A LEGAL AND SOCIO-ECONOMIC ANALYSIS OF HEALTH INSURANCE IN UGANDA: A CASE STUDY OF KAMPALA

BY

MUTINYU MOSES

208-053012-01099

SUPERVISOR

MR.

TAJUDEEN SANNI

A RESEARCH REPORT SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF A BACHELOR OF LAWS DEGREE OF THE ISLAMIC UNIVERSITY IN UGANDA: KAMPALA CAMPUS

JUNE 2012

Declarations

I **MUTINYU MOSES** do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously in its entirety or in part submitted to any other university for a degree. Other works cited or referred to are accordingly acknowledged.

Date.....18/06/2012..... **Signature**.....

For Mutinyu Moses

Supervisor's Approval

I MR. **TAJUDEEN SANNI** do hereby certify and confirm that I have supervised this research and it satisfies the standards of the university.

Date.....18-6-12..... **Signature**.....

For Supervisor

Faculty of Law
Islamic University in Uganda-Kampala Campus

Dedication

I dedicate this research to my parents; **Mr. David Luleti and Maayi Alice Nelima** whose abundant love, extreme tolerance and support have sustained me through my life.

I also dedicate this work to my cousin **Betty Kwamya** together with her family more so to her husband **Mr. Kwamya**, daughters; **Martha, Grace, Rosette Faith** and son; **Jonah**. This family did a lot to see me this far. May God bless you all. **Aunt Irene** (Tororo) is not forgotten for the advises and prayers. It would be unfair not to also dedicate this work to my friend **Janet** who has in one way or another been supportive.

Acknowledgment

I must with utmost respect thank the almighty God for his favor upon me for minus him, I am nothing. He has seen me through a lot and I am sure he will not leave me alone till the end of the journeys of my life. He is a Mighty God with whose Name I praise. May his Name be glorified in **Jesus'** name. Amen

My greatest appreciation goes to my parents, **Maayi Alice Nelima and Mr. David Luleti** who have strived assiduously to bring me up to this level with a formidable parental care. May God continue to bless you.

In a special way I want to acknowledge the support rendered to me by my mother **Maayi Alice Nelima**. It is so miraculous that a person in her position would take up a decision to support someone in university. Mum sacrificed a lot for my sake to see me get an education. May God bless you mum.

In a special way, I also want to thank my cousin **yaya Betty Kwamya** together with her husband **Mr. Kwamya**. It's easier to squeeze water out of a stone than to get appropriate words to say thank you. May God Bless you, and your family.

I again want to thank, in a special way my friends; **"Janet Lumumba", Nalondo and Harriet, Hilda Awoko, Martin Shirara, Hakim, Nalela John and Tony Hash**. It is said that a friend in need is a friend indeed. You guys are friends indeed. You were there whenever I needed you. Thank you so much for the contributions that you have put in my academic journeys in the four years. May God Bless you, in all your endeavors.

This acknowledgment piece will be useless, irrelevant and irresponsible if I inadvertently fail to give my unreserved appreciation to my supervisor, MR **TAJUDEEN SANNI** whose astuteness, uprightness and brilliance has helped me achieve this feat.

Finally, I acknowledge and appreciate the assistance and support of every single person I came across during the completion of my course whose time and space constraint would not permit me to mention. You are all dear to me. **THANK YOU. GOD BLESS YOU ALL. AMEN.**

MUTINYU MOSES

LIST OF ABBRIEVATIONS

- AAR : AAR Health Services
- AIDS : Acquired Immune Deficiency Syndrome
- HIV : Human Immune Virus
- HMO : Health Maintenance Organization
- HPI : Health Plan Insurers
- IAA : International Air Ambulance
- NSSF : National Social Security Fund
- POS : Point Of Service
- PPO : Preferred Provider Organization

List of cases

Burnand v Rodocanachi (1882)7 App. Case. 333

Castellian V Preston (1883)11 Q.B.D 380

Cehave v Coulson (1976) Q.B 44

Mackenzie v Coulson (1869) L.R 8 Eq. 368

Prudential Insurance v I.R.C (1904)2 K.B 658

Rozanes V Brown (1928)32 L1 L.R 98

Rust v Abbey Life Assurance Co. Ltd (1978) Lloyds Rep. 386

Uganda Motors v Wavah Holdings Ltd S.C.C.A 19/ 1991

List of statutes

The 1995 constitution of the Republic of Uganda

The Judicature Act

The Insurance Act

The Contract Act, 2010

The Workers' Compensation Act 2000

The Kenya Insurance Act Cap.487 Laws of Kenya

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Chapter one

1.1 Introduction

Insurance is a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the insured or underwriter, the other , the insured or assured, the agreed consideration, the premium the written contract, a policy, the events insured against, risk or peril and the subject right, or interest to be protected, the insurable interest[1]. The insurer and the insured are the essential parties to a contract of insurance. However, an essential part is plated by the presence and necessity of the insurance fund. This insurance fund must be protected.

There are various types of insurance such as accident, fire, marine and life. But this study is centered on health insurance, which is a type of insurance where the premium paid is used to pay for the cost of medical treatment for the application form filled at the beginning of the contract.

There are essentially two kinds of health insurance; fee- for service and managed care. Fee-for service are plans that generally assume that the medical professional will be paid a fee for each service provided to the patient. Managed care plans are of a variety and can include health maintenance organizations (HMOs), preferred provider organizations (PPOs) and Point of Service (POs) plans. These plans provide comprehensive health services to their members and offer financial incentives to patients who use the providers in the plan[2].

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[1] Henry Campbell; Black's Law Dictionary, 4th Edn, St.Paul Minn West Publishing Co.1968.P.945
[2] Insurance information institute, inc. "Health Insurance" <http:// www.iii.org>

There must be in an insurance contract, a clear agreement as to the distinct features of the particular contract as was held in the case of Rust v Abbey Life Insurance Co. Ltd[3]. The parties must be ascertained. They must be ad idem as regards the subject matter of the insurance. The period of insurance must be fixed and there must be agreement as to the sum to be insured and the premium to be paid. In Uganda, today, the social- economic climate and conditions have adversely changed. These call for there to be a comprehensive legal frame work to govern health insurance and contract.

"The contract of insurance is basically governed by the rules which form part of the general law of contract". Per Roskil L.J[4]. But there is equally no doubt that over the years, it has attracted many principles of its own to such an extent that it is perfectly proper to speak of a law of insurance. More still, a warranty in insurance law is a very different concept to that of the ordinary contractual warranty. In Uganda, this modification has greatly been hindered as shall be shown by this study. The Insurance Act[5] says nothing about insurance relationships. As it is mainly concerned with administrative matters of insurance, like the Uganda Insurance Commission, its functions and composition. Rules governing insurance brokers are also tackled as well as the licensing of insurance companies, financial reporting and minimum capitalization.

As a result of this, the health insurance contract is left governed by the law governing all other contracts. A study of the Insurance Act would have thrown some light on this short coming but unfortunately, such information is not available.

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[3] (1978)Lloyds Rep 386,392
[4] Cehave v Bremer (1976)Q.B 44,71
[5] Cap 213

1.2 Background of the study

The need for health insurance should be recognized in this country with the increasing private hospital care that is as a result of the unfortunate inability of government to provide quality care at affordable, or any price at all. Health care is very expensive and beyond the means of many Ugandans, even the middle class. Health care consumers have therefore been obliged to identify a means of providing for the contingency and illness and attendant costs.

In the early nineties in Uganda, health management organizations (HMOs) like AAR and IAA begun to emerge. They stepped into a virtual vacuum comprising a handful of disinterested provides and a bewildered disillusioned consumer. HMOs do not themselves provide health insurance products although they in turn often reinsure part of their exposures either locally or offshore. Presently, HPIs such as micro care now operate in many hospitals including Nsambya, Rubaga and Kibuli. HMOs provide the same product range as the HPIs but almost always on a direct settlement basis whereby the bills are settled directly by the HMOs. The choice for the consumer between HMOs and HPIs is really one of the pricing scopes and the mode of health expense settlement. Generally, HPIs provide a cheaper but more restrictive cover with plenty of optional features.

1.3 Statement of the problem

With the high poverty levels, health insurance is an important behavioral change especially given Uganda's drive to attract foreign investment. Employees need to be guaranteed good health so as o maintain their lives and ensure their productivity. With pandemic public health insurance

becomes an important issue, so far ignored. The bottom line: The legal status of health insurance in Uganda has unfortunately, remained undermined for too long.

The researcher therefore intends to stretch the importance of health insurance and then the need for a comprehensive law to establish and regulate the same.

1.4 Significance of the study

The importance of the study is to bring out law as it stands at present or lack thereof. The Insurance Act[6] leaves a lot to be desired with regard to health insurance legislation. A compressive legal framework is required especially since health is a very important aspect of the society. For each of the top causes of death and morbidity, well over half of the estimated spending by patients and health system is devoted to curative care. Health insurance would act as a great contribution to this matter.

Leading illnesses conditions such as malaria, diarrhea, acute respiratory infections, nutritional disorders, immunisable diseases and guinea warms. The cost of health care is both a constraint and determinant of the care received. Poor people cannot afford health care. But why should someone be deterred from getting treatment because of poverty? National health insurance plan would help to minimize such problems.

[5] Cap 213

The findings of the study will be beneficial not only to law reformers but also to parties of insurance contracts. Hopefully with the help of this research recommendation for a national health insurance statute can be put in place.

1.5 Study objectives.

1.5. 1 Major objectives

The major objective of this study is to establish a general overview of the health care available in Uganda currently.

1.5.2 Specific objectives.

1. To examine the existing law or lack thereof on health insurance contracts.
2. To examine the availability or lack of health insurance.
3. To examine the need for reform with particular emphasis on health insurance.

1.6 Research questions.

This research paper is guided by a number of questions that arise from the fact that there are insufficiencies in the insurance law in Uganda especially as regards health insurance.

A few studies have looked into the existing insurance law. However there is need;

1. To establish the nature and scope of the law currently applied by parties to the health insurance contracts in Uganda, if any.
2. Whether the law is sufficient to support development in health insurance.
3. Make a cooperative study of health insurance law in other third world countries. Especially, Kenya and Philippines.

3. Whether there is need for reform.

1.7 Scope of the study

This paper intends to look generally in the law of insurance in Uganda and particularly health care in Kampala. The study shall focus on the major applicants of the law, these being the insurance companies and hospitals. It shall also look at employees and medical professionals who provide a health service. At least two hospitals either private or government shall be considered.

1.8 Chapter synopsis

This research shall be composed of four chapters.

Chapter one

This basically covers the introduction to the problem, statement to the problem, objectives of the study and the literature review.

Chapter two

This will cover the general principles and practice of insurance law with particular emphasis on health insurance.

Chapter three

This will look at the operation of health insurance in Uganda as found out in the field.

Chapter four

This will basically sum up the researchers whole discussion by giving recommendation in relation to the topic and what the researcher will have discovered during the research and finally giving the conclusion.

1.9 Methodology

My research will employ both qualitative and quantitative methods of data collection. The insurance companies, hospitals and individuals will be taken as levels of analyzing data through interviews and questionnaires.

A desktop library research together with internet will also be employed. Reference will also be made to statutory instruments including the 1995 Constitution of the republic of Uganda. The Insurance Act among others.

1.10 Literature review

There is not much literature on insurance law generally in Uganda and even less on health insurance. Reliance therefore on the internet and English textbooks is inevitable. These however, more often than not, do not reflect the situation and circumstances of Uganda but they provide a basis for which a comprehensive law should be formed.

Some of Ugandan literature includes a book called "***Insurance and the law in East Africa***"[7]. It gives a history of a law generally and also of insurance law in the East African region. It

[7] Joseph B. Byamugisha (1973)

questions the applicability of the English law to the local setting of east Africa. It then goes ahead to give a good discussion on the insurance law principles. Such works however have been overtaken by events having been published in times when the Acts in practice in the U.K were still applicable to Uganda. This position was reversed with the court's decision in the case of Uganda motors Ltd[8]. The research thus will borrow the relevant issues from the work and go ahead to show the insufficiency of the law with regard to health insurance.

An important article was written analyzing the situation with regard to insurance law after the decision in Uganda Motors[9]. This is the Demise of substantive law on insurance in Uganda: the case of **Uganda motors Ltd. V. Wavah Holding ltd**[10]. In here the problem presented by the decision is defined and well explained. The article also traces the introduction of English law in Uganda from the reception date of 11th August 1902 to 1992 the time of the decision. It gives a very good discussion of the situation after the decision and helps to appreciate the graveness of the situation as regards insurance and it will be considered for this. However, research is still lacking as to what is being used in the field of insurance at the moment after the decision. This research shall endeavor to do this.

Martin mark Obia[11]. In the law and practice of liability insurance in Uganda has done studies like those by Kabaya T.M[12]in the law and practice of life insurance in Uganda and although one was done prior to the supreme court decision in Uganda motors ltd., and the other after, both have ever taken by events as the a law on insurance has had new developments such as the

[8] S.C.C.A. 19/ 1991
[9] ibid
[10] S.C.C.A 19/1991
[11] Martin Mark Obia (2002)
[12] Kabaya T.M. (1990)

Marine insurance Bill. Another shortfall lies in the fact that both works deal exclusively in life and liability insurance respectively. Research on health insurance is therefore still a very virgin area to be extensively explored by this research paper that will with anticipation provoke further research and therefore development in the area of health insurance.

Another study entitled The legal and institutional Framework for the management of insurance companies in Uganda done by **Tiba Nyongo Sanyu**[13] have been centered on various topics such as the management of insurance companies and the implications of the decision of Uganda motors case. Like all these studies before, this research aims at increasing the knowledge available on the law of insurance in Uganda and specifically in this case on health insurance law.

The most important English text on the subject of this study, health insurance, is Halsbury's laws of England edited by Lord Hailsham of St. Marylebone[14]. In **paragraph 589**, it provides for a contract of sickness insurance and it explains that this is normally drawn so as to cover the assured against incapacity arising from diseases, whether or not the disease is related to an accident or injury caused by accident and whatever nature of the disease.

Paragraph 567 provides that the object of accident insurance is to make provision for payment of a sum of money in the event of the assured sustaining accidental injury. It goes ahead to explain that the policy usually makes provision for the payment of different sums varying in amount according to the nature of the injuries sustained by the assured.

Tiba Ngongo Sanyu (2002)
Volume 25(1994)

The book also explains that where as accident insurance is defined as being in a class of 'general' **under the English Insurance Companies act (1982),** insurance against disease is included in the statutory definition of long-term insurance business if it is contained in a contract expressed to be in effect for a period of not less than five years or until normal retirement age, or without limit of time.

The text further refers to accident insurance as resembling life insurance (and differs from other types of insurance) in that it is not a contract of indemnity. It is merely a contract to pay a sum of money on the happening of a specified event, namely the sustaining by the assured of personal injury by such accidental means as may be defined in the policy.

Under paragraph 573, the authors explain injury by disease with regard to accident insurance. It explains exceptions in accident policies relating to disease in **paragraph 585** and gives the example of disease as proximate cause of death or disablement. Here it provides that the accident insurance policy may contain an exception relating to disease. It may be framed in general terms or specified diseases may be expected. Further it explains that where the death or disablement is solely caused by disease there is no injury by accident and the insurers are not liable whether the policy contains such an exception or not. So although it is accelerated by accident it does not matter. However the exception relating to disease is inapplicable where the death or disablement, through ultimately due to disease, is never the less proximately caused by accident, the disease being a mere link in the chain initiated dominantly and effectively by the accident.

This book thus provides the most relevant literature as regards origin of health insurance and the law applicable which applies to accident insurance in **paragraph 589.** However, the same

paragraph expressly sets out that a contract of accident insurance in the strict sense does not cover the assured against disablement or incapacity arising from disease unless the disease is directly or indirectly related to some accident or injury caused by accident. Thus in addition the fact that the book refers to disease in regard to accident insurance, it refers to sickness insurance which is the subject of this study in only one paragraph out of the whole.

However, not all literature used in this research has been reviewed, as some shall be considered in the main study. A lot of the literature used in the main study includes material from the internet as well as information from interviews of key informers. What is important to note is that a lot of the literature available is foreign and this in itself justifies this work. Little is available on the Ugandan stand on insurance generally and health insurance in particular.

Chapter two

2.1 Introduction

This chapter sets out to define the basic insurance principles and these include insurable interest, indemnity, subrogation, utmost good faith, the duty of disclosure, and contribution. Many of the insurance principles have been modified to suit particular contracts of insurance like Marine under the various Marine insurance Acts. These principles should be examined in the context of health principles. The chapter shall further look at the important aspects of health insurance.

2.2 General principles of Insurance

It is important to understand what is meant by an insurance policy first before the principles that apply to it are explained. This is a legally binding contract between an insurance company and the person who buys the policy, commonly called the 'policy holder'. This is the person insured. Insurance policies offer protection against loss, that is, loss or damage that is measured in purely financial terms and compensated by money, for example, an insurance policy can pay for the cost of medical treatment for an injury or illness. Prior to issuing a policy, insurers must determine the risk that an individual client presents and must adjust their premium to acknowledge that risk. The process is called underwriting.

For each type of policy, insurance companies have a range of premium levels that may be charged based on various factors that are considered at the time an application or proposal is submitted. Rating factors must be reasonably related to the risk being insured. In addition, the specified event for which the policy is taken out must have some element of uncertainty about it.

In **prudential insurance company V. I.R.C**[15] Per Channell J. *"... there must be either some uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time or another, there must be uncertainty as to the time at which it will happen."*

Insurable interest: a person has an 'insurable interest' in something when loss or damage to it would cause that person to suffer a financial loss or certain other kinds of losses. The general rule is that it is not necessary that the assured should specify in the contract, or even disclose to the insurer, either the nature or the extent of his interest.[16] However like all general rules, it has exceptions among which is where there is an express condition to this effect.

The principle of indemnity: This simply states that the assured is prima facie entitled, on performing the requite conditions, to receive the full amount of his loss within the limits of the policy. The liability of the insurer to make good the loss under the policy is a liability to do o by a payment of money. The assured must however be content with an indemnity.[17] This brings us to the issue of subrogation.

The doctrine of subrogation "has been adopted solely for the purpose of preventing the assured from recovering more than a full indemnity"[18] per Brett L.J. subrogation applies to all insurance contracts which are contracts of indemnity, that is, particularly contracts of fire, motor, property and liability insurance. It does not apply to life insurance or prima facie to accident

(1904) 2 K.B 658 AT 663
E.R. Hardy Ivamy (1993) Pg. 25
Colinvaux's Law of insurance (1993) Pg. 89
Castellain V. Preston (1883) 11 Q.B.D 380 CA at 387

insurance. When a loss happens, anything which reduces or diminishes it reduces or diminishes the amount the insurer is bound to pay; and if the insurer has already paid the full loss, then if anything which diminishes the loss afterwards comes into the hands of the assured, the insurer is entitled to be recouped to the extent of the benefit so received,[19] per Lord Blackburn. This is precisely what is referred to as subrogation.

Utmost good faith "uberrima fides': It is a fundamental principle of insurance, that each party must observe the utmost good. Good faith forbids either party from concealing what he privately knows so drawing the other into a bargain with ignorance of that or his believing the contrary. In the case of certain contracts, the law demands a higher standard of good faith between parties and "there is no class of documents as to which the strictest good faith is more rigidly required in courts of law than policies of insurance." Moreover, this utmost good faith is required not only from the assured but also from the insurer. This brings us to another important principle.

The duty of disclosure: "as the underwriter (also known as the insurer) knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriter without being asked of the material circumstances"[20] the most important part of insurance is determination of the risk. The insurer can only adjust his premium profitably if he knows accurately the nature of the risk which he is asked to take upon himself, and it is even more essential to the assured to

[19] Burnand V. Rodocanachi Sons and Company (1882) 7 App Cas. 333 at 339
[20] Rozanes V. Brown (1928)32 L1 L.R, 102

know precisely the extent of his cover, so that he may take out additional insurance if it is required, and so that he may avoid uneconomical double insurance.

Where the applicant for insurance is asked to fill in a proposal form containing a list of questions, there is a presumption against him that such questions refer to material facts. Thus the parties have settled which facts is material. If the question is unclear or ambiguous, the courts are generally slow to apply the doctrine of non-disclosure to answers, which are true on a reasonable construction of the question.

Contribution: This arises where insurers have discharged their liability but where the assured effected many policies and they are comprised of same subject matter, were effected against the same peril, were effected on behalf of the same assured are all in force at the time of loss and are legal contracts of insurance where none of them contains any stipulation by which it is excluded form contribution. In such a case insurers are entitled as between themselves and other insurance to call upon the latter to bear their share of the loss and pay their proportion of the amount already paid under the first policy. This right is called the right of contribution, which doesn't depend on contract but on principles of equity.[21]

It should be noted that though any other mode of discharging the liability of insurers maybe substituted for the payment in money with the consent of assured; they cannot do this without his

[21] E.R. hardy Ivamy (1993) 517

consent by what is known as 'reinstatement' i.e. by replacing what is lost or repairing what is damaged.[22]

2.3 Health insurance applying principles

Uganda needs to awaken to the importance of health insurance when it is experiencing alarming infant and adult mortality due to malnutrition, diarrhea and malaria among other illness. HIV/AIDS and cholera pandemics can all be considered under this. An advanced health care system and a natural health insurance law will no doubt help the situation immensely.

Health insurance is, basically, a promise by an insurance company or health plan to provide or pay for health care services in exchange for payment of premiums.[23] Whereas the purchase of insurance is usually done voluntarily based on an individual determination of need, in some instances, there maybe a legal or contractual obligation to have a certain type of insurance. In Uganda today, 2 types can be said to exist, private health insurance (like that offered by IAA and AAR) and pre-payment schemes, which are not obligatory and are normally provided by employers to their employees. However, a team from Harvard University School of Public Health and the institute of public health together with Makerere University has carried out feasibility analysis of social health insurance. This assessment of feasibility of social health insurance considers the possibility of a legal obligation to have this insurance[24].

A health insurance policy is a binding contract issued by an insurance company to an individual or group which promises to pay for health care reasonably required by the insured or policy

[2] Mac Gillivray on insurance Law Vol. 3 Pg. 483
[3] <http:/law. Free advice.com/insurance_insurance/health_insurance.htm
[4] Information received from interview with Dr. Christine Kirunga of ministry of Health

holder or certificate holder to treat illness or injury. If the insurance policy is issued to an individual, the individual applies for the policy and pays premiums either directly or through payroll deduction. Typically, in individual health insurance, the individual policy holder is insured and also in exchange for a higher premium the insurance covers a spouse and dependant family member.

In the circumstances where the health insurance is obtained by an employer or a group or an association, the entity is the group policy holder. Generally, in addition to payment of premiums by the policy holder, the insured is also responsible for payment of deductions and co-pays (a percentage of actual charges or a fixed amount per visit) which are pre- determined in the policy at set amounts or rates. A health insurance plan or health service plan is generally distinguished from health insurance by the type of promise that is made in the binding contract between the insured and the issuing company[25].

Insurance products are developed to provide financial protection against unanticipated loss. This is equally applicable to health insurance. Insurance is sold to pay for healthcare on the chance that any one of the unanticipated events related to becoming ill occurs. It is a means of mitigating loss. However, it should be noted that standard premiums are calculated on the expected outcome for large numbers of individuals with similar risks and are expected to spread the cost of the loss among a group. This is because the insurance industry is commercial and not humanitarian essentially.

[5] http://law.frradvice.com\insuranc_lawhealth_htm

2.4 Provision of health services visa viz commercial interests.

It can be argued that in so far as the insurance industry is a commercial one, its important function is that of providing people with the opportunity to spread their risk among a large community while allowing legitimate businesses to earn a profit. Thus in so far as health insurance is a social problem, it is not solely the responsibility of the insurance industry to ensure access to health care for all[26].

It is this tension between the legitimate business goals of the private insurance industry and the social need for universal access to healthcare, are recognized in the Ugandan Constitution of 1995 under the national Objectives and Directive Principles of State Policy, which must accelerate public pressure for a national policy that will reconcile the two goals. Article 45[27] provides that rights relating to fundamental human rights not specifically mentioned are recognized. The national Healthy policy goes ahead to provide that the state shall ensure that Ugandans enjoy access to health services and that the state shall take all practical measures to ensure the provision of basic medical services to the population. However it should be remembered that Uganda has little experience with health insurance and development along these lines would require drafting of enabling legislation.

2.5 Health insurance underwriting

Medical assessment is often used in underwriting of health insurance. In social policy terms the need for basic healthcare is different from the need for life insurance. These differences should be considered when one is discussing the implications of medical testing of insurance applicants.

[26] Interview by author with Mrs. Lindsey Davidson of AON Uganda(need to confirm)
[27] Of the 1995 Constitution of the Republic of Republic

A more serious question is whether insurers would be classified as a pre- existing condition. Considerable ambiguity exists in characterizing an individual who has been found to have a chronic disease. Some would argue that he or she only the predisposition to develop the condition at a later time. An insurer, however, might argue that the condition is present, even if it is in dormant form, as soon as the individual acquired (or knew that he or she has acquired) the disease symptoms. Such is the predominant practice position in Uganda.[28] More still, in Uganda, both HMO and HPI plans exclude pre existing conditions together with a whole range of medical conditions/illness arising out of special situations. HIV related illness are excluded whereas there maybe special terms for impaired lives, diabetics, asthmatics and a number of other conditions. Insurance company policies on these matters will obliviously affect individual's willingness to be medically tested. Adverse policies could discourage individuals from seeking testing and there by could deprive them of the opportunity of either obtaining timely treatment or making reproductive choices that might, in the long run, both improve health and reduce the cost of health care for the insure and others.

The amount of information sought depends in part on the amount of coverage for which an individual applies. Applications are therefore more likely to generate deeper inquires into medical background and possibly, to bring about more medical testing. On this matter, however, the different insurance companies differ in practice. The insurance company of East Africa, for instance, does not require applicants for medical coverage to undergo any form of medical testing as a prerequisite.[29] Medical examinations generally in the Ugandan situation are not normally required for joining but a "declaration of good health" is almost always mandatory.

[28] Interview with Geofrey Kanali of Insurance Company of East Africa (U) limited
[29] ibid

2.6 Ethical and policy questions

Distinguishing and classifying individuals at different risks is at the heart of commercial insurance as it is practiced today, particularly when individual and small group policies are involved. Insurers do not believe that tests that predict illness, death or disability should be excluded from this traditional practice. Differentiation of applicants on the basis of health risks is a predominantly acceptable practice and should be distinguished from discrimination, which is illegal if based on race, gender, or sexual orientation. However, the extent of such legal discrimination should be made clear so that its future course can be predicated with clarity. This feature is not clarified in Uganda at present, as the insurance Act says nothing about it.

2.7 Implication of requirement of medical testing

Not many companies, in Uganda at present, require tests in underwriting. Although insurers may not now require testing, they nevertheless do make decision based on information including prior diagnostic tests performed in the course of delivery of medical care to the applicant and his or her family. This information may be obtained from an application form, a medical record, or other sources.

The availability of health insurance will also be affected by the definition of 'pre-existing or chronic conditions' since health insurance policies commonly exclude coverage for such condition[30]

[30] Interview with Geofrey Kanali, supra.

The possibility that information concerning an individual's heath status could be used to determine 'insurability' or premium rates is likely alter standards of informed consent for medical testing. The very high value placed on autonomy in medical decision-making requires that individuals be informed of risks reasonably to be expected before they decide whether to undergo a medical procedure. Denial of health insurance can be a catastrophic event. If there is a reasonable ought to disclose it.[31]

2.8 Importance of medical history of clients

Concealment of medical information by health-care providers is an important issue. This goes against a fundamental principle of insurance, that of utmost good faith. If an insurer is considering acclaim and finds that the attending physician has not disclosed all the medical information in the report submitted with the application, the claim may be denied. In authorizing the attending physician to report to the insurer, the applicant signs a waiver that usually says that all "pertinent information" should be sent. If the insured becomes ill or dies and an omission of information is uncovered, the insurer may rescind the policy and return the premiums but not honor the claim. The attending physician may then be at risk of litigation initiated by the insured (whom the physician was originally trying to protect)[32]

2.9 Adverse selection

Adverse selection occurs when individuals have more information about their risk of illness than do insurance companies and base their insurance-purchasing decision on such information. The imbalance allows these individuals at higher risk to buy more insurance yet pay no more than at

[1] http://law.free advice.com>supra
[2] ibid

lower risk. This may jeopardize the economic well being of the insurance company or require companies to raise all premiums, as protection against adverse selection. The latter approach imposes costs on others who are not at higher risk. In addition to the deception involved, this seems to conflict with the practice that the cost of insurance should be higher for those at higher risk.

However, the adverse selection posses a lesser problem for heath insurance since it is less discretionary. Health insurance is typically obtained through groups where as life and disability insurance are commonly obtained through an individual application. In addition, few individuals should be able to afford forgo health insurance and will therefore generally pay higher premiums.

Some would argue that the basic premise of charging more for those at higher risks is ethically flawed. According to this view, health conditions are never the individual's "fault" and should therefore never be the basis for insurance discrimination. Insurers on the other hand, will point out that a high susceptibility to disease is also not an individual's fault but nevertheless is a condition that increases an applicants risk and might warrant a premium rating. Critics of the health insurance industry emphasize the inequality of the system, which allows companies to practice adverse rejection- that is, to discontinue coverage when a client, who has been faithfully paying-premium, is found to have a serious condition. This is the position not only in Uganda but also in neighboring Kenya[33]. It is to be hoped that health care-reform legislation will eliminate this inequality.

[33] Interview with Geoffrey Kanal supra.

.10 Confidentiality of Clients' Information

The central role of confidentiality in health care has been recognized and has been reinforced repeatedly in contemporary writings and in the law. Patients will not be able to maximize benefits of health care unless they feel secure in disclosing potentially embarrassing and stigmatizing information about themselves[34]. Such trust is essential if the doctor is to obtain information needed to provide competent care, and it is generally in society's interest for patients to seek medical help for health problems, whether they are infectious or recurring conditions that may present risks to others or are disabilities that interfere with leading full and productive lives.

Like all principles, respect for confidentiality must have exceptions. This includes disclosure of [35]stigmatizing information in the absence of consent that may occur during the claims process when an insurance company exchanges information with an employer. Similarly, during underwriting, physicians commonly release an entire medical record to an insurer, thereby disclosing health information even though it was not specifically requested. It should be noted that in Uganda, this is against the patients' fundamental rights as provided under Article 27[36] among others as invasion of privacy of individuals is against constitutional provisions. The position ought to be settled by specific legislation in the field of health insurance.

2.11 Legal issues

For the longest time, law has not handled the regulations of health insurance practices. Laws need to be enacted on prohibitions of discrimination based on health conditions. **The Workers**

[34] http://www.iii.org>supra

[36] Of the 1995 Constitution of the Republic of Uganda

Compensation Act[37], a law that regulates the compensation of workers for injuries sustained while at work has significant impact on access to insurance. **S.19** provides for insurance of employers against liability by any worker. **S.20 of the same Act** goes on to give the Minister concerned the discretion to make by regulation provision for declaring void any terms included in a policy and on payment of benefits. However, the Act leaves out many important matters as regards insurance. For instance, what legal remedies do I have if my insurance company will not pay my claim? Are there any options for resolving a dispute with my insurance company other than suing the company in court like arbitration?

2.12 Conclusion

Some of these questions involve large public-policy decisions, such as whether the government should guarantee access to health care for all citizens. Universal access to health care, without regard to past, present, or future risk of disease could eliminate risk- oriented underwriting in health care coverage. A positive response to that question will be an answer to other problems. Until universal access is reality, important issues for insurance implications will remain. Should patients be counseled to purchase insurance before being tested? Should chronic disease information be excluded from medical records before their release to insurance companies for routine reimbursements or underwriting? What are the ethical and legal responsibilities of the physicians?

[37] Act 8 of 2000

Chapter three

3.1 Introduction

This chapter shall deal with the findings of the researcher in the field but first, it shall look at the barriers to the development of social health insurance in Uganda to day. The method of data collection and analyzing were both quantitative and qualitative.

The importance for government to give priority to health as a strategy for bringing about faster economic development and improving quality of life needs to be addressed. To gain financial access for health services, in combination with other government health programs, health insurance needs to be addressed seriously. A national health insurance program shall give the highest priority to achieving coverage of the entire population with at least a basic minimum package of health insurance benefits. Thus in pursuit of such National health insurance program, governing legislation is of paramount importance to the process of enforcement. In Uganda today, the possibility of social health insurance is being considered but a number of barriers hinder its development.

3.2 Major barriers to the development of health insurance and its related law in Uganda

Knowledge: In general, few Ugandans are aware of the term "health insurance' and can identify the link between contributions and benefits in terms of paying for health care (see resulted ahead). There is still a very big task and an important one of public education about the concept of health insurance.

Perceptions and Attitudes: Another important barrier to the development of health insurance is the population's attitude towards health insurance as well as the way in which they perceive it. Not many Ugandans would be in favor of the idea of paying something for health insurance. This is because the insurance culture is generally not well ingrained in the society. Also not many people would take kindly to not being able to get a refund incase they have not used up the premiums paid. The practice of being able to obtain medicine on credit also does not improve the situation. Since this can be arranged with private clinics, the need of health insurance is further down played.

Poverty: The relation between poverty and sickness cannot be ignored. In a country where the larger part of the population earns a salary of not more than Ugandan Shs. 130,000 a mount[38], the burden of payment for health services is indeed great. In addition to the poverty of the masses, the health facilities also are short of qualified staff, equipment and supplies. The law access to health service, poor quality of care, weak management of the health services and household poverty are all factors that hinder the development of health insurance in Uganda.

Alternative source treatment: One of the major factors in the field of medical treatment is traditional medicine. In Uganda, traditional healers were recognized as one the key players if HIV/AIDS was to be prevented at grass root community level.[39] The fact that alternative source of medicine other than those provided in the health facilities are available to the rural population, which makes up the biggest percentage of the Ugandan population, also creates a hindrance to

[8] Source:MoF-information received from Commissioner for Tax Policy at the MoF
[9] ,http://www.hivnet.ch:8000/Africa/af-aids/view?269

the development of healthy insurance. The grass root Ugandans would rather use local herbs and medicines than engage in the complicated systems of modern health facilities and their stressful funding requirements. It should be noted that in 1977, the 30th world health assembly adopted a resolution urging interested governments to give adequate importance to utilization of their traditional system of medicine.[40]

A number of rural areas in Uganda rely on traditional healers and tradition plants for their health care, and it is estimated that 80% of the population of Uganda relies on traditional practices[41]. Moreover, it has been estimated that whereas the doctor to patient ratio is 1:187, that of traditional healers to patients is 1:250. The fact that most herbs offer effective cures and the majority of people continue to seek traditional health care as they have been doing, traditional healer are able to plug gaps in primary health services in Uganda. This can therefore be seen to be a major hindrance to the development of health insurance since people may not sue sees the importance of paying premiums that may never be used.

3.3 Results of finding in the field

3.3.1 Socio-economic factors

The study was conducted on exit interviews from Nsambya, Mulago and Kibuli hospitals in the Kampala area. A total of the 100 patients/ caretakers (accompanying the patients) were interviewed using a structured questionnaire. Results of the interviews are presented in this section.

[10] WHA article 30 clause 49
[11] <http://www.Idrc.ca/adventure?medicina.html>

The age of respondents from exit interviews ranged from 9 to 70 years of age, with a mean of 31 years and a mode of 30 years. This is evidence that the bigger number of the respondents were between the ages of 30 and 31. Thus it can be argued that they were capable of understanding that questions that were put to them and giving coherent answers. The respondents can therefore be said to have represented all age groups from children, through to the adults.

Table: Demographic Characteristics of Respondents

Sex	Male 57%	Female 43%
Marital status	• Married • Single • other	46% 45% 9%
Educational status	• Nil • Primary level • Secondary level • Tertiary	13% 22% 34% 31%

The majority of respondents were peasants (57%), while a large number of the rest were small businessmen like dish sellers, market vendors, and tailors. A few were professionals like engineers, mechanics, police officers and journalists. A total of 16 students were also among the respondents, while other sectors represented were teacher, welder and housewives.

3.4 Cost of services

Respondents were interviewed on how they meet costs for medical services, each time they visit a health facility. The majority of respondents 94/100 (94%) revealed that they pay for health services. The range of cost of services was between shs 7,000-shs. 95, 800 for each trip to the health center.

3.5 Knowledge of health insurance

Concerning knowledge of respondents, only 18/100 (18%) of respondents admitted having an idea about health insurance. The remaining 82/100(82%) had no knowledge at all.

The 18% respondents who admitted having an idea were asked for the source of information. Their source of information ranged from friends, adverts to relatives whose work involved in insurance.

On whether respondents receive medical care through insurance policies, only 1/100 %(1%) admitted using insurance for medical care. The respondent mentioned using Micro care. On what the respondents' thought of the implementation of health insurance in Uganda, 82% thought it was a good idea while most of the rest were ignorant. A good 9% thought that its implementation would be expensive in terms of sensitization of the public and funds for this sensitization. In line with this was the argument that a good number of the public would not have funds to get involved in the schemes at all. Suggestions concerning establishment of health insurance law in Uganda were mostly encouraged so as to address the implementation of health insurance in Uganda.

3.6 Results from Key Informants

A total of 12 key informants were interviewed for qualitative information. These key informants included employees of insurance companies and heads of the hospitals where the exit interviews on patients were conducted.

Examine The Availability Of Or Lack Of Health Insurance.

The respondents had varying opinions on health insurance as it exists in Uganda today. Most however, admitted that it was mostly taken advantage of by a few privileged that can afford it. The respondents all argued that few could afford the requirements of an insurance scheme. The general consensus was on the fact that such a venture as health insurance is however very important. One respondent is quoted to have commented:

"Sickness isn't planned and most health facilities require up front payment for health services, to avoid people getting sent without treatment."[42]

3.6.1 Legal factors

Examine The Existing Law Or Lack Thereof On Health Insurance Contracts.

Limited knowledge on health insurance was expressed by most of the key informants nterviewed. One key informant pointed out that:

'The only law I've heard of is the one requiring insurance companies to have a license from he insurance commission for the general practice of insurance" Since the respondents didn't now of any law in existence, they did not comment on ways in which it can be revised.

[42] Interview by author with the administrator Kibuli Muslim hospital

Examine The Need For Reform With Particular Emphasis On Health Insurance.

The respondents admitted that there was great need for health insurance in our communities. Most of them argued that the most controversial point of enforcement of health insurance was with regard to the sincerity of the clients and companies especially as regards the covering in the success of a health insurance scheme. A method of ensuring that people not entitled to receive it do not wrongly claim medical care was also pointed out as a crucial point.

"***Compliance with the requirements from the companies needs to be observed and the tendency by medical personnel to collaborate with clients in inflating costs needs to be addressed.***[43]

Another point put forward was with regard to the fact that although all the companies preferred to deal with groups and as such an individual cannot claim the benefit of health insurance in Uganda today. The medical personnel, however suggested that it be considered that individual who wish to purchase health insurance policies be allowed to do so.

3.7 Conclusion

With the above results a number of conclusions can be made form which recommendations can also be suggested. This shall all be tacked in the following chapter. The suggestions of both the respondents from the exit interviews and the key informants shall all be included in the recommendations suggested by the author,

[43] ibid

Chapter four

4.1 Recommendation and Conclusion

National health insurance is a health care financing scheme where specific population groups are mandated to enroll and pay a contribution to the national health insurance fund. In turn, enrollees are entitled to a set of health care benefits. National health insurance is currently being developed in many countries around the world. Such is practiced in neighboring Kenya at present.[44] This should be adopted by Uganda.

Uganda's National Health Policy[45] places health-financing reform clearly as a supporting element for objectives of reducing "mortality, morbidity, and fertility and the disparities there in." the policy emphasizes a "Ugandan minimum health care package" emphasizing prevalent diseases and meeting the needs of the poor. To help achieve this strategy the policy calls for development and support of alternative financing schemes, such as...health insurance..."[46]. The same is reached in Uganda's health sector strategic plan 2000/01-2004/05 as well as in the ministry of health's health financing strategy: objectives and strategies for Health Financing in Uganda.[47]

National health insurance is one of the main methods used by many countries to raise financial resources for health and to assure access to care and risk protection for all or part of a nation's population. For a number of middle and higher income countries, national health insurance is an

[4] "NHIF why haven't you settled Juma's claims" East African Standard" October 9, 2000. By Mildred Murule
[5] Ministry of Health, 1999
[6] Ibid pg 19
[7] Draft, October 1999

increasingly common means of health financing increasingly, lower income nations, like Uganda, are exploring their potential for developing National Health insurance.

Typically, national health insurance focuses initially on civil servants and the formal sector labor force and their dependents, as this is a group which can be enrolled relatively easily for purposes of collection, is of middle to upper income, tends to be located in and around cities and towns to be able to access covered services, and has an emerging high demand for health care. As countries gain experience with health insurance they often expand coverage to include other sector of the labor force, and eventually the rest of the population. Such schemes have been successful in the Philippines[48] and established in Kenya as noted before under the NHIF.

Uganda's national health policy calls for the development of new sources of health care financing in support of the national goals of improved health status and equity. Uganda also faces the challenge of growing demand for health care and an emerging private health sector. In principle, national health insurance can make a significant contribution to overall health care financing and support such national goals. However, in lower income countries the success of national health insurance schemes in achieving their intended objectives depends heavily on their design and implementation.

4.2 Recommendations

Uganda has little experience with health insurance and development a national health insurance program will require significant new capacities for Ugandan institutions. The major areas that a

[48] <htt://ww.chanrobles.com/legal14nhia.html>

governing legislation needs to address are in collections, management of insurance and provider payment, regulation and supervision of insurance and health care delivery, and provider registration, accreditation, and quality control.

4.3 Collections

International experience shows that the lack of information between the buyers and sellers produces one major market failure. In the Kenyan situation for instance, many have asked themselves, what is the point of investing in a health insurance fund that cannot help you? On the other hand, insurers have replied to this by nothing that problems arise when clients do not fully understand what they are applying for and fail to ask questions.[49] All this is as a result of the break in the information chain between insurers and clients. As seen in the results before in Uganda, knowledge of health insurance is low. This issue needs to be effectively tackled by a governing legislation. Government needs to engage in a wide spread informative campaign.

4.4 Management of insurance and provider payment

Insurance companies need to set out in precise terms their basis of discrimination of clients. A legal provision specifically made would help immensely. The types of medical expense considered under insurance coverage, the disease conditions covered by the various companies and those commonly excluded under most medical expense plans (as defined in chapter 2 of this text) should be clearly set out in a governing legislation. The public also needs to be sensitized that even though major medical plans provide broad coverage, insured still incur certain out-of-pocket" costs and they need to be notified which costs these are. An important point to sensitize

[49] "British American replies to lawyer's accusation" East African standard October, 9, 2000

the public a bout is as regards the difference between the medical expense coverage offered by health maintenance organization (HMOs) from the coverage provided under basic and major medical expense plans.

4.5 Regulation and supervision of insurance company practices

Private insurers engage in risk selection that excludes the elderly[50], the disabled and less healthy people from their insurance plans. This needs to be governed by legislation. The extent of discrimination by the insurance companies needs to be governed by law so that all ailments are covered.

Government support of a national health insurance program will help correct some of the short fall of private insurance business. All the management health programs in Uganda have one main objective- to make profits[51]. Profit is their sole motivation. Consequently, concern for the welfare of clients is a means to profit, not an end to itself, with a national health insurance program in place however, people who have obvious current health needs (chronic diseases) or predictably anticipated health problems will still be considered as long as they contribute to the national fund.

4.6 Free versus subscribed health services

With a well-designed legislation to property govern such a scheme, a more meaningful form of assistance will be provided to the masses. In Uganda the poor lower income households cannot afford to purchase private insurance. It should be noted that Uganda is among the poorest

[50] See chapter 2
[51] See chatter 2

countries of the world. Official figures provide about 42% of our people live the poverty line[52]. And it has been noted that 37% of the urban population are considered to be below absolute poverty line[53]. Thus, they have to rely on free or nearly free public health services. The government therefore still has to bear a large proportion of the nation's total health care cost because it serves the high health risk groups and the poor. However, the affluent and the middle-income households would resist paying taxes to fund the healthcare for the public health services because most of them would be covered and paying for their employment-based health insurance.

4.7 Quality control

For the whole system to, however, be carried on smoothly, the efficiency in producing healthcare and the quality of the services need to be appropriately improved. However the current Ugandan government policy to under fund the health budget will not help the process, as it should be noted that to improve the healthcare and service, the health sector needs to be injected into its projects, instead of injecting funds in none priority sectors like the security and building a stronger army or motor vehicles for high government officials, finances need to be directed to improvement of health services as argued by Chakalson J[54]. Better use of NSSF funds should be ensured to provide better services. For indeed what is the logic behind providing security to a population that is extinct from disease that can easily be controlled? Medical personnel also need to be trained to provide care.

R.Hay (2001) Uganda Expenditure Review (Draft World Bank)

Sengendo (1994)

in **Soobramoney V. minister of Health (Kwa-Zulu-Natal)** Constitutional court of south Africa CCT 2/97(26/Nov./1997)

4.8 National health insurance scheme

With improved quality of healthcare, Uganda could start with a small scope by initially covering only civil servants and their families located in large cities plus workers and their families employed by large companies such as those employing 250 workers or more. Step-by-step, the scheme can be expanded to include all workers and their families in the formal sector. When Uganda becomes an upper middle-income nation, the National Health Insurance program could be extended to cover the workers in the informal sector as well.

With regard to monitoring of the scheme, a law relating to health insurance identification cards can be considered. This would go hand in hand with legislation specifying a basic benefit package of personal health services for inpatient and outpatient as well as emergency purposes. The extent of an insurance claim should also be clearly laid out.

Governing legislation as to the funds also needs to be enabled so that an orderly manner of management of the funds is established contributions from workers, employers and the government should all be well set out by an enabling statute to avoid misunderstandings.

Finally, it should be noted that a national health insurance program would provide Uganda with an important opportunity for health system development. Done well, this strategy could support Uganda's overall health system goals and make a significant contribution to its longer-term development. But international experience suggests that developing national health insurance poses substantial risks as well, and that these risks can threaten other important health system goals in lower income countries. This research has tried to provide Ugandan law makers with a

reasonable view that a well thought out and designed enabling legislation is the best way to ensure the possibilities of the scheme working out and avoiding risks of failure.

4.9 Claim settlement

A law governing the procedure of filing for an insurance claim should also be clarified. The legal remedies available for grievances and appeals to both the insurer and the client should be well set out in an enabling statue of the National Health Insurance Program. Penalties should also be covered under the same law. In comparison, the Kenyan insurance Act[55] provides for claim settlement under part VIII there in an under Part VIII, legal proceedings and appeals as well as, under section 178, providing for a general penalty. This needs to be the trend that the Ugandan law reformers should take.

4.10 Conclusions

Should Ugandan decide to embark on a National Health Insurance program, this study will make a positive contribution to the lawmakers, many groups and to the nation as a whole. Moreover, the consumer must give a lot more thought to the need for health care insurance which might be cheaper than motor vehicle insurance, and arguably which is more critical for ones well being

[5] Laws of Kenya, Chapter 487

Questionnaire for interviews.

a. For exit interviews

1. Back ground information.

1.1 Hospital/health facility

1.2 Date

1.3 Sex of respondent M/F

1.4 Marital status

1.5 Education level

2. Knowledge on Health Insurance

2.1 Do you know about health insurance? Yes/No

2.2 If yes, Please explain

2.3 Do you obtain/ receive health care using insurance?

2.4 If yes, which firm?

2.5 What problems do you face in the process of getting health insurance?

2.6 What problems do you face in the process of getting health insurance?

2.7 What do you think about implantation of health insurance law in Uganda?

2.8 Do you have any suggestions concerning establishments of health insurance law in Uganda?

b. Key informant guide

1.Do you know about health insurance law in Uganda ? if yes?

1.1 What is that know about it?

1.2 How did you know about it?

2.What is your opinion about health insurance in Uganda? And Why?

3.Do you often attend to patients with a medical policy? If Yes,

3.1 How many patients a day/ week

3.2 What are the disease conditions covered?

4. Do you think there is a need for health insurance in our communities? If yes,

4.1 How big?

4.2 Affordability?

5. How do you think the health insurance law can e revised especially to suit the needs of the people?

6. Any other suggestions?

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