

THE REPUBLIC OF UGANDA
IN THE EQUAL OPPORTUNITIES COMMISSION TRIBUNAL
AT KAMPALA
EOC/CR/128, 187, 815, 817/2023

1. BUHIO MEDICAL CODERS ASSOCIATION
2. ASSOCIATION OF ANESTHETIC OFFICERS
3. PHARMACUETICAL SOCIETY OF UGANDA
4. UGANDA ALLIED HEALTH PROFFFESIONALS
ASSOCIATION.....COMPLAINANTS

VERSUS

ATTORNEY GENERAL.....RESPONDENT

Coram: Hon. Joel Cox Ojuko, Hon Habiibu Sseruwagi, Hon. Denise Tusiime.

DECISION

The 1st petitioner, Buhio Medical Coders Association (BUMECA) is a registered association formed by the medical records and health informaticians working in all health facilities in Uganda.

The 2nd Petitioner, Association of Anesthetic Officers is a registered association with the mandate to fight for the welfare of anesthetic officers in Uganda.

The 3rd petitioner, Pharmaceutical Society of Uganda, is a society established by Section 5 of the Pharmacy and Drugs Act OF Uganda Chapter 309.

The 4th petitioner, Uganda Allied Health Professionals Association, is a corporate body established under the Allied Health Professionals Act Cap 296 to regulate, supervise and control the training and practice of the Allied health Professionals in Uganda.

The Respondent, Attorney General, is the principal legal adviser of the government of Uganda and is mandated under **Article 119 of the Constitution of the Republic of Uganda, 1995** with the duty of representing the government of Uganda in courts of Law or in any other legal proceedings to which the government is a party.

The Petitioners herein filed four separate petitions against the Attorney General of Uganda. The 1st Petitioner filed a Petition which was received and registered as EOC/CR/065/2023 on March 2, 2023., the 2nd petitioner filed a Petition which was received and registered as EOC/CR/128/2023 on May 23, 2023. The third petitioner filed a petition which was received and registered as EOC/CR/815/2023 on November 10, 2023 and the fourth petitioner filed a petition which was received and registered as EOC/CR/817/2023 on November 10, 2023.

On April 14, 2024, Commission Counsel, Musema Miragi prayed to consolidate all the filed complaints on record and this was granted. The four petitions were therefore consolidated with the consent of the all the parties.

The main contention of the petitioners in general is the continued discrimination in the health sector of Uganda which they allege essentially places health professionals with equal competence and qualification on disproportionate levels of recognition and opportunity.


It is important to state the cases of each of the petitioners as presented in their separate petitions. The 1st petitioner under their association of Bonded Uganda Health Information Officers and Medical Coders Association (BUMECA) contend that:

1. Despite being formally gazetted as health professionals by the Allied Health Professionals Council in 2022, they were excluded from the salary enhancement extended to other health workers (e.g., mortuary attendants, ambulance drivers, theatre attendants, and dental assistants) in the FY 2022/2023 government salary structure.
2. Whereas medical Records Officers at district level previously received a medical salary scale, this was reduced without notice following the new scientists' salary enhancement policy. Other allowances were similarly removed.
3. The profession is also burdened by the confusing job titles of ("Medical Records" and "Health Information"), which refer to identical functions.



4. There is no structured recruitment for qualified personnel (Diploma, Bachelors and Postgraduate degrees) in Medical Records and Health Informatics, leading to underutilization of professional skills.
5. Despite prior engagements with sector stakeholders i.e., Ministry of Health and Ministry of Public Service, the draft Scheme of Service for the petitioner has not been implemented.
6. There is no clear guidance on how to absorb serving officers who lack the newly required qualifications, unlike other health professional bodies like Nursing and Midwives Council that have adopted inclusive transitional measures.
7. The petitioner's contribution to health data management which forms the backbone of evidence-based decision making is undervalued in the health sector, despite earning national recognition (e.g., Heroes in Health Award for Allied Health Professionals).

The petition which was signed by President, Mr. Tom Baker and the General Secretary, Mr. Atibo Benard seeks the following reliefs.

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1. Immediate harmonisation of their salary scales in line with other health workers doing similar work. Specifically, they seek movement of their salary scale from U3 Upper to U3 Med, U4 Upper to U4 Med, U5 Upper to U5 Med, U6 Upper to U6 Med, and U7 Upper to U7 Med, in tandem with their respective positions.
 2. Explanation for the unilateral reduction in salaries and allowances.
 3. The unification of their professional title under a single nomenclature to eliminate confusion while strengthening professional identity.
 4. Creation and filling of positions for qualified professionals with Diplomas, Degrees, and Masters in Medical Records and Health Informatics within the public health sector.
 5. Formal approval and implementation of the draft Scheme of Service for Medical Records and Health Informatics personnel.
 6. Explicit inclusion in salary enhancements and professional development program.




7. A formal intervention by the Equal Opportunities Commission with the Ministry of Health and Public Service to ensure non-discriminatory treatment of Medical Records and Health Information professionals.
8. Any other relief that this Honourable tribunal deems fit and just in the circumstances.

The 2nd petitioners under the Association of Anesthetic officers of Uganda contend in their petition that;

1. Anaesthetic officers in Uganda are trained to qualify for a higher diploma in addition to basic diploma in either clinical medicine, Registered nurse, midwife or ordinary diploma in Anaesthesia. To date, Uganda has about 500 Anaesthetic officers.
2. Anaesthetic officers include Principal Assistant anaesthetic officers, Assistant Anaesthetic Officers and senior assistant anaesthetic officers as approved by the ministry of public service on the 30th December 2022.
3. That various concerns that range from remuneration, lack of promotion, education and career enhancement, shortage of staff, overworking of the cadres and lack of recognition have over the years been raised with the Ministries of health and Public Service respectively.
4. That following various engagements, the ministry of public service released a scheme of service on the 30th day of December 2022 detailing a proposal to introduce a cadre of Anaesthetic officers with Bachelor's degrees and then phasing out diploma holding Assistant anaesthetic officers.
5. That according to the scheme, there would be degree holding Anaesthetists known as anaesthetic officers, then diploma holding anaesthetics known as principal assistant, senior assistant and assistant anaesthetic officers respectively.
6. That the current anaesthetic officers have held the field for decades and have senior positions despite holding diplomas.

7. That the plan was to provide for a period to phase out the diploma holders gradually as the degree holders are given space to replace the cadres.
8. That to the utter shock and dismay of the petitioner, the ministry of public service released the approved structures for the regional referral hospitals and General hospitals where the petitioners' positions were abolished and they were all re-designated as assistant anaesthetic officers with U5 Med scale.
9. By this classification, ALL their senior positions were by implication extinguished.
10. By the same classification and re-designation, any hope of promotion and career advancement was no more
11. The salary structures are also not definitive since the said re-designation shifted the scale of many of them from U3 or U4 MED to U5 MED which is discriminatory and also contrary to the legally defined principle of not reducing the pay of an employee without their consent.
12. That promotion of Anaesthetic officers has been rare and unheard of apart from a few isolated posts at the national and regional referral hospitals.
13. That the various issues that affect the Anaesthetic officers were tabled before the ministry, which in its justification of the scheme of service stated that there is no clearly defined scheme of service for the anaesthesia cadre.

The petition which was filed by Branmark Advocates on behalf of the Petitioners seeks the following reliefs.

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1. A declaration that the structures for National referral hospitals, regional referral hospitals, General hospitals, Health centre IV, released on the 9th day of March 2023 be declared discriminatory in as far as the claimants are concerned because of the fact that many of their positions were nonexistent and they were all designated as assistant anesthetic officers.

2. That the tribunal issues a permanent injunction against the implementation of the said structures for National referral hospitals, regional referral hospitals, General hospitals, and Health centre IV facilities.
3. That the promoted and other serving officers in the National and regional referral hospitals be retained in both appointment and scale till retirement or attainment of the newly desired qualification as has been done for other cadres.
4. That promotions be reinstated at all levels of healthcare for the anaesthesia cadres as has been done to the rest of the other cadres like Nursing.
5. That the respondent allows a grace period for upgrading like it has been done with Nursing and other health professionals.
6. That the recent circular No. 1 of 2023, HRM 80/80/01 Vol 7 on the deferment of implementation of posts like nursing assistant should be equally applied to critical cadres like the claimant.
7. That the Ministry of Health treats the claimant equally in regards to the issue of compensation for the anaesthetic officers who died as a result of Ebola and Covid -19 pandemic.
8. That the respondent be ordered to pay the costs of this complaint.

The 4th petition was brought by a coalition of health professional associations in Uganda, including Allied Health Professionals, Nurses and Midwives, Pharmacists, Cold Chain Professionals, among others. Their main grievances are:


1. The Ministry of Health (MoH), together with the Ministry of Public Service, have approved and implemented health sector structures that systematically exclude or marginalize non-medical officer cadres (from management and operational leadership positions).
2. Recent restructuring and job descriptions for the Ministry of Health, Mulago National Referral Hospital, Uganda Cancer Institute, Regional Referral Hospitals, General Hospitals, and Health Centres (IV, III, II) have ringfenced key administrative and leadership roles for medical officers, to the exclusion of equally or better-qualified professionals from other health disciplines.

3. Allied Health Professionals and other cadres who have acquired Bachelor's degrees, master's, and PhDs are systematically denied career progression opportunities and remunerated at significantly lower scales than MBChB (Bachelor of Medicine and Bachelor of Surgery) holders even when they hold senior or principal positions.
4. A discriminatory classification exists in public service, where medical officers and pharmacists are classified as "(Med 1" and all other cadres as "Med 2", falsely assuming that the latter are only diploma holders.
5. The petitioners argue that the recent health sector restructuring was conducted without consultation of key stakeholders from all health professions. Despite the stated objective of addressing human resource gaps and updating outdated structures, the restructuring excluded new cadres and deliberately omitted existing specialized professionals from critical roles.
6. The current discriminatory practices undermine Uganda's commitments to Universal Health Coverage, the Sustainable Development Goals, and national and international health declarations.
7. The system promotes medicalization at the expense of a multi-professional, prevention-focused approach necessary for modern healthcare challenges, including Non communicable diseases, epidemics, and health emergencies.
8. Uganda's exclusionary policies undermine East African Community inclusion agenda. Other countries like Kenya and South Africa have embraced multi-professionalism in leadership.
9. The petitioners argue that Uganda's policies inhibit local professionals from advancing, forcing many to seek education and specialization abroad, hence disadvantaging Uganda in regional health care delivery.

The 4th petition was signed by Kyaterekera Paul, President Medical Clinical Professionals Council, Atibo Benard, President Buhio Medical Coders Association, Alibu Patrick Dennis, *President Uganda Medical laboratories Technology Association*, Danson Sembatya, *President Uganda Dispensers Association*, Ssevume Abbey, *President Uganda Association for Orthopedic technologists*, Ekwee Maxwell, *President Dental officers and Technologists Association*, Mbaha Emery, *President*

Environmental Health Workers Association, Kakooza Isaac, President, Uganda Association of Physiotherapists and Mpumwire Justus, President Uganda association of occupational Therapists. They pray for the following reliefs from the Equal Opportunities Commission:

1. Recommendation for Comprehensive Review of the approved structures (Ministry of Health, referral hospitals, general hospitals, health centres, Cancer Institute, etc.) to: Include all health professional cadres fairly. Remove cadre-specific restrictions (e.g., ringfencing) from leadership and management positions.
2. Halt Implementation of discriminatory structures and call for an inclusive restructuring process involving all professional councils and other relevant stakeholders.
3. Policy Directive to the Ministry of Health and Ministry of Public Service to: Harmonize schemes of service for all professional cadres, Recognize and include new and upgraded cadres in the public service framework.
4. Equal Opportunities in Recruitment, Promotion, Remuneration, and Scholarships, including: Abolition of the Med 1/Med 2 classification. Fair consideration of all qualified health professionals for leadership roles.
5. Public Acknowledgement that discriminatory practices have hindered the development of a functional and equitable healthcare system.
6. Alignment of Uganda's Health Professional Policies with: WHO standards and definitions of healthcare professionals, East African Community policies on free movement and mutual recognition of qualifications, National Vision 2040, NDP III, UHC goals, and SDGs.



Before I proceed to analyze the substantive merits of the petition, I find it prudent to discuss and re-echo the issue of jurisdiction and mandate. The question is whether the Equal Opportunities Commission has the jurisdiction to hear and determine this complaint?

The Equal Opportunities Commission derives its mandate from the **Constitution of the Republic of Uganda, 1995 (as amended)** and the **Equal Opportunities Commission Act, Cap 7**.

Article 32(1) of the Constitution provides:

“Notwithstanding anything in this Constitution, the State shall take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.”


Article 32(5) empowers Parliament to make laws to give full effect to this article, leading to the enactment of the **Equal Opportunities Commission Act, Cap 7**.

The commission is established under Section 2 (1) of the **Equal Opportunities commission Act**. It states that;

“In accordance with article 32 (3) of the Constitution, there is established a Commission called the Equal Opportunities Commission.”

Under Section 14 (1) of the **Equal Opportunities Commission Act**, the Commission is mandated to:

“Monitor, evaluate and ensure that policies, laws, plans, programmes, activities, practices, traditions, cultures, usages and customs of organs of state, statutory bodies and agencies, public bodies and authorities, private businesses and enterprises, non-governmental organizations, and social and cultural communities are compliant with equal opportunities and affirmative action.”



Section 14 (2) (a) of the Equal Opportunities Commission Act empowers the Commission to receive and investigate complaints where individuals or groups allege discrimination, marginalization, or any action that undermines equal opportunities. This means that any person or group who feels unfairly treated based on gender, disability, ethnicity, or other grounds can file a complaint with the Commission, which has a legal mandate to inquire into such matters.




Section 15 grants the Commission judicial powers, meaning it operates as court. It conducts hearings, summon witnesses, reviews evidence, make findings, and issue binding recommendations or orders. These powers enable the Commission not just to mediate but to adjudicate complaints and enforce compliance, ensuring fairness and accountability in both public and private institutions.

The petitioners allege systemic discrimination, marginalization, and exclusion of non-medical officer from management, leadership, and promotion opportunities within the public health sector. They cite unequal classification (Med 1 and Med 2), skewed restructuring processes, biased job descriptions, and discriminatory career growth trajectories all of which allegedly offend the principles of equity, inclusion, and equal opportunity enshrined in the Constitution and the EOC Act.

It is important to note that these allegations fall squarely within the scope of **Sections 14 and 15** of the **Equal opportunities Commission Act, Cap 7**. The Commission's jurisdiction extends to all organs of state at all levels like the Ministry of Health and Ministry of Public Service, and it is empowered to determine whether the said institutions have implemented structures or policies that result in unfair treatment, indirect discrimination, or systematic exclusion of qualified professionals.

Moreover, the issues raised go to the heart of affirmative action, equal access to opportunities, and redressing of historical and structural imbalances that lie at the very core of the Commission's constitutional and statutory mandate.

 This Commission is further guided by jurisprudence from the competent courts of record of Uganda which in several decisions have affirmed the Commissions competence to hear matters involving marginalization, discrimination injustice, exclusion, unfairness, and inequality in access to resources, services and benefits. See the case of *Adrian Jjuuko Versus Attorney General. Constitutional Petition No. 1 of 2009*.

Having carefully considered the constitutional mandate, statutory provisions, and the nature of the petition before this tribunal, I am confident to state that indeed this Honourable tribunal is tightly clothed with the legal jurisdiction to inquire into and



dispose this petition. All the issues raised in the Petitions are in tandem with the letter and spirit of the *Equal Opportunities Commission Act, Cap 7* and is therefore competent to investigate, hear and determine the complaint filed by the petitioners.

I now turn to the core issues in the consolidated petitions in no particular order. According to the petitioners, The Ministry of Health (MoH), together with the Ministry of Public Service, have approved and implemented health sector structures that systematically exclude or marginalize non-medical officer cadres from management and operational leadership positions. The petitioners' central argument is that they violate their rights under **Article 21** of the **Constitution**.

It is the petitioners' case that people of the same status should be treated equally. They cite **Article 21** of the **1995 Constitution of the Republic of Uganda** which provides for equality and freedom from discrimination. **Article 21 (1)** states that "*All people are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*" **Article 21 (2)** states that "*Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, creed, religion, social or economic standing, political opinion or disability.*"

They submit that their training and qualifications are equal to those of the doctors and hence treating them unequally is discriminatory. They cite examples of their main benchmarks. They give examples of people like Dr. Tedros Adhanom Ghebreyesus the current Director general of the World Health Organization who they contend has a bachelors degree in biology and other qualifications including a PhD and not MBChB. They also mentioned Dr. Catherine Russel, the Executive Director of UNICEF who is not a medical officer but rather a holder of a bachelors in philosophy. Lastly, Winnie Byanyima an Aeronautical Engineer who now is the Executive Director of UNAIDS.

The Tribunal considered the sworn oral testimony of Kyatereka Paul, a Senior Clinical officer who testified that;



“There is no DHO elected outside medical doctors yet this is an administrative position... Government should open up management and administrative positions in cities, district and municipalities to all cadres. Let us have diversity.”

He went on to explain the structural limitations affecting Allied Health Professionals, particularly clinical officers, stating:

“They can only act as DHOs but cannot be made DHOs because they have no medical degrees. Yet in countries like Kenya, Allied professionals can have these positions.”

This unrebutted assertion was made in response to queries by Commission Counsel and was not rebutted. He further confirmed that:

“A degree of clinical officers was approved and registered by the Allied Health Professionals Council but were not added to the structure. The structure only favours medical officers even in management positions.”

In the absence of any rebuttal, the Tribunal finds this testimony credible and consistent with the Petitioners’ allegations of structural exclusion. It is further supported by his statement that:

“Even the World Health Organisation director general is not a medical officer but is managing the entire World Health Organisation. We are being marginalized in Uganda.”

These admissions are material to the complaint and demonstrate a systemic barrier rooted in the health sector’s administrative framework, which appears to exclude non-MBChB professionals from equitable access to leadership positions.

What is Discrimination? Though the Covenant on Civil and Political Rights doesn’t not define discrimination in particular, the **CCPR General comment No. 18 on Non-Discrimination** gives us a clear understanding of what it is. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply “any



distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

Section 2 of the **Equal Opportunities Commission Act, Cap 7** defines discrimination to mean “*any act, omission, policy, law, rule, practice, distinction, condition, situation, exclusion or preference which, directly or indirectly, has the effect of nullifying or impairing equal opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability;*”

Ugandan courts have over the years upheld the right to equality and freedom from discrimination as enshrined in the **Constitution of the Republic of Uganda** as brought out in the cases of *Law Advocacy for women in Uganda v Attorney General* (Constitutional Petition No. 13/05&05/06 [2007] UGCC 1), *Cehurd V Pastor Dr. Martin Sempa* – (EOC/CR/123/2019), *Uganda Law society and 12 ors Versus Attorney General* [2024] UGCC 2) among many others.

Further in the Constitutional Court of South Africa, it was held in the case of Jacques Charl Hoffmann that; “*At the heart of the prohibition of unfair discrimination is the recognition that under our Constitution all human beings, regardless of their position in the society, must be accorded equal dignity. That dignity is impaired when a person is unfairly discriminated against. The determining factor regarding, the unfairness of the discrimination is its impact on the person discriminated against. Relevant considerations in this regard include the position of the victim of the discrimination in society, the purpose sought to be achieved by the discrimination, the extent to which the rights or interests of the victim of the discrimination have been affected, and whether the discrimination has impaired the human dignity of the victim...*”

The right not to be discriminated against is also protected by a number of International and regional instruments which are applicable in our jurisdiction. One of those



instruments is the **International Covenant on Civil and Political Rights (ICCPR)** which states at **article 26** that: "*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.*" In this respect, the law prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Another international Legal Instrument which provides for the same right is **the International Covenant on Economic, Social and Cultural Rights (ICESCR)** which at **article 2(2)** states that: "*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"

The Universal Declaration of Human Rights, 1948 stipulates under **Article 7** that "*All are equal before the law and are entitled without any discrimination of equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.*"


Likewise, **articles 2 and 3 of the African Charter on Human and Peoples' Rights (also known as the Banjul Charter)** states that: "*Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.*" **and that** "*Every individual shall be equal before the law and shall be entitled to equal protection of the law.*"

Courts in Uganda and elsewhere have given meaning to the right to "equality and freedom from discrimination." In the case of **Federation of Women Lawyers of Kenya (FIDA-K) & 5 others v Attorney General & another [2011] eKLR** the court held that "... At this stage, it is important to ask ourselves, 'what is equality and what is freedom from discrimination?' The two terms have been largely defined under **Article 27(1) and (2) (Constitution of the Republic of Kenya)**. We have also tried to state a general perspective of what the two words mean. We are aware that individuals in any



society differ in many respects such as age, ability, education, height, size, colour, wealth, occupation, race and religion. In our view any law made, must of necessity be clear as to the making of the choice and difference as regards its application in terms of persons, time and territory. Since the constitution can create differences, the question is whether these differences are constitutional. If the basis of the difference has a reasonable connection with the object intended to be achieved therefore the law which contains such a provision is constitutional and valid."

On the other hand, if there is no such relationship, the difference is stigmatized as discriminatory and the provision can be rightly said to be repugnant to justice and therefore invalid."



In Indian case of **State of Kerala & another v NM Thomas & others 1976 AIR 490; 1976 SCR (1) 906** the Court explained the concept behind the right to equality and freedom from discrimination as follows: "*Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similar are entitled to equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved... The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as those governing ... set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances.*"


The principle of equality is a cornerstone of modern human rights jurisprudence, encapsulating the idea that all individuals possess equal inherent dignity, enjoy the same fundamental rights, and should be treated with equal concern and respect by the law.

Accordingly, laws, public policies, and administrative practices must be designed and implemented in a manner that is non-discriminatory. Public authorities are under a legal

and moral obligation to refrain from enforcing laws or policies in a manner that is arbitrary, biased, or unjustly differentiated.

This standard is well-articulated in guidance from the **Attorney-General's Department of the Australian Government**, which affirms that *"the right to equality mandates that no person should be disadvantaged on grounds such as race, sex, marital status, pregnancy, disability, age, religion, belief, conscience, health status, colour, ethnic or social origin, culture, dress, language or birth. These protected attributes reflect a consensus in international and comparative constitutional law regarding impermissible grounds for discrimination."*

Importantly, the right to equality does not require identical treatment in all circumstances. On the contrary, treating everyone the same can, in some instances, perpetuate inequality or exacerbate existing disadvantage. Thus, differential treatment may be both necessary and permissible to achieve substantive equality, provided that the criteria for such differentiation are reasonable, objective, and pursue a legitimate aim.




This approach to equality is consistent with the jurisprudence of various national and international courts. In the landmark decision of **Matadeen & Another v Pointu & Others [1998] 3 LRC 542**, the Judicial Committee of the Privy Council held that *"while equality before the law implies like treatment for like cases, differentiation may be justified where there exists a legitimate reason that is rationally connected to the objective sought."* The Court emphasized that equality does not mean absolute uniformity in all cases, but rather an assurance that distinctions are not based on arbitrary or unjustifiable considerations.

Similarly, the South African Constitutional Court in **President of the Republic of South Africa and Another v Hugo (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1 (18 April 1997)** recognized that equality sometimes necessitates affirmative or remedial action to rectify historical and systemic disadvantages. The Court noted that *"the need for such measures flows from the recognition that the achievement of equality is not only about removing barriers but also about improving conditions for those disadvantaged by unfair discrimination."*

Therefore, in both principle and practice, the right to equality and the right to non-discrimination are inseparable. Together, they ensure that individuals are not only shielded from prejudice but are also empowered to thrive under conditions of genuine fairness and justice. Laws, policies and practices must thus be tested not only for neutrality on their face, but also for their impact so that formal equality does not mask substantive inequality.

The question therefore is *whether there is a discernible justification in ringfencing administrative positions mainly to holders of MBChB degree and excluding the members of the petitioners from occupying certain posts*. Failure to locate any justification will mean that the impugned practices are discriminatory. This tribunal believes that any limitation of a right must be backed by a justifiable reason.

First, we must note that job qualification differentiation exists in the Guidelines for the recruitment of health workers in Local Governments, third edition June 2020 signed off by Dr. Pius Okong Chairperson, Health Service Commission (as he then was) as well as the Job Descriptions and Person Specifications for cities and City Divisions, July 2022 prepared by management services department, Ministry of Public Service which specify that particular positions are ringfenced for certain health cadres. Some of the positions include Commissioner, Assistant commissioner and Directors at the Ministry of Health among others.




In the matter before this tribunal, it has not been demonstrated that medical doctors or holders of the MBChB (Bachelor of Medicine and Bachelor of Surgery) degree are endowed with unique administrative competencies or policy formulation abilities which are so exclusive as to justify the exclusive statutory reservation of senior managerial and decision-making roles within Uganda's public health sector. This tribunal believes that there is a stark contrast between these impugned administrative policies and the inclusive notion envisioned under Equal Opportunities Commission Act, Cap 7 and several relevant international instruments and more fundamentally, the **1995 Constitution of Uganda**.



These impugned practices and provisions effectively reserve critical administrative and leadership roles to one class of health professionals, namely medical doctors with the result that the petitioners and other similar professionals have been excluded and rendered irrelevant despite their skills, training and experience. Notably the current structure has failed to incorporate a holistic and multi-disciplinary health care delivery which underpins Uganda's Policy framework.

This exclusion prevents the desired achievement of the highest attainable standard of health envisaged under the Constitution of the Republic of Uganda which among others requires collaborative input across all cadres. By structurally excluding competent professionals such as pharmacists, clinical officers, laboratory scientists, radiographers, and therapists from administrative leadership, the State implicitly undermines the integrated health systems approach and denies the public the full benefit of multi-professional expertise.

It is the tribunals considered view that these exclusions are unjustified and discriminatory under **Article 21 of the Constitution**. No valid evidence or policy rationale has been advanced by the respondent and their witnesses to warrant such discriminatory classification. The contested provisions and circulars create artificial distinctions between professionals who are all regulated, licensed, and qualified under Ugandan law to contribute meaningfully to the health sector. They serve under the same Ministry, in the same hospitals, and toward the same public health objectives.




It is this tribunals finding therefore that the impugned policies violate the constitutional rights to equality, dignity, and freedom from discrimination, particularly the rights of the petitioners and other marginalized cadres. The policies and practices also contravene **Articles 32(1) and 33(6)**, which prohibit discriminatory practices and mandate affirmative action in favor of marginalized groups. What becomes apparent is that the current framework disproportionately favors MBChB (Bachelor of medicine and bachelor of surgery) holders not on the basis of merit, but on historic privilege and institutional bias thereby reinforcing a structurally unequal health system for which affirmative action must promptly be applied.



The Schedule to the Public Service Job Descriptions, in particular, limits the managerial posts in health centres and hospitals to a narrow definition of “Medical Officers,” a designation not defined or interpreted in any written law in a way that excludes other professionals. This exclusion, though framed as technical, carries practical consequences. It bars qualified professionals from upward mobility, representation in decision making, and equitable participation in shaping Uganda’s health sector priorities.

Where a public health policy locks opportunity and leadership to a particular group without lawful justification, it is not only discriminatory but also counterproductive to the national goal of universal health coverage and equitable health service delivery. The failure to integrate the petitioners into management structures violates not only equality under Uganda’s laws but also Uganda’s obligations under international instruments, including the *International Covenant on Economic Social and Cultural Rights*, *Convention on the Elimination on all forms of Discrimination Against Women*, and the *African Charter on Human and Peoples’ Rights*, which guarantee equality and non-discrimination in public service.



In March 2025, the honorable members of the commission handling this petition undertook a benchmarking visit to the Republic of Kenya to study structure, regulation, and career advancement of health professionals in the health sector. During engagement with the Clinical Officers Association of Kenya, the Commission noted that clinical officers, laboratory technologists, and other allied health professionals were integrated into leadership and decision-making structures. These cadres are governed by their own statutes and regulatory bodies and have clear promotional pathways to senior administrative levels, including directors in the Ministry of Health. The Kenyan experience highlighted structural reforms that Uganda must adopt to keep up with the increasing demand for inclusive and equitable human resource policies in the health sector.

Uganda’s health sector remains characterized by a lopsided hierarchy that prioritizes MBChB (Bachelor of Medicine and Bachelor of Surgery) holders in nearly all strategic




and administrative positions. This entrenched privilege has sadly barred otherqualified health professionals including clinical officers, laboratory technologists, radiographers, dental officers, and other cadres from ascending to leadership positions within the Ministry of Health and public hospitals.

This tribunal notes with concern that despite the indispensable contribution of these cadres to primary and secondary health care delivery, their career progression remains stagnated due to the absence of statutory schemes of service and limited recognition by the Health Service Commission.

The Kenyan experience illustrates that professional equality does not undermine medical standards; rather, it enhances coordination, reduces the burden on tertiary facilities, and improves retention of health professionals. Failure or refusal to adopt similar inclusive reforms, despite comparative advantage and growing internal demands, amounts to systemic failure in fulfilling the Constitutional obligations.

This tribunal takes judicial notice of the benchmarking evidence from Kenya and finds it persuasive and worth emulating. The structural arrangements in the Kenyan health sector, including the autonomy, leadership integration, and statutory recognition of clinical officers and allied professionals, present a feasible and constitutionally sound model that Uganda must adopt for its own benefit.



For these reasons, I find that the exclusionary policies and practices that limit leadership and recognition to MBChB holders, to the exclusion of other health professionals, are inconsistent with the provisions of the Constitution, and accordingly, they are discriminatory and must be reviewed promptly to reflect fair inclusion of all health professionals in the administrative and management roles in the health sector.

I now move to discuss the next issue presented by the **Bonded Uganda Health Information Officers and Medical Coders Association (BUMECA)**, a professional association duly recognized under the laws of Uganda, representing Medical Records Officers and Health Information Assistants deployed across various public health facilities in Uganda. They allege systemic discrimination, exclusion, and unfair



treatment of its members by organs of the state, particularly the Ministry of Public Service and Ministry of Health.


The following issue has been identified namely: **Whether the Petitioners have been subjected to unequal treatment and discrimination in violation of the Constitution of Uganda and the Equal Opportunities Commission Act;**

The petitioner's main grievance is about salary disparity, denial of professional recognition, and lack of career progression for Medical Records Professionals despite their critical contributions to Uganda's health system.

The Tribunal considered the oral testimony of **Mr. Atibo Bernard**, a 34-year-old Records Assistant with the Ministry of Health. He gave his evidence under oath and identified himself as a health information professional based in Munyonyo. His testimony was delivered on behalf of the Bonded Uganda Medical Coders and Health Information Officers Association (BUMECA).

When asked to explain the nature and application of the scheme of service, he testified that:

"It's a tool that provides for... It is supposed to apply generally, but the current one does not cater for local government. The new one is supposed to be presented to Public Service by the Ministry of Health, but it's been four years, since 2021."

 He added that although the 2018 Scheme of Service was approved for other cadres, theirs was not, despite being drafted within the same time frame:

"The scheme of service 2018 was drawn and approved, yet ours were not approved within the same year."

He further alleged that despite working in the same health facilities as other professionals, health information officers are paid significantly less. He stated that:

"We are not being paid the salary scale we are supposed to be paid. I work at a hospital with everyone else yet we are paid differently. I am being paid as an



ART. Yet the courses we do have sciences in them: anatomy and physiology, first aid, primary health care, medical terminology. You cannot work in a hospital without knowing these.”

When questioned by Commission Counsel about the entry qualifications, he confirmed that:


“A person must have passed sciences... whether certificate or diploma. So yes, it is clear that we are scientists.”

The Tribunal finds this testimony compelling, especially in light of the respondent’s failure to provide any justification for the reclassification of these cadres as “Arts” rather than “Science”, despite the content and technical nature of their training.

He further testified about administrative exclusion and professional neglect by the Allied Health Professionals Council:

“In July, the Council advertised for registration. Our members applied and paid money, but since 2022 we have not been registered. There has not been an official communication since 2022.”

“We wrote letters seeking clarification but there’s been no communication from them.”

 This lack of response, according to Mr. Atibo Bernard, has impeded their ability to engage directly with the Ministry of Health since all grievances of the petitioners ought to be expressed through the Allied Health Professionals Council.

The witness also confirmed the lack of transparency and arbitrary downgrading of their salary scale:

“We have no idea. We have tried to ask but we have not received any communication.”

He affirmed that:

“I can confirm we are the only cadre who were downgraded.”



“To become a Commissioner in Health Information, you have to be a medical officer, yet we have studied it up to degree level.”


Under cross-examination by Counsel representing the Attorney General, Mr. Atibo Bernard defended the scientific nature of his training and the technical exclusivity of his work:

“Everything in the health system is digitalized. We register patients when they come in, generate monthly and weekly reports, and keep records.”

When it was suggested that his work could be performed by others persons qualified in “Arts”, he firmly responded that:

“No. It is medical records they are different from others. Public service does not keep those records. They keep Human Resource records not medical records. I cannot work in public service. I can only work within hospital settings.”

The Tribunal finds his evidence consistent, well-articulated, and credible. It supports the petitioners’ broader claim of structural discrimination, professional exclusion, and arbitrary classification of certain scientific cadres as non-scientific, with corresponding adverse implications on remuneration, career growth, and professional recognition.

 **Article 40(1)(b) of the Constitution of the Republic of Uganda** protects the economic rights of workers and mandates parliament to enact laws that ensure equal payment for equal work without discrimination. Similarly, **section 6 (7) of the Employment Act, 2Cap 226** states that *“Every employer shall pay male and female equal remuneration for work of equal value.”*

In **Pharmaceutical Society of Kenya v Attorney General & Others [2017] eKLR**, the High Court of Kenya held that: *“State policy and legislation that has the effect of excluding a cadre of qualified professionals from government appointments or remuneration enhancements based solely on their professional titles, without reasonable justification, is discriminatory and unconstitutional.”*




During the proceedings the main issue of contention was whether the position of medical records officer was a science discipline or not. To answer this question, we must first look at the course or program content and the requirements for entry. Notably for this cadre of health workers, this tribunal summoned officials of Kabale university particularly the school of medicine to appear before it to give information and shed light on issues raised in the petition. They responded in a letter dated 13th August 2024 signed by *Nacikir Tibenderana the Academic registrar* where they clarified and confirmed that the course is indeed a science discipline.

Firstly, it is clearly stated in the letter that the requirements for direct entry are that an applicant must have at least one principal pass in a science subject preferably biology, Mathematics or Chemistry and two subsidiaries at advanced level of education and five passes at ordinary level in one sitting or equivalent. For certificate entry, a certificate (science oriented) from a recognized institution of higher learning with a credit in a relevant field or its equivalent.

Secondly, the content of the course includes science related subjects. Some of them include Human Disease and essential medicines, disease classification and medical coding, introduction to medical terminology among others.

Thirdly, we must ask ourselves, can these medical records officer work in any other place or setting besides a medical related setting. If not then they are a science discipline.



The evidence shows that their professional training is science-based, with admission requirements in science subjects, and their work involves clinical data interaction. The profession has been recognized by international classification systems such as ISCO Code 3252 under the WHO-ILO joint framework.

The Tribunal is persuaded by the oral and documentary evidence of the petitioners, Medical Records Officers and Health Information Assistants who form the frontline of data collection, patient records, and health information management, a role central to public health delivery.




Despite these facts, the Tribunal finds that the cadre was excluded from salary enhancement in FY 2022/2023, and further, that earlier salary improvements made in 2018 were reversed without notice or justification. This inconsistency violates the right to equal treatment under **Article 21 of the Constitution**.

The failure to approve the revised Scheme of Service submitted by the professionals, and the stagnation in career progression despite advanced qualifications of some members, clearly show institutional neglect. The Tribunal takes judicial notice that many government health cadres have approved progression frameworks, unlike the Complainant's group.

Evidence was adduced that despite the Allied Health Professionals Council advertising for registration of the professionals and collecting fees, no registration was made. This is deemed to be a failure in administrative accountability and professional regulation.

The petitioners have successfully shown that the actions and omissions of the respondents amount to discrimination, marginalization, and unequal treatment of Medical Records Professionals.

The Petitioners also allege that the actions and omissions of the Ministry of Public Service, especially through its issuance of revised schemes of service and approved staffing structures for hospitals across Uganda, amount to discrimination, marginalization, and unfair treatment of anaesthetic officers holding diplomas.



The facts giving rise to the complaint are undisputed. In 2022, the Ministry of Public Service released a new scheme of service and later operationalized it through structures issued in March 2023, which introduced a new cadre of graduate anaesthetic officers gradually phasing out diploma holders. The revised structures re-designated experienced senior anaesthetic officers to the lower U5 MED salary scale, extinguished established senior titles but failed to provide transitional safeguards.

This complaint presents the legal question of whether the restructured scheme of service and staffing framework as implemented by the Ministry of Public Service constitutes **discriminatory treatment** against diploma-holding anaesthetic officers




contrary to **Articles 21 and 32 of the Constitution** and the principles enshrined in the **Equal Opportunities Commission Act Cap 7**.

The Petitioners contend that the new scheme of service and hospital structures Extinguished senior-level positions previously held by diploma holders, resulted in re-designation to lower salary scales (U5 MED), thereby diminishing accrued employment benefits and created a career ceiling for diploma holders with no transition arrangements or upgrading programs. It also failed to protect long-serving officers despite decades of professional contribution and existing appointments, disregarded comparable transition policies implemented for other cadres such as Nursing and Education, Omitted the anaesthesia cadre from deferred implementation arrangements extended to other critical support workers in **Circular No. 1 of 2023**.

The Petitioners further assert that the Ministry's actions perpetuate structural exclusion, entrench pay disparities, and frustrate career progression of the existing workforce thus causing indirect discrimination and marginalization of the affected health workers.

This Tribunal is guided by the principles of substantive equality and the duty to promote inclusive development under **Articles 21, 32, 40 and 45 of the Constitution** and the **Equal Opportunities Commission Act, Cap 7**



While the introduction of a Bachelor's degree in Anaesthesia represents a legitimate effort to professionalize and improve health outcomes, the implementation must not result in discriminatory erasure of the rights, status, and accrued benefits of existing officers.

This Tribunal finds the downgrading of senior diploma-holding officers to U5 MED scale, from the previous U3 or U4 MED designations, without clear legal authority or any reasonable justification whatsoever, violates the principle of non-retrogression and protection under employment law.

No clear upgrade paths, grace periods, or capacity-building opportunities were provided to enable current officers attain new qualification requirements. This contrasts sharply



with transition arrangements in the Education and Nursing sectors, where cadres were given time, incentives, and opportunities to upgrade.

The omission of anaesthetic officers from Circular **No.1 of 2023** (on deferment of redundant re-designations) reveals a selective and exclusionary approach to reform. There is no justification why a cadre so critical to surgical care especially during emergencies such as COVID-19 and Ebola should be excluded from equitable treatment.

The Ministry's failure to equitably compensate families of anaesthetic officers who died during COVID-19 and Ebola outbreaks as alleged violates the principle of equal recognition for equal sacrifice as is further alleged that anaesthetic officers worked under extreme duress and occupational risk, often without adequate protective support.

The Tribunal finds that the structures released by the Ministry of Public Service on 9th March 2023 for National Referral Hospitals, Regional Referral Hospitals, General Hospitals, and HC IVs are discriminatory in so far as they abolished previously existing positions, re-designate experienced officers to lower salary scales, and exclude the anaesthesia cadre from transitional protections.

The lack of promotional pathways, upgrading opportunities, and equitable benefits constitutes indirect discrimination and the Respondent failed in its constitutional duty to ensure equality, non-discrimination, and inclusivity in public service reforms.

This Tribunal reiterates that no reform, however well-intentioned, should negate the principles of fairness, equity, and dignity of labour. Anaesthetic officers are indispensable to Uganda's healthcare delivery. Their value should be acknowledged not merely in rhetoric but in legal protections, fair remuneration, and equitable treatment like other health workers.

Among the remedies available to this tribunal under **Section 15 (4) (b) of the Equal Opportunities Commission Act, Cap 7** is the power to "*recommend to or order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Commission will promote equal opportunities;*"



Consequently, this tribunal finds it appropriate to issue the following recommendations and declarations.

1. It is declared that; The persistent exclusion of non-MBChB health professionals from administrative and policy leadership positions amount to systemic discrimination and contravenes **Articles 21, 32, and 40** of the Constitution of the Republic of Uganda, as well as **the Equal Opportunities Commission Act, Cap 7**. This practice violates Uganda's obligations under Regional and International human rights Instruments and **must** be reversed immediately.
2. The unjustified delays in the approval and operationalization of Schemes of Service for Allied Health Professionals, Medical Records Officers, and Pharmacist's amount to systemic discrimination and contravenes **Articles 21, 32, and 40** of the Constitution of the Republic of Uganda, as well as **the Equal Opportunities Commission Act, Cap 7**.
3. The disparities in remuneration, recognition, and professional visibility; as well as the structures for National Referral hospitals, regional referral hospitals, General hospitals, health Centre IV released on the 9th day of March 2023 amount to systemic discrimination against anaesthetic officers and contravenes **Articles 21, 32, and 40** of the Constitution of the Republic of Uganda, as well as **the Equal Opportunities Commission Act, Cap 7**.
4. That Medical Records officers constitute a health cadre entitled to recognition and equal treatment as health workers under the laws of Uganda and an order is consequently issued that all qualified Medical Records Professionals be duly registered by the Allied Health Professionals Council within 90 days from the date of this decision.
5. It is recommended that; The Ministry of Health and the Health Service Commission review and revise existing leadership and governance structures within the health sector to ensure equitable representation of all cadres.
6. The Ministry of Public Service, in coordination with the Ministry of Health, is strongly advised to expedite the review, approval, and implementation of the


long pending Schemes of Service for Allied Health Professionals; Pharmacists; Medical Records Officers and similar cadres.

7. The Ministry of Health **should** hence forth implement policies, circulars, or practices that are all embracing and inclusive of all cadres of health workers.
8. Given that this petition was brought in public interest and intended to inspire provoke institutional reforms, parties shall bear their own costs.

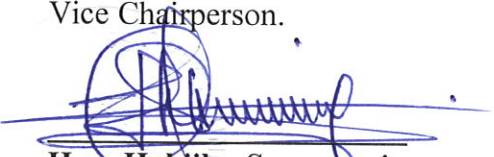
Any party dissatisfied with this decision has a right to appeal within 30 days from the date of this decision as provided in Section **29(1) of the Equal Opportunities Act, Cap 7.**

We So Order declare and recommend.


Given under our hand and seal of the Equal Opportunities Commission this
.....30th.....day of July....., 2025



Hon Joel Cox Ojuko
Vice Chairperson.



Hon. Habiibu Sseruwagi
Commission Member



Hon. Denise Tusiime
Commission Member

THE REPUBLIC OF UGANDA
IN THE EQUAL OPPORTUNITIES COMMISSION TRIBUNAL
AT KAMPALA
EOC/CR/128, 187, 815, 817/2023

5. BUHIO MEDICAL CODERS ASSOCIATION
6. ASSOCIATION OF ANESTHETIC OFFICERS
7. PHARMACUETICAL SOCIETY OF UGANDA
8. UGANDA ALLIED HEALTH PROFFFESIONALS
ASSOCIATION.....COMPLAINANTS

VERSUS

ATTORNEY GENERAL.....RESPONDENT

CONCURRING OPINION OF HON. DENISE TUSIIME, COMMISSION MEMBER

I have carefully read the detailed and well-reasoned decision delivered by Hon. Joel Cox Ojuko, Vice Chairperson of the Commission. I fully associate myself with the findings, declarations, and directions made therein, and I write separately to highlight a few issues that, in my view, deserve emphasis.

This Tribunal is vested with a constitutional and statutory duty to ensure that no segment of society is left behind, especially in areas such as employment, public service delivery, and leadership. The evidence in this matter clearly demonstrates a pattern of institutional exclusion and policy rigidity that has disproportionately affected non-MBChB health professionals.

I was particularly struck by the comparative evidence from Kenya, which shows that inclusive health sector reforms are not only good practice but also enhance efficiency, morale, and health outcomes. Uganda's reluctance to implement similar reforms despite

having competent professionals across multiple disciplines perpetuates inequality and compromises talent.

The testimonies of the petitioners' witnesses were credible, coherent, and well-substantiated by both documentes and live experience. Their voices spoke not just for themselves but for thousands of professionals who remain undervalued and underutilized, simply because of outdated classifications and exclusionary structures.

The Petitioners have, in my view, made out a compelling case of discrimination, both in remuneration and access to career advancement opportunities. I agree that these practices violate the Equal Opportunities Commission Act and the broader constitutional framework on equality, non-discrimination, and affirmative action.

In the result, I fully adopt the decision that has been delivered by the Vice Chairperson and support the orders made therein.



Hon. Denise Tusiime
Commission Member

THE REPUBLIC OF UGANDA
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VERSUS

ATTORNEY GENERAL.....RESPONDENT

CONCURRING OPINION OF HON. HABIIBU SSERUWAGI, COMMISSION MEMBER

I have had the benefit of reading the decision that has just been delivered by the Vice Chairperson of the Commission, Hon. Joel Cox Ojuko, and I entirely agree with the reasoning, findings, and orders therein. I wish to append a few brief remarks to underscore my concurrence and add context to the collective position of this Tribunal.

The issues raised by the Petitioners across the different associations of health professionals are not merely technical employment grievances, but rather manifestations of deep-rooted structural inequality in Uganda's public health sector. These forms of exclusion have far-reaching implications for equal opportunity, professional dignity, and the constitutional imperative of affirmative action.



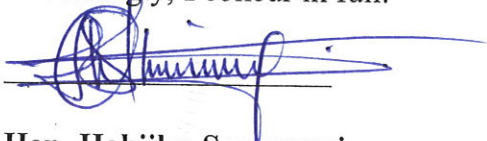
I was particularly moved by the oral testimonies of the Petitioners' witnesses, especially Dr. Lutooti Steven and Mr. Atibo Benard, whose accounts laid bare the systemic disregard for equally trained professionals who are consistently denied access to leadership, recognition, and fair compensation simply because they do not hold MBChB

(bachelor of medicine and bachelor of surgery degrees.) It was evident from the evidence adduced that the problem is not one of competence, but of a policy environment that has institutionalized professional hierarchy without justification.

It is my considered view that affirmative action is not merely about redressing historical imbalances, but about correcting current policy and administrative practices that continue to marginalize critical health cadres, especially in fields like anaesthesia, health information management, pharmacy, and laboratory technology.

I therefore join the Vice Chairperson in declaring that the health sector structures and policies under scrutiny in this matter are discriminatory, unjustifiable, and inconsistent with **Articles 21 and 32 of the Constitution**. I also agree with the remedial orders issued, including the need for urgent revision of schemes of service and leadership structures, as well as the recognition of overlooked cadres such as medical records officers.

Accordingly, I concur in full.



Hon. Habiibu Sseruwagi
Commission Member