ISER
Facilitating Social Justice
INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

WHEN PATIENT BECOMES PRISONER

DETENTION IN HEALTH FACILITIES IN UGANDA

2021

EXECUTIVE SUMMARY

The detention of patients due to failure to pay hospital bills is increasingly prevalent. This report shares the experience of those detained in hospitals in Uganda and best practices from other countries. From a rights based perspective, it analyses the impact of this on patients' right to health, dignity, freedom from degrading treatment. It examines the causes, both long term and short term, finding that the persistent chronic under investment in public health services and to regulate the private sector providing health services risks undermining Uganda's progress on universal health coverage, particularly for vulnerable women.

Recommendations

To Government

- Outlaw the practice of patients detention by health facilities. The law should explicitly prohibit hospital detention for financial reasons and
    - Should provide mechanisms for recourse to the courts or some other national authority to provide for court-ordered release of patients, or the release of the bodies of deceased patients. This mechanism should ideally be government-funded, free-of-charge and easy for patients and their families to use, to ensure access to quick and simple redress and release.
    - Should provide for legal and financial sanctions (such as fines) against defined parties, hospital staff and the owners/operators of a hospital to act as a deterrent to the practice of hospital detention. Fines should be set at a high enough level to effectively deter the practice. The law could include a provision that prohibits health facilities and health workers from refusing to treat patients, on financial grounds, in the case of medical emergency.

- Regulate private actors and ensure that: they do not over charge for services, do not exploit patients, share patient information with them clearly showing the breakdown of the bill.

- Strengthen and equip public health facilities and reform the health system through increasing the health budget as to reduce the heavy out-of pocket expenditure.

- Enforce the no cost sharing policy in public health facilities.

- Provide sufficient protection to all women seeking maternal services from any forms of arbitrary arrests through developing and implementing a legal framework that bans detention of patients.

- Government should pay for patient's bills in locations where there is no comparable public service.

- Fast-track the enactment of the national health insurance bill to provide a cushion to expectant mothers, especially the poor, vulnerable and young from falling further into poverty as a result of huge out of pocket expenditure. The Bill if passed into law will improve a population's access to quality medical services and health outcomes while narrowing health inequities.

- To enable access to information and stakeholder monitoring. questions on hospital detention or denial of care could be added to national household surveys to enable better identification of which population groups are most affected by the practice of hospital detention.

To Private Sector

- Private Sector refrain from detaining patients and recover their money through legal processes.

INTRODUCTION

Health care services during pregnancy, childbirth and after delivery are important for the survival and well-being of both the mother and the infant. The government of Uganda recognizes this as a strategic and priority health care intervention area under the Health Sector Development Plan (HSDP 2015/16-2019/20[1]. The National Development Plan III[2] attributes the significant progress that has been made in maternal and child health to the increase in deliveries in health facilities and, most especially, skilled birth attendance which have played crucial role in the reduction of maternal mortality in the country. The Uganda National Health Policy prioritizes the effective delivery of the Uganda National Minimum Health Care Package (UNMHCP) in order to achieve universal access to a minimum health care package and consists of Maternal and Child health services as a priority healthcare interventions.[3] The UNMHCP has been implemented in the country for more than 17 years. According to the Health Sector Strategic and Investment Plan (HSSIP) 2010/11 – 2014/15, the package is delivered by public and private sectors, as it was developed for all levels of healthcare.

According to the Uganda Demographic Health Survey, about 3 in 4 births (73%) are delivered in a health facility[4] and with skilled birth attendance (74%)[5]. This is a marked increase from 37% in 2000-01 to 42% in 2006 and 57% in 2011[6]. Uganda under NPD III seeks to invest in appropriate guidelines for maternal care, health care package, infrastructure, technologies and human resource capacity for neonatal services at all levels of health care and increase investment in child and maternal health services at all levels of care. Ministry of Health in its Strategy for Improving Health Service Delivery "recommits itself to

1 Health Sector Development Plan, 2015/16-2019/20 https://health.go.ug/sites/default/files/Health%20Sector%20Development%20Plan%202015-16_2019-20.pdf last accessed 31st March,2021
2 Uganda Bureau of Statistics, Statistical Abstract, 2020. Available at http://www.npa.go.ug/wp-content/uploads/2020/08/NDPIII-Finale_Compressed.pdf.
3 Uganda National Health Policy, 2010. Available at http://library.health.go.ug/publications/policy-documents/second-national-health-policy-2010
4 Uganda Demographic Health Survey (UDHS), 2016, See: https://dhsprogram.com/pubs/pdf/SR245/SR245.pdf, last accessed 22 February 2021.
5 Ibid
6 Ibid

achieving Universal Health Coverage aimed at ensuring that every citizen gets services they need, when and where they need them, without suffering impoverishment or financial hardship."[7]

Despite the progress made, women continue to face challenges in access of maternal health services. Women aged 20-34 experienced serious problems in accessing health care due to difficulty in getting money for treatment (42.6%) and the long distances to the facility (36.7%).[8]

The detention of mothers post-delivery in private and Private Not For Profit (PNFP) facilities for non-payment of maternal healthcare bills is increasingly commonplace across Uganda.[9] Reports from ISER community advocates, community volunteers that monitor economic social rights flagged this was happening. The media has also been awash with stories of mothers who have been detained after birth for failure to clear their medical bills, activists in 2019 tabled similar complaints with the Uganda Human Rights Commission. [10]

Although there is no universal definition of this practice, this kind of detention is characterized by treatment and then holding the patient until the entire bill is cleared. This often entails denial of movement, separation of patients in separate rooms, limited access to basic livelihood rights and are deeply psychologically depressing, economic distress which causes victims further into poverty. This detention can last months and depends entirely on the good will of the health facility. Family members may also be detained and asked to work of the patient's debt in exchange for the patient and family member's freedom. Although official statistics are scanty given the illegality of the practice and the government's failure to track this, a significant proportion of hospital detainees are women who have suffered complications in connection with the birth of a child or seeking maternal health services, such as those who delivered by caesarean section. A typical example involves a woman being admitted to hospital,

7 Ministry of Health, Strategy for Improving Health Service Delivery 2016-2021, P.15.
8 Uganda Demographic Health Survey (UDHS), 2016, See: https://dhsprogram.com/pubs/pdf/SR245/SR245.pdf, last accessed 22 February 2021
9 What the press has to say. See: Hospital detains 4 mothers, babies over medical bills, 2019, available at: https://www.monitor.co.ug/uganda/news/national/hospital-detains-4-mothers-babies-over-medical-bills-1853302, last accessed 22 February 2021.
10 Daily Monitor, Human Rights Commission petitioned over detained patients, Monday, October 21, 2019. Also see: Daily Monitor, It is illegal for hospitals to detain patients over bills, November, 2019.

often with a complication of pregnancy that requires an emergency intervention. She is treated with no upfront charges but is then required to pay and clear all medical bills before being allowed to leave. If she doesn't have the money to pay on departure, she is detained, often with her baby, for weeks or months while her family raises the necessary funds.

Although vulnerable and poor women residing in underserved communities often fall victim to this practice due to limited access to alternative public health facilities, women in urban areas have also suffered the violation. Yet, the practice is scarcely investigated and reported.

This research report focuses on the practice of holding mothers hostage at Private Not For Profit (PNFP) and Private For Profit (PFP) health facilities for failure to pay maternal medical bills.

METHODOLOGY

This report was based on field visits to select PNFP and PFP health facilities, key informant interviews from community members, detained patients and family members, health workers and health centre administrators and policy makers. A literature review was conducted on government's policies and research reports. Observation, Keywords used included, 'detention and patients', 'non-payment of medical bills and detention', hospital imprisonment and medical bills', among others.

LEGAL AND POLICY FRAMEWORK ON PATIENT DETENTION IN HOSPITALS

Detention Of Patients Infringes A Number Of Human Rights.

These are enshrined in the following human rights instruments to which Uganda is a party.

The International Covenant on Civil and Political Rights (ICCPR).

Article 9, states that no person shall be detained arbitrarily, every person has the right to liberty and security of person. No person shall be detained for non-payment of a debt.[11] ,Article 11 states "[n]o one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." It also underscores that no person shall be imprisoned under unworthy inhumane conditions like crowded places with scarce food.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR specifies that everyone has a right "to the enjoyment of the highest attainable standard of physical and mental health."[12]. The Committee on Economic, Social and Cultural Rights in General Comment clarified that right to health is has both entitlements and freedoms.[13] "The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."[14] Patient

11 Article 11 of the ICCPR states: "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." This provision prohibits the deprivation of personal liberty for failure to pay a debt either by a creditor or by the state. States have an obligation to enact laws and other measures to prevent the state and private creditors from limiting the personal liberty of their debtors who cannot fulfil their contracts

12 ICESCR Article 12.1

13 CESCR General comment no. 14: the right to the highest aΣ ainable standard of health (art. 12). Adopted at the twenty-second session of the CommiΣ ee on Economic, Social and Cultural Rights, on 11 August 2000 (contained in document E/C.12/2000/4). Geneva: Office of the United NaϴΘ ons High Commissioner for Human Rights; 2000.

14 CESCR General comment no. 14: the right to the highest aΣ ainable standard of health (art. 12). Adopted at the twenty-second session of the Commitee on Economic, Social and Cultural Rights, on 11 August 2000 (contained in document E/C.12/2000/4). Geneva: Office of the United NaϴΘ ons High Commissioner for Human Rights; 2000.

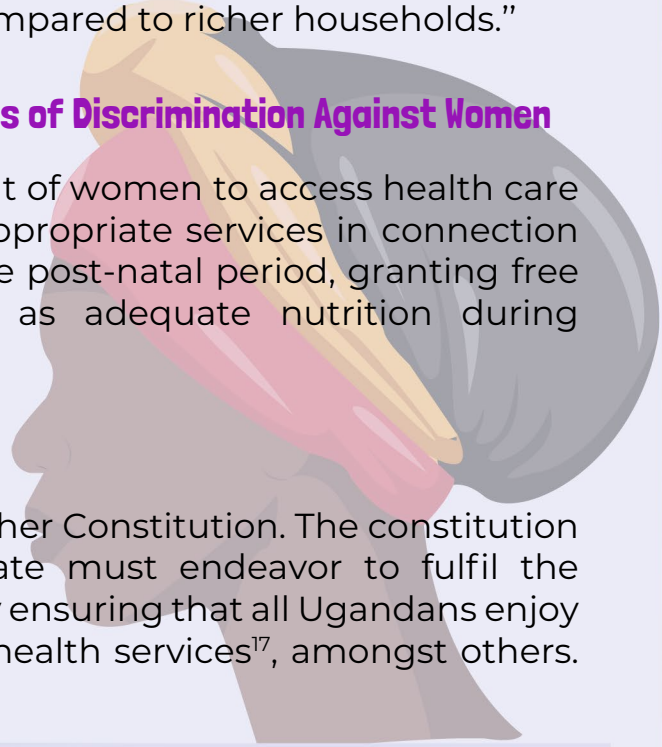
detention affects both entitlements and freedoms by interfering with freedom through restrictions on autonomy and torture and by interfering with entitlements by detrimentally impacting on equal opportunity to access healthcare.

General Comment No.14 of the ICESCR emphasizes the minimum core obligations of a government in terms of health care, which includes, for example, "the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups" and that governments must "ensure equitable distribution of all health facilities, goods, and services." Given that hospital detention as we will see disproportionately affects vulnerable groups, it results in discrimination in access to health facilities, goods and services.

With regard to economic access, the Committee states: "Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households."

Convention on the Elimination of All Forms of Discrimination Against Women

Similarly, the CEDAW defines the right of women to access health care without discrimination and to get "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.[16]



Domestic Law and Policy

Uganda domesticated these rights in her Constitution. The constitution of the Republic of Uganda, the State must endeavor to fulfil the fundamental rights of all Ugandans by ensuring that all Ugandans enjoy rights and opportunities and access health services[17], amongst others.

15 UN Committee on Economic, Social and Cultural Rights, General Comment No.14.
16 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 12
17 Constitution of Uganda, National Objectives and State Principles, Objective XIV. General Social and Economic Objectives

Under Objective XV the state is enjoined to recognize the significant role that women play in society. Additionally, the state must take all practical measures to ensure the provision of basic medical services to the population.[18]

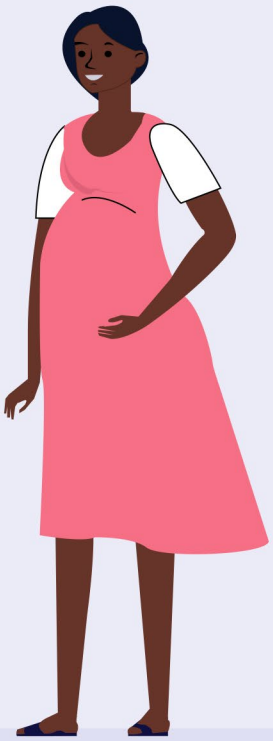
Under the Bill of Rights, women must be accorded full and equal dignity of the person with men and it is the obligation of the state to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.[19]

Uganda's Constitution in Article 23 circumscribes instances of detention requiring that no person shall be deprived of personal liberty except as provided for under the Constitution and a person if restricted or detained must be kept in an authorized / gazetted place of detention.[20]

There have been a number of government policy interventions in Uganda aimed at specifically improving access and quality of maternal services. The National Health Policy (2010) has set maternal and reproductive health care as one of the priority areas.

Patient Detention Contravenes Principles on Universal Health Coverage.

The World Health Organization has affirmed that patient detention is not only a human rights violation but contravenes principles onuniversal health coverage.[21] Contrary to the ethos of patient centred quality care, and instead exposes patients to financial hardship, particularly the most vulnerable population groups. It can deter people from seeking healthcare if they lack sufficient fees to pay for treatment. It results in detaineesliving in degrading conditions.[22]



18 Ibid, Objective XX. Medical Services.
19 Article 33 (1&2) Constitution of Uganda.
20 Article 23, Constitution of the Republic of Uganda.
21 Ending hospital detenΘ on for non-payment of bills: legal and health financing policy opΘ ons/ David Clarke, Aurelie Klein, Inke Mathauer, Aurelie Paviza
22 World Health Organisation (2020) Ending hospital detention for non-payment of bills: legal and health financing policy Options/ David Clarke, Aurelie Klein, Inke Mathauer, Aurelie Paviza at p.3

PROVISION OF MATERNAL HEALTH SERVICES IN UGANDA

Uganda's health system is decentralized and allows for districts to able to direct resources to address local priorities. District local governments are responsible for managing the district health system and all healthcare providers including Private Not for Profit (PNFP) and Private for Profit (Private for Profit) et al under their jurisdiction. These are divided further into health sub-districts, administered at the Health Centre (HC) - IV level. HC IIs are the first point of call between communities and the formal health system. Maternal health services are provided by HC III and above. HC IIIs serve 20,000 people, they provide basic preventative, inpatient laboratory and some curative services. HC IVs should serve up to 100,000 people and should be able to provide specialized services like emergency surgery, blood transfusions etc and all the services provided by lower HCs. District Hospitals serve as referrals for HCIV at district level providing provide specialty level services like intensive care, high level surgery alongside HC IV. Regional referral hospitals and national referral hospitals are semi-autonomous institutions that also provide specialty level services like intensive care, high level surgery alongside other health services. All user fees at first level government health facilities in Uganda were removed in March 2001 although some designated public hospitals also have separate private paying wings.

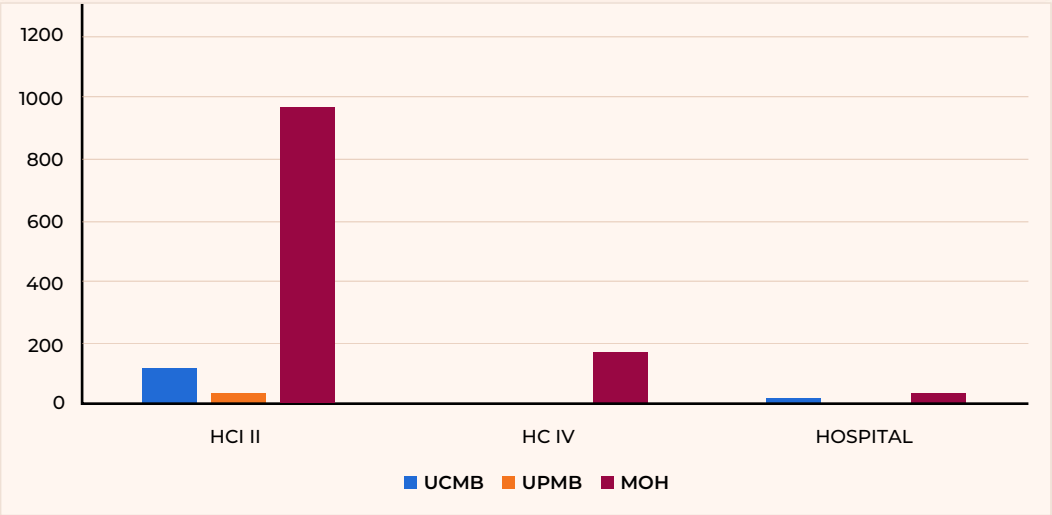
Alongside government efforts to provide health services, the private sector provides health care charging user fees on a fee for service basis. The private includes private for profit (PFP), Private Not For Profit (PNFP) and Traditional and Complementary Medical Practitioners.

PNFP facilities are predominantly faith based, administered by the religious bureaus at national level in partnership with local diocesan boards. Four umbrella organizations: the Uganda Catholic Medical Bureau (UCMB), the Uganda Protestant Medical Bureau (UPMB), the Uganda Orthodox Medical Bureau (UOMB) and the Uganda Muslim Medical Bureau (UMMB) are responsible for the majority of facility-based PNFP organizations.

According to the Ministry of Health Website, Uganda currently has 6937 hospitals, with 1002 (14.44%) of these are Private Not for Profit (PNFP)

and 2795(40.29%) Private for Profit (PFP).[23] The National Health Policy II reflects the government's intention to fully utilize PPPs in advancing the right to health. This includes ensuring the participation of PPPs in services delivery, amongst others.

OWNERSHIP OF HEALTH FACILITIES IN UGANDA BY MOH, UCMB, UPMB.



Adopted from MoH, National Health Facility Master List, 2018.

TABLE 1: STATISTICS OF DELIVERIES AND C–SECTIONS UNDERTAKEN BY SELECTED PNFP FACILITIES IN THE YEAR 2019/2020.

Name of facility	Number of deliveries	Number of C–Sections	C–Sections rate
Buikwe St Charles Lwanga	789	383	49%
St Francis Nsambya	3741	1950	51%
Kumi Hospital (NGO)	692	361	52%
St Francis Naggalama	1532	640	42%

Source: Ministry of Health Annual Performance Report, 2019/20

23 Ministry of Health, National Health Facility Master List 2018.

Accredited PNFP health facilities organized through their bureaus receive a subsidy from government in a PPP arrangement with the objective to increase equitable access to healthcare, particularly for vulnerable groups.[24] Annually the Local Governments in line with their mandate under The LG Act (schedule 2)[25] make a budget provision for Primary Health Care (PHC) Non-Wage Recurrent (NWR) Grant to fund the operational/ running costs and maintenance costs of health facilities and facilitate measures to improve health according to the policies in place at el.[26] A resource allocation formula based on standard unit of output expected to be delivered by the health facility or institution is used to apportion funds to non-wage recurrent, wages and development expenditures. These grants are transferred directly to health facilities from the Ministry of Finance Planning and Economic Development (MOFPED) following the guidelines of the Ministry of Health.[27] PNFP health facilities that meet the eligibility criteria and have been approved by the Ministry of Health and have a signed Memorandum of Understanding (MoU) with the Local Governments are allocated PHC funds. In addition to the PHC appropriated under the Local Government Grant, in FY 20/21, additional funding equal to the Local Government grant is appropriated under the Ministry of Health and constitutes credit line facility at Joint Medical Stores for use by these facilities.[28]

PFP providers provide services on a fee for service basis. PNFP and Private Health Providers (PFP) charge user fees. Public health facilities are not supposed to charge user fees. However, some public hospitals have private wings that charge user fees.

The Ministry of Health retains oversight over the entire health system including policy formulation, regulation, strategic planning, resource

24 National Policy On Public Private Partnerhsips In Health at section 6.2, p.41
25 According Local Government Act, Schedule II Local governments are responsible, for providing Medical and health services, including—maternal and child services subject to article 176(2) of the Constitution and sections 96 and 97 of the Act.
26 According to the Ministry of Health, the following can be funded: employee costs (other than wage), administrative costs, food supply, medical equipment, office equipment, printing and stationer, operation and maintenance utilities, fuel, oil and lubrication et al.
27 Ministry of Health, Primary Health Care Non-Wage Recurrent Grant and Budget Guidelines to Health Centre II, III and IV, and General Hospitals, Sector Grant and Budget Guidelines to Health Facilities for FY 2020/21. Available at https://budget.go.ug/sites/default/files/Guidelines%202020-21%20%281%29.pdf
28 Supra

management and budgeting, setting standards and quality assurance, capacity development and technical support, monitoring and evaluation of the overall sector performance.[29] As reiterated in the National Health Policy II, "The Ministry of Health and other central level departments/agencies have the mandate to supervise the health sector."[30]

PATIENT DENTION IN UGANDA: KEY FINDINGS

Given the little attention drawn to this issue, coupled with low reporting in both traditional and social media platforms, it is difficult to place a specific number to quantify its severity.

In December 2020, at the time of investigations, St Francis Mission hospital, Buikwe had detained 5 new mothers at its facility due to failure to pay maternal medical bills. By the time of this research visit C.M - aged 32 years, one of the 5 detainees, had been held hostage at St Francis Mission Hospital, Buikwe for 3 months post-delivery of her child.

S.N from Buikwe district

"I have 3 children; the eldest aged 6 and the other two 4 and 2 years respectively. I was admitted to St. Francis Hospital Nkokonjeru for delivery on the 27th October 2020 but I unfortunately lost the baby. At this point, I was requested to pay shs 306,500 but I didn't have the money. I was therefore told to stay at the hospital until I cleared the money. However, during that period, I developed some complications and I had to be operated upon. This operation cost another shs 633,000; making the total sum shs 939,500. To date, I have so far paid shs 250,000 and my outstanding is shs 689,500."

The practice of hospital detention affects a person's right to health and impedes their ability to work.

non-payment of user fees prevents people when well enough from returning to work, and can in turn push families into poverty or deepen their pre-existing poverty.

29 Ministry of Health, National Health Policy II 2010..
30 Ministry of Health, National Health Policy II 2010 at p.6

I have no way of raising this money since I'm detained and I'm not allowed to leave the hospital premises. We have no money for food and the hospital doesn't provide us with anything. I ask for your help so that we can be released because my young ones are left at home with their weak grandmother and I don't know how they are holding up. **S.N**

I am imprisoned here. I am not allowed to go past the entrance gate. If I need anything from outside, I must send the security agent. Worse still, since I do not speak the local language (Luganda), I must wait for a security agent that speaks Lugbala. Yet, he works in shifts". **C.M**

Some patients seeking help find that the nearest facility lacks the staff or equipment needed for appropriate care, and must move on to another hospital. In Nkonkojeru town council, many women like S.K and H.L, hoping to give birth have no alternative but to go to St. Francis Hospital Nkokonjeru as the available public facility, does not offer child delivery services.
S.K a 15–year–old girl who was admitted to St. Francis Hospital Nkokonjeru and delivered by C–section on the *15th October 2020*. She was charged shs 590,000 that she was, however, unable to pay.

H.L – aged 31 was formerly detained at St. Francis hospital Nkokonjeru–Buikwe.
"I have been a victim– twice for both my pregnancies– C–section. First was in 2016– detained for 11 days with an outstanding balance of 273,300Ugx. Also in 2017 for the second pregnancy and I was detained for 45 days for non–payment of 370,000Ugx. I have no alternative but to use the facilities at St. Francis Hospital.

I am unemployed and a senior four school drop–out. Currently, I have three children and expecting baby four in June 2021. My husband was until recently unemployed and was a casual labourer. While in detention, neither food nor any essential livelihood necessaries were provided by the facility. I had to wait for my husband to pass–by. Sometimes he could not come as he had to take care of the children at home or work odd jobs.

What I can recall is the hospital staff, especially the nurses were rude and hesitant to provide additional healthcare to either me or the baby. At one point, the nurse shouted at me *"Lwaki tosasula nottuvila"* loosely translated as, "why don't clear your bill and free up space"
I was only allowed to leave the hospital after my husband secured a loan and paid the outstanding bill. It took

She was henceforth detained and her bill was offset in instalments by her mother and the father of her baby. By the time ISER intervened, on the 10th December 2020, she had an outstanding bill of shs 150, 000; full payment of which was a condition for her release.

Hospitals clearly regard detention as a strong motivator for patients to rally wider family networks to assist with payment, and assume that the

families of detained patients will pool their resources to help with this[31]. Families usually call upon community intervention be motivated less by a desire to highlight the abusive or degrading behaviour endured by the victims than by the hope that publicity may persuade a philanthropist, politician or NGO to come to their aid in meeting their payment obligations.

It results in psychological torture due to triggering fear, separation from family members, conditions of detention.

E.B (next of kin– and mother to A.E recounts her daughter's ordeal at Kumi Mission Hospital in Ongino sub county, Kumi district.

"My daughter A.E, aged 22 from Atutur sub-county, Kumi District has recently been detained.

At seven months, A.E experienced pregnancy complications. We went to Atutur hospital, the nearest public facility for healthcare. But there was no doctor at the facility nor any medical officer at that time. As a result, we were referred from Atutur hospital to Kumi Missionary Hospital located about 7km from Atutur sub-county. This was despite informing the nurse at Atutur Hospital that I could not afford the fees at Kumi Missionary Hospital, and that my daughter did not receive any financial support from the boyfriend.

The nurse indicated that if I delayed referral to Kumi Missionary Hospital, I was likely to lose both my daughter and her pregnancy. We therefore had no other option but to accept the referral.

While at Kumi Missionary Hospital, the attending nurse asked us to pay 30,000 Ugx for the ultrasound scan to enable the doctor establish the status of the pregnancy and the cause of the complication. The CT- scan revealed that it was a multiple pregnancy. The babies were in a critical condition and A.E's uterus could no longer support the foetus. A caesarean section was recommended as the best option.

30 Key Informant Interview, District Health Officer, Mukono

At this point, I was asked to pay 240,000Ugx before the procedure could commence. I pleaded to the nurse that I did not have the money. She said, "if you do not have, your daughter will not proceed to the operation theatre"

Being out of money, I reached out to my village saving circle for bail out. As the services increased, so did the money charged. Now there was a new twist to the challenge, the babies were successfully out. However, they had to be admitted to a neonatal special care unit, popularly known as 'nursery'.
During this time, A.E became anaemic. She needed a blood transfusion. Sadly, as she journeyed through recovery, her caesarean scar ruptured. This called for correction of the scar, which came at an extra cost. By then, the bill had accumulated to 1, 450, 000Ugx. All I can say is that, "A.E's medical care at Ongino Hospital left me high and dry". Again, the hospital administrator assured me that, ***"without clearing the total bill, you will not leave the hospital".*** It is at this point that we are instructed to leave the post maternity ward and relocate to the 'village'. For your information, the village is a detention area where indebted patients stay until they complete their respective bills. Since the amount I had was less than 250,000Ugx, the hospital set us free but A.E's original national identity card was retained.

Presently, I live with lots of fear and receive threats of imprisonment due to unpaid loans from my village saving circle. I have had to flee my village and I presently reside with my mother (A.E's grandmother)".

- **Hospital detentions expose the patients to the risk of further illness especially in the context of Covid 19.** Patients detained during Covid 19, often in overcrowded facilities with an increased risk of infection are likely to contract Covid 19 or aid in the further spread of the disease, contravening guidelines on decongesting to enable social distancing.

- **It promotes discrimination and is contrary to equity in access to healthcare. It disproportionately affects** the poorest and most vulnerable women and their children, both groups that deserve special protection.

- **Psychological impact.** It is described by its victims as traumatizing.

Deepening poverty. The poor bear the brunt of the health inequity. Often going to that facility either because it is the only one available or as a last resort, if it is the only one equipped to handle the medical care required, their subsequent failure to pay further pushes them into poverty. The financial impact of hospital detention on the detainee and their family is huge. Bills continue to accumulate during the detainee's stay especially if they are or becom unwell. The detainee and their family often have to find money for food. All resources of the family are devoted to clearing the bill including further borrowing, selling of household possessions, pushing households further into long term poverty.

Fear of detention may forestall the seeking of medical care, particularly if the woman experienced it during her prior pregnancy. This results in more home deliveries and resorting to traditional birth attendants, undermining the country's progress in ensuring safe deliveries in health facilities and will likely increase maternal mortality and morbidity.

CAUSES OF HOSPITAL DETENTION

Hospital detention for non-payment is a direct result of underfinancing of the public health sector resulting in the catastrophic out of pocket expenditure[32] on health that burdens households particularly, low income households.

Limited access to health insurance at 2 percent, limited access to prenatal, antenatal and post-natal care and education; no functionality of some health facilities and poor maternal nutrition still plague Uganda.[33] Whereas the staffing norms have been improving, gaps still

32 These include user fees, over the counter drugs, and related hospital fees.
33 Supra note 4

exist among the critical staff e.g. doctors, anesthetists, pharmacist, public health nurses. Health worker population ratio was noted to have improved from 1.85/1,000 (2017) to 1.87/1,000 persons (June 2018) though still below the WHO recommended threshold of 2.5 per 1,000 persons (AHSPR, 2018/19).[34] Patients resort to PNFP and PFP facilities because the community has no close public health facility that is able to provide maternal health services. The lack of a public hospital in the local area leaves many expectant women to seek maternal healthcare at PNFP facilities near them, irrespective of their ability to pay medical bills. In Buikwe District, 4 out of 8 sub counties lack public health center III and/ or IV that are mandated to deliver maternal health care services. This has left these communities have no alternative but to seek maternal health services from PNFP or PFP facilities that are nearest to them. Buikwe North, Nyenge Division, solely depends on St. Francis Nyenga Hospital affiliated to the Uganda Catholic Medical Bureau (UCMB) as the only other facility, Tongolo health center II is not able to provide the requisite services. All three facilities in Ngogwe sub county are at the level of Health Centre II. Women in Nkokonjeru town council faces the same challenge as their counterparts in Nyenge division. They must resort to Nkokonjeru Hospital (PNFP) as the other two facilities; Nkokonjeru HC II and Kavule (Buikwe) Health Centre II can't provide maternal health services.[35]

One of the administrators of a PNFP PPP noted the failure to provide quality public services results in women seeking care when they can't afford. "Usually we charge 35000Ugx for normal delivery. Upon the first antenatal visit, a woman is requested to pay 9500Ugx to cover costs for preliminary tests and patient record book. Sadly, majority women are unable to pay due to lack of money." When asked why patients are not referred to Bugembe HCIV, Sr. Mpatta responded, "it is of recent that the HCIV started conducting caesarean sections, also the women do not like the services provided and prefer coming to St. Benedict. Jinja hospital ...struggles with staffing challenges and nurses experience burn-outs. One consequence of this, expectant mothers are not attended to in a timely manner and this includes women in need of emergency obstetric care." They note that even when they refer women to a public hospital like Jinja, the patient must pay for both ambulance and driver which the patient already can't afford.

34 Ibid
35 Ministry of Health, National Health Facility Master List, 2018

This is directly linked to the financing of the public health sector. The average expenditure on the health sector in the last nine years stood at 7.9 percent, much lower than the Abuja Declaration of 15 percent[36]. Yet the World Health Organization has found that "Countries that have made significant progress towards UHC rely predominantly on compulsory resources, i.e. taxes. Higher government spending on health is generally associated with lower out-of-pocket expenditures." It has accordingly recommended that to address patient detention, "it is necessary to improve revenue raising policy with the aim of increasing prepaid funding in an equitable and sustainable way."[37]

The Government's failure to regulate Private Actors in Health has enabled practice to become prevalent.

The existing policy documents while setting out private sector role in health services do not sufficiently regulate it. The Public Private Partnerships Act does not provide substantial guidance to PPPs in health service delivery. A more sector specific policy, the National Policy on Public Private Partnerships in Health Policy while governing the government's relationship with private facilities focuses more on how they can complement government rather than regulating. Under section on regulation, it notes the need for annual publishing of licensed providers and do not set out obligations the facilities have with regards to the rights of health consumers. Accordingly, structures put in place are to handle disputes between health facility and patient; instances that require remedying of human rights violations of consumers are not represented. However, the Patient Rights and Responsibilities Charter (2019) now makes it illegal to for health facilities to detain patients or hold dead bodies at health facilities over fees disputes.[38]

This inadequate legal policy framework is compounded by the limited access to health complaints mechanisms, the courts or other means of challenging the legality of their detention (for example, through complaint to an independent officer such as an ombudsperson that are easily accessible to someone that been detained for failure to pay bills.

36 https://www.ubos.org/wp-content/uploads/publications/11_2020STATISTICAL_ABSTRACT_2020.pdf

37 World Health Organisation (2020) Ending hospital detention for non-payment of bills: legal and health financing policy Options/ David Clarke, Aurelie Klein, Inke Mathauer, Aurelie Paviza at p.3

38 Article 18.

Furthermore, the Ministry of Health is yet to take action against those health facilities detaining patients despite being petitioned by civil society.[39]

The lack of regulation and swift action taken against hospital detention is particularly concerning for PNFP hospitals and other health facilities with which government has a direct public private partnership and contributes state resources with the objective to ensure equitable access to healthcare for vulnerable groups. PNFPs that meet the eligibility criteria and have been approved by the Ministry of Health and have a signed Memorandum of Understanding (MoU) with the Local Governments and are allocated Primary Health Care (PHC) funds under a PPP arrangement. In addition to the PHC appropriated under the Local Government Grant, in FY 20/21, additional funding equal to the Local Government grant is appropriated under the Ministry of Health and constitutes credit line facility at Joint Medical Stores that supply them with drugs.[40]

BEST PRACTICES: LESSONS FROM OTHER COUNTRIES

Burundi

Following a 2006 report by Human Right Watch[41], the President realized that hospitals had turned into debtor prisons and released all mothers and babies from detention. This decision was informed by the decision to reform the health financing system. Following this, he issued a directive that speaks to provision of free maternity care for all. The action had a ripple effect on the fall of maternal mortality and morbidity in Burundi over a period of five years from the time of implementation of the presidential directive.

39 Petition by Enforcement of Patients and Health Workers Rights, July 2020.
40 Supra
41 Human Rights Watch: A high Price to pay, Detention of Patients in Burundian Hospitals, September 7, 2006 Available hrw.org/2006/09/07high-price-pay/detention-poor-patients-burundian-hospitals

Kenya

Early into 2021, the Kenya High Court passed a landmark ruling in a constitutional petition no 327/2018- Muthoni Njeri Vs. Nairobi Women's Hospital.[42] The petitioner submitted that she was detained by the respondent against her will and without any reasonable justification. Court pronounced that detention of patients for non payment of hospital bills is illegal and unlawful. The High Court issued a declaration that the hospital infringed on constitutional rights and fundamental freedoms under Articles 28, 29 and 39 of the Constitution; by unlawfully detaining the Petitioner for failing to pay her medical bill. the plaintiff was unable to pay the sum of Kshs. 1,351,510 and her proposals on how to pay the balance were rejected by the Respondent. Court ruled that, although the petitioner was in breach of her contractual obligations, the respondent hospital had other avenues open to it to recover the debt rather than detaining the petitioner. Similarly in ***Emma Muthoni Njeri Vs. Nairobi Women's Hospital*** Instead, she was unlawfully and illegally detained at the Hospital premises as the Respondent continued to levy unreasonable and unjustified charges. Similarly findings were held in Gideon Kilundo & Daniel Kilundo Mwenga v. Nairobi Women's Hospital. Petition no. 242 of 2018; Christine Kidha v Nairobi Women's Hospital (2016)eKLR; MAO & another vs Attorney General & 4 Others [2015] eKLR and Tryphosa Jebet Kosgey v Eldogn View Hospital [2016]eKLR.

Hon. Jared Okello, moved a motion before Parliament to amend the Health Laws Bills (section 86, 112) and insert a provision that outlaws detention of patients. The legislator cited Article 43 of the kenyan Constitution, which guarantees everyone the highest attainable standard of health, pointing out that, detention of patients violates this fundamental right. broadly, the proposed amendment reads;
"No health institution in this country shall detain or otherwise cause, directly or indirectly, the detention of the body of the patient who died after or during treatment for reasons of non-payment, in part or in full, of hospital bills or other medical expenses."[43] It also will include punitive sanctions for non-compliance.

42 [2021] eKLR, Petition No.325/ 2018 available at: http://kenyalaw.org/caselaw/cases/view/208766/

43 Motion seeks to illegalise patient detention over bills, 23 November,2018. Accessible https://www.the-star.co.ke/news/2018-11-23-motion-seeks-to-illegalise-patient-detention-over-bills/

India 

The High Court of Delhi in Devensh Singh Chauhan Vs. State & Others[44], stated that hospitals cannot refuse treatment on the ground that the patient is not in a position to pay for the fee or meet medical expenses. The court vehemently lamented that holding patients hostage for unpaid fees is not only illegal but squarely inhumane and torturous inhumane for the person detained as well as for their relatives. To this end, the Court said that, "merely because the hospital provides outstanding medical services, cannot be a reason to withhold the release of the patient... only for the purpose of extracting the amounts claimed by the hospital towards treatment of the patient.

Philippines 

In 2007, it passed an act prohibiting the detention of patients in hospitals and medical clinics on grounds of nonpayment of hospital bills or medical expenses, deeming it illegal It also introduced punitive sanctions like fines and imprisonment for non compliance.[45]

Zimbabwe 

It has issued an official directive prohibiting detention of patients in health facilities for non-payment of bills.

Turkey 

Turkey passed a ministerial decree to successfully outlaw hospital detention, ruling uncompensated bills could be included in hospital budget requests for the following year. It concurrently had broader health system reform consolidating existing health protection systems, increased financing to the health sector and strengthening health service purchasing modalities.

44 Devensh Singh Chauhan Vs. State. S. W.P (Crl)1214 (2017) and Crl. M.A 6828-8629/2017, available at: https://www.casemine.com/judgement/in/5a65cbba4a9326332077b3c0, last accessed 31 March 2021.

45 Republic Act no. 9439. Manila: Republic of the Philippines; 2007 https://www.senate.gov.ph/republic_acts/ra%209439.pdf, accessed 16 March 2020.

CONCLUSION AND RECOMMENDATIONS

The practice of patient detention for failure to pay hospital bills is increasingly prevalent and violating human rights and causing psychological damage to patients. It undermines the country's progress towards universal health coverage. This report makes the following recommendations:

To Government

- Outlaw the practice of patients detention by health facilities. The law should explicitly prohibit hospital detention for financial reasons and
  - Should provide mechanisms for recourse to the courts or some other national authority to provide for court-ordered release of patients, or the release of the bodies of deceased patients. This mechanism should ideally be government-funded, free-of-charge and easy for patients and their families to use, to ensure access to quick and simple redress and release.
  - Should provide for legal and financial sanctions (such as fines) against defined parties, hospital staff and the owners/operators of a hospital to act as a deterrent to the practice of hospital detention. Fines should be set at a high enough level to effectively deter the practice. The law could include a provision that prohibits health facilities and health workers from refusing to treat patients, on financial grounds, in the case of medical emergency.

- Strengthen and equip public health facilities and reform the health system through increasing the health budget as to reduce the heavy out-of pocket expenditure.

- Enforce the no cost sharing policy in public health facilities.

- Provide sufficient protection to all women seeking maternal services from any forms of arbitrary arrests through developing and implementing a legal framework that bans detention of patients.

- Fast-track the enactment of the national health insurance bill to provide a cushion to expectant mothers, especially the poor, vulnerable and young from falling further into poverty as a result of

- To enable acccess to information and stakeholder monitoring. questions on hospital detention or denial of care could be added to national household surveys to enable better identification of which population groups are most affected by the practice of hospital detention.

- Regulate private actors and ensure that: they do not over charge for services, do not exploit patients, share patient information with them clearly showing the breakdown of the bill.

- Government should pay for patient's bills in locations where there is no comparable public service.

To Private Sector

- Private Sector refrain from detaining patients and recover their money through legal processes.

References

1. Kippenberg, J et al: Detention of Insolvent Patients in Burundian Hospitals, University Press and London School of Hygiene and Tropical Medicine, Health Policy and Planning, 2008, 23: 14-23. doi: 10.1093/heapol/cmz044
2. Handayani, K et al: Global problem of Hospital Detention Practices
3. Devensh Singh Chauhan Vs. State. S. W.P (Crl)1214 (2017) and Crl. M.A 6828-8629/2017, available at: https://www.casemine.com/judgement/in/5a65cbba4a9326332077b3c0, last accessed 31 March 2021
4. Human Rights Watch: A high Price to pay, Detention of Patients in Burundian Hospitals, September 7, 2006 Available hrw.org/2006/09/07high-price-pay/detention-poor-patients-burundian-hospitals
5. World Health Organisation (2020) Ending hospital detention for non-payment of bills: legal and health financing policy Options/ David Clarke, Aurelie Klein, Inke Mathauer, Aurelie Paviza at p.3
6. Mostert Saskia et al, Global Problem of Hospital Detention Practices. International Journal of Health Policy and Management, 2nd February 2020.9(8), 319-326.
7. Ministry of Health, National Health Facility Master List, 2018
8. Ministry of Health, Patients Rights and Responsibilities Charter 2019.
9. Ministry of Health, National Policy on Public Private Partnerships in Health, 2012.
10. Motion seeks to illegalise patient detention over bills, 23 November, 2018. Accessible the-star.co.ke/news/2018-11-23-motion-seeks-to-illegalise-patient-detention-over-bills/.
11. M A O and another Vs The Attorney General and 4 others. [2015] eKLR Petition No. 562/ 2012
12. Emma Muthoni Njeri Vs. Nairobi Women's Hospital [2021] eKLR, Petition No.325/ 2018, available at: http://kenyalaw.org/caselaw/cases/ view/208766/
13. Gideon Kilundo & Daniel Kilundo Mwenga v. Nairobi Women's Hospital. Petition no. 242 of 2018. Republic of Kenya in the High Court of Kenya in Nairobi, Constitutional and Human Rights Division; 2018.

ISER
Facilitating Social Justice
INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

Initiative for Social and Economic Rights (ISER)
Plot 60 Valley Drive, Ministers' Village, Ntinda
P.O Box 73646, Kampala - Uganda
Email: info@iser-uganda.org Tel: +256 414 581 041
Website: www.iser-uganda.org

@ISERUganda ISERUganda ISERUganda