

OPEN LETTER REGARDING THE UNLAWFUL DECISION BY THE KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD AGAINST MARIE STOPES KENYA

We, the undersigned, being representatives of institutions drawn from the health, human rights and governance sector write pursuant to our rights as Kenyan citizens and our organizations' constitutional mandate enshrined under Articles 3, 10 and 43. We further write with support and endorsement from various organizations working towards the advancement and realization of women's and girls' rights globally. We make reference to the Ruling of the Kenya Medical Practitioners and Dentist Board (The Board) dated 14th November 2018 regarding public complaints against Marie Stopes Clinics (The Ruling). We note with particular concern Order 1 of the Ruling directing Marie Stopes to 'immediately cease and desist offering any form of abortion services in all its facilities within the Republic of Kenya.'

As representatives of a wide variety of health care providers, as well as women and girls who will be adversely and disproportionately affected by this Order, we write with the following concerns:

1. The Constitution of Kenya (2010) guarantees the right to the highest attainable standard of health, including reproductive health care under Article 43(1) (a). This is further complemented by Article 43(2) which forbids denial of emergency medical treatment.
2. In safeguarding access to the rights above, the State is obligated to ensure protection from discrimination during the entire life-cycle of a woman, especially considering that the majority of reproductive health care rights and services are owed to and primarily apply to women and girls. Further, ensuring the provision of comprehensive reproductive health care services is particularly important to enhance protection of women's and girls' rights, especially those from poor, vulnerable and marginalized contexts which goes a long way to reduce adolescent, maternal, new-born and child mortality and morbidity.
3. With particular regard to access to safe abortion and post-abortion care services, the Constitution mandates health care providers to offer safe abortion services under Article 26(4) when the life, or health of the mother is in danger or in cases of emergency. This constitutional obligation is further enunciated in Section 6 of the Health Act 2017; the National Guidelines on the Management of Sexual Violence; Ministry of Health's National Guidelines for Quality Obstetrics and Perinatal Care; and, the various professional codes of conduct for doctors, nurses and clinical officers, which all recognize the fundamental duty that health care providers have in saving lives and preserving health.
4. On 7 June 2013, following the Presidential Directive on free maternity services, the then Directors of Medical Services, Public Health and Sanitation issued a joint Circular directed to all County Health Coordinators, Kenyatta National Hospital and Moi Teaching and Referral Hospital indicating that post-abortion care is an integral part of maternity services. This Directive means that post-abortion care services must be administered in all public facilities.
5. Notably, statistics from the 2012 Ministry of Health research on Incidences and Complications of Abortion, demonstrate that each year we expose an average of 465,000 women to unsafe abortion practices. Unsafe abortion remains one of the leading causes of maternal deaths, with 266 women and girls dying for every 100,000 unsafe procedures per year.

Hadi kufikia hapa, tunataka suluhisho la haraka kuhusu yafuatayo:

1. Bodi ya Matibabu, kwa haraka, iondoe Agizo la 1 kuhusu Maamuzi ya tarehe 14 Novemba 2018 kwa misingi ya ukiukaji wa katiba, ukosefu wa urazini na ukiukaji wa sheria. Aidha, Bodi ya Kimatibabu pia ikome mara moja na kujiepusha na kudhulumu bila sababu taasisi za huduma za afya ambazo zinatoa huduma muhimu za afya ya uzazi kwa wanawake na wasichana nchini Kenya, kwa mujibu wa Katiba ya nchi na sheria nyinginezo.

2. Wizara ya Afya na Serikali za Kaunti sharti zitimize majukumu yazo, kama ilivyoafikiwa katika sheria za kimataifa za haki za kibinadamu na kushadidiwa na Katiba ya Kenya (2010), kuhakikisha kuwa pana upatikanaji wa habari na huduma za uavyaji salama, kwa kuzingatia sheria, katika vituo vyote vya afya. Haya, sharti yajalizwe na uenezaji na utekelezaji wa sheria zote zilizopo, sera, viwango na miongozo sawia na utoaji habari sahihi kuhusu upatikanaji wa huduma za uavyaji salama na za matibabu ya baada ya kuavya nchini Kenya.

3. Kwa kufahamu kuwa afya ni jukumu lililogatuliwa, kwa ushirikiano na Serikali za Kaunti, Wizara ya Afya iingilie kati kikamilifu na kwa upesi kutimiza haki za kimapenzi na uzazi kwa watu wote kama ilivyoniwa katika Kifungu cha 43(1) (a) cha Katiba ya Kenya (2010), kwa madhumuni ya kuimarisha upatikanaji wa huduma za kiafya za taadhima na hadhi ya juu.

Wanawake wa Kenya, wasichana na jamii zao zinategemea Serikali katika kufanikisha hili. Tuna imani katika kujitolea kwa serikali kudumisha haki ya kupata huduma za juu za kiafya iwezekanavyo, ikiwemo huduma za afya ya uzazi, pamoja na haki ya kuishi. Tunaamini kuwa hatua zilizotajwa hapo juu zitatekelezwa upesi ili kufanikisha haki hizi.

