



Failure to Deliver

Executive Summary and
Recommendations

Violations of Women's Human Rights
in Kenyan Health Facilities



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Federation of Women Lawyers–Kenya

ISBN: 1-890671-35-5
978-1-890671-35-5

Printed in the United States

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EXECUTIVE SUMMARY

The Kenyan government has taken many positive steps to advance women's reproductive health and rights. However, as this report from the Federation of Women Lawyers–Kenya (FIDA Kenya) and the Center for Reproductive Rights (CRR) demonstrates, much work remains to be done. For decades, women seeking reproductive health services in Kenya have been suffering serious human rights violations, including physical and verbal abuse and detention in health facilities for inability to pay. Shortages of funding, medical staff, and equipment plague the health care system, particularly the public sector, dramatically interfering with the ability of health care staff to provide adequate care. These systemic problems have persisted, in part, because of a dismal lack of accountability within the health care system, which in turn stems from a lack of basic awareness about patients' rights and the absence of transparent and effective oversight mechanisms.

The situation at Pumwani Maternity Hospital (PMH), Kenya's largest public maternity hospital, vividly illustrates the Kenyan government's failure to take responsibility for severe human rights violations in health facilities. PMH's patients are among the poorest and the youngest women in Kenya, making them particularly vulnerable to discrimination and abuse. Women who delivered at PMH described decades of egregious rights violations—including unsafe conditions for delivery and behaviour by medical staff that abused and humiliated women and endangered their lives and the lives of their infants. While the problems that plague PMH are not unique to the hospital, they have been exacerbated by the facility's large number of patients and its struggles with mismanagement and corruption. Despite the fact that PMH's shortcomings have been public knowledge for decades, only piecemeal and inadequate measures have been taken to address them.

The lack of funding for public health facilities contributes to the emergence of a two-tiered health care system in Kenya, which discriminates against poor women and prevents or delays access to much-needed care. The government of Kenya controls slightly over half of all health facilities in the country while the rest—including the majority of maternity homes—are controlled by non-governmental, private, and mission organizations. While government facilities cost less money, they tend to have long lines, suffer from congestion, lack supplies, and treat patients unequally. Women expressed a firm belief that money usually buys better treatment, and when they could afford it, they opted for private facilities. The difference between delivery in public and private facilities was often stark, with women contrasting the rude treatment from staff and dirty, overcrowded quarters at public facilities with the attentive care they received in a private facility.

However, the care at private facilities is not uniformly good. The private sector also suffers from lack of government regulation and private health facilities are not required to establish complaint processes for patients as a condition of registration. Nearly half of all women obtain their contraceptives from private facilities, a fact that has specific implications for women. Health facilities run by faith-based organizations often provide limited services and information depending on the facility's religious affiliation. For instance, Catholic facilities offer counselling only on natural family planning and do not supply condoms. Although Catholic and non-Catholic Christian facilities treat survivors of gender-based violence, these facilities do not provide emergency contraception, as the method is considered too controversial.

At both public and private facilities, the imposition of user fees creates a significant barrier to obtaining quality care. Women reported not seeking certain kinds of services, such as reproductive health check-ups, because they could not afford to, which led to small problems becoming serious when left untreated. In other instances, women were denied services because they could not pay a deposit fee, resulting in unassisted deliveries and other serious consequences. Although the Kenyan government has implemented a fee exemption for certain services and a general waiver system in public facilities for those who cannot afford the user fees, these systems have failed to protect women needing reproductive health care services. The exemption system suffers from inconsistent and ineffective publicity and implementation, so that women and health care providers do not know about the exemption or a facility arbitrarily charges for a service that should be free. Although government policy provides that contraceptives at government facilities and government-supplied contraceptives at private facilities must be free-of-charge, women often still pay some kind of fee.

The process of determining who qualifies for a waiver based on financial need is a lengthy and degrading one that delays care and gives rise to serious human rights violations, largely in the form of detention. Detention of women who cannot pay their medical bills for maternity or other services occurs in both public and private facilities. Private facilities generally use detention to pressure the patient's relatives to pay the bill. Public facilities also use detention for this purpose and to determine whether or not a patient really is poor enough to qualify for a waiver. Thus, women who have only recently given birth are often forced to sleep on the floor or share a bed with others, are underfed, and suffer verbal abuse from staff over their failure to pay. For women whose babies have died, there is a particular psychological cruelty to being detained in a maternity ward, surrounded by other mothers and their infants.

In order for the safe motherhood initiatives being promoted in Kenya to succeed, women must receive quality care that respects their dignity when they seek maternity services at health care facilities. However, the reality of the delivery experiences reported to FIDA Kenya/CRR was starkly different. In some cases, women received little or no care during labour. Women described having to find the delivery ward on their own, and giving birth alone or with the assistance of another patient or an inexperienced trainee.

Assistance, when it did come, was sometimes accompanied by verbal and physical abuse. Women described being beaten and slapped during labour and being called "stupid" or "psycho" or told to "just die." Young mothers are particularly vulnerable to discrimination; one woman who delivered her first child as a teenager recalled nurses telling her, "You young girl, what were you looking for in a man? Now you can't even give birth." In a particularly egregious case of abuse, a woman described being sexually abused and subjected to genital mutilation when she gave birth at a private facility.

Women also reported that following delivery, they endured long, uncomfortable waits on a hard, wooden bench before being stitched; unreasonably painful and poorly performed stitching; refusal to provide sufficient anaesthesia—or any anaesthesia at all; and verbal abuse from medical providers during the process. One woman described being stitched by the medical staff as if "they were stitching a sack," and a doctor confirmed that the stitching process for women is often "like a conveyor belt—people just quickly stitching them."

Women and health care providers who spoke to FIDA Kenya/CRR described bleak conditions in health facilities, primarily public facilities. Health care providers in Kenya

encounter a number of serious challenges to providing quality care. These obstacles include understaffing, lack of institutional support, and inadequate supplies and equipment, which invariably lead to lower-quality services for women and their babies. Hospitals often lack the most basic supplies, such as anaesthesia, gloves, syringes, surgical blades, soap and disinfectant, speculums, and bed linens. Patients are often asked to bring their own supplies; when they have not done so, they must beg medical staff to buy the needed item for them or go without it. A woman who had not known to bring anaesthesia with her for her first delivery described pleading with the medical staff to locate the drug so that she would not have to be stitched without it. An insufficient number of beds and incubators is another recurring problem; PMH, which handles between 25,000 and 28,000 deliveries a year, had only two incubators for the entire facility in 2004 and ten in 2005. Shortages of contraceptives and the supplies necessary to insert certain methods also impede women's consistent access to their preferred method of contraception and expose them to the risks of unplanned pregnancy.

Moreover, staff shortages result in overworked and overstressed staff with low morale. Health care providers observed that poor work conditions demoralize staff and interfere with quality care: "Nurses want to give proper care but they can't." Understaffing can also lead to inexperienced medical students providing care, including performing surgeries, without adequate supervision. Similarly, non-medical staff sometimes performs the work of nurses, such as assisting with delivery or cutting women during labour. Without sufficient staff, patients do not receive the individual care they need. A former matron at PMH described the effects of understaffing: "Mothers go out and say they delivered alone because babies are just falling out by themselves."

Understaffing and lack of supplies and equipment contribute to unhygienic conditions, which can threaten the lives and health of women and their babies. Women described delivering on beds covered with the blood and bodily fluids of the women who had delivered before them and babies being wiped with soiled bed sheets after delivery. These conditions increase the risk of infection, including HIV, for both women and their babies. One woman attributes her contraction of HIV to the fact that she was cut during her first delivery by a pair of unsterilised scissors immediately after they were used to cut another patient.

These negative experiences have lasting psychological and physical repercussions on women and shape their subsequent decisions regarding health care use. Some women try to save enough money so that they need not return to the facility where they were mistreated, while others avoid health care facilities altogether by giving birth at home or no longer seeking contraceptive services. The negligence and abuse documented in this report have more than just public health implications; they also constitute serious violations of human rights that are protected under national, regional, and international law. Fundamental human rights that the government of Kenya is obligated to guarantee include the rights to life and health; the rights to equality and non-discrimination; the right to be free from torture and cruel, inhuman, or degrading treatment; the right to dignity; the right to information; the right to privacy and family; and the right to redress. The violations described in this report demonstrate that Kenya is not honouring its domestic and global commitments to respect, protect, and fulfil these rights.

FIDA Kenya/CRR urge the Kenyan government to back its stated commitment to women's reproductive health and health care reform with the necessary actions. Until the government corrects the problems outlined in this report and restores public confidence in

the health care system, the public's negative views of the system will be one more barrier to improving the care and overall health of the people of Kenya.

One key step is allocating the necessary funding to the health care sector in general, and to reproductive health care in particular, in order to improve conditions and remove maternity fees at public hospitals. The Minister of Health, Honourable Charity Ngilu, recently declared the Ministry's intention to remove maternity fees in public health facilities as of July 1, 2007. Should this plan be implemented, it would increase access to delivery services and eliminate the detention of women and their babies in public facilities for inability to pay delivery costs. However, the success of such a plan hinges on it being supported by necessary funding and the provision of enough health care professionals to provide sufficient care. Adequate funding would go a long way toward fixing the broken exemption and waiver system, and remove the incentive in public health facilities to detain patients in order to recoup costs. The government must also promote and implement laws and policies that protect the rights of health care users. This process should include establishing formalized internal complaint mechanisms in both public and private health facilities, as well as external mechanisms that enforce ethical and professional standards of care.

The report is based on research and interviews conducted by FIDA Kenya/CRR between November 2006 and May 2007. FIDA Kenya/CRR gathered the experiences of over 120 women through a combination of in-depth interviews, focus group discussions, and questionnaires. FIDA Kenya/CRR also interviewed health care providers and administrators, leaders of medical associations, and officials at licensing and regulatory bodies. Additionally, FIDA Kenya/CRR reviewed government guidelines, standards, and manuals on issues pertaining to reproductive health services and media coverage of reproductive health issues for the past ten years. Data from the 1998 and 2003 Kenya Demographic Health Survey and the 2004 Kenya Service Provision Assessment Survey has been used both to offer a national perspective on reproductive health and to corroborate specific rights violations. In order to protect their privacy, the names of the women who provided information for this report have been changed. For the same reason, certain identifying information has been withheld for other interviewees where necessary.

RECOMMENDATIONS

The following recommendations are based upon the findings of this report and input from the women, health care providers, and officials with whom FIDA Kenya/CRR spoke in the course of its research.

To the Government of Kenya

Address problems in the delivery of maternal health care.

- Implement and enforce the Ministry of Health's Maternal Care Standards, which protect women's rights and health.
 - Meet the recommended ratios for staffing in medical facilities.
 - Ensure that the supplies and equipment necessary to maintain hygienic conditions are available and that hygiene standards are strictly enforced.
 - Provide adequate equipment for women in labour and newborn infants, including incubators.
- Develop a protocol for post-delivery stitching and train providers to follow the protocol.
- Enact a law that would govern maternal health care and ensure the protection of women during childbirth.
- Ensure that only qualified health care personnel attend to expectant mothers and that medical trainees are closely supervised.

Develop a comprehensive strategy to address the problems identified by the 2004 Kenya Service Provision Assessment Survey, including equipment and supply shortages.

Distribute government guidelines addressing reproductive health services to all facilities and encourage their use; emphasize the importance of informed consent in these guidelines.

Provide continuous training for reproductive health care providers in both public and private facilities.

Improve contraceptive access.

- Develop comprehensive guidelines on the obligations of all health care facilities, including those run by faith-based organizations, to provide accurate and comprehensive family planning services and information. Develop a clear referral policy for facilities that cannot or choose not to provide certain family planning information or services.
- In light of the Ministry of Health's Guidelines on the Medical Management of Sexual Violence, insist that all health facilities, regardless of their religious affiliation, provide emergency contraception to survivors of sexual violence.
- Assure equal and consistent contraceptive distribution to non-public institutions.

Reduce incidents of unsafe abortion, which is one of the primary causes of maternal mortality for women in Kenya.

- Review and update current reproductive health policies and guidelines, including training for health providers, to guarantee access to safe abortion services within the existing law.
- Ensure that women who develop abortion-related complications are not doubly victimized by both the health care and the criminal justice system.
- Take measures to make certain that medical professionals who may provide or advocate for safe abortion are not harassed or unjustly targeted for criminal prosecutions.

Remove financial barriers that result in the denial of or delays in receiving necessary health care services.

- Publicize which services are cost-exempt and ensure that they are actually free in practice.
- Monitor practices in facilities to ensure that informal and inappropriate fees are not levied.
- Ensure that women in need of delivery services are not turned away because they cannot pay a fee or deposit.
- Implement the Ministry of Health's stated commitment to free maternity services in public facilities by providing the finances and staffing necessary to make it a reality; define explicitly what is included in maternity services.

Fix the waiver system in public health facilities.

- Develop clear guidelines and procedures for implementing the waiver system.
- Publicize the existence of a waiver system and its eligibility criteria. Institute protections so that determining waiver status does not delay access to care.
- Reimburse public facilities for administering and granting waivers.

Explicitly outlaw at all health facilities the practice of detaining patients who cannot pay their medical bills.

Address the longstanding violations of women's rights at Pumwani Maternity Hospital (PMH).

- Release the 2004 PMH Task Force Report, fully implement its recommendations, and allow for its review and the development of further recommendations.
- Remove PMH from the supervision of the Ministry of Local Government and place it under the supervision of the Ministry of Health.
- Appoint an independent ombudsperson to investigate current and past violations.
- Develop mechanisms, such as public hearings, to redress past violations.
- Release information on staffing levels, operating procedures, and the tender process at PMH.

Strengthen structures to protect patients' rights.

- Conduct public-awareness programs to educate patients about their rights.
- Require all public and private health care facilities to establish formalized complaint mechanisms as part of their licensing requirements.
- Issue standards and guidelines for medical facilities on patients' rights and complaint mechanisms; ensure their widespread dissemination and implementation.
- Strengthen the complaint mechanisms of the Medical Board, the Nursing Council, and the Clinical Council. Establish formal guidelines for complaint-screening procedures and take measures to reduce delays in the complaint process. Establish a patients' advocate on each board and ensure that patients have legal representation in the complaint process. Require these bodies to release annual accountings and statistics on the cases that they have heard and their outcomes. Institute an internal appeals system.
- Develop a clear complaint process to be adopted by all health facilities, regardless of type of management.
- Improve the regulation and training of clinical officers; include these personnel in the Medical Board's oversight.
- Conduct mandatory trainings for doctors, nurses, and clinical officers in both public and private facilities in order to continually educate them on medical advances, best practices, and patients' rights.
- Provide information to judges and legal professionals on rights violations in the health care context.

Improve access to information within the health care system.

- Enact a comprehensive Freedom of Information bill that includes whistleblower protections and encourage public employees to report incidences of wrongdoing.
- Release the findings of task force reports documenting conditions in health care facilities, including the 2004 PMH Task Force Report.
- Make public the operating guidelines, standards, and procedures that govern public health facilities.
- Develop a policy to ensure that patients can easily obtain their comprehensive medical records from private and public health facilities.

Strengthen Kenya's human rights framework.

- Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
- Domesticated international treaties and implement them at the national level.
- Create a constitutional framework that recognizes key human rights, such as the right to health. Provide accountability and complaint mechanisms to protect and realize those rights.

To all public and private health care facilities

Protect patients' rights and promote accountability.

- Conduct trainings for all staff members on protecting the rights and dignity of patients; encourage health care staff to report rights violations.
- Post patients' rights and provide complaint boxes. Develop clear processes for lodging and redressing complaints and make this information readily available to patients.
- Ensure that all health care staff members wear badges with their names and positions.

Establish payment policies that are fair and transparent, and that safeguard patients' health.

- Immediately stop the practice of detaining patients who cannot pay their medical bills; release all patients who are currently detained.
- Do not turn away women seeking delivery care because they cannot pay a fee or deposit.
- Ensure that women and their families are not required to bring supplies for delivery or other reproductive health services. Post the fee schedule for services in a prominent location and ensure that patients understand these fees.

Remove financial incentives for unnecessarily cutting women during childbirth for the purpose of forcing them to undergo post-delivery stitching. Stitch women promptly and with adequate anaesthesia.

Implement an effective identification process for newborns to prevent possibilities of, and fears about, baby-stealing and swapping.

To Associations of Health Care Professionals in Kenya

Revise ethical codes to provide sanctions for all violent and discriminatory practices against women and ensure that these provisions are widely publicized.

Emphasise the importance of respecting patients' rights in trainings and other activities for members.

To The World Bank and International Monetary Fund

Examine the human rights consequences of conditions placed on funding and take necessary steps to ensure that these conditions do not result in rights violations, such as detention for inability to pay medical bills; ensure that these conditions do not weaken the health care system in other ways, such as by making it impossible to hire sufficient medical staff.

To the International Donor Community

Organizations financing public and private reproductive health and family planning programs should ensure that such programs are designed to improve health care and promote the exercise of women's rights, and should establish indicators for evaluating these projects, based on the criteria of efficiency, quality, and respect for women's human rights.

To International and African Human Rights Bodies

Use the occasion of Kenya's periodic reports to the treaty-monitoring bodies to issue strong concluding observations and recommendations in order to reinforce Kenya's obligations to protect the rights of women seeking reproductive health care services and to provide redress and remedies for violations of these rights.