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September 13, 2021

Dr. Peter Kamunyo Gathege  
Chief Executive Officer  
National Hospital Insurance Fund  
P.O. Box 30443 - 00100  
Nairobi, Kenya

Dear Dr. Kamunyo,

We are writing on behalf of the Economic & Social Rights Centre-Hakijamii and the Center for Human Rights and Global Justice (CHRGJ) to request a response to the attached questions regarding the growing role of the private healthcare sector in Kenya.

Hakijamii is a leading national human rights organization that supports marginalized groups to claim their economic and socio-cultural rights. CHRGJ is a premier human rights center based at New York University School of Law in the United States. The Human Rights and Privatization Project at CHRGJ is focused on how the privatization of essential sectors and services affects the realization of human rights, particularly for low-income people. We will soon release a report on privatization of healthcare in Kenya. The report is based on extensive interviews and focus group discussions with community members, public and private healthcare workers, and community health volunteers living and working in informal settlements in Isiolo, Mombasa, and Nairobi; interviews with health and human rights experts, government officials, and other stakeholders; and a review of public documents, surveys, and laws related to health in Kenya.

Our research to date documents significant concerns about the growing role of the private sector in healthcare. These include high costs for individuals and the government, safety and quality concerns, and shortcomings with regard to public health priorities, accountability, and workplace conditions. People interviewed raised serious human rights concerns, reporting that they were denied and excluded from private facilities, received inadequate care from private providers, and were pushed into debt and economic hardship due to the high cost of private sector care. People in poverty, those with disabilities, rural residents, and women have raised particularly acute concerns.

We are writing to a number of government entities including the Ministry of Health, the National Treasury, the National Hospital Insurance Fund, the Public Private Partnership Unit, and the Auditor General. To ensure that our report accurately reflects the National Hospital Insurance Fund's position on these issues, we have attached an annex of questions to this letter. In order for us to reflect your responses in our upcoming report, we request that you respond to us by October 1, 2021; alternatively, we would be happy to discuss these questions and our report in a meeting at your convenience. We can be reached at [rebecca.riddell@nyu.edu](mailto:rebecca.riddell@nyu.edu).

Thank you for your attention to this matter.

Philip Alston  
Faculty Director, Center for Human Rights and Global Justice  
New York University School of Law

Bassam Khawaja  
Co-Director, Human Rights and Privatization Project  
New York University School of Law

Nicholas Orago  
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Rebecca Riddell  
Co-Director, Human Rights and Privatization Project  
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## Annex: Questions for the National Hospital Insurance Fund

Does the National Hospital Insurance Fund (NHIF) have a response to the preliminary findings of our research?

What is the total number of NHIF principal members and dependents? What is the total number of **currently active** NHIF principal members and dependents? Of those who are currently active, how many are NHIF SUPA Cover principal members and dependents?

For the most recent year available, how many total facilities are accredited with the NHIF, and of those, how many were private for-profit facilities, how many were faith-based/NGO facilities, and how many were public facilities? And in 2011?

### Service rates and expenditure

Independent research suggests that the NHIF reimburses private facilities at higher rates than public facilities for certain inpatient and outpatient services.<sup>1</sup> Does the NHIF make public any information about the rates it pays to private and public facilities for services, including both capitation rates and fee-for-service rates? If so, could you direct us to that information? If not, could you kindly provide us with the information?

Does the NHIF disaggregate its spending on benefits and claims at private for-profit facilities, faith-based/NGO facilities, and at public facilities? If so:

- Please provide the total NHIF expenditure on claims every year between 2010/2011 and 2020/2021, as well as the NHIF expenditure on claims at **private for-profit facilities** and at **public facilities**, for each of those years.
- Please provide the total number of services the NHIF covered every year between 2010/2011 and 2020/2021, as well as how many of these services were provided by private for-profit facilities and by public facilities in each of those years.

Outpatient benefits and services:

- For the most recent year available, how much did the NHIF pay in outpatient benefits, and of that total, how much went to private for-profit facilities and how much went to public facilities? And in 2011?
- For the most recent year available, how many outpatient services did the NHIF cover, and of that total, how many were in private for-profit facilities and how many were in public facilities? And in 2011?

Inpatient benefits and services

- For the most recent year available, how much did the NHIF pay out in inpatient benefits, and of that total, how much went to private for-profit facilities and how much went to public facilities? And in 2011?
- For the most recent year available, how many inpatient services did the NHIF cover, and of that total, how many were in private for-profit facilities and how many were in public facilities? And in 2011?

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<sup>1</sup> See, e.g. Appleford, G., and Owino, E., “National Hospital Insurance Fund tariffs: what are the effects on Amua franchisee businesses?” African Health Markets for Equity, 2018, p. 5, <https://hanshep.org/our-programmes/AHMEresources/case-study-national-hospital-insurance-fund-tariffs>; Mbau, R., Kabia, E., Honda, A. et al. “Examining purchasing reforms towards universal health coverage by the National Hospital Insurance Fund in Kenya,” Int J Equity Health 19, 19 (2020), Table 3: NHIF Provider payment methods and rates, <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-019-1116-x/tables/3>.

## **Accreditation and regulation of private facilities**

Does the NHIF impose any requirements on accredited private facilities regarding:

- what services must be offered;
- what medical equipment must be operational;
- how much they can balance bill patients for services whose cost is only partially covered by NHIF reimbursement;
- in what areas of the country or neighborhoods they must operate;
- staffing levels, qualifications, or ongoing education;
- staff compensation rates or benefits; or
- any other public health related obligations or requirements?

Does the NHIF terminate the accreditation of private facilities due to fraud or poor standards? If so, over the past five years, how many private facilities have lost their accreditation?

Does the NHIF track the amount of money lost to fraudulent medical claims from private facilities? If so, could you please provide this figure for the last five years?

What accountability measures, if any, are in place for those whose rights are affected by accredited private facilities?

## **Affordability**

Has the NHIF performed any assessment of the affordability or economic impact of the Ksh 500 SUPA Cover monthly fee on households? If so, what are the results of the assessment and can you share a full copy of the findings?

For the most recent year available, how many households and individuals were beneficiaries of the national health insurance subsidy programme? In that year, what were the eligibility criteria?

In 2020, the government announced its intention to cover the cost of NHIF membership for one million vulnerable households unable to pay. Could you please provide an update on the status of that initiative? Specifically:

- how many households are currently being covered as a result of this initiative;
- what criteria were used to identify the households; and
- how long will each household's membership be covered for?

An estimated 17.1 million people lived under the national poverty line in 2015. Aside from HISP and the government's announced plan to cover one million vulnerable households, what measures, if any, does the NHIF take to ensure that coverage is affordable for poor Kenyans?

## **The National Hospital Insurance Fund (Amendment) Bill, 2021**

What is the status of the National Hospital Insurance Fund (Amendment) Bill, 2021? Is the Government still seeking to achieve passage of the Bill and, if so, what is the timeline for passage?

We are aware of reports that the National Assembly Committee on Health has rejected the proposal in the Bill that NHIF membership be made mandatory. Is the Government still seeking make membership mandatory, or has this proposal been dropped?

Has the NHIF prepared any projections for estimated revenue and expenses over the next ten years if the Bill were to pass with the mandatory membership provision included?

What type of NHIF coverage would households receive under the Bill? Is this information publicly available?

Did the NHIF assess the affordability or impact of mandatory monthly contributions for poor households? If so, what are the primary findings?

What is or was the plan to support individuals who could not afford a monthly NHIF contribution? Please include specifics regarding how these individuals will be identified, how their coverage will be funded, and where in the government responsibility lies for ensuring that those who need support are receiving it.