CASE STUDY

KENYA

Medical detentions

CONTEXT

Kenya is a lower-middle-income country with the ninth largest economy in Africa. Just over 36% of the country's 45.4 million population live in poverty.[170] Post-2013, Kenya adopted a devolved form of government with two levels – national and county – and a constitutional commitment to delivering UHC.[171,172] One of four goals in President Uhuru Kenyatta's Big 4 Agenda is to provide affordable health care for all.[173] The 2017 Health Act protects individual rights and commits to supporting emergencies as well as ensuring progressive overall financial access to UHC. The National Health Insurance Fund (NHIF) is a critical vehicle used by Government to achieve this. Although coverage of essential health services has improved, gaps persist for WCA, including access to family planning, antenatal care and vaccinations. It is estimated that out-of-pocket health care expenses make up close to 25% of the country's total health expenditure, disproportionately affecting the poorest.[174,175] The government set up the Linda Mama free maternity programme to address this population group. However, due to inability to pay medical bills, women who have given birth, their children and other vulnerable people are sometimes detained, – despite laws and high court ruling that medical detention is illegal.[176,177, 178] Such medical detentions are a denial of people's rights and dignity and can push people into poverty. In 2019, the government ordered a probe into facilities engaged in this practice.

Experiences

- **"In Kenya, we tend to re-engineer policies instead of implementing the ones we already have. The government is not enforcing the law and that is why we have people acting with impunity. The waiver policy is not activated until the media is involved."** *(KII, CSO)* The right to health is explicit in the Kenyan constitution and supported by key policies and regulations.

- **"We know the price of a tomato is this much and the price of electricity is this much … but not health care."** *(CSO, MSD).* **"Even if they keep me here for a year, I will not be able to pay the money. I cannot afford it. All I am requesting is that they release my child so that I take care of him at home. If I get money, I will always send it to the hospital."[177]** Several social protection measures exist for Kenya's poorest citizens: 2004 user fee policy, including fee waivers, 2014 Health Insurance Subsidy, and free maternity services since 2013 in all public health institutions. Overall access could be improved by public and facility education. However, participants highlighted that people tend to be admitted to hospitals for emergency treatment, such as caesarean operations, which are subject to high out-of-pocket costs they did not expect.

- **"It takes long to get a waiver within the public health facility … But most of the time even that waiver system doesn't work, so someone will come back and say, 'I have not collected enough information' after you have been detained."** *(KII, CSO).* For most people who cannot afford to pay hospital bills, the process for getting a waiver is reported to be complicated, long-winded and overly bureaucratic.

- **"The quality of service within the different departments in the health facilities needs to improve so that we can reduce preventable mortalities. This means a focus on the care and not just coverage, as is the case currently."** *(KII, CSO).* Many health facilities lack essential infrastructure, equipment and supplies, compounded by an insufficient and poorly distributed workforce.[179] This contributes to people seeking care in tertiary and/or private institutions and being charged fees beyond their ability to pay.

- **"Many of the private facilities are struggling with outstanding bills from NHIF and insurance companies."** *(Participant, MSD).* This in turn hinders the provision of quality services by facilities and may lead to illegal debt recovery through medical detentions.

RECOMMENDED ACTIONS

The case study identified emerging local recommended actions for consideration at the country level to enhance and complement government efforts to protect people against medical detentions in the context of UHC, acknowledging the complexity of the issue; and to avoid unintended consequences. **"I'd like to ask us to be very careful in the way we handle this issue. We may force people to release patients, but we will end up making facilities to have a very strict screening process of offering services to patients. We need to be objective in finding a sustainable solution and not militant…"** (Private hospital, MSD).

1. **There needs to be valid ways of recovering debts. And that is the message health care providers need to take … so that we approach the access to health care really as an essential service and it's not just a commodity where we say, 'if you cannot pay, we block you in to get the money'."** *(CSO, MSD).* Steps to achieve this include: working with private health care providers to develop flexible, affordable patient payment plans and alternative debt-collection processes that do not entail medical detention; establishing systems for monitoring, reporting and resolving breaches of people's rights; use of innovation and technology to fast-track patient applications for financial support; prompt identification of an alternative debt collection process; and importantly, an effective mechanism to enforce regulations. **"In the absence of direct legislation for individuals to rely on with regard to medical detention, the courts have been forced to be imaginative and to rely on the development of common law to enforce accountability in cases such as patient detention and medical negligence."** *(KII, Judiciary)*

2. **"A medical fund is very important. The running costs of a hospital are not small. We might want to put this legislation but as long as the running costs are not met, we are not going to achieve anything. NHIF must pay in a timely manner. More people need to have access to NHIF accredited facilities. Also, those that cannot pay for NHIF premiums need to be supported by the fund."** *(Private hospital, MSD).* Broadening the income base for health insurance, timely payments to hospitals by government, insurance houses and the fund.

3. **"Let us sort first the cost of health care. Can health care costs be brought down so that detentions can also reduce? When you consider health-seeking behaviour, patients need to be informed of what they can afford."** *(Participant, MSD)* Actions to achieve this include: having a discussion (that respects the rights of people as well as the needs of health service providers) with all stakeholders on the costs of health care and how to reduce and manage them; using evidence-based approaches to ensure access to a maternal health care benefits package for pregnant women and childbirth; as well as the planned cover for unexpected complications and emergencies; and working closely with health care institutions to clarify the NHIF access, Linda Mama free maternity programme access and emergency care, and at public and private hospitals.

4. **"We have a Mum's Club, where we have sessions to inform and advise both members and non-members on what they are to expect."** *(KII, Private sector).* Building on such examples, participants suggested developing a strategy to communicate health care costs and payment mechanisms, as well as the waiver scheme to citizens, health workers and other relevant stakeholders; and working together with civil society, the media, government and others to raise awareness about right to health and health literacy. **"So, robust citizen awareness is required … to understand what exactly NHIF is. What do you gain by having this in place?"** *(Participant, MSD).*

Stakeholder commitment and a clear plan of action is critical for next steps under the President's UHC agenda. This includes, using the results of the 2019 probe to inform government deterrent action going forward; the establishment of an emergency medical treatment fund to address unexpected emergency treatment currently leading to out-of-pocket costs and establishment of training programs for facilities to effectively use the waiver system among other efforts. More details of the Governments response are captured in the full case study.

The full country case study is available at: www. www.iapewec.org/reports/annual-reports/iap-2020-report/casestudies.

REFERENCES

170. UNDP Kenya. Anuual Report 2018. Nairobi, Kenya: UNDP, 2018.

171. Republic of Kenya Ministry of Health. Kenya Health Policy 2014-2030. Towards attaining the highest standard of health. July 2014. (http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf).

172. National Council for Law Reporting. Constitution of Kenya. 2010. (http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010).

173. Republic of Kenya Ministry of Health. President Uhuru launches Universal Health Coverage Pilot Program Nairobi. 13 December 2018. (https://www.health.go.ke/president-uhuru-launches-universal-health-coverage-pilot-program-nairobi-kenya-december-13-2018/).

174. The World Bank Group. Out-of-pocket expenditure (% of current health expenditure). (https://data.worldbank.org/indicator/SH.XPD.OOPC.CH.ZS, accessed 30 June 2020).

175. Chatterjee S, Gitahi G. For Kenya to defeat poverty, universal health coverage is a must. 12 December 2017. (https://news.trust.org/item/20171211101543-t9znq/).

176. Human Rights Council, Working Group on the Universal Periodic Review. Compilation on Kenya. Report of the Office of the United Nations High Commissioner for Human Rights. 18 November 2019. (https://digitallibrary.un.org/record/3849174/files/A_HRC_WG-6_35_KEN_2-EN.pdf).

177. Oketch A, Atieno W. Hope for patients detained in hospitals over unpaid bills. 13 January 2019. (https://www.nation.co.ke/news/Hope-for-patients-detained-in-hospitals-over-unpaid-bills/1056-4932696-11qtx6m/index.html).

178. Republic of Kenya in the High Court of Kenya at Nairobi. Constitutional and Human Rights division. Petition No. 562 of 2012. (http://kenyalaw.org/caselaw/cases/view/131104/)

179. Kenya National Bureau of Statistics, Republic of Kenya Ministry of Health, National AIDS Control Council, et al. Kenya Demographic and Health Survey 2014 December 2015. (https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf).