

International Women's Day 2025

THE SILENT LABOR PAINS: THE GENDERED REALITY OF OBSTETRIC VIOLENCE

A Glimpse into Obstetric Violence – by Melinda Mugambi



Obstetric violence refers to the abuse and mistreatment of women by health personnel during pregnancy, childbirth, or post-natal care. It is a form of dehumanizing and abusive treatment.

It can manifest as outright physical abuse, profound humiliation and verbal abuse, coercive or unconsented medical procedures (including sterilization), lack of confidentiality, failure to get fully informed consent, refusal to give pain medication, gross violations of privacy, refusal of admission to health facilities, neglecting women during childbirth to suffer life-threatening, avoidable complications, and detention of women and their newborns in facilities after childbirth due to an inability to pay.[1]

The Special Rapporteur to the UN on torture and other cruel and inhuman or degrading treatment or punishment in his report to the Human Rights Council emphasizes, “International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender...”[2]

[1] Bowser D, Hill K. Exploring Evidence for Disrespect and Abuse in Facility-based Childbirth: report of a landscape analysis. USAID / TRAction Project; 2010 [Link](#)

[1] Report of the Special Rapporteur on torture and other cruel and inhumane or degrading treatment [Link](#)

Most, if not all women who have undergone childbirth have experienced some form of obstetric violence regardless of social class, complexion, race, religion or age. The common denominator is that it is perpetrated on women and rooted in gender-based discrimination and patriarchal norms. Some women experience a heightened risk of obstetric violence due to intersectional discrimination which makes them more vulnerable. Examples include women living with HIV, women with disability, adolescent mothers and women from lower-income backgrounds. This reveals the systemic inequalities of maternal healthcare. Obstetric Violence is a form of Gender-based Violence Gender-based violence 'hereinafter GBV' goes beyond domestic settings and can extend into institutional practices. Obstetric violence is one manifestation of the wider societal disregard for women's autonomy and bodily integrity. It is rooted in gender hierarchies that diminish women's decision-making power, especially in traditionally male-dominated settings like medicine.

By positioning obstetric violence alongside these other forms of GBV, advocacy efforts can drive home the message that all forms of violence against women are interrelated, stemming from similar cultural and institutional failures.



Constitutional Rights Approach in Addressing Obstetric Violence

Obstetric violence violates fundamental constitutional rights such as the right to the highest attainable standard of health which includes the right to comprehensive reproductive healthcare (Article 43(1)(a)), the right to inherent dignity (Article 28) and the right to freedom from discrimination (Article 27(4)) of the Constitution of Kenya 2010.

Other constitutional rights are infringed upon depending on the form of obstetric violence. The right to family (Article 45) is violated through forced or coerced sterilization, depriving women of their reproductive autonomy. The right to life (Article 26) is compromised when women experience delayed or denied emergency treatment, leading to preventable maternal deaths. In addition, the far-reaching consequences of unconsented care leads to poor outcomes which invariably affect the right to a quality and dignified life for women. Freedom and security of the person (Article 29) is undermined through physical or verbal abuse, non-consensual medical procedures, and unnecessary cesarean sections, which violate bodily autonomy and dignity. Consumer rights (Article 46) are breached when women receive substandard maternal healthcare, often marked by negligence and systemic inequalities. Additionally, the right to information (Article 46(1)(b)) is violated when healthcare providers fail to seek informed consent or provide full disclosure on medical procedures and alternative treatment options, limiting women's ability to make autonomous healthcare decisions.



Jurisprudence on Obstetric Violence in Kenya

While Kenya lacks specific legislation addressing obstetric violence, several court cases have highlighted the importance in the protection of the rights of women in healthcare institutions.

L A W & 2 others v Marura Maternity & Nursing Home & 3 others; International Community of Women Living with HIV (ICW) (Interested Party); Secretariat of the Joint United Nations Programme on HIV/AIDS & 2 others (Amicus Curiae) (Constitutional Petition 606 of 2014) [2022] KEHC 17132 (KLR) (Constitutional and Human Rights) (16 December 2022)

This landmark case dealt with the forced sterilization of women living with HIV. The Petitioner, L.A.W went for antenatal care and tested positive for HIV. She was told at the clinic that she should not have any more children because of her HIV status. L.A.W. was referred to a Nursing Home where she gave birth by caesarean section. Four years later, she wanted to have children but could not conceive. On returning to her healthcare worker, she was told that she had been sterilized by way of bilateral tubal ligation. She was unaware that this had been done on her. The Court held that health care providers are required by law to obtain a patient's informed consent before any procedure (see para 187 of the judgement). The Nursing Home failed to do so, and the court found that the Nursing Home discriminated against L.A.W. on the basis of her HIV status, economic vulnerability and sex under para 212 and 231. The Court was satisfied that, since the events that took place, the government had passed the Health Act and policies that protected the right to informed consent hence did not hold the State accountable for L.A.W's violations of rights. L.A.W was awarded damages for the violation of rights in the judgement delivered in 2022.

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SWK & 4 others v Me'decins Sans Frontie'res - France & 5 others; Secretariat of the United Nations Programme on HIV/AIDS (UNAIDS) Secretariat & 2 others (Amicus Curiae); International Community of Women Living with HIV (ICW) & another (Interested Parties) (Constitutional Petition E065 of 2014) [2023] KEHC 22424 (KLR) (Constitutional and Human Rights) (21 September 2023)

The Petitioners are Women Living with HIV. The 1st and 3rd Petitioners attended pre-natal clinic at Blue House Mathare Clinic run by Medecins Sans Frontiers and was referred to Pumwani Maternity Hospital to give birth. A nutritionist at Blue House Mathare Clinic informed them that if they did not agree to undergo the tubal ligation during the time of giving birth, they would not qualify to receive food portions and payment of the maternity bill at Pumwani Maternity Hospital. The 2nd and 4th Petitioners gave birth at Pumwani Maternity Hospital and the costs incurred were paid by Blue House Mathare Clinic. They were given instructions not to breastfeed their children but only to use formula milk provided weekly at Blue House Mathare Clinic alongside food portions. They were told by a nutritionist at Blue House Mathare Clinic that if they did not have proof of tubal ligation, they would not qualify to receive food portions and formula milk anymore. They were referred to Lions Clinic in Huruma where the 3rd Respondent's personnel were, and they underwent bilateral tubal ligation. The Petitioners were coerced to undergo bilateral tubal ligation so as to pay the medical bills, get formula milk and food portions for their children.

The court delivered a judgement on the 21st September 2023, declaring that the rights of the petitioners had been violated. An emphasis was made on the importance of informed consent as was dealt with in the L.A.W case. The court found the 2nd to 4th Respondents variously culpable for the breach of the legal requirement to obtain informed consent from the Petitioners. The 1st to 4th Petitioners were awarded compensation in the sum of Kshs. 3,000,000 against the 1st, 2nd and 4th Respondents jointly and severally.

J O O (also known as J M) v Attorney General & 6 others [2018] eKLR

The Petitioner went to Bungoma County Referral Hospital for delivery. Due to the delayed delivery, she was told that she would have to undergo induced labor. She was asked to purchase cotton wool and the inducement drug to be administered on her. She received information from the nurses on duty that at the onset of labor pains, she would have to walk from the labor ward to the delivery room.

The Petitioners are Women Living with HIV and due to their status they were coerced to undergo bilateral tubal ligation so as to pay the medical bills, get formula milk and food portions for their children.

The inducement drug was administered upon Josephine as the doctor had ordered. Josephine then went into labor, and when the pain intensified, she sought help which was not forthcoming. She decided to walk to the delivery room where she found the 3 beds in the room were occupied by other women in the process of delivery. Left with no choice, she attempted to walk back to the labor ward but did not make it as she lost consciousness along the way. She delivered the baby and woke up to shouts and abuses from two nurses who questioned her as to why she had delivered and soiled the floor. She was ordered to carry her placenta and walk to the delivery room to have it expended despite her weak and vulnerable condition.

The court delivered a judgement at the High Court stating that the Respondents' failure to avail basic necessities and care is nothing short of violation of a basic rights to maternal healthcare, right to dignity and right not to be subjected to cruel, inhuman and degrading treatment. The Court found that the National Government & County Government of Bungoma failed to develop and/or implement policy guidelines on healthcare thus denying the Petitioner her right to basic healthcare. Further, they failed to implement and/or monitor the standards of free maternal health care and services thus resulting in the mistreatment of the Petitioner and violation of her rights. The learned judge awarded damages of Kshs. 2.5 million to the Petitioner for all the depravity and indignity she suffered.

The Respondents appealed the decision to the Court of Appeal in Civil Appeal 61 of 2018. The three-judge bench found in the judgement that the appellants were obligated to ensure the Petitioner enjoyed the minimum core of her maternal health when she was admitted at the hospital. At the systemic level, the appellants were held liable for the eminently clear failure to establish a human rights-based clinical protocols for women during child birth. Such protocols, if available, includes not only clinical components but outline measures to ensure all women are accorded the right to dignified, respectful health care throughout pregnancy and childbirth as well as freedom from violence and discrimination. This includes the provision of respectful maternity care that maintains women's dignity, privacy and confidentiality, enables informed choice and continuous support throughout labour and childbirth, and ensures freedom from mistreatment. The judge agreed with the High Court decision and found that the damages awarded were not excessive but commensurate with the violations.

Failure to avail basic necessities and care is nothing short of violation of a basic rights to maternal healthcare, right to dignity and right not to be subjected to cruel, inhuman and degrading treatment.

M A O & another v Attorney General & 4 others [2015] eKLR

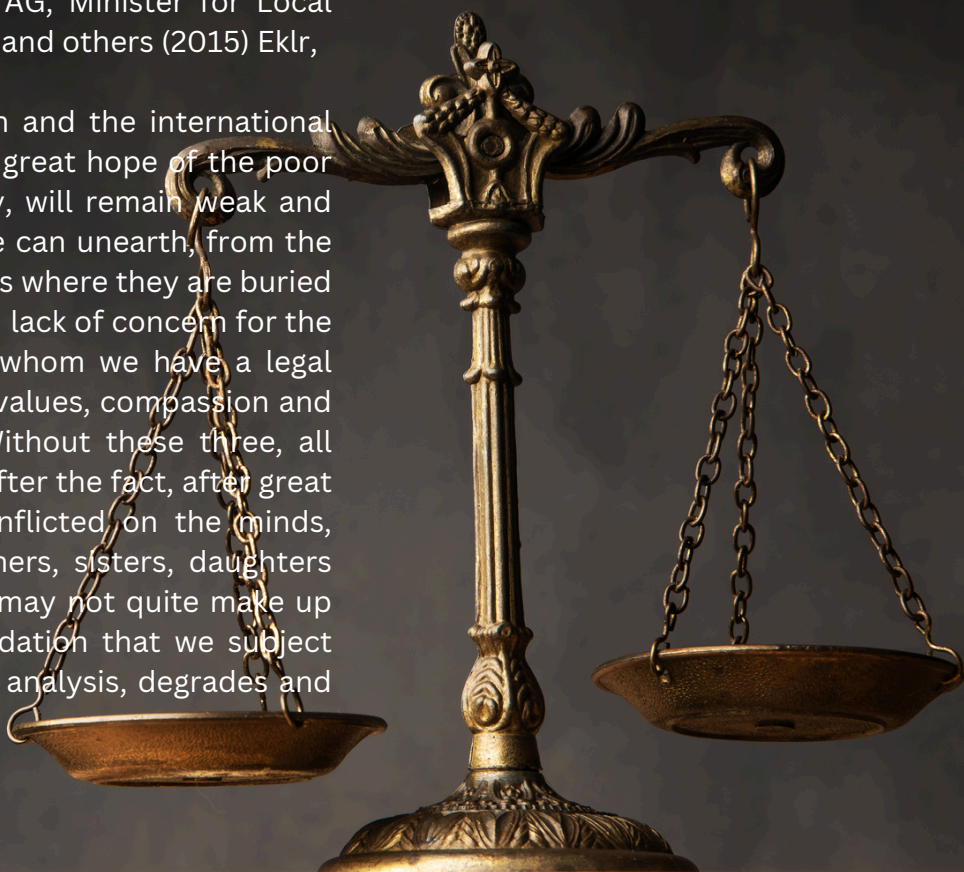
The petition was brought with respect to the detention of the Petitioners at Pumwani Hospital for inability to pay hospital charges after childbirth. The court noted that neglect of health care services that are unique to women's needs is a form of discrimination against women. The lack of adequate, appropriate maternal health services and the failure to: "meet the specific, distinctive health needs and interests of women not only constitutes a violation of article 12, paragraph 2, of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), but also discrimination against women. The court directed the Respondents to take the necessary administrative, legislative, and policy measures to eradicate the practice of detaining patients who cannot pay their medical bills and awarded damages to the Petitioners.

Neglect of health care services that are unique to women's needs is a form of discrimination against women.

Despite these judgements, the prevalence of obstetric violence still persists with manifestations in various forms in Kenyan healthcare facilities. Reports from [Citizen TV](#) and [the Kenyan Times Article](#) on 22nd October 2024, highlighted overcrowding in the maternity wing of Mama Lucy Kibaki's Hospital. As many as five women were sharing a single bed yet each is charged for the use of one bed per night. This is just but one example of the many obstetric violence cases being experienced in the country. These conditions amount to cruel, inhumane and degrading treatment of the pregnant women and strips them of their dignity. Respectful care is not optional. It is a human right.

To reiterate the words of the learned judge Mumbi Ngugi in M.A.O and others vs AG, Minister for Local Government, Pumwani Hospital and others (2015) Eklr,

"The rights in the Constitution and the international instruments that represent the great hope of the poor and marginalized in our society, will remain weak and ineffectual platitudes unless we can unearth, from the recesses of our hearts and minds where they are buried under layers of indifference and lack of concern for the welfare of others, even those whom we have a legal duty to serve, the remnants of values, compassion and empathy that we once had. Without these three, all that a Court can do is come in after the fact, after great pain and suffering has been inflicted on the minds, bodies and spirits of our mothers, sisters, daughters and wives, to offer reliefs that may not quite make up for the humiliations and degradation that we subject others to. And that, in the final analysis, degrades and dehumanizes all of us."





Let's Take Action!

It is essential that we become aware of the realities of maternal healthcare in Kenya including the budget allocated for maternal healthcare and how it is expended to prevent more cases as in the J.O.O and M.A.O cases. We need community engagements to build awareness on obstetric violence so that we can speak up when rights are violated as in the L.A.W and S.W.K cases. Finally, obstetric violence has to be recognized as a form of gender-based violence within Kenyan law. We need a clear, comprehensive policy framework on obstetric violence and for its recognition under policies that fight gender-based violence.

As long as women are denied the respect, dignity, and bodily autonomy they rightfully deserve, gender-based violence will remain an indelible part of our society. Women, as the bearers of future generations, are not just participants in society but its very foundation. Yet, obstetric violence, one form of gendered discrimination and gender-based violence, remains alarmingly overlooked. It is past time to prioritize change, to honour women's rights within medical institutions, and to build a society where equality is tangible, not aspirational.

We must dare to demand a future where every woman is valued, protected, and empowered. Until then, we cannot claim progress in our fight against gender-based violence.

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