

# Claiming The Right to Health:

## A Focus on Health Rights of Vulnerable Groups

UCT School of Public Health and Family medicine  
Health and Human Rights Programme



## LEARNING NETWORK

**A LEARNIG NETWORK INITIATIVE**

**The Learning Network** is a collection of 5 civil society organisations based in Cape Town:

1. The Women's Circle,
2. Ikamva Labantu,
3. Epilepsy South Africa,
4. Women on Farms Project and the
5. Cape Metro Health Forum

The **Learning Network** serves as the umbrella body in the Western Cape and includes 4 higher education institutions:

1. University of Cape Town (UCT)
2. University of the Western Cape (UWC)
3. Maastricht University, in the Netherlands
4. Warwick University in the UK



UNIVERSITY of the  
WESTERN CAPE



Universiteit Maastricht





**This project is funded by the Foundation For Human Rights**

The contents of this publication is the work of the  
**Learning Network for Health and Human Rights**  
It can no way be taken to reflect the views of the Foundation for Human Rights.



Open Source Learning Material

Curriculum Developed by: Fundiswa Kibido  
Health and Human Rights Programme  
Department of Public Health and Family Medicine  
University of Cape Town

Tel: 021 406 6429

Email: [Fundiswa.kibido@uct.ac.za](mailto:Fundiswa.kibido@uct.ac.za)

Published: 30 June 2016

Copyright: University of Cape Town, School of Public Health

Head of Department: Professor Leslie London

Email: [leslie.london@uct.ac.za](mailto:leslie.london@uct.ac.za)

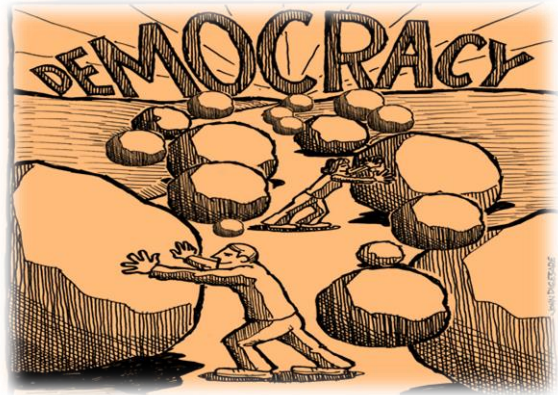
## Table of Contents

	Page
1. Background .....	7
2. Developing a sense of identity .....	8
3. The concept of vulnerable groups .....	8
4. Discrimination .....	9
4.1 Types of discrimination .....	10
4.1.1 Some discriminatory practices .....	10
4.2 Effects of discrimination .....	12
4.3 Dealing with discrimination .....	13
5. What do people do to claim their rights .....	13
6. Understanding Human Rights Provisions: International Provisions .....	14
6. Health equity .....	15
6.1 Responsibilities of states and international organizations .....	15
6.2 Examples of obligations .....	15
6.3 Conventions on Elimination of All forms of discrimination against women .....	16
6.4 Conventions on Elimination of discrimination against persons with disabilities ....	16
7. Understanding human rights provisions in S.A. context .....	17
7.1 Background to S.A. Constitution and human rights provisions .....	17
7.2 What are human rights .....	19
7.2.1 Application of Bill of rights .....	20
7.2.2 Chapter 2: Bill of Rights .....	21
8. Right to Health .....	23
8.1 Community Participation .....	24
8.1.2 Defining Community Participation .....	25
8.2 Health and Human Rights Provisions for Persons with disabilities in S.A. ....	26
9. Human Right in the Health Context .....	27
9.1 Cultural Practices and right to Health .....	28
9.2 Violation of Human Rights in the health sphere .....	30
9.3 Patients Charter of Rights .....	31
9.4 Explaining Health Violations .....	32
10. Reporting human rights violations .....	33
10.1 Approach to complaining .....	36
11. Evaluation .....	41
12 Appendices .....	
References .....	

**LEARNING OUTCOMES:**

At the end of this session, participants should be able to:

- Understand the concept of vulnerable groups
- Know the right to health provisions and how to use this right to access health care
- Explain the effects of discrimination on vulnerable groups
- Know the different agreements, policies and laws that inform development of a human rights culture in our society.
- Apply different human right provisions to address health and human right challenges.
- Gain skills and knowledge on how to advocate and lobby against human right violation
- Have a good understanding of the right to health and how to claim this right to improve access to health care



## 1. Background

Report on Social Profile of vulnerable groups released by Statistics S.A. in 2012 show that vulnerable groups make up a large number of the South African population and continue to expand as the population grows. Vulnerable population are groups who for various reasons, are viewed as weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. Having specific characteristics that make vulnerable groups to be at higher risk of falling into poverty and ill health, human rights instruments set out additional guarantees for persons belonging to these groups.

Many levels and global platforms discuss and prioritise human right provisions for these groups. The Committee on Economic, Social and Cultural Rights, for example, has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, and requires the states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints. One of the aims of the National Health Act is to protect, respect, promote and fulfil the rights of vulnerable groups such as women, children, older people and people with disabilities. The Patients' Rights Charter, in addition, says there must be provision for the special needs of vulnerable groups, such as infants, children, pregnant women, the aged, people with disabilities and people living with HIV/AIDS. Despite having all these provisions, vulnerable groups continue to live in the margins of society, with little dignity and fulfilment of their rights specifically the right to access health care.

Although the United Nations had adopted a number of specific international conventions and declarations in order to address the challenges of this nature, the responsibility remains with both states and individuals to claim these rights to the extent possible. The international community extended concessions to the vulnerable groups or disadvantaged people across the world, not only to remove the apparent deficiencies in the realization of their legally guaranteed human rights, but also to make them self-sufficient in exercise of their rights on an equal footing. The South African Constitution speaks to these concessions and guarantees all the people; civil, political, economic, social, and cultural rights for realization by all sections of the policy without any kind of discrimination.

Education is a vital tool to address many problems in any society. Therefore, the aim of the LN is to equip communities to understand and spread the message of human rights. These rights will in turn certainly, help to evolve effective solutions to strengthen communities and individuals whose rights are adversely affected, and who do not have at their disposal adequate knowledge and tools for the realization of their legally guaranteed rights.

**Activity: Understanding the concept of vulnerability: 30 minutes**

**Purpose:** To conduct self- reflection

**Method:** Individual

**Material:** Flip-chart and khokis

**Procedure:** Give participants quiet time to reflect on themselves and write aspects of what makes their identity; these aspects must be aligned with the different parts of the tree and tell a story about themselves. This should also reflect strengths and weaknesses

## 2. Developing a sense of Identity

It is essential that people reflect on themselves and think of who they are and who they identify themselves with. Developing a sense of self is an essential part of every individual becoming a mature person. Identity is the conception, qualities, beliefs, and expressions that make a person or a group, different from others and this evolves over the course of your life. This may include aspects of your life that you have no control over, such as where you grew up or the color of your skin, choices you make in life, how you spend your time, or being poor.

Understanding this, allows you to examine who you are and more importantly create who you want to be. Each person's self-conception is a unique combination of many identities. Identities can also be collective; that is, extend to countries and ethnic communities, so that people feel injured when other persons sharing their identity are injured or killed. The concept of vulnerable group is another concept that encompass grouping of people, we will explore the concept below.



## 3. The concept of vulnerable groups

**Activity: Reflection (30 minutes)**

**Purpose:** To reflect and identify vulnerability in people and community

**Method:** Group work

**Material:** Flip-chart and khokis

**Procedure:** Are you able to identify vulnerability just by looking at people? As a group discuss and write down all the things that you would associate with vulnerability in people.



**DEFINITION 1:** Groups that experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.

Some definitions state that vulnerable groups are people who are easily prone to physical or emotional injury, or subject to unnecessary criticism, or in a less advantageous position in any society. In most of the societies, it is quite common, for various reasons, to find practices that treat certain groups of people in a different and disadvantageous manner. Vulnerable groups are also viewed as certain groups of population who often encounter some kind of discriminatory treatment, or constantly need some kind of special protection from exploitation or from harmful practices and environment. This group of people may find it difficult to generally lead a comfortable life.

Due to poverty and other cross-cultural social problems many a times, the majority of vulnerable people are not able to access their basic needs, in spite of the efforts both at the international and national plane. To wipe out the miseries of these people, and to help them to achieve the equal status with that of the developed sections of a society, it is the responsibility of both nation-states, organisations and individuals to empower this group to the extent possible to uplift them in realizing their rights.

**4. Discrimination: It can either be direct or indirect.**

**Activity: Counteracting discrimination 30 minutes**  
**Purpose:** To reflect on personal qualities  
**Method:** Individual  
**Material:** Pen and paper  
**Procedure:** Participants to reflect on discriminations that they often experience and places where this occur. You should think of what protection do they need to lead a normal life.

Group	Kind of discrimination	Where
Disadvantaged women	<ul style="list-style-type: none"> <li>• .....</li> <li>• .....</li> </ul>	
Female farmworkers	<ul style="list-style-type: none"> <li>• .....</li> <li>• .....</li> </ul>	
Disabled person	<ul style="list-style-type: none"> <li>• .....</li> <li>• .....</li> </ul>	

## 4.1 Types of discriminations

Direct discrimination	Indirect discrimination
Unfair treatment of person or group of people because of certain characteristic, or their association with someone with that perceived characteristics	Intentional or unintentional practices or policies that put a person or persons in a disadvantaged position. Such policies may apply to everyone but because of some particular characteristic that you have, the policy will adversely affect you harder than others. If the policy makers can prove that they considered your characteristics and ended up with the policy with the least effect, it can be disqualified as discrimination.

**DID You Know?** In many parts of Africa including South Africa, people with albinism are misunderstood, disadvantaged, and even attacked and killed. Their body parts are sold to witchdoctors for use in charms and magical potions believed to bring wealth and good luck. What other persons face similar treatments in S.A. and elsewhere

'Wave of albino murders in Mozambique', From Arimando Domingos in Maputo, (CAJ News)



A United Nations independent expert will carry out a first visit to Mozambique next month prompted by the incessant killing of persons with albinism in the Southern African country. About 20 albinos, including a murdered six-year-old, have been kidnapped or killed in Mozambique amid indications the figure could be higher because fear prevents victims from reporting the crimes to the authorities.

### 4.1.1 Some practices can also be discriminatory in nature, these

Harassment	Victimization
This is an unwanted, offensive, humiliating and intimidation act directed at a person because of their characteristics e.g., age, disability, gender, race, sexual orientation, religion etc. This can be in the form of gestures, spoken or written words, images or jokes.	This is the unfavourable treatment one receives, often as a reaction to the person's claim of discrimination, or because the person is supporting someone's claim of discrimination, or the person's intentions about something.

**PLENARY: From the vulnerable groups below, which group do you think have difficulties when accessing health care? What difficulties are these? 15 minutes**

From these discriminatory practices, vulnerable groups find it difficult to enjoy and exercise their human rights. People falling under the category of vulnerable groups include:

- Elderly
- Women
- Children
- Youth
- People living with HIV and AIDS
- Ethnic minorities
- Migrants
- Disabled people
- The homeless
- Refugees
- Stateless persons and
- Victims of war.

**Places where discrimination can occur:** In any human community settlement or environment, it is possible for discrimination to occur, the places can include:



At this point, what would you do or say?  
Walk away or put up a fight, what kind of fight?  
If you walk away, what kind of message are you sending?

- **Workplace:** Some people are not employed because of who they are, or the characteristics that they have, which has nothing to do with their capacity to do the work
- **School:** Children are denied admission, or scholarships, or have been excluded from educational programs also because of who they are, or the characteristics they have that do not have anything to do with intelligence or capacity to study.

- **Housing:** Certain sections of the community have to endure long waiting periods from housing officials because they are of certain characteristics or occupy an unfavourable position in society, e.g. the ward Councillor allocate houses to close friends and family. They are given all sorts of ridiculous reasons, with the intention of making the homes available to other people that they are more comfortable with.
- **Public Places:** Many people have been given disrespectful treatment at public places such as restaurants, markets, hospitals and sports facilities, just because they look like or have some characteristics that others are not comfortable with.
- **Access to credit/funds:** People have been denied credit or funds just because they come from particular families, or are known to be from poor backgrounds, or for other reasons.
- **Politics/Voting:** People are often prevented from being active in political groups because they are perceived to carry negative images. People have also been prevented from voting because of their social, cultural, religious or political backgrounds.
- **Law/Police:** People are sometimes treated, or profiled by police just because of their skin color or the way they dress.
- **Travel/Tourism:** People have been denied visas, or harassed by security officers at the airport, or been treated unfairly because they are perceived to be troublemakers or dangerous people.

## 4.2 Effects of Discrimination

Plenary: What does discrimination do to a person? What feelings is the person most likely to have, and what do you think the person will do as a consequence of discrimination? 10 minutes

Like abuse and bullying acts, there are effects and consequences of discrimination: Here are a few:

### The Victim: Physical and emotional impacts

Exclusion or rejection directed to you by others for reasons that you often have no control of can cause extreme worry to an individual. It results in anxiety, sadness, depression and a feeling of guilt and emptiness. These often translate into depression, loss of interest, eating disorders and stress-related ailments.

### Health, Social and financial impacts:

Discrimination, harassment and victimization leave the individual confused and broken. They may take to alcohol or drugs, or may form their own opinions on others, develop a hatred for others, or withdraw from people. It can affect their health, decide not to fetch their treatment, develop resistance towards treatment, It can affect them financially, may lose their job,

### **Society and Businesses:**

Communities and business that fail to take strong action on discrimination tend to be lower in productivity. This is because people feel disgruntled, and loose interest in working hard. There is a drop in morale, trust and confidence on the part of the employees. People with talents and exceptional skills and abilities are not attracted to these places because they do not want to be discriminated against

Plenary: In South Africa, which are the most vulnerable groups that face discrimination more than the others? Why is that so, what effects does this have on them and their health in general?

### **4.3 Dealing with Discrimination**

Discrimination is something that can be a bit difficult to prove. Some people are quick to make conclusions about racial discrimination or feel threatened by any little thing. The baseline is that no one deserves to be treated less than other humans and no one should put up with it. Here are some ideas for dealing with discrimination:

**Be sure or certain that there is a case of discrimination.** Make sure you document the event and what was said to you or done to you. Do not wait as you may lose memory of the actions and words used against you.

**Speak to a senior person:** e.g. if it is the health facility, speak to the manager, or second in charge, health committee member or any person in authority at the place of the incident. Politely make your case and trust that they will take it up. Follow it up and ensure that the issue is resolved and that the culprit is aware of the consequences if it happened again.

**Speak to the relevant law experts** if you feel the case is a very serious one that needs serious attention. Do not be quiet about it. Make the right choices about what to do

### **5. What do people need to claim their rights?**

Individuals and communities, particularly those that are marginalized groups should be empowered to understand and claim their rights. In order to effectively claim their rights, rights holders must be able to:

- Access information,
- Organize and participate
- Advocate for change and
- Obtain redress.

A situational analysis is required and will assist in getting to the bottom of the challenge. A situational analysis has to respond to four main questions:

**1. Assess the situation: What is happening, where and who is more affected?**

For every health challenge, identify the inter-related human rights standards and the groups suffering from a greater denial of rights.

**2. What cause the situation: Why are these problems occurring?**

Identify the underlying and root causes of exclusion, discrimination and inequality.

**3. Role analysis: Who has the obligation to do something about it?**

Identify individual and institutional duty-bearers and their corresponding obligations.

**4. What capacity is required: What capacities are needed for those affected, and those with a duty, to take action?**

Identify the skills, abilities, resources, responsibilities, authority and motivation needed by those affected to claim their rights and those obliged to fulfil the rights. Once capacity development assets and needs have been identified, the central question is:

**Where and how can capacity development efforts produce the greatest results?**

**6. Understanding Human Rights Provisions: International Provisions to eradicate human right abuses against vulnerable groups**

The United Nations has adopted a number of Declarations, Conventions, and Covenants to uplift the rights of these people. It also established special commissions and organisations to deal with the rights of such people whose rights are at jeopardy.

**Based on the reports of the various committees, the UN has adopted a general framework to eradicate and address the adverse situations faced by these groups. The suggestions include:**

- Equal pay for equal work;
- Independent mechanism or commission to establish and to deal with each category of people;
- Basic compulsory education;
- Special concessions to these people;
- Provisions to enable them to take part in the governance;
- Independent forums to express their grievances;
- Easy accessibility to medical and health care; and,

- Efforts to raise the standard of living, subsidized food supply, eradicate malnutrition, abolish any customary practices that threaten their survival, over all social security etc.

### 6.1 Health Equity

The General Comment also makes additional reference to the question of health equity, a concept not addressed in the initial International Covenant. The document notes, "The Covenant prescribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement." Moreover, responsibility for ameliorating discrimination and its effects with regards to health is delegated to the State: "States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services." Additional emphasis is placed upon non-discrimination on the basis of gender, age, disability, or membership in indigenous communities.

### 6.2 Responsibilities of states and international organizations

Subsequent sections of the General Comment detail the obligations of nations and international organizations towards a right to health. The obligations of nations are placed into three categories: obligations to respect, obligations to protect, and obligations to fulfill the right to health.

#### **Examples of these obligations (in non-exhaustive fashion) include:**

- Preventing discrimination in access or delivery of care;
- Refraining from limitations to contraceptive access or family planning;
- Restricting denial of access to health information;
- Reducing environmental pollution;
- Restricting coercive and/or harmful culturally-based medical practices;
- Ensuring equitable access to social determinants of health; and
- Providing proper guidelines for the accreditation of medical facilities, personnel, and equipment

#### **International obligations include:**

- Allowing for the enjoyment of health in other countries;
- Preventing violations of health in other countries;
- Cooperating in the provision of humanitarian aid for disasters and emergencies; and
- Refraining from use of embargoes on medical goods or personnel as an act of political or economic influence.

### **6.3 Convention on the Elimination of All Forms of Discrimination Against Women**

Article 12 of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related healthcare provisions. Article 12 states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women 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.

### **6.4 Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities**

The Convention on Rights of Persons with Disabilities (CRPD) was adopted by UNGA Resolution 61/106 of 13 December 2006. It entered into force on 2 May 2008 and was to 'ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Article 2 enshrines the principles of dignity, freedom of choice, independence, non-discrimination, full inclusion, participation, respect for difference, acceptance of disability as part of human diversity. Equality of opportunity, accessibility, equality between men and women and respect for the evolving capacities of children with disabilities and their right to preserve their identities is also promoted by the Convention.

Article 25 of the Convention on the Rights of Persons with Disabilities (2006) specifies that "persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability." The sub-clauses of Article 25 state that States shall give the disabled the same "range, quality, and standard" of health care as it provides to other persons, as well as those services specifically required for prevention, identification, and management of disability.

States parties are also to maintain, strengthen, designate or establish a framework, including one or more independent mechanisms, to promote, protect and monitor implementation of the Convention. When designating or establishing such a mechanism, states parties shall take into account the principles relating to the status and functioning of national institutions for the protection and promotion of human rights. Finally, civil society is given a central role in promoting the implementation of the Convention as Article 33 sets out that civil society shall be involved and participate fully in the monitoring process established by states parties.



The International Day of Disabled Persons is 3 December each year. The aim is to promote an understanding of disability issues and mobilise support for the dignity, rights and well-being of persons with disabilities.



**Equality is not about treating all people in the same way. It's about recognising and respecting diversity enough to adapt practice and procedure to suit all.**

## **7. Understanding Human Rights Provisions in S.A. context**

### **7.1 Background to the SA Constitution and Human Right Provisions**

Chapter 1 of the Constitution enshrines the key national principles, defines the country's flag and national anthem, and specifies the official languages and principles of government language policy. It defines South Africa as "*one, sovereign, democratic state*" based on principles of human rights, constitutional supremacy, the rule of law and universal adult suffrage. The chapter contains a supremacy clause which establishes that all other law and actions are subject to the constitution.

The Constitution of the Republic of South Africa, was approved by the Constitutional Court (CC) on 4 December 1996 and took effect on 4 February 1997. It is the highest law of the land, and that no other law or government action can supersede the provisions of the Constitution. This then means that all other laws and policies must fall in line with what the Constitution says.

### **Based on Negotiation**

An integral part of the negotiations to end apartheid in South Africa was the creation of a new, non-discriminatory constitution for the country. One of the major disputed issues was the process by which such a constitution would be adopted. The African National Congress (ANC) insisted that it should be drawn up by a democratically-elected constituent assembly, while the governing National Party (NP) feared that the rights of minorities would not be protected in such a process, and proposed instead that the constitution be negotiated by consensus between the parties and then put to a referendum. There were many other parties that were also involved and participated besides the ANC and NP

Formal negotiations began in December 1991 at the Convention for a Democratic South Africa (CODESA). The parties agreed on a process whereby a negotiated transitional constitution would provide for an elected constitutional assembly to draw up a permanent constitution. The CODESA negotiations broke down, however, after the second plenary session in May 1992. One of the major points of dispute was the size of the supermajority that would be required for the assembly to adopt the constitution: The NP wanted a 75 per cent requirement, which would effectively have given it a veto.

### **Constitutional principles included :**

- multi-party democracy with regular elections
- universal adult suffrage – qualifying voting age
- supremacy of the constitution over all other law
- a quasi-federal system (union of states under a central government) in place of centralised government
- non-racism and non-sexism
- the protection of "all universally accepted fundamental rights, freedoms and civil liberties," equality before the law
- the separation of powers with an impartial judiciary
- provincial and local levels of government with democratic representation, a
- Protection of the diversity of languages and cultures.

## The Pre-amble of the South African Constitution

“We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity.  
We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to — Heal the divisions of the past and establish a society based on democratic values,  
Social justice and fundamental human rights;  
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;  
Improve the quality of life of all citizens and free the potential of each person; and  
Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.  
May God protect our People!

### 7.2 What are human rights?

Some possible definitions of human rights:

- Basic standards that you need in order to live in dignity.
- A set of moral principles that apply to everyone equally.
- A claim that we are justified in making.
- Something that we are entitled to and can expect to be met (promise or guarantee)



The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. It is also stated in the Constitution that the state must respect, protect, promote and fulfil the rights in the Bill of Rights. South African human rights are also legal rights, which mean they are enforceable by law. Although people are afforded the rights, it is also stated in the Bill of Rights that rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill. The S.A. Constitution and the Bill of Rights, binds all S.A. citizens to democratic practices.

**Rights Holders** are those who are eligible to claim rights or are entitled to rights.

**Duty Bearers** are those who have obligations to fulfil rights, making sure that people's rights are made real. Duty bearers include local, provincial and national governmental authorities.

### 7.2.1 Application of the Bill of Rights

It should be clarified that individual rights should always be balanced in relation to the rights of others.

**In Practical terms, the Bill of Rights and its provision:**

- Applies to all law in the country, and binds the legislature, the executive, the judiciary and all organs (structures) of state in S.A.
- Binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

3. When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court in order to give effect to a right in the Bill:

- Must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
- May develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

#### **Limitation of rights 36 (1)**

- ✓ The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
  - a. the nature of the right;
  - b. the importance of the purpose of the limitation;
  - c. the nature and extent of the limitation;
  - d. the relation between the limitation and its purpose; and
  - e. less restrictive means to achieve the purpose.

4. A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Together with the Bill of rights, the South African Human Rights Commission (SAHRC) was also established as the body that is to monitor whether government takes up its human rights commitments. SAHRC serves as the body that investigates human rights complaints.

## 6.2.2 Chapter 2: Bill of Rights

A bill of rights enumerates the civil, political, economic, social and cultural human rights of the people of South Africa. Most of these rights apply to anyone in the country, with the exception of the right to vote, the right to work and the right to enter the country, which apply only to citizens. They also apply to juristic persons to the extent that they are applicable, taking into account the nature of the right. The rights enumerated are:

**Section 9:** The right to equality before the law and freedom from discrimination. Prohibited grounds of discrimination include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

**Section 10:** The right to human dignity.

**Section 11:** The right to life, which has been held to prohibit capital punishment,[8] but does not prohibit abortion.[9]

**Section 12:** The right to freedom and security of the person, including protection against arbitrary detention and detention without trial, the right to be protected against violence, freedom from torture, freedom from cruel, inhuman or degrading punishment, the right to bodily integrity, and reproductive rights.

**Section 13:** Freedom from slavery, servitude or forced labour.

**Section 14:** The right to privacy, including protection against search and seizure, and the privacy of correspondence.

**Section 15:** Freedom of thought and freedom of religion.

**Section 16:** Freedom of speech and expression, including freedom of the press and academic freedom. Explicitly excluded are propaganda for war, incitement to violence and hate speech.

**Section 17:** Freedom of assembly and the right to protest.

**Section 18:** Freedom of association.

**Section 19:** The right to vote and universal adult suffrage; the right to stand for public office; the

### Activity:

**Purpose:** To identify human rights provisions in everyday life context

**Method:** Buzz session

**Procedure:** Find a partner and tell them about a) human rights you are enjoying and; b) the ones that you are not enjoying. The ones you are not enjoying how would you claim for them and who should provide for them? Match these rights you are enjoying with the Bill of rights

**Section 20:** No citizen may be deprived of citizenship.

**Section 21:** Freedom of movement, including the right to leave South Africa, the right of citizens to a passport and the right to enter South Africa.

**Section 22:** The right to choose a trade, occupation or profession, although these may be regulated by law.

**Section 23:** Labour rights, including the right to unionise and the right to strike.

**Section 24:** The right to a healthy environment and the right to have the environment protected.

**Section 25:** The right to property, limited in that property may only be expropriated under a law of general application (not arbitrarily), for a public purpose and with the payment of compensation.

**Section 26:** The right to housing, including the right to due process with regard to court-ordered eviction and demolition.

**Section 27:** The rights to food, water, health care and social assistance, which the state must progressively realise within the limits of its resources.

**Section 28:** children's rights, including the right to a name and nationality, the right to family or parental care, the right to a basic standard of living, the right to be protected from maltreatment and abuse, the protection from inappropriate child labour, the right not to be detained except as a last resort, the paramountcy of the best interests of the child and the right to an independent lawyer in court cases involving the child, and the prohibition of the military use of children.

**Section 29:** The right to education, including a universal right to basic education.

**Section 30:** The right to use the language of one's choice and to participate in the cultural life of one's choice.

**Section 31:** The right of cultural, religious or linguistic communities to enjoy their culture, practise their religion and use their language.

**Section 32:** The right of access to information, including all information held by the government.

**Section 33:** The right to justice in administrative action by the government.

**Section 34:** The right of access to the courts.

**Section 35:** The rights of arrested, detained and accused people, including the right to silence, protection against self-incrimination, the right to counsel and legal aid, the right to a fair trial, the presumption of innocence and the prohibition of double jeopardy and ex post facto crimes.

**Responsibility:** Every right has a matching responsibility. If we want to have our rights met, we must also contribute toward shared responsibility. If we go to the clinic for treatment, the health worker will ask for information about our medical history. If we want the health-care worker to treat our problem properly, we should provide the correct information. To have our right to access to health care met, we have a responsibility to share medical information that is needed for our treatment. We have the right to express ourselves and the responsibility to observe the dignity of others.

### **Activity 2: Human Rights in the context of health 20 minutes**

**Purpose:** To reflect on human right and health.

**Method:** Brainstorm

**Procedure:** Participants to think of an incident in which their enjoyment or lack of enjoyment of their human rights indirectly or directly affected their health and share with a partner. What did you do?

## **8. Right to health**

**Section 27 of the Bill of Rights: The rights to food, water, health care and social assistance,** which the state must progressively realize within the limits of its resources.

27 1) Everyone has the right to have access to:

- Health care services, including reproductive health care;
- Sufficient food and water; and
- Social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

3) No one may be refused emergency medical treatment

The right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

*“The right to health does not mean the right to be healthy, nor does it mean that poor governments must put in place expensive health services for which they have no resources. But it does require governments and public health authorities to put in place policies and action plans which will lead to available and accessible health care for all in the shortest possible time...”* Mary Robinson, United Nations High Commissioner for Human Rights

General Comment No. 14 highlights that the right to health extends to:

- Timely and appropriate health care
- Address the underlying determinants of health, such as safe and potable water, sanitation, food, housing,
- Provision of health related information and education, and Gender equality

The four elements below are essential to the enjoyment of the right to health by all.

- Availability,
- Accessibility,
- Acceptability and
- Quality (AAAQ)

Human rights-based approach gives importance not only to outcomes, but also to the processes. Human rights standards and principles such as:

- Participation,
- Equality and non-discrimination, and
- Accountability

Human rights standards and principles are to be integrated into all stages of the health programming process:

- Assessment and analysis
- Priority setting
- Programme planning and design
- Implementation and
- Monitoring and evaluation

### **8.1 Community Participation and Inclusion in health**

Participation and inclusion means that people are entitled to active, free and meaningful participation in decisions that directly affect them, such as the design, implementation and monitoring of health interventions. Many times health policies and programmes can intentionally or unintentionally, promote or violate human rights in the ways they are implemented and designed. The advocacy for a rights-based approach to health assesses and addresses the human rights implications of health policies and programmes, and integrates



human rights in the design, implementation, monitoring and evaluation of health policies and programmes. World Health Organisation (WHO) supports countries to build their capacities to design and implement health policies and programmes that enhance health equity and integrate pro-poor, gender-responsive, and human rights-based approaches. The right to health provision is there to make sure that policy strategies and solutions address and rectify inequalities, discriminatory practices and unjust power relations, which often disadvantage vulnerable populations at the heart of inequitable health outcomes

### **8.1.2 Community Participation: Definitions**

- *The process by which individuals and families assume responsibility for their own health and welfare and that of those of the community, and develop the capacity to contribute to their and the community's development. They come to know their own situation better and are motivated to solve their common problems. These enable them to become agents of their own development instead of passive beneficiaries of development aid (WHO, 1978)*
- *Community participation is; "A social process whereby specific groups with shared needs, living in a defined geographic area, actively pursue identification of their needs, take decisions and establish mechanisms to meet those needs" (Rifkin et al 1988: 933).*
- "A process whereby community members take active part in the identification of their needs, setting priorities, identifying and obtaining means to meet those priorities, including the development, implementation and evaluation of those means in terms of their outcomes" (Koelen & van den Ban, 2004).
- "An opportunity for community members and health care workers to become active partners In addressing local health needs and related health service delivery requirements. Community participation also enables community members and other stakeholders to identify their own needs and how these should be addressed, fostering a sense of Community ownership and responsibility" (Paradath and Friedman 2008).
- "Community participation is a process where 'community members' engage with health officials in matters related to health and health services, and where that includes involvement in setting the agenda, identifying problems, planning and implementing solutions, taking part in decisions, having an oversight function that entails monitoring and evaluation, and ensuring an accountable health system." (Haricharan 2012).

## 8.2 Health and Human rights provisions of people with disabilities in S.A.



In 1997 the government released its Integrated National Disability Strategy White Paper advocating for an approach to disability which focuses on the social barriers leading to disability and flowing from it. The approach recognises the need for people with disabilities to participate in policy and legislative developments on issues that affect them. The White Paper noted that 5 to 12% of South Africans are moderately to severely disabled and that people with disabilities who are women, children, elderly or living in rural areas are particularly vulnerable.

The White Paper further noted that not only are poor people at greater risk of impairment or disability, but also that disability places an additional burden on families thrusting them into deeper poverty. In relation to health care, the White Paper's policy objective is the development of a comprehensive universal health care system, at primary, secondary and tertiary level, that is sensitive to the general and specific health care needs of people with disabilities. Strategies to achieve this should include:

- Measures aimed at the elimination of discrimination on the basis of disability in the health sector, with special attention given to women with disabilities;
- The development of national norms and minimum standards for the building of health facilities to ensure barrier-free access;
- Appropriate communication strategies at service-delivery points which must ensure equal access for people with communication disabilities; and
- The development of training programmes

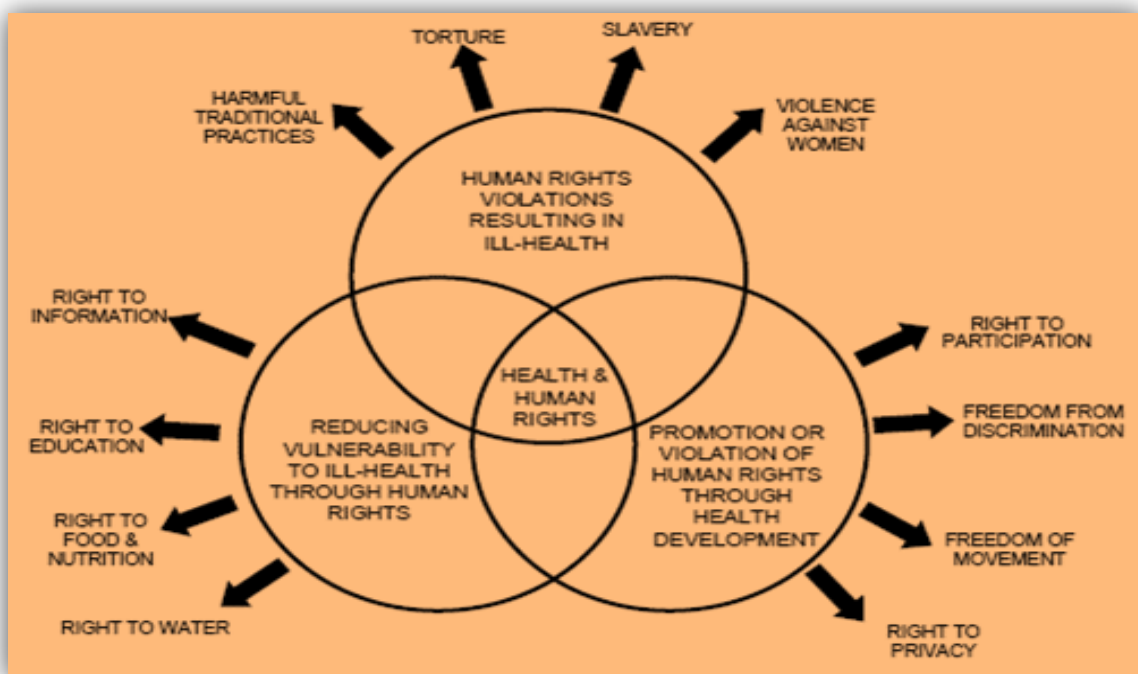
The NHA requires the Minister of Health to consider the needs of people with disabilities when deciding which people qualify for free public health services. All people with disabilities are already able to access free primary health care services. Those who receive disability grants – meaning poor people who are unable to work because of their disabilities – qualify for full subsidisation of public hospital fees. The same applies to people in receipt of pensions for the blind, care dependency grants and single care grants for mental illness.

## 9. Human rights in the health context?

Human rights activists all over the world advocate for a human right-based approaches in health to address and rectify inequalities, discriminatory practices and unjust power relations. It is widely known that discrimination in the delivery of health services violates fundamental human rights and can have serious health consequences. Providing an environment for the realization of human rights reduces vulnerability to ill-health.

This approach aims at realizing the right to health and health-related human rights, it emphasise the following:

- Capacity development of duty bearers to respect, protect and fulfil human rights
- Empowering rights-holders to effectively claim their health rights.
- Elimination of all forms of discrimination.



### Activity: Claim your rights

**Purpose:** To apply the right to health against cultural practice

**Method:** Buzz session

**Material:**

**Procedure:** Reflect on the case scenario and discuss what are some of the things you would do to claim your rights, should you disagree with the cultural practise?

## 9.1 Cultural Practices and the right to health: Fighting female genital mutilation in Africa

Dakar, Senegal - Now in her 50s, Madina Bocoum Daff still cannot get over the agony and shame of her teenage years. Madina - barely into adolescence - was subjected to one of the most severe forms of female genital mutilation (FGM) - a practice long carried out in many African countries.

She was too young to understand what was happening to her. Like all other young girls in her ethnic Fulani community in Mali, she was required to go through the rite of passage before the onset of puberty. The practice involves "cutting" a girl's vagina to create a seal that narrows the opening, just wide enough to allow the passing of urine and menstrual blood. Infibulated girls often have their legs bound together for up to four weeks to allow the freshly fused tissue to heal.

"All I know is that I had severe problems immediately after being excised. I remember going through a very agonising cycle of puberty. I remained covered in pain and humiliation," says Madina.

On the International Day of the African Child, the suffering caused by female genital mutilation is under the spotlight with the controversial practice widely condemned by rights and health organisations. According to the World Health Organisation, there are about 140 million girls and women around the world currently living with the consequences of the practice. The majority of these females are in Africa, where it is routinely done in 28 countries.

An estimated 101 million girls 10 years old and above have undergone varying forms of genital mutilation in Africa. A study by child rights and development organisation Plan International in Mali in 2010 found more than half of all fathers and one-third of mothers wanted their girls excised. "I don't see any harm from this practice. It has been our tradition for centuries," Abdoul, a father of two young girls, told researchers.

### **Dangerous operation**

For families it is a seal of guarantee that secures girls against any sexual encounter prior to marriage, and protects the family honour. For infibulated girls, mutilation does not end with the childhood operation. On the day of their wedding, brides undergo another painful surgery to reverse it. This involves cutting open the connecting tissue and restoring the vaginal opening to enable sexual intercourse with their husbands. "I cannot even explain the feeling of terror that runs through infibulated girls' minds thinking of marriage," says Madina. In most cases cutting is done by a traditional practitioner without any anaesthesia and little care for hygiene. Razors, knives or scissors are used and they are rarely sterilised. The surgery takes place wherever it is convenient - from out in the open to a bathroom floor. "It is only after completing this procedure an excised bride is considered 'free'. She usually has her first sexual experience the very same night after cutting," says Madina.

In most places where it is practised, FGM is considered an essential part of raising a girl and preparing her for womanhood and marriage. With its direct link to beliefs about premarital virginity and marital fidelity, the social pressure to adhere to the practice is intense. Thousands of girls every year suffer health complications including severe vaginal pain, shock, bleeding and infection. Life-long consequences include infertility, childbirth complications and new-born deaths.

All health policies, strategies and programmes must be designed with the objective of progressively improving the enjoyment of all people to the right to health. Interventions to reach this objective adhere to rigorous principles and standards, including:

1. **Non-discrimination:**

The principle of non-discrimination seeks ‘...to guarantee that human rights are exercised without discrimination of any kind based on:

- Race
- Colour
- Sex
- Language
- Religion
- Political or other opinion
- National or social origin
- Property

Birth or other status such as;

- Disability
- Age
- Marital and family status
- Sexual orientation and gender identity
- Health status
- Place of residence
- Economic and social situation

2. **Availability:** A sufficient quantity of functioning public health and health care facilities, goods and services, as well as programmes.

3. **Accessibility:** Health facilities, goods and services accessible to everyone.

**Accessibility has 4 overlapping dimensions:**

- Non-discrimination
- Physical accessibility
- Economical accessibility (affordability)
- Information accessibility.

4. **Acceptability:** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate as well as sensitive to gender and life-cycle requirements.

5. **Quality:** Health facilities, goods and services must be scientifically and medically appropriate and of good quality.

6. **Accountability:** States and other duty-bearers are answerable for the observance of human rights.

7. **Universality:** Human rights are universal and inalienable (not be taken away). All people everywhere in the world are entitled to them.

## 9.2 Violations of human rights in the health sphere: Whose rights are more important?

### **Article on News24 2015-12-22 titled: Patients turned away as clinic staff attend end-of-year function**

Cape Town - A community clinic in Mfuleni is alleged to have turned away several patients - some of whom were in need of antiretroviral and TB medication - as staff attended an end-of-year function, GroundUp reports.

At the entrance a security guard was turning people away, telling them only emergency cases would be seen.

Angie Peter, an activist for the Treatment Action Campaign in the area said, she received a call from two patients who had been turned away when they went to fetch antiretroviral medication.

She had gone to the clinic manager's office only to find that he was not there. She had called the sub-district in Khayelitsha to report the problem, she said.

"One of them is going to the Eastern Cape today, and she was supposed to get the medication. Who wants to disclose their status at the gate to a security guard?" said Peter.

Peter, who was also supposed to get her medication that day, gave her clinic card to the clerk. He told her to go to the pharmacy where she was told to go back to the clerk and ask for her file. He went to look for it on the other side of the clinic and came back after a few minutes to say he couldn't find the file.

"I don't know how the filing system works. I don't work here, I was just asked to help out today," he said.

Peter finally managed to get her medication after refusing to leave without it.

Another TAC volunteer, said people who collected TB medication were being turned away. "There are people who just started their treatment. Now the clinic will be the reason why many people default," said TAC volunteer.

A patient who didn't want to be named said she was at the clinic to fetch her treatment but read the notice at the gate and returned home.

"I am leaving for the holidays and my departure date was today. I am only coming back in January. Now I must postpone my bus ticket which will cost me more money," she said. Magubane: "The staff on duty included one clerk, two medical officers, one clinical nurse practitioner, two professional nurses, one enrolled nurse and two cleaners. This staff complement was sufficient to see to patients attending the facility. "The department cares about the well-being of its clients as well as its staff. The end-of-year function is an opportunity for staff and managers to appreciate the efforts that have been made as a unit throughout the year."

### **Activity: A Balancing Act Debate**

**Purpose:** To apply the principle of 'balancing act'

**Method:** Debate

**Material:** Two groups face to face with facts

**Procedure:** Reflect on the case scenario and divide into two groups; one group argues for the staff and the other for the patients. Apply the Bill of Rights to argue your cases

### **9.3 Patients' Charter of Rights (SA Department of Health):**

In 1997 the South African Department of Health launched the Patients' Rights Charter, which aims to make sure that the right of access to health services is realised. They see the Patients' Rights Charter as a way to empower patients in their relationships with health care service providers.

The Patients' Rights Charter lists both the rights and the responsibilities of people using health services. According to the charter patients have the right to:

- A healthy and safe environment
- Participation in decisions about their health
- Access to health care which includes:
  - i. receiving timely emergency care at any health care facility that is open, regardless of one's ability to pay;
  - ii. treatment and rehabilitation that must be made known to the patient to enable the patient to understand such treatment or rehabilitation and the consequences thereof;
  - iii. provision for special needs in the case of new-born infants, children, pregnant women, the aged, disabled persons, patients in pain, persons living with HIV or AIDS patients;
  - iv. counselling without discrimination, coercion or violence on matters such as reproductive health, cancer or HIV & AIDS;
  - v. palliative care that is affordable and effective in cases of incurable or terminal illness;
  - vi. a positive disposition displayed by health care providers that demonstrates courtesy, human dignity, patience, empathy and tolerance; and
  - vii. health information that includes the availability of health services and how best to use such services and such information shall be in the language understood by the patient.

**Patients have the right to:**

- Knowledge of one's health insurance/medical aid scheme
- Choice of health services
- Be treated by a named health care provider

- Confidentiality and privacy
- Informed consent (information about condition, procedure explained, risks explained)
- Refuse treatment
- Be referred for a second opinion
- Continuity of care (co-operation between health care facilities)
- Complain about health services (poor quality of care)

**Patients have the responsibility to:**

- Advise the health care providers on his or her wishes with regard to his or her death
- Comply with the prescribed treatment or rehabilitation procedures.
- Enquire about the related costs of treatment and/or rehabilitation and to arrange for payment.
- Take care of health records in his or her possession.
- Take care of his or her health.
- Care for and protect the environment.
- Respect the rights of other patients and health providers.
- Utilise the health care system properly and not abuse it.
- Know his or her local health services and what they offer.

Provide health care providers with the relevant and accurate information for diagnostic, treatment, rehabilitation or counselling purposes.

#### **9.4 Explaining Health Violations:**

Human rights violations take place when government fails to respect, protect, fulfil or promote rights because of:

**Direct actions** of the government: e.g. adopting a law that is incompatible with the right to health, like a law that results in medicines being unaffordable.

**Negligence:** deliberate failure to take the necessary steps to fulfil or protect the right to health, e.g. by not providing enough budget or staff for health services to function properly.

**Discriminatory** policies or practices related to people's rights: e.g. like not having sign language interpretation for deaf patients who use health care facilities.

Not every situation of wrongdoing, failure or bad service by a government authority or health care worker is a violation of health rights. There is a difference between complaints about health care services e.g. about nurses not allowing patients access to toilets in the facility and violations of health rights not having any clinic or health service in a rural town, which is a violation of the right to have access to health care.



It is also important to note that there may be good reasons why a government authority or a health care worker is unable to meet their duties related to health rights. Here it is important to note the difference between the government being **unwilling** to meet its obligations and being **unable** to meet its obligations.

### **When has the Right to health been violated? :**

According to the SA Constitution the right to health has been violated when government:

1. Fails to **respect** health care rights: Government fails to respect rights when it interferes with a person's access to health care services or takes away health rights, by moving away from progress that has been made. Examples of failures to respect health rights include:

- Denying access to health care to non-citizens
- Only providing sexual and reproductive health care treatment if you consent to an HIV test
- Closing existing health care facilities or shortening the hours that clinics stay open
- Deliberately withholding health information that is vital for prevention or treatment

2. Fails to **protect** the right to health: Government fails to protect the right to health when it doesn't prevent powerful people or organisations from violating your health rights or doesn't remove obstacles to the immediate fulfilment of a right. Examples include:

- Failing to put in place laws that stop factories from polluting drinking water
- Failing to ensure that hospitals take measures to make sure the medical treatment of patients is of a high quality and that the staff they employ are registered to practice medicine
- Failing to protect people from discriminatory practices of medical aids

Government fails to **fulfil** the right to health by not taking reasonable steps towards the progressive realisation the right to health. Examples include:

- Not allocating enough budget nor having a plan to improve health care services
- Failing to plan to ensure that essential medicines are available at health care facilities

The courts in South Africa have interpreted the government's obligation to take **reasonable steps** in the following way. Government's programmes to fulfil the right to health must:

- Be comprehensive, coherent and co-ordinated
- Measures taken must be able to facilitate the right to health
- Provide for short, medium and long term needs
- Allocate responsibilities and tasks to different parts of government
- Ensure that financial and human resources are available
- Be reasonably formulated and implemented
- Must provide for the needs of those most desperate

Government fails to **promote** the right to health. Examples include:

- Not using the media to inform people about the right to health and where people can complain
- Failure to display the Patients' Rights Charter or complaints procedures at clinics

## 10. Reporting Human Rights Violations

### **Organisations in South Africa that can deal with violations of Rights**

In South Africa we have a number of formal organisations whose main purpose is to deal with violations of rights or hold government accountable in different ways. These organisations include:

**The South African Human Rights Commission (SAHRC):** This is an independent body that keeps an eye on government actions that affect human rights and that is also tasked with monitoring how private institutions respect human rights. The aim of the SAHRC is to create a culture of rights and to promote respect for human rights. The SAHRC can:

- Receive complaints regarding the violation of human rights.
- Investigate and report on human right violations.
- Give people assistance when their rights have been violated or find solutions to remedy violations of rights.
- Conduct research on human rights issues.
- Have public hearings (where people can talk about violations of their rights) to gather information on specific rights issues.
- Report to Parliament on matters relating to human rights.
- Regularly publish reports on government departments' performance on realising socio-economic rights.
- Make recommendations to government to improve the carrying out of human rights.
- Create awareness of human rights.

Any individual or group can make a complaint to the SAHRC if they think their rights have been violated. Even if it takes a while for them to respond to your complaint, it is still important to complain, because they keep a record of the types of rights complaints they get.

These records of complaints can then be used to track the patterns and kinds of human rights violations occurring most often in South Africa. The SAHRC will use this in their reports to government and to decide which rights issues should be investigated in more depth. There is no cost involved in complaining to the SAHRC. Their website has a complaints form that can be completed online. For more information on how you could complain see the SAHRC website.

The SAHRC will ask for the following basic information if you are complaining about a rights violation:

- Your name, ID number and contact details
- A brief description of what happened

- The date, time and the place where the incident happened
- Which of your rights you feel were violated
- The name and contact details of the person who violated your rights
- The names and contact details of any people who saw what happened to you (when your rights were violated)

### **South African Human Rights Commission**

Tel: 011 877 3600 (Switchboard) - National

Tel: 021 426 2277 | Fax: 021 426 2875 – W. Cape

WEBSITE: [www.sahrc.org.za](http://www.sahrc.org.za)

General information: [info@sahrc.org.za](mailto:info@sahrc.org.za)

Complaints: [complaints@sahrc.org.za](mailto:complaints@sahrc.org.za)

### **The Equality Court**

TOLL FREE LINE: 0800 11 20 40

Customer Service Line: (012) 366 7143

[customerservice@pprotect.org](mailto:customerservice@pprotect.org)

Tel: 0860 142 142

[service@westerncape.gov.za](mailto:service@westerncape.gov.za)

The Right to equality is one of the most basic rights in our new Constitution. To ensure this right the Constitution calls for a specific law to be put in place to prevent unfair discrimination. In September 2000 the Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) came into operation. In order to deal with unfair discrimination specific Equality Courts were established to enforce this law. You can approach the Equality Court with any complaint about:

- Unfair discrimination
- Publication of information that unfairly discriminates
- Harassment
- Hate speech

### **Health Professions Council**

Client Care: 012 338 9300/01012 328 5120

Email: [info@hpcsa.co.za](mailto:info@hpcsa.co.za)

[www.hpcsa.co.za](http://www.hpcsa.co.za)

[legalmed@hpcsa.co.za](mailto:legalmed@hpcsa.co.za)

Fax: 012 328 4895

## The Public Protector

[info@pprotect.org](mailto:info@pprotect.org)

**Public protector:** *“The Public Protector South Africa strives to make constitutional democracy and the fulfilment of human rights a reality to South Africans through the improvement of national governance.”* **Chief Executive Officer**

The Public Protector receives and looks into complaints from the public against government agencies or officials who deliver a service to the public or who are responsible to the public in some way. This includes provincial government, state departments, local authorities or someone employed by the government e.g. policeman, nurse or doctor, electoral officer and people elected to parliament or local councils. The Public Protector’s services are free and available to everyone.

### 10.1 Approach to complaining

There are a couple of things that are important to remember when you are complaining. Firstly, you should keep copies of all the letters you have sent or forms you completed in order to complain. If you complain in writing and make copies of your complaint letter, then you have proof of your complaint. Normally government institutions have a procedure (a formal series of steps that need to be followed) when you complain. It is easiest to work through these steps and you are more likely to eventually get a response to your complaint. In most cases, when you complain effectively, you are always moving one step up (complaining to someone who has more authority or control) until you are satisfied with the response you get.

- It is important to start off by complaining to the **person directly involved** (in other words the person who you feel has violated your rights e.g. nurse, doctor, pharmacist or security guard).
- If you don’t feel satisfied with how the problem was resolved you can then complain to that person’s boss or manager (e.g. **Sister in Charge, Facility manager**).
- You could try to approach the **clinic health committee** if neither the sister in charge nor the facility manager can resolve your complaint or if they don’t respond to you.
- You could also try the **sub district manager (health department)** if neither the sister in charge nor the facility manager can resolve your complaint or if they don’t respond to you.
- If your complaint still has not been resolved you can contact the **Provincial Department of Health** (write to or call the complaints manager)
- If you don’t have a satisfactory response from the provincial department of health you can contact the **National Department of health** (contact the national complaints centre)
- If your complaint has still not been resolved you can complain to the **South African Human Rights Commission**

### **Information needed for Complaints:**

When you complain about a rights violation, always remember to make sure you have the following information:

- The name of the facility or organisation where the violation occurred.
- The names of anyone who was involved in the complaint (if people do not have a name tag, you can ask them what their name is).
- Also remember to have names of any witnesses (other nurses, doctors, patients who saw what happened to you when your rights were violated)
- The time and date of incident
- Which of your rights you feel were violated
- Your name and contact details (so that they know who they should respond to)
- Keep a record of any reference numbers you are given in the process of complaining or copies of any letters or complaints forms

### **Complaints to the Department of Health**

If you feel your rights were violated and you want to complain directly to the health care service, because you are not happy with the response you got from the person directly involved, you can contact your clinic health committee. Each clinic or community health centre should have a health committee. Health committee's represent the community's interests in the facility and they can assist you with complaints. You should be able to get the contact details of the health committee members from facility staff or you can call the Cape Metro Health Care Forum (umbrella body for all health committees) to get contact details for the health committee at your clinic.

If you want to complain directly to the health care facility or clinic, the name and contact details of the facility manager at a clinic or a community health centre should always be clearly displayed. If it is not displayed a member of staff at the facility should be able to give you the contact details of the facility manager. Also remember that every clinic or community health centre should have:

- A formal, clear, structured complaints procedure
- The complaints procedure should be clearly displayed at the clinic
- If there is a problem you should be informed of your right to complain and the complaints procedure should be explained to you
- The clinic should provide assistance for those who don't understand the procedure as well as providing help for those who need assistance with complying with the complaints procedure (e.g. someone who is blind or deaf)
- Each clinic should have a register of complaints and keep a record of how these complaints were addressed.

If you are not satisfied with the response you get from the clinic or community health centre when you complain, you may contact the Provincial Department of Health. When you complain to the Provincial Department, they should give you a reference number for the complaint and they will probably respond to you in writing.

### **Developing effective strategies for dealing with violations of rights :**

Besides **complaining** as an individual to an organisation or a government department there are a number of other things you could do to deal with violations of your rights. As an individual you could also get the support of a NGO or a human rights organisation to advise or assist you with rights violations. Sometimes people will go to court or take **legal action** as a way to deal with violations of their rights.

It is often easier if groups of people are able to get together and support each other (**mobilise or campaign**) to achieve their goals. If you find other organisations or people who are also concerned about health rights violations you could work together. Groups of people have more power to influence decision makers or government to make changes. In a joint campaign people may organise protest marches to government, create awareness of the problem in the media or even do a presentation in Parliament to try and bring about change.

Groups of people can also take legal action together and this may be a more effective strategy than an individual going to court alone. Examples of **complaints** you could make as an individual or as a group:

- You could complain to the South African Human Rights Commission about a violation of health rights.
- You could complain to the Public Protector about the actions of a nurse, doctor, facility manager or other public official that you believe has violated your rights.
- You could inform government officials / the Department of Health about health rights violations and ask them to take action.
- You could arrange a meeting to speak to your ward councillor or local councillor about health rights violations.
- You could write to an official or councillor to make a complaint about health rights violations or to give suggestions on how to deal with violations.
- If it is difficult to approach officials directly you could ask a large NGO to visit an official's office and represent your complaint.

Examples of **legal action** you could take as an individual or as a group:

- You could approach organisations like Black Sash, the Legal Resources Centre or the Women's Legal Centre for free legal advice to decide if you have a strong case to take to court.
- You could file a complaint at the Equality Court (if you feel it is an issue of unfair discrimination) by contacting the Equality Clerk at your local magistrate's office.

- You could request a lawyer to take the case to court (some lawyers will work for free on human rights cases).
- You could get a Legal Aid lawyer or an NGO to assist you to go to court (organisations like the Women's Legal Centre, Black Sash, Legal Resources Centre sometimes assist with court actions).
- After a court has upheld a right, you could get a lawyer to take action to persuade the authorities to implement the judgement.
- You could go to court to bring an individual or group who has violated your rights to justice.

### Examples of **mobilising or campaigning** about a rights issue as a group:

#### **Report on News24 of 28 June 2016, Titled: Malawian musicians march against albino killings**

**Lilongwe** - Musicians in Malawi held a solidarity march over the weekend to highlight the scourge of murders affecting people living with albinism in the country.

According to Malawi24, the Musicians Union of Malawi (MUM) said that musical artists could no longer remain silent on the issue. "As musicians in the country, we are bitter and we are joining the bandwagon of people speaking against the killing and abduction of people with albinism.

"We are happy to see people reacting positively, they have come to listen to the messages we have carried, to walk with us and fight together in making sure that Malawi should remain a peaceful country and that people should live freely including those with albinism," MUM president Chimwemwe Mhango was quoted as saying. Mhango said that music was one of the strongest tools that could be harnessed to deliver a message and fight against the victimisation of albino nationals in Malawi.

Grace Chiumia, Minister of Sports and Culture, also joined in support of the musicians where she commended them for their team spirit and assured citizens that government was doing all it could to curb the plague of attacks on albino people. The march followed on from the sentencing of a 47-year-old man who was found in possession of bones belonging to an albino citizen, according to Nyasa Times.

The suspect, Mussa Kachepa, was expected to spend the next 10 years in jail after a Malawi court found him guilty of attempting to sell the bones to a woman in the country's southern district of Liwonde. Despite pleading with the court for leniency, Kachepa was served with a stiff penalty in order to discourage other citizens who may be persuaded to commit a similar crime.

### **Some other examples of mobilising**

- You could inform others about health rights issues (distribute pamphlets or write an article for your community newspaper).

- You could make a public statement informing NGOs and others involved in the issue about health rights violations.
- As a group you could gather signatures from people affected by violations of health rights and send a petition to your local political representative or Member of Parliament.
- You could record violations that you have experienced or seen and when you have enough evidence (data gathered) you could write a report on the patterns and kinds of violations experienced.
- As a group you could do a presentation to the South African Human Rights Commission on health rights violations.
- Some NGOs or organisations have regular meetings with government officials or councillors. Such meetings may be an opportunity to raise health rights concerns.
- As a group you could try to persuade important members of the community to put pressure on the authorities responsible for the rights violations.
- You could do a presentation on health rights violations to the Standing Committee or Parliamentary Portfolio Committee on Health.
- You could hold a press conference about government health related obligations and compare these obligations to what actually happens at health care facility level.
- You could speak to the media (newspapers, television, radio) about health rights violations.
- You could run workshops or training on health rights violations and their effects with health care workers or policy makers.
- You could organise a protest march/demonstration/mass action about health rights violations.
- You could invite an official to participate in an event, such as to open a workshop or visit a community where there is a problem with rights violations.
- You could hold a seminar on specific health rights topics (especially those that happen to be in focus for some reason) and invite a guest speaker with enough status to attract health officials.
- You could ask officials to open or close community workshops or other events on health rights.
- You could join in campaigns at local, national or regional levels

**Activity: 120 minutes**

**Purpose:** To design and implement a strategy to claim the health rights

**Method:** Group Work

**Material:** Pen, Paper, crayons

**Procedure:** Discuss and think of a health challenge, this can be in health facility or elsewhere. Design a strategy to claim your rights and address this challenge. Apply all the information including situational analysis



## 11. EVALUATION QUESTIONNAIRE

True or false

1. Vulnerable groups are people who are:

	True	False
a) Experience a higher risk of poverty than general population		
b) Subject to unnecessary criticism		
c) In a more advantageous position in any society		

2. Name two types of discrimination

a) .....

b) .....

3. Human rights are:

	True	False
a) Basic standards that you need in order to live with dignity		
b) A set of moral principles that apply to everyone		
c) A claim that we are not justify to make		
d) Something we are entitled to and can expect to be met		

4. Human violation takes place when government fails to:

a) .....

b) .....

c) .....

d) .....

5. Name 3 rights that are listed in the Patients Charter of Right that patients can claim

a) .....

b) .....

c) .....

6. Name 3 Patients responsibilities listed in the Patients Charter of Rights

a) .....

b) .....

c) .....

## Appendix 1:

### A Commitment to improve access to health care: “A long and healthy life for all South Africans”, Dept. of Health, Western Cape Government. (2013). Health Care 2030

Department of Health, Western Cape Government. (2013). <i>Health Care 2030</i>	
Values	Principles
1. Caring	1. Patient-centred quality of care
2. Competence	2. Outcomes-based approach
3. Accountability	3. PHC philosophy
4. Integrity	4. District health services model
5. Responsiveness	5. Equity
6. Respect.	6. Efficiency
	7. Strategic partnerships.

Many of the above values and principles are based on the philosophy and “spirit” of national legislation - such as the National Health Act (Nov 61 of 2003), and national strategic documents such as the Negotiated Service Delivery Agreement (2010-2014). This last document is a national initiative which is spear-headed by the health sector and aims to achieve “A long and healthy life for all South Africans”

## Appendix 2

<b>City of Cape Town Policy Title: Policy on Vulnerable Groups REVISED AND APPROVED: 04 DECEMBER 2013 C24/12/13</b>
<p><b>The Strategic aims of this Policy are to:</b></p> <ul style="list-style-type: none"><li>• Articulate specific interventions to meet the needs of vulnerable groups</li><li>• Ensure the delivery of awareness, development and training programmes in consultation with NGOs registered with Provincial DSD, CBOs and other spheres of government throughout the City of Cape Town;</li><li>• Promote and support a cohesive and effective network of structures, organisations and groups focussing on vulnerable groups;</li><li>• Ensure that the City conducts and utilises research on issues of vulnerable groups to inform the design and delivery of services and strategies;</li><li>• Guide the collaboration with other spheres of government and more specifically with the Western Cape Provincial Government Department of Social Development to avoid duplication of funding and to contribute towards unity of effort in the delivering of social development services.</li></ul>

## Appendix 3

### City of Cape Town Problem Statement on Persons With Disabilities

Women, persons with disabilities, orphans and older persons are considered vulnerable as they tend to be at higher risk of social exclusion and marginalisation. These groups often face higher rates of victimisation and abuse and tend to be over-represented among the poor, with the experience being more discriminating. Addressing poverty and inequality demands that there is a specific consideration of these vulnerable people and their livelihood strategies

#### 1.1 Persons with Disabilities

**1.1.1** Despite considerable progress made with regards to the legal status of vulnerable groups being entrenched in the Bill of Rights contained in the Constitution of the Republic of South Africa, 1996 often these groups do not, in practice, enjoy equal rights.

**1.1.2** Persons with disabilities face serious challenges to participate meaningfully in community activities with regard to access to public institutions and facilities, employment opportunities, appropriate skills training.

**1.1.3** Local Government is the sphere of government that is closest to communities. The services that are provided by municipalities to communities can make a significant change in not only the condition, but also the position of persons with disabilities, as well as play a dynamic role in redressing past imbalances in communities.

**1.1.4** It is Local Government's legal responsibility to engage in an approach in all its policies, programmes and projects in order to ensure fairness in the treatment of persons with disabilities and their access to services

**1.1.5** Specific measures must be developed to identify and remove the underlying causes of discrimination in policies, laws, procedures, beliefs, practices and attitudes. This can only be achieved from a multidimensional approach that focuses on all aspects pertaining to the development of disabled persons both internal and external to the City of Cape Town.

**1.1.6** The South African Human Rights Commission flagged the lack of tolerance and acceptance towards South Africans living with disabilities. They noted that there is: "Lack of an adequate human rights culture of tolerance and acceptance and; that intolerance is aggravated by a general lack of awareness and knowledge about the different types of disability, and the causes and ways of ensuring acceptance of persons with disabilities within communities; that there is still a presence of negative stigmas within communities associated with disability....[in addition] there is an invisibility of persons with disabilities in communities resulting in their specific and special needs not being adequately addressed".

## Appendix 4

### Legislation and policies associated with protection of vulnerable groups

- Legislation relating to the promotion, protection and enforcement of certain human rights: the [Promotion of Administrative Justice Act, 2000 \(Act 3 of 2000\)](#), the [Promotion of Access to Information Act \(Paia\), 2000 \(Act 2 of 2000\)](#), and the [Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 \(Act 4 of 2000\)](#) better known as the Equality Act, 2000.
- Legislation pertaining to the protection of vulnerable groups: the [Child Justice Act, 2008 \(Act 75 of 2008\)](#), the [Children's Act, 2005 \(Act 38 of 2005\)](#), the [Criminal Law \(Sexual Offences and Related Matters\) Amendment Act, 2007 \(Act 32 of 2007\)](#), the [Maintenance Act, 1998 \(Act 99 of 1998\)](#), and the [Domestic Violence Act, 1998 \(Act 116 of 1998\)](#).
- Legislation providing support to Chapter-9 institutions: the [Human Rights Commission Act, 1994 \(Act 54 of 1994\)](#), and the [Public Protector Act, 1994 \(Act 23 of 1994\)](#).
- Legislation regulating management and control of public expenditure: the [Public Finance Management Act, 1999 \(Act 1 of 1999\)](#).
- Legislation regulating operations in the public service: the [Public Service Act, 1994 \(Act 103 of 1994\)](#), as amended.

## References

1. Abrahams, T. W. J. (2015) Community participation and the right to health for people with disability.
2. Department of Health, Western Cape Government. (2013). Health Care 2030. Cape Town: Western Cape Department of Health.
3. Available from:
4. <http://www.westerncape.gov.za/text/2013/October/health-care-2030-9-oct-2013.pdf>
5. Republic of South Africa, The Constitution of the Republic of South Africa (1996). Available at <http://www.info.gov.za/documents/constitution/index.htm>.
6. Health & Democracy: A background to health law and human rights in South Africa, [section27.org.za/wp-content/uploads/2010/04/Chapter1](http://section27.org.za/wp-content/uploads/2010/04/Chapter1).
7. General Comment No. 20 of the Committee on Economic, Social and Cultural Rights offers ample details about non-discrimination in relation to the right to health. General Comment No. 20 is available on OHCHR's web site: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>
8. OHCHR/WHO, Human Rights, Health and Poverty Reduction Strategies, 2008