital, a PPP hospital funded by the IFC, the first of its kind locked the low income country in a 100 million USD 18 year contract that threatened to bankrupt the Ministry of Health. It diverted scarce public funds from providing health services in rural areas, where three quarters of the population live. The payments increased almost 80% since 2008 when the government first contracted the private actor to build and operate it.[22]

- The European Union Expert Panel on Effective Ways of Investing in Health in its Health and Economic Analysis for the

21 ISER (2019) Achieving Equity in Health: Are Public Private Partnerships the Solution? https://iser-uganda.org/wp-content/uploads/2022/07/achieving_equity_in_health.pdf (last accessed 13 July 2023).

22 Paul C Webster, Lesotho's Controversial Public Private Partnership Project, https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)00959-9/fulltext (last accessed 13 July 2023); Oxfam (2014) A Dangerous Diversion: Will the IFC's Flagship Health PPP Bankrupt Lesotho's Ministry of Health, https://policy-practice.oxfam.org/resources/a-dangerous-diversion-will-the-ifcs-flagship-health-ppp-bankrupt-lesothos-minis-315183/ (last accessed 13 July 2023)

Evaluation of the Public Private Partnerships in Europe[23] found:

- No evidence that a PPP model is more efficient than a public provider, finding PPPs have been more expensive in the long run.

- Public disclosure of data and analyses behind PPP investments is very poor, inconsistent and not standardized.

- PPPs in Canada involving schools, bridges and water treatment plants to social services and hospital food concluded that the claims of reduced cost and efficient delivery of services through PPPs to save tax payers money and benefit consumers were mostly empty and labelled them as ideological assertions.[24]

  - Study also found that the chief motive for the public sector to pursue PPPs in Canada was to get the projects "off book" and to give the appearance of lower debt levels.

  - Rating agency Standard and Poor's, which found that investors in PPPs face "a relatively benign risk" and that

23 Expert Panel on Effective Ways of Investing in Health , Health and Economic Analysis for an Evaluation of the PublicPrivate Partnerships in Health Care Delivery across Europe at p.38, adopted 27 February 2014, https://op.europa.eu/en/publication-detail/-/publication/032ee8ff-9507-4e97-ae3f-c7b534536c59/language-en (last accessed 13 July 2023).

24 Jomos KS et al. (2016) Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for purpose? UN DESA Working Paper No 148, https://www.un.org/esa/desa/papers/2016/wp148_2016.pdf

penalty clauses for non-delivery by private partners are "less than rigorous", the study questioned whether risk was really being transferred to the private partners in these projects.

- Australia

    - In the early 1990s, the NSW government opened the privately-operated Port Macquarie Base Hospital. The authorities announced savings by ignoring additional administrative and legal costs; it ended up costing about A$6 million more than a public hospital of an equivalent size. The Auditor-General's report concluded, "The government is, in effect, paying for the hospital twice and giving it away."[25]

CONCLUSION

ISER demands that the Government should evaluate the project's cost-benefit analysis and terminate the contract. The public health system has to be improved. It must be prioritised and the government should make investments in this.

[25] Anis Chowdhury and Jomo K,, Sundaram, Hospital PPPs Undermine Healthcare, http://www.ipsnews.net/2019/01/hospital-ppps-undermine-healthcare/ (last accessed 13 July 2023).

RECOMMENDATIONS

1. Government terminate the Lubowa Hospital PPP.
2. Government invest in public health facilities.
3. Avoid setting up PPPs in health and education.
4. Public funds including those guaranteed by government should not be invested in for profit private providers providing social services.
5. Ensure access to information and robust meaningful public participation for any loan or contigent liability.

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