# Wrong Prescription

## The Impact of Privatizing Healthcare in Kenya

*Short Version*

**2021**

CHR&GJ
center for human rights and global justice
nyu school of law

Economic & Social Rights Centre – Hakijamii
'Putting people first'

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*The Economic and Social Rights Centre-Hakijamii*

*and the Center for Human Rights and Global Justice*

*at New York University School of Law*

2021

The Kenyan government has sought to expand access to healthcare by embracing the private sector as both a provider and a financier. At the same time, the public healthcare system has generally been neglected and starved of resources, harming the quality of service and pushing many toward private care.

This report explores how privatizing healthcare—increasing the role of the for-profit private sector in health—has failed many Kenyans, undermined the right to health, and set back the goal of universal health coverage. This is a short version of a longer report based on desk research and interviews with community members from informal settlements and rural areas, health workers, volunteers, government officials, investors, and others. The findings below are discussed in greater detail in the full report.

## HOW IS KENYAN HEALTHCARE BEING PRIVATIZED?

The government has not formally privatized the existing public healthcare system by selling it off entirely. However, its policies—which have consistently encouraged private sector involvement in healthcare, while neglecting and underinvesting in the public sector—amount to de facto privatization. The role of for-profit private actors in health has grown rapidly over the past decade, and the private sector now constitutes a substantial part of Kenya's healthcare system.[1]

Privatization is embedded in key national policies.[2] The government has embarked on large-scale contracts with private actors, including public-private partnerships, offered favorable tax incentives, provided the private sector with medical supplies, and expanded national health programs like Linda Mama to include private facilities, effectively subsidizing private care.[3]

The government's signature policy for achieving universal health coverage is the nationwide rollout of National Hospital Insurance Fund (NHIF) coverage. Although the NHIF offers public insurance, it favors the private sector. It contracts extensively with private facilities, offers them higher reimbursement rates for certain services, and sends most of its money for claims to private actors.[4]

Meanwhile, chronic underinvestment in the public healthcare system has led to a lack of sufficient infrastructure, staff, and medicine at public facilities, making it difficult for people to access public health services. These shortcomings have pushed many to seek care from private providers.

# WHO IS PROMOTING PRIVATE CARE?

## Kenyan Policymakers

The President, cabinet members, and other high-level officials have adopted policies and programs contributing to the growth of the private sector. They often reference the importance of private sector resources in the financing of healthcare, and market the health sector as an opportunity for investors to make money.[5]

## Development Actors

International financial institutions, development agencies, and philanthropic organizations have also sought to increase the role of the private sector in healthcare. These include the World Bank Group, the United Nations, and the Bill and Melinda Gates Foundation.[6] National development agencies from wealthy countries have sought to promote the private health sector as well, at times with an explicit aim of creating opportunities for their own domestic companies.[7]

## The Private Sector

Large multinational corporations, private equity firms, and consultants are increasingly involved in and profiting from the Kenyan healthcare sector. For example, they have engaged in long-term public-private partnerships and invested in private hospitals in Nairobi.[8]

# WHAT IS THE IMPACT OF PRIVATIZING CARE?

## Key findings

Privatizing healthcare has proven costly, led to the neglect of public health priorities, contributed to the rise of low-quality, low-cost providers that offer inadequate and unsafe care, and resulted in severe human rights problems including exclusion and denial of service. The private healthcare sector in Kenya has generally failed to deliver value for money or increase access to quality, affordable care. The results have been disastrous for many, especially for poor and historically marginalized communities.[9]

### *Bad Value*

Private care is more expensive for individuals and for the government. Treatment at private facilities can cost in excess of twelve times more than the public sector, and community members said they faced very high fees for private care.[10]

The government transfers tens of billions of Kenyan shillings to the private sector every year to contract with private facilities, subsidize access to private care, and pay for secretive public-private partnerships with companies.[11]

### *A Failing Approach*

Private providers' focus is on making a profit, not public health priorities. They are less likely to offer important, but less profitable, forms of care like family planning services, antenatal and postnatal care, tuberculosis diagnosis and treatment, and key vaccinations.[12]

There are significant issues with the quality and safety of some private providers, especially those in lower-income areas such as informal settlements.[13] Healthcare workers who were interviewed described having to meet patient "targets" as well as workplace conditions at times inferior to those in the public sector. And private providers operate with significantly less transparency and accountability.

### *Severe Human Rights Impacts*

Privatization is having severe human rights impacts. The private sector excludes and denies access to people who cannot afford private services and pushes others into poverty and debt due to the high cost of care. Many people interviewed described facing immense hardships to pay for private care, including selling land and sacrificing educational and livelihood opportunities.

Others described experiencing major problems because of poor quality care or misdiagnoses at private providers, including unnecessary deaths and disabilities. Privatizing care poses significant problems for people who are poor and low income, those in rural areas, people with disabilities, and women.

# PRIVATE SECTOR HEALTHCARE: PROMISES VS. REALITY

Comparing common assumptions about private care with the available evidence.

| Promise | vs. | Reality |
|---|---|---|
| The private sector provides value for money. | | Private providers extract profits, face higher financing costs than the public sector, and often charge patients overwhelmingly more than public providers without necessarily providing better care.[14] |
| Privatizing care conserves scarce government resources. | | The growth of the private sector has been highly dependent on a commitment of major resources from the Kenyan government, including to subsidize private care.[15] Many people cannot afford to pay for healthcare at market prices, and private actors rely extensively on public money.[16] |
| The private sector offers high quality care. | | The private sector offers wildly different quality of care to the "haves" and the "have nots." Lower income areas are often dominated by low-cost, low-quality private services that can be unsafe, inadequate, or even illegal.[17] |
| Private actors fill gaps neglected by the public system. | | Private care in Kenya is concentrated in the most profitable forms of care, and has spurned less commercially viable areas, patients, and services—including important preventative care like vaccinations, family planning, and maternal and child healthcare.[18] |
| Private care improves access for all. | | Cost is a major barrier to accessing care, and many are unable to access private care due to its high cost, while others are pushed into poverty to pay for it.[19] |

# HOW IS PRIVATIZING CARE AFFECTING THE RIGHT TO HEALTH AND UNIVERSAL HEALTH COVERAGE?

## The right to health[20]

Health is a fundamental human right, guaranteed under the Kenyan Constitution and international human rights law.[21] It requires that the facilities, goods, and services necessary for the realization of the highest attainable standard of health be *available* in sufficient quantity, *accessible* to everyone without discrimination, culturally *acceptable*, and of good *quality*.[22] *Accessible* means physically accessible—including for people with disabilities and those in rural areas—but also economically accessible and affordable for all.[23]

Privatizing care undermines the right to health.[24] The private sector's preference for higher-profit services affects the availability of many essential but less profitable ones. And the private sector's focus on the areas and patients with the most resources makes high quality healthcare less physically and financially accessible for many people—who then turn to a subset of private actors that offer low quality services, which can be unsafe or illegal.

## Universal health coverage[25]

Universal health coverage is defined in the Sustainable Development Goals as "financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all."[26] In 2017, President Kenyatta announced that his administration would be dedicated to the realization of universal health coverage, one of the priorities of his "Big Four" agenda.[27] But not all paths taken in the name of achieving universal health coverage are consistent with the goal.[28] In many ways, privatizing care has proven a step backwards, including by diverting resources away from the public sector. Despite significant shortcomings, Kenya's public health system is vibrant and impressive. If properly funded, it is more capable of providing a high-quality, affordable, physically accessible, and comprehensive healthcare system.

## RECOMMENDATIONS[29]

1. **Prioritize and invest in the public health sector as a path to universal health coverage:** The public health sector is in need of significant improvement and more resources. Public health spending should be increased, and invested first and foremost in the public health sector. This includes expanding and improving public health facilities and infrastructure, ensuring workers have dignified working conditions, and making drugs much more widely available at public facilities.

2. **Rethink support for the private sector:** In light of its significant shortcomings, the government and development actors should reassess their support for privatizing healthcare in Kenya.

3. **Exert meaningful control over private healthcare providers:** The regulatory framework that applies to private providers should be significantly strengthened and far better enforced.

4. **Greater transparency and access to information:** Information relating to the private sector's role in healthcare in Kenya must be public and made available online. Existing secrecy is an invitation to corruption and self-dealing.

## HOW WAS THIS RESEARCH DONE?

This short report summarizes research by the Economic and Social Rights Centre-Hakijamii and the Center for Human Rights and Global Justice at New York University School of Law (CHRGJ). The research is based on public documents, interviews with 55 community members in Isiolo, Mombasa, and Nairobi, as well as more than 130 private and public healthcare workers, community health volunteers, government officials, and experts and activists. The full report in English and Swahili—as well as correspondence with officials, development actors, and the private sector—is available at https://chrgj.org/kenya-health.

# ENDNOTES

[1] Health Policy Plus, *Kenya Health Financing System Assessment: Time to Pick the Best Path*, 2018, 83-84, http://www.healthpolicyplus.com/pubs.cfm?get=11323.
[2] While county governments are directly responsible for county health facilities and pharmacies under the 2010 Constitution, the national government has significant authority over healthcare policy, entities, and practices. See Ministry of Health, *Kenya Health Policy 2014-2030*, 2014, 35, 49-50, 52-53, http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf; Ministry of Health, *Kenya Health Sector Strategic Plan*, 2018, 53, 70, 71, 77, https://www.health.go.ke/wp-content/uploads/2020/11/Kenya-Health-Sector-Strategic-Plan-2018-231.pdf. For further information, see section 1.1 of the full report. Economic and Social Rights Centre-Hakijamii and the Center for Human Rights and Global Justice at New York University School of Law, *Wrong Prescription: The Impact of Privatizing Healthcare in Kenya*, November 2021, https://chrgj.org/kenya-health.
[3] GlobeNewswire, "Gruppo San Donato, Italy's Leading Private Hospital Group, and Kenya Sign an Agreement to Strengthen the East African's Local Health Care," news release, July 19, 2021, https://www.globenewswire.com/en/news-release/2021/07/19/2264986/0/en/Gruppo-San-Donato-Italy-s-leading-private-hospital-group-and-Kenya-sign-an-agreement-to-strengthen-the-East-African-s-local-health-care.html; Monish Patolawala, "Transforming Kenya's Healthcare System: A PPP Success Story," *World Bank Blogs*, May 24, 2017, https://blogs.worldbank.org/ppps/transforming-kenya-s-healthcare-system-ppp-success-story; Task Force Health Care and Kenya Healthcare Federation, *Kenyan Healthcare Sector: Opportunities for the Dutch Life Sciences and Health Sector*, 2016, 56, https://www.tfhc.nl/publication/kenyan-healthcare-sector-report-2016; Stacey Orangi et al., "Examining the Implementation of the Linda Mama Free Maternity Program in Kenya," *International Journal of Health Planning and Management* (2021): 5 https://onlinelibrary.wiley.com/doi/epdf/10.1002/hpm.3298.
[4] Between FY 2016/17 and FY 2019/20, private facilities received 82 percent of NHIF outpatient benefits, and 64 percent of inpatient benefits. Maureen Kinyanjui, "NMS Pushes for Policy to Make NHIF Only Useable in Public Hospitals," *The Star*, September 5, 2021, https://www.the-star.co.ke/counties/nairobi/2021-09-05-nms-pushes-for-policy-to-make-nhif-only-useable-in-public-hospitals/; Gabriella Appleford and Edward Owino, *National Hospital Insurance Fund Tariffs: What are the Effects on Amua Franchisee Businesses?* (London: Marie Stopes International, 2018), 5, https://hanshep.org/our-programmes/AHMEresources/case-study-national-hospital-insurance-fund-tariffs. For further information, see sections 2.2 and 5.1 of the full report.
[5] John Muchangi, "Private Hospitals to Get UHC Cash," *The Star*, September 6, 2019, https://www.the-star.co.ke/news/2019-09-06-private-hospitals-to-get-uhc-cash/; "Kenya Encourages Private Sector Investment in the Health Sector," Ministry of Health, October 31, 2019, https://www.health.go.ke/kenya-encourages-private-sector-investment-in-the-health-sector/; State Department for Planning, *A Summary of Key Investment Opportunities in Kenya*, undated, 24-25, newdemo.planning.go.ke/wp-content/uploads/2021/02/A-SUMMARY-OF-KEY-INVESTMENT-OPPORTUNITIES-PRESENTATION-revised-2-22-01-2021.pdf.
[6] See World Bank, *Kenya: Enabling Private-Sector Participation in Infrastructure and Social Services*, April 2018, https://www.worldbank.org/en/about/partners/brief/kenya-enabling-private-sector-participation-in-infrastructure-and-social-services; International Finance Corporation, "IFC and Development Partners Make Landmark Health Care Investment in East and Southern Africa," news release, November 23, 2019, https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=24868; "Kenya SDG Partnership Platform MPTF," UN Development Programme, accessed June 9, 2021, mptf.undp.org/factsheet/fund/KEN00?fund_status_month_to=&fund_status_year_to=2020; International Finance Corporation, *The Business of Health in Africa: Partnering with the Private Sector to Improve People's Lives*, January 2008, v, https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/878891468002994639/the-business-of-health-in-africa-partnering-with-the-private-sector-to-improve-peoples-lives; Gabrielle Appleford, Isaac Theuri, and Edward Owino, *Brokering Accreditation in Kenya's National Hospital Insurance Fund: Lessons Learned from Marie Stopes Kenya's AMUA Social Franchise Network* (London: Marie Stopes International, 2018), http://www.hanshep.org/our-programmes/AHMEresources/brokering-accreditation-in-kenya2019s-national-hospital-insurance-fund-lessons-learned-from-marie-stopes-kenya2019s-amua-social-franchise-network-s. For further information, see section 1.3 of the full report.
[7] See USAID, *Sustainable Strategies for Accessible, Quality Health Care: Public-Private Sector Engagement in Kenya*, undated, 1-2, https://www.shopsplusproject.org/sites/default/files/resources/Kenya Program Brochures_0.pdf; USAID, P*rivate-Sector Engagement Policy*, 2018, 4, 9, https://www.usaid.gov/sites/default/files/documents/1865/usaid_psepolicy_final.pdf; Wemos, *In the Interest of Health for All? The Dutch 'Aid and Trade' Agenda as Pursued in the African Healthcare Context*, 2020, 34, https://www.wemos.nl/wp-content/uploads/2020/10/Dutch-AT-in-Health-Kenya_Wemos-discussion-paper_Oct-2020.pdf. For further information, see section 1.3 of the full report.
[8] See Philips, *Edited Transcript: Q1 2015, Koninklijke Philips NV Earnings, April 28, 2015*, 2015, https://www.results.philips.com/publications/q115/downloads/files/en/philips-first-quarter-results-2015-transcript.pdf?v=20210726183841; "2017 Annual Results," Philips, February 20, 2018, https://www.results.philips.com/publications/ar17; Evercare, The Evercare Group Annual Impact Report 2020-2021, 2021, 8, https://evercaregroup.com/wp-content/uploads/2021/06/evercare-group-annual-impact-report-20202-20201.pdf; "Kenya," Evercare, accessed October 4, 2021, https://evercaregroup.com/kenya/; McKinsey & Company and USAID, *Private-Sector Investment Opportunities in Primary Healthcare in Kenya: Implementation Roadmap*, 2018, https://pdf.usaid.gov/pdf_docs/PA00TGSC.pdf. For further information, see section 1.3 of the full report.
[9] For further information, see sections 2-4 of the full report.
[10] Sujha Subramanian et al., "Cost and Affordability of Non-Communicable Disease Screening, Diagnosis and Treatment in Kenya: Patient Payments in the Private and Public Sectors," *PLOS One* 13, no. 1 (January 2018): 7-8, https://doi.org/10.1371/journal.pone.0190113.
[11] The government does not publish figures on the total amount of public health expenditure directed towards the private sector and did not respond to queries seeking such figures. However, public information regarding specific initiatives indicates that tens of billions of shillings in public funds are directed to the for-profit private sector each year. For example, in the 2021/22 budget, the national government allocated 6 percent of its health spending (Kshs. 7.21 billion) to the Managed Equipment Services arrangement, a public-private partnership for medical equipment, and in 2021, it was reported that

Kshs. 11 billion of the Kshs. 14 billion that the NHIF pays out for medical care in Nairobi annually goes to private facilities. Parliamentary Budget Office, *Unpacking the Estimates of Revenue and Expenditure for 2021/2022 and the Medium Term*, May 2021, 11-12, http://www.parliament.go.ke/sites/default/files/2021-05/Unpacking of the FY 2021-22 budget.pdf; Kinyanjui, "NMS Pushes for Policy."

[12] Ministry of Health, *Kenya Harmonized Health Facility Assessment 2018/2019 Main Report*, 2020, 58, 61, 82, 78, 90, https://khro.health.go.ke/files/Kenya-Harmonized-Health-Facility-Assessment-2018-2019.pdf; Ministry of Health, K*enya Harmonized Health Facility Assessment 2018/2019 Annex Tables, Questionnaires, and Footnotes*, 2020, 71, 78, 97, 101, 103, 161, https://www.health.go.ke/wp-content/uploads/2020/01/KHFA-2018-19-ANNEX-TABLES-FINAL.pdf; World Bank and Government of Kenya, *Kenya Health Service Delivery Indicator Survey 2018 Report*, May 2019, 50-51, https://ncpd.digispurenterprises.com/wp-content/uploads/2021/02/Final-KESDI-Health-Technical-Report-1.pdf.

[13] See Kennedy Abuga et al., "Sub-Standard Pharmaceutical Services in Private Healthcare Facilities Serving Low-Income Settlements in Nairobi County, Kenya," *Pharmacy* 7, no. 167 (December 2019): 7-8, https://doi.org/10.3390/pharmacy7040167; World Bank and Government of Kenya, *Kenya Health Service Delivery Indicator Survey 2018 Report*, xiii; Ministry of Health, *Kenya Harmonized Health Facility Assessment 2018/2019 Main Report*, 268.

[14] Subramanian et al., "Cost and Affordability," 7-8; Benjamin Daniels et al., "Use of Standardised Patients to Assess Quality of Healthcare in Nairobi, Kenya: A Pilot, Cross-Sectional Study with International Comparisons," *BMJ Global Health* 2, no. 2 (2017): 8, http://dx.doi.org/10.1136/bmjgh-2017-000333.

[15] See endnote 11.

[16] Barbara McPake and Kara Hanson, "Managing the Public-Private Mix to Achieve Universal Health Coverage," *Lancet* 388, no. 10044 (2016): 627, https://doi.org/10.1016/s0140-6736(16)00344-5.

[17] World Bank and Government of Kenya, *Health Service Delivery Indicator Survey 2018 Report*, xiii; Abuga et al., "Sub-Standard Pharmaceutical Services," 4; Sirina R. Keesara, Pamela A. Juma, and Cynthia C. Harper, "Why Do Women Choose Private Over Public Facilities for Family Planning Services? A Qualitative Study of Post-Partum Women in an Informal Urban Settlement in Kenya," *BMC Health Services Research* 15, no. 335 (2015): 1, https://doi.org/10.1186/s12913-015-0997-7.

[18] See Ministry of Health, *Harmonized Health Facility Assessment 2018/2019 Main Report*, 58, 95, 199; World Bank and Government of Kenya, Health Service Delivery Indicator Survey 2018 Report, 51, 83-84; Stefania Ilinca et al., "Socio-Economic Inequality and Inequity in Use of Health Care Services in Kenya: Evidence from the Fourth Kenya Household Health Expenditure and Utilization Survey," *International Journal for Equity in Health* 18, no. 196 (2019): 9, https://doi.org/10.1186/s12939-019-1106-z.

[19] Sujha Subramanian, et al., "Financial Barriers Related to Breast Cancer Screening and Treatment: A Cross-Sectional Survey of Women in Kenya," *Journal of Cancer Policy* 22 (December 2019): 5, https://doi.org/10.1016/j.jcpo.2019.100206; Ministry of Health, *2018 Household Health Expenditure and Utilization Survey*, 19; Paola Salari et al., "The Catastrophic and Impoverishing Effects of Out-of-Pocket Healthcare Payments in Kenya, 2018," *BMJ Global Health* 4 (2019): 6, http://dx.doi.org/10.1136/bmjgh-2019-001809.

[20] For further information, see section 6 of the full report.

[21] International Covenant on Economic, Social and Cultural Rights, opened for signature December 16, 1966, (entered into force January 3, 1976), 993 U.N.T.S. 3, art. 12; Constitution of Kenya, art. 43.

[22] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4, paras. 9, 12, 17 (August 11, 2000), https://undocs.org/E/C.12/2000/4.

[23] Ibid., para. 12.

[24] For further information, see section 6 of the full report.

[25] For further information, see section 5 of the full report.

[26] UN Department of Economic and Social Affairs, "Goals 3 Ensure health lives and promote well-being for all at all ages," https://sdgs.un.org/goals/goal3.

[27] "Speech by His Excellency Hon. Uhuru Kenyatta, C.G.H.," Statements and Speeches, president.go.ke, December 12, 2017, https://www.president.go.ke/2017/12/12/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-during-the-2017-jamhuri-day-celebrations-at-the-moi-international/.

[28] World Health Organization, *Making Fair Choices on the Path to Universal Health Coverage: Final Report of the WHO Consultative Group on Equity and Universal Health Coverage*, 2014, 37, https://www.who.int/publications/i/item/9789241507158.

[29] For further information, see section 8 of the full report.

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