

# A toolkit on the Right to Health for Southern and East Africa

Health is a Human Right, take action!



LEARNING NETWORK FOR HEALTH  
AND HUMAN RIGHTS

Second Edition

# Credits

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# Foreword

This toolkit is an adaptation of ‘A toolkit on the Right to Health’ first published in 2011 by the Learning Network on Health and Human Rights (as First edition: Toolkit on the Right to Health by Fick, N., London, L. & Coomans, F. (2011) at <http://www.salearningnetwork.uct.ac.za/sln/resources/training-materials/toolkits>). While the previous toolkit focused exclusively on South Africa, this toolkit has been broadened to explore the right to health in Southern and East Africa at the regional level.

The toolkit covers the right to health in the member states of the Southern African Development Community (SADC): Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe<sup>1</sup> as well as East African countries outside SADC, such as Kenya, Madagascar, Uganda and Congo Brazzaville.

This is a work in progress and we hope it will be updated with new material as human rights and health activists and researchers use the toolkit to advance health rights in their countries and in the region.

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<sup>1</sup> Retrieved from: <http://www.sadc.int/about-sadc/overview>. Last visited: 22 July 2014.

# Acknowledgements

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We also gratefully acknowledge the following publications, from which we sourced and adapted (with attribution) materials used in the original toolkit:

Claude, Richard P. 2000. *Popular Education for Human Rights: 24 participatory exercises for facilitators and teachers*. Cambridge: Human Rights Education Associates.

*Siniko: Toward a Human Rights Culture in Africa*. 1999: Amnesty International.

Hassim, A., Heywood, M. & Berger, J. 2007. *Health and Democracy: a guide to human rights, health law and policy in post-apartheid South Africa*. Cape Town: Siber Ink.

Farell, E., Goodnow, M. & Lohman, M. (2009). *Human Rights Toolkit*. Minneapolis: Advocates for Human Rights

*Train-the-Trainer Manual: participation, civic education and community mobilisation*. Netherlands Institute for Southern Africa

Padarath, A & Friedman, I. 2008. *The status of clinic committees in primary level public health sector facilities in South Africa*. Durban: Health Systems Trust.

The work of many NGOs struggling to advance human rights has inspired the original toolkit, particularly the People's Health Movement, whose People's Health Charter recognises health firmly as a right, and whose work aims to build global community action to realise the Right to Health.

# About the Learning Network

The Learning Network, established in 2008, draws together six civil society organisations and four Universities around a programme in which research, training and advocacy are linked to empower organisations and their members to assert rights for health.

The Network is made up of the following members:



## The Cape Metropolitan Health Forum

The Cape Metropolitan Health Forum is an umbrella structure for community participation in health, with health committees and in eight sub-districts, each of which has a sub-district Health Forum. Health committees act as the interface between communities and health care services.



## The Women's Circle

An organisation of grassroots women working together to promote a culture of equity and women's rights around a programme of action that aims to encourage respect for women's rights and for women amongst all members of society; expose women of all ages to a wide range of opportunities; showcase innovative women-led projects and programmes; and celebrate women's achievements through ongoing collaboration.



## Epilepsy South Africa

Epilepsy South Africa is a non-profit organisation that renders developmental services to people with epilepsy and other disabilities. It uses an integrated approach to development and aims to empower its constituents through social development, individual and family counselling, disability sensitisation, public education and awareness raising and training on disability and human rights, as well as empowerment that provides employment opportunities for people with epilepsy and other disabilities. For more information visit <http://www.epilepsy.org.za/wcape/index.php>



## Ikamva Labantu

Ikamva Labantu provides services to the residents of South Africa's township communities through all the stages of life. Its mission is to build community capacity that is self-reliant and sustainable through programmes driven by community needs. The main focus areas are: education and skills development, food security, health & nutrition at primary level and building community infrastructure through securing land and buildings. The primary means of delivering services is through strategically located community-based multi-purpose centres which serve as hubs where community members can access a vast array of support services. For further information see <http://www.ikamva.org>.



## Maastricht Centre for Human Rights - Faculty of Law, Maastricht University, the Netherlands

The Centre hosts research activities in the field of human rights of the members of the staff of Maastricht University Faculty of Law, reflecting an integrated view of economic, social and cultural rights. Research conducted by members of the Centre has contributed to clarifying the normative content of social and economic rights, such as the right to food, health, housing and education. For more information visit <http://www.maastrichtuniversity.nl/humanrights>.



### **University of Cape Town**

The School of Public Health and Family Medicine has a diverse involvement in human rights teaching, research and advocacy. Currently the Health and Human Rights Programme is involved in collaboration with NGOs and other research and training institutions to explore how collective action and reflection can identify best practice with regard to using human rights to advance health. In addition, it runs an annual Train the Trainer programme for staff who teach health professional students and produces materials on health rights. For more information visit <http://www.hhr.uct.ac.za/about/about.php>



UNIVERSITY of the  
WESTERN CAPE

### **University of the Western Cape**

The School of Public Health and the Community Engagement programme at the University of the Western Cape aim to contribute to enhancing access to health care and to health equity more generally. For more information visit <https://www.uwc.ac.za/CE/Pages/default.aspx> and <https://www.uwc.ac.za/faculties/CHS/soph/pages/default.aspx>



### **Women on Farms Project**

A rural feminist NGO working to strengthen the capacity of women who live and work on farms to claim their human rights by taking both individual and collective action. We do this through socio-economic rights-based and gender education, advocacy and lobbying, case work and support for the building of social movements of farm women. For more information visit <http://www.wfp.org.za>

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# Introduction

International law and some national constitutions in Southern and East Africa guarantee either the right to health or health care. However, such a right is difficult to implement in practice. There are still many violations of the right to access to health care, and of rights to enjoy healthy living conditions. Also, many patients and community members are not even aware of their health rights.

In some cases, people in communities might realise that their rights are being violated, but they don't know who to hold responsible or even how to hold someone responsible for these violations.

This toolkit was designed in response to the need for a practical tool to empower communities in Southern and East Africa on what the right to health means, how to identify violations of health rights and how to respond to these violations. The toolkit can be used as a stand-alone source of information or as training tool for workshops on the right to health. Each section uses practical examples to illustrate ideas, and has a number of exercises and case studies that could be used for training purposes. This toolkit is accompanied by a set of workshop handouts that can be photocopied for participants.

Many of the examples given in the toolkit are actual cases from across Southern and East Africa. The examples are specific to different countries, but each example can illustrate how to fight for the right to health and can be a source of inspiration for other organisations and communities who may have directly or indirectly experienced the same health-related issues.

The toolkit is designed for use by Civil Society Organisations (CSOs) such as health committees, NGOs working with health issues, educational institutions, community members or anyone with an interest in health rights.

The toolkit is divided into five main sections:

The first section aims to improve the general **understanding of human rights**, focusing on the different rights set out in international treaties and national Constitutions but also on the limitations of these rights and the role of community members in claiming rights.

The second section on **health and human rights** discusses why

the **relationship between health and human rights** is important.

The third section on **health and the law** looks in detail at health rights in international law, but also in national Constitutions and secondary law; criteria for deciding whether the right to health is being met; and the duties of governments in realising the right to health.

The fourth section focuses on **violations of the right to health**. The toolkit gives an approach to identifying violations of the right to health, and suggestions on whom to hold accountable when rights are violated and also how to complain about violations of health rights.

The fifth and last section is about citizen or **community participation in health** as a way of realising the right to health. It covers the role that citizens could play in a democracy; participation as a right; and why participation is essential for the realisation of the right to health. Finally, this section focuses on the role that health committees could play as formal structures set up for community participation in health.

By providing practical tips, this toolkit is intended to enable organisations and individuals in civil society to take action to realise the right to health.

# Symbols



The **Goal** icon can be found at the beginning of each section of the toolkit and sets out the overall learning aim of the section.



This icon refers to **Activities** that are designed for participants to do practical tasks or to answer a series of questions.



This is where practical **Examples** are given to help participants to better understand ideas.



**Case studies** are practical examples of people's real experiences. They are used to illustrate ideas or to explore participants' ability to apply ideas.



**Handouts** can be found at the end of each chapter. They summarise key points made in the workshops and can be photocopied for participants to take home.

# Section 1: What are Human Rights?

“  
All human beings are born free and equal in dignity and rights  
**(Universal Declaration of Human Rights)**”



The goal of the first section is to gain a basic understanding of human rights and the concepts related to human rights.

## Human Rights and Basic Needs



### Activity 1

#### **Purpose**

To make the link between basic needs and human rights clear.<sup>2</sup>

#### **Process**

(Time 20 minutes)

1. Ask members of the audience what every person needs to survive. Write down what they say on a piece of flipchart paper with the heading 'What you need to survive'.
2. Stick this flipchart up where it can be seen clearly.
3. Sort through the answers to decide which are wants and which are actually needs. Explain that 'wants' are things that would be nice to have, but 'needs' are things that are essential and which people cannot survive without.
4. Talk about how for every basic need there is a matching human right – using the examples below.

<sup>2</sup> This exercise has been adapted from Claude, Richard P. 2000. *Popular Education for human rights: 24 participatory exercises for facilitators and teachers*. Cambridge: Human Rights Education Associates.

Human rights address basic needs (like the need for food, water, housing, freedom of religion, freedom from torture, to be able to speak out, social support from the state). For every basic need there is a matching human right.

**For example:**

- |                           |   |  |
|---------------------------|---|--|
| need for shelter          | → | right of access to housing   |
| need to be treated fairly | → | right to equality  |
| need for freedom          | → | right to freedom and security  |
| need to survive           | → | right to social assistance from the state if you are disabled or have children and don't have enough resources |



## What are Human Rights?

### Activity 2

**Purpose**

To check out participants' basic understanding of human rights.

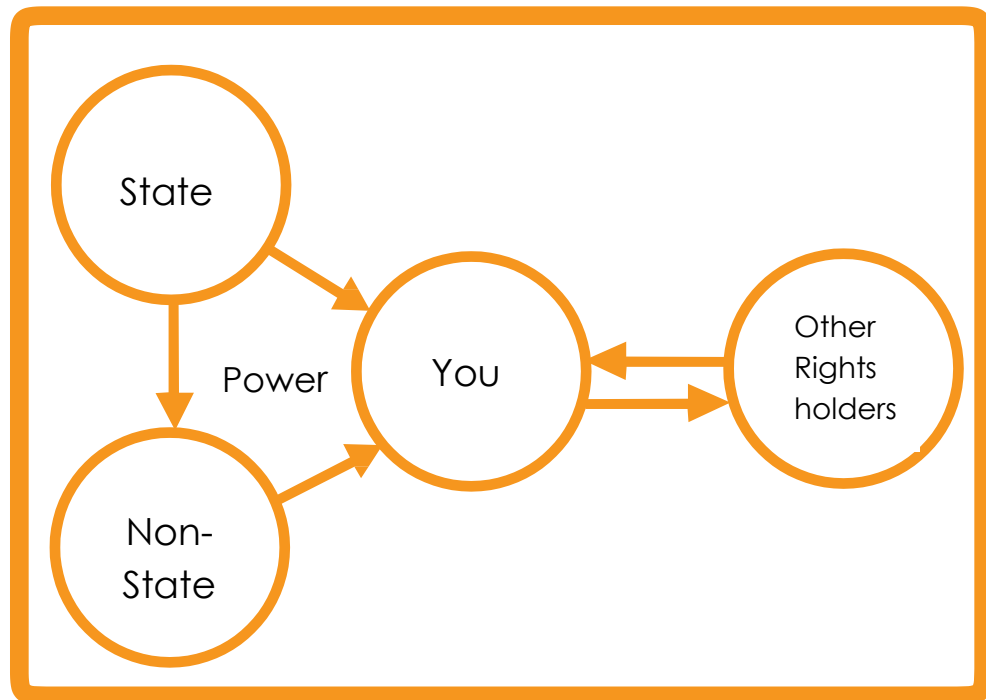
**Process**

(Time 40 minutes)

1. Divide the larger group into small groups where each group discusses what human rights are (give every group a chance to report back).
2. Stick each group's flipcharts up where they can be seen clearly.
3. Talk about human rights regulating your relationship with state and non-state actors (see meanings below). Then present a number of meanings of human rights and point out where the



## Rights – regulating your relationship with the State



## What is the State?

We usually say “country” instead of “state” but they are both the same thing. Countries or states have recognition from other countries (were voted into the club by other countries) and have internationally recognised boundaries or borders. The state has an organised economy and is normally controlled by government. Government provides public services (like education, health, transport) and police or military power.

In the language of human rights, ‘state actors’ are government officials and the officials of any bodies owned and operated by the state.

## What are Non-State Actors?

Non-state actors are normally companies, transnational corporations, private citizens, NGO's or institutions (e.g. Universities or the World Bank or even armed groups that are rebelling against governments). Non- state actors are therefore basically any individuals or organisations that are not controlled by the state or the country.

**Human Rights set minimum standards for individuals and institutions for the treatment of people. Human rights tell both state (national and local government and government officials) and non-state actors (individuals, companies, institutions) what they can do,**

what they cannot do and what they should do for you.<sup>3</sup>



In South Africa, the Treatment Action Campaign (TAC) took the government to court because of the lack of access to antiretroviral medicine (ARVs) for pregnant women with HIV<sup>4</sup>. At the time ARVs were only provided at some clinics (18 pilot sites). In 2004, the Constitutional Court ruled that the state had to provide ARVs to pregnant mothers at all sites and had to come up with a plan for how they would start doing this. In this way the state was told what it could not do and what it should do as a result of human rights agreements.

**Non-state actors can also be forced to respect your rights through laws made by the state.**



In Malawi an employee, Mrs Banda, was dismissed from her job after she had been tested positive for HIV. Mrs Banda was leading a normal life and had never been incapacitated from work due to her HIV status. The court ruled that Mrs Banda had suffered discriminatory treatment.<sup>5</sup> Illness can only be a ground for dismissal if the employee becomes so sick that she can no longer perform his job normally. Therefore, the Court ruled that the employer violated Mrs Banda's right to equality and the right to fair labour practices under the Constitution of Malawi.

In this case the government protected a citizen, Mrs Banda, from abuse by a non-state actor, her employer. The Court ruled that private employers cannot dismiss people for the mere fact that they are HIV-positive.

**In conclusion, human rights protect you from abuse by those who have more power than you, whether it is the state or private individuals or organisations.**

## 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).

<sup>3</sup> *Haki Zetu (Our Rights)*. Amnesty International

<sup>4</sup> Constitutional Court of South Africa, *Treatment Action Campaign v. Minister of Health*, Case CCT 8/02 [2002].

<sup>5</sup> Industrial Relations Court of Malawi, *Banda v. Lekha*, IRC 277 [2004].

## Human Rights are:

- **Universal:** Belong to everyone.
- **Inherent:** We are born with rights just because we are human.
- **Inalienable:** They exist no matter what happens (we still have rights, even if they are being violated).
- **Interdependent:** All human rights are interlinked and dependant on each other. The realisation of one right often depends on acknowledging and realising other rights. For example, when you have been educated (the right to education) it is easier to find a job (the right to work). Equally, in order to be healthy (enjoy the right to health), it is necessary to have access to food and water (right to food and right to water).
- **Indivisible:** All rights form a whole and cannot be divided; no right is more important than any other right.



In Botswana Mr. Lemo worked as a trainee aircraft engineer for the Northern Air Maintenance. Over a four-year period, Mr. Lemo's health deteriorated considerably. His employer pressured him to see a doctor. Mr. Lemo finally revealed to his employer that he was HIV-positive. The next day, he received a letter of termination. The District Labour Office ruled that the dismissal of Mr. Lemo was unfair and ordered the employer to pay three months' salary as compensation. The Industrial Court further said that where an employee is HIV positive, employers should refrain from any discriminatory practices towards him/her and treat him/her in the same way as any other employee suffering from a life-threatening illness.<sup>6</sup> In this case we can see how the right not to be discriminated against and the right to work are indivisible from and interdependent on the right to health.

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<sup>6</sup> Industrial Court of Botswana, *Lemo v. Northern Air Maintenance (Pty) Ltd*, IC 166, [2004].



# Important Human Rights Ideas

**Rights Holders:** Those who can claim rights or are entitled to rights.

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



## Activity 3

### **Purpose**

To show clearly how every right we have also has a responsibility attached to it.<sup>5</sup>

### **Process**

(Time 30 minutes)

1. Ask participants to turn to the person next to them, so that they can work together.
2. Each person must list three rights they feel they should have at home. Then the two people working together should swap their lists of rights with each other.
3. Once they have swapped lists, each person should write down three responsibilities related to the rights listed by their partner.
4. The partners will share one or two rights and their matching responsibilities with the rest of the larger group.
5. The facilitator writes down the rights and responsibilities on a flipchart and displays it where it can be clearly seen.
6. Talk about how we don't just have rights, but that there are also responsibilities related to those rights – using the material below.

**Responsibility:** Every right has a matching responsibility. If you want to have your rights met, you need to behave in a way that allows the state to meet your rights and to allow others to have their rights met. We are also all responsible to continue the struggle for human rights.

If you go to the clinic for treatment, the health worker will ask for information about your medical history. If you want the health care worker to treat your problem properly, you need to give the correct information. To have your right to access to health care met, you have a responsibility to share medical information that is needed for your treatment.



Another example is the right to freedom of expression. You have the right to express yourself, but you also have a responsibility to tell the truth and not abuse the dignity of others in what you say<sup>7</sup>.



**Participation:** All people have a right to participate in public affairs and to be consulted in public decision-making.

**Non-discrimination:** All human beings are entitled to their human rights without discrimination on the basis of gender, race, sexual orientation, religion, political opinion, national or social origin or disability<sup>8</sup>.

**Progressive realisation:** Steps to improve access to rights over a period of time (a plan for improvement).

**Equity:** Fair and reasonable distribution of resources - allocating the most resources to those with the greatest need.

**Dignity:** The idea that every human being has worth and should be treated with respect and without discrimination.



<sup>7</sup>*Siniko: Toward a Human Rights Culture in Africa.* 1999. Amnesty International.

<sup>8</sup>*Toolkit: A human rights based approach.* 2009. Vietnam: United Nations.

# The International Bill of Human Rights

The International Bill of Human Rights consists of three important sources of human rights law:

- the Universal Declaration of Human Rights (UDHR);
- the International Covenant on Civil and Political Rights (ICCPR);
- and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UDHR is considered as the foundation of human rights law. It was adopted by the United Nations General Assembly on 10 December 1948. It represents the universal recognition that basic rights are inherent and inalienable to all human beings, and that everyone is born free and equal, regardless of their nationality, ethnicity, religion, colour, gender or any other status<sup>9</sup>.

The core principles of human rights set out in the UDHR have been reiterated in numerous international conventions, regional human rights instruments, and other treaties. It has also been a great source of inspiration for many countries in Southern and East Africa, as well as in the rest of the world. The same fundamental rights can be found in many Constitutions, Bills of Rights and other national laws.

The ICCPR and ICESCR were adopted in 1966. They contain many human rights. When a State decides to ratify one of the Covenants, it becomes a party and is therefore bound to respect, protect and fulfil the rights enshrined in that Covenant.

The majority of states in the world are parties to the ICCPR and the ICESCR. In Southern and East Africa, all countries have ratified the ICCPR and are thus bound by it. Regarding the ICESCR, Botswana, Mozambique and South Africa are the only Southern and East African countries who have not ratified it yet. However, this does not mean that these three countries are free to violate the cultural, economic and social rights of their citizens. In fact, the Constitution of South Africa, Botswana and Mozambique have recognised similar rights as those enshrined in the ICESCR. Furthermore, they can still refer to the ICCPR and the ICESCR to interpret their own Constitution and ensure these rights accordingly.

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<sup>9</sup> Retrieved from: [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml)

# Different Kinds of Rights



## Activity 4

### Purpose

To find out what rights participants already know about and to improve their knowledge of different kinds of rights.<sup>10</sup>

### Process

(Time: 50 minutes)

1. Divide the larger group into smaller discussion groups.
2. Ask participants in each small group to imagine that they are responsible for writing a Bill of Fundamental Rights for a new country. Each participant must list three human rights that they feel the country should have.
3. After this, ask them to discuss their lists and to decide together on ten rights for the country, agreed on by everyone in the group.
4. Each group should give their country a name and write down the ten rights they have agreed upon on flip chart paper.
5. The discussion groups then report back one by one to the larger group.
6. The workshop facilitator uses the feedback to create a Master List of rights by writing down each different or new one presented.
7. Put the Master List up where everyone can see it.
8. Compare the Master List to the fundamental rights enshrined in the Bill of Human Rights.

<sup>10</sup>This exercise has been adapted from *Siniko: Toward a Human Rights Culture in Africa*. 1999. Amnesty International.

There are five different groups of rights: 1) civil rights; 2) political rights; 3) economic rights; 4) social rights and 5) cultural rights. People sometimes cluster these rights together and talk about economic, social and cultural rights as one group and civil and political rights as another group. But some rights can belong in two or more of these groups at the same time. This shows that rights are not easily separated into these different groups. Having one right met is also sometimes needed for you to be able to enjoy another right. For example, you cannot enjoy the right to vote if your right to education has been violated and you cannot read what is on the ballot paper. This is what we call rights being indivisible (you cannot separate them) and inter-dependent (you need one or more rights for you to enjoy another right).

What are these groups of rights?

**Civil Rights** are about an individual's place in a country and maintaining a free, orderly and secure society. These rights allow people to some extent to be free from fear. Here are some examples:



Right to be a citizen of a country	Right to life
Children have the right to an identity	Right to equality
<i>Right to own land</i>	<i>Right to privacy</i>
Right to freedom from slavery	Right to non-discrimination
Right to just administrative action	Right to dignity
Right to equality before the law	<i>Right to fair labour practices; children have a right not to be subjected to labour that affects their health or schooling</i>
Right to access to courts	Right of access to information
Right to a fair trial	Right to freedom of movement and residence
Rights of arrested persons	Right to freedom of religion

**Political rights** focus on an individual's right to participate in public affairs and political processes. These rights allow people to some extent to be free from threats or discrimination. Here are some examples:



Right to freedom and security of the person	Right to freedom of expression
Right to assembly, picket and demonstration	Right to stand for election
Right to freedom from torture	Right to vote
Right to strike	Right to free and fair elections
Right to form a trade union	Right to make political choices

**Economic rights** are rights concerning money and earning a living. They also relate to the necessities we need to survive and are an aspect of ‘freedom from want’. Here are some examples:



Right to freedom of trade, occupation and profession (right to work)	Right to an adequate standard of living
Right to social assistance (social security, grants)	Right to fair working conditions
Right to freedom from slavery	Right to strike
Right to own land (not have your property taken away from you)	Right to join a trade union

**Social rights** are about our lives at home and in our community. Their focus is on things we need to survive and be ‘free from want’. Here are some examples:

Right to sufficient food and water	Right to fair labour practices; children have a right not to be subjected to work that affects their health or schooling.
Right to adequate housing	Right to privacy
Right to adequate sanitation	Right to dignity
Right to social assistance	Right to freedom of movement and residence
Right to basic education	Children’s special rights (food, education, shelter and protection from abuse)
Right of access to health care	Right to a healthy environment

**Cultural rights** protect the cultural identity (language, beliefs, traditions and religion) of groups of people. Here are some examples:

*Right to freedom of religion and belief*

Right to your own language and culture - e.g. for members of minority groups

**Economic, social and cultural rights are not separate from civil and political rights. No one group of rights is more important than another. All rights are equally important.**



The right to health is considered as an economic, social and cultural right. However, the right to health cannot be considered alone, because many factors involving other rights can have an impact on health.

The right to health is dependent on the achievement and protection of other **economic, social and cultural rights**. Without food, water and decent living conditions, the right to health becomes threatened. Without basic education, people have more difficulties finding a job with a good salary, treating themselves against illnesses and providing their children with a healthy

environment.

**Civil and political rights** are also linked to the right to health. When people are tortured, they can suffer from emotional distress and physical injury for the rest of their life, and therefore be deprived from their right to the highest attainable standard of health. Another example is the right to speak freely and form a group with others: these fundamental freedoms are what make it possible for people to campaign for economic, social and cultural rights, for example for improving access to essential medicine or better health facilities.<sup>11</sup>



## Limiting and Balancing Rights

### Activity 5

#### Purpose

A role-play to stimulate discussion and to get people involved in understanding and balancing rights.

#### Process

(Time: 25 minutes)

1. Get three volunteers to act out the following scenario. One is the husband, the other his wife and the third a policeman called to the scene. The husband is abusing his wife; but when she calls the police the policeman refuses to come and help, saying it is a private matter between husband and wife happening in their home.
2. Ask the group to discuss the rights that are being balanced against each other here (right to privacy vs. right to be free from public and private violence).
3. Give input on the limitations applicable to the right to privacy. How should the right to privacy be balanced with the right to be free from violence? Do you think the policeman should have intervened?



**Note:** rights are often subject to restraints or limitations, mostly in order to respect the rights of others. In this scenario, two different rights are clashing and need to be balanced. One may have more weight than the other.

<sup>11</sup> Haki Zetu (Our Rights). Amnesty International



## Case Study



In South Africa parents have to provide clinic cards to prove that their children have been vaccinated before children may start school. In 2006 a newspaper reported on a Rastafarian family who wanted their children to start school. Because of Rastafarian cultural beliefs, which reject Western medicine, the children had not been vaccinated. As a result, these children were not allowed to start school. The rights that have to be balanced in this case are the children's **right to education** and the right of Rastafarian people to practise their **cultural or religious beliefs**, against the other pupils' **right to health** (or their right be protected at school from disease through mandatory vaccination for everybody). In this case the South African Human Rights Commission ruled in favour of the family and asked that the children be admitted to school. They argued that the school's admission policy requiring vaccination was not a good enough reason to deny children their right to education.

Sometimes rights can be suspended (taken away) or restricted by the state. However, for the state to be able to restrict rights:

- The restriction of rights must be set out in a law or regulation;
- The restriction must be for the purpose of respecting the rights of others;
- The restriction must be reasonable or justifiable;
- The restriction must meet the requirements of morality, public order and general welfare in a democratic society.

Courts will look at whether a restriction or limitation is justified as follows:

- By examining whether the limitation is likely to result in the intended outcome;
- By asking if the reason for limitation is important;
- By looking at the degree of limitation (to what extent is the right being limited?);
- By checking if there are perhaps other better (less restrictive) ways to achieve the same outcome without limiting the right?

There are certain rights that can never be limited. They are **non-derogable rights**. In other words, rights that must be guaranteed under *all* circumstances. These include the following:

- Right to life;
- Right to be free from discrimination;
- Right to freedom from torture;
- Right to human dignity;
- Right not to be punished in a cruel, inhuman or degrading way;
- Right not to be subjected to medical or scientific experiments without consent or permission;
- Right to be free from slavery and servitude;
- Children's special rights to be protected from abuse or neglect, exploitative labour and not



to be imprisoned except as a last resort; and

- Due process rights, fair trial rights and or the other various rights of those who have been arrested (to be provided with a lawyer, to have enough time to prepare a defense, to have access to an impartial court, etc).



In Uganda female genital mutilation [FGM] is still a traditional practice in certain communities. The Constitutional Court of Uganda was confronted with the issue whether the custom of FGM is unconstitutional and should be declared null and void. The judges had to balance **the right to practice one's cultural tradition** (Article 37 of the Constitution of Uganda) against **the right to be free from torture and cruel, inhumane or degrading treatment** (Article 44 of the Constitution of Uganda). In this case the judges concluded that FGM was unconstitutional because respect for human dignity and protection from inhumane treatment are non-derogable rights. The Court stated that: *'Any person is free to practice any culture, tradition or religion as long as such practice does not constitute disrespect for human dignity of any person, or subject any person to any form of torture or cruel, inhumane or degrading treatment or punishment.'*<sup>12</sup> In other words, in the balance of human rights, the right to bodily integrity will always weigh heavier than the right to practice one's culture or tradition.

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<sup>12</sup> [Constitutional Court of Uganda, \*Law and Advocacy for Women in Uganda v. the Attorney General\*, Constitutional Petition No. 08](#)



## Workshop Handouts

The pages that follow can be photocopied to give to workshop participants as handouts during the workshop.



## What are Human Rights?

- ▣ Basic standards needed to live in dignity
- ▣ A set of moral principles that apply to everyone
- ▣ A claim that we are justified in making; something that we are entitled to and expect (promise or guarantee)

“All human beings are born free and equal in dignity and rights.”

***(From the Universal Declaration of Human Rights)***



## Properties of Human Rights

**Universal:** Belong to everyone

**Inherent:** Born with rights because we are human

**Inalienable:** Exist no matter what happens  
(cannot be given up or lost)

**Interdependent:** All linked and depend on each other.



# Important Human Rights ideas

## Rights Holders

Those who can claim rights

## Duty Bearers

Those who have responsibility to fulfil others' rights (make sure they are real)

## Responsibility

Treating other rights holders equally in dignity and justice. Take forward the struggle for human rights.



## Different Kinds of Rights

### **Civil and Political rights** (freedom, my right to be me)

- ▣ right to vote
- ▣ right to participate in government
- ▣ right to freedom of expression
- ▣ right to equality

### **Social, Cultural and Economic rights** (need for work, health, food, social assistance)

- ▣ right to basic education
- ▣ right to access to health care
- ▣ right to fair working conditions
- ▣ right to social assistance from the state



## Limiting and balancing rights

- ☐ Rights of one person may conflict with another person
- ☐ This could result in restriction of rights

State may limit or restrict rights if:

- ☐ The restriction of rights is set out in law
- ☐ The restriction is for the purpose of respecting the rights of others
- ☐ The restriction is reasonable or justifiable
- ☐ The restriction meets the requirements of morality, public order and general welfare in a democratic society

## Section 2: Health and Human Rights

“

*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)*



The goal of this second section is to understand the connection between health and human rights. To do so, we aim to get deeper insight into what health is, and how the right to health can best be understood.

### Defining Health

According to the World Health Organisation health is a “state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity.” When talking about the right to health, we take a similar broad view of health. This means thinking about your health as more than just going to a clinic or a hospital for treatment. We must also think about how to prevent illness and promote healthy living. But there are many social conditions and factors related to your standard of living that influence health. For example, living in a healthy environment, having access to shelter, food, water and adequate sanitation are all important factors in maintaining good health.<sup>13</sup>

Therefore, in defining health, it is important to talk not only about access to health care but also about these social conditions that affect your health – we call these factors the conditions necessary for health.<sup>14</sup>

<sup>13</sup> Asher, Judith. 2004. *The Right to Health: A Resource Manual for NGO's*. London: The Commonwealth Medical Trust.

<sup>14</sup> 2. See also “*The Commission for Social Determinants of Health report*” summary at <http://www.csr360gpn.org/library/file/who-commission-on-social-determinants-of-health-executive-summary/>





# Rights related to Health

## Activity 1

### **Purpose**

To brainstorm what general rights are related to the right to health.

### **Process**

(Time: 20 minutes)

1. Ask members of the audience which human rights affect health. Write down their responses on a flip chart paper with the heading 'Rights Affecting Health'.
2. Put this page up where it can be seen clearly.
3. Go through the list, pointing out the rights they have named and confirm these as correct. Then add any other rights that they may not have mentioned. Remind the group how all rights are connected and that we cannot really enjoy one without having the other.

In the first section of this toolkit, we refer to the fact that all human rights depend on each other to be realised and that all rights form a whole and no rights are more important than other rights. In the case of health, there are a number of human rights in national Constitutions that are closely connected to the right to health. These rights are listed below.

## Key Health-related Human Rights:

### **The Right to life**

When your health is threatened, it can also lead to your right to life being violated.

### **The Right to dignity**

The way you are treated by health services may violate your right to dignity; having to live a life deprived of health rights may also result in a life without

dignity.



For example, if you have a chronic ulcer or a leaking bladder that you cannot get treatment for, your disability may affect your life so badly that it may impair your human dignity.

“

*The Constitution requires all of us to respect the dignity of South Africans and one can't speak of a person's dignity when the person is living in squalor and that person can't have access to facilities, medical facilities and it is for that reason I presume that we have in our Constitution ... socio-economic rights.*  
*(Justice T.L. Skweyiya, Constitutional Court of South Africa, October 2003)*

”

## The Right to bodily and psychological integrity

This means people have the right to have control of their body and mind. They should be free of violence and assault, both in public spaces and in their homes. They should also be free to make their own reproductive choices (e.g. to have or not to have a baby). Another aspect of this right is that people should not be part of medical treatment or experiments without their permission.



In Zambia, in 2010, Mr. Kingaipe and Mr. Chookole complained about the Zambian Air Force (ZAF) after having been subject to mandatory HIV testing without their consent. They claimed that their right to privacy and to bodily integrity had been violated. The Court held that Mr. Kingaipe and Mr. Chookole were entitled to damages for the mental anguish and emotional distress as a result of these violations.<sup>15</sup>

## The Right to education

The way that the right to education affects health is that people with education are more able to lead healthy lives and to ensure that their children are healthy if they have been educated about health risks and are able to read and write.

## The Right to a healthy environment

When you live in an environment that contains many harmful factors (e.g. pollution, infections, physical dangers), this can increase your risk of becoming ill.



In Uganda, in 2001, the Environmental Action Network (TEAN) started an action on

<sup>15</sup> High Court at Livingstone, Kingaipe and Chookole v. Attorney General, 2009/HL/86 [2012].

behalf of non-smoking members of the public, with a particular concern, to protect their rights to a clean and healthy environment.<sup>16</sup> The High Court declared smoking in public places a violation of non-smokers' constitutional rights to life and to a clean and healthy environment. The judge ordered Uganda's National Environment Management Authority to pass new laws to prohibit smoking in public places within one year.

## The Right to food and water

We need enough food and water of good quality to grow up and to stay healthy. Children and adults that do not have enough to eat are more likely to get infections and die. Access to water and sanitation is also necessary for basic daily needs, such as drinking, cooking, as well as personal and domestic hygiene. The water must be safe because when water is contaminated (with germs that cause infections) people can get diseases (like cholera or diarrhoea).



In 2000, the UN held a 'Millennium Summit' and established eight international development goals. Governments around the world committed to achieve these goals by 2015. One of the sub-goals was to 'halve the proportion of the population without sustainable access to safe drinking water and basic sanitation by 2015'.<sup>17</sup> Many Southern and East African countries took actions in order to improve access to water and sanitation.

For example, in 2009, the government of Namibia launched a national sanitation strategy. The sanitation sector mission is "to provide, with minimal impact on the environment, acceptable, affordable and sustainable sanitation services for urban and rural households, informal settlements and institutions through inter-sectoral coordination, integrated development and community based management with a Sector-Wide Approach in financial resource allocation."<sup>18</sup>

Similarly, in June 2002, the government of Angola adopted a new **Water Act**. Article 10 of the Water Act requires the government to provide the population in a continuous and sufficient manner with potable water in order to satisfy their needs for domestic uses and for hygiene. To implement that law, the government of Angola took many affirmative actions:

- In 2003 and 2004 respectively, the government developed a **Water Sector Development Strategy** (Programa de Desenvolvimento do Sector das Águas) and Water Sector Development Program. These strategic plans mainly aimed at achieving two objectives: (1) the correct management of national water resources and (2) the provision of potable water and sanitation to the people of Angola.
- In 2007, the government further launched a 'Water for All' program.
- In 2007 and 2008 respectively, the government of Angola established a Secretary of State for Water Affairs (SEA) and Ministry of the Environment (MINAMB).

<sup>16</sup> High Court, *The Environmental Action Network Ltd. v. Attorney General & National Environment Management Authority (NEMA)*, HC Misc. Application No. 29 of 2001 [2002].

<sup>17</sup> UN Millennium Project, Goal 7, Target 10. Retrieved at: <http://www.unmillenniumproject.org/goals/gti.htm#goal7>

<sup>18</sup> See Namibia National Sanitation Strategy 2010/2011 - 2014/2015, second draft, p. 7. Retrieved at: <http://www.mawf.gov.na/Documents/Sanitation%20strategy.pdf>.

## The Right to housing



Living in a house that has been built properly and that has good sanitation will help to keep you healthy. If your house is overcrowded or leaking, for instance, you are more likely to get an infectious disease.



In the *Grootboom* case,<sup>19</sup> the Constitutional Court of South Africa looked at the right to housing. The Court said that all the rights in the South African Bill of Rights depend on each other and form one whole (human rights are indivisible). When people live without shelter, food or water, this also interferes with their right to live with dignity, equality and freedom (human rights are interdependent)<sup>20</sup>.

## The Right to equality

The right to be treated equally is essential for protecting the health status of vulnerable and disadvantaged groups. Unfair discrimination and exclusion are causes of poverty, and poverty threatens health. Poor people are also often excluded from having access to good health care.<sup>21</sup>

## The Right to access to information

In order to protect your right to health, it is important to have access to information. Fulfilment of the right to access to information enables you to monitor government health policies and implementation and get access to important health information (e.g. your own records and general information on the causes of illnesses).<sup>22</sup>

## The Right to participation

The right to participate is important for the realisation of all human rights and people have a right to participate in any decision making processes that might affect their health.

<sup>19</sup> Constitutional Court of South Africa, *Irene Grootboom v. the Government of the Republic of South Africa*, CCT 11/00 [2000].

<sup>20</sup> Grant, K., Lewis, M. & Strode, A. 2006. *HIV/AIDS and Human Rights in Southern Africa*. AIDS and Rights Alliance for Southern Africa.

<sup>21</sup> *Haki Zetu (Our Rights)*. Amnesty International and Asher, Judith. 2004. *The Right to Health: A Resource Manual for NGOs*. London: The Commonwealth Medical Trust.

<sup>22</sup> *Haki Zetu (Our Rights)*. Amnesty International

”“

*The people have the right and duty to participate individually and collectively in the planning and implementation of their health*

”

*care. (Alma Ata Declaration on Primary Health Care.)*



# Link between Health and Human Rights

We have seen how the right to health is interlinked with other human rights. This link puts health and human rights in a dual relationship:

- 1) health can depend on the realisation of other human rights;
- 2) other human rights can depend on the realisation of the right to health.

Here are some examples of this dual relationship



Health depends on the realisation of other human rights. For example:

- When people are denied the right to access to clean water and sanitation (violation of the right to water), it could result in illnesses like diarrhoea or cholera.
- When people have been tortured (violation of right to be free from torture), they can suffer terrible health problems and mental distress, both immediately and long after the torture.
- When a woman has been physically abused (violation of the right to bodily integrity), she can suffer from wounds and mental distress, which both have a direct impact on her health.
- When a woman has endured female genital mutilation (violation of the right to be free from torture and any inhumane or degrading treatment), she can be confronted later in her life with very serious health problems (for example childbirth complications which can result in the death or long-term disability of the mother).



Many other human rights - such as the right to education, the right to be treated equally and the right to work - can depend on the right to health. In that sense, health problems can cause the violation of other human rights or have an adverse impact on them.

For example:

- A child who is sick because of an unhealthy environment will not be able to go to school (violation of the right to education).
- Someone with a minor physical handicap or mental illness, despite being able to perform a job, may be denied the opportunity to work because of his/her health condition (violation of the right to work and to be treated equally).

- People who are HIV-positive may be denied the opportunity to join medical aids and will have to carry the full financial burden of their sickness (violation of the right to be treated equally).
- People who are deaf are discriminated against when health services do not provide adequate translation for them (violation of the right to be treated equally).

## The four dimensions of the right to health

The right to health is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Many African States have accepted this treaty meaning that they are bound by it. To help States understand what the right to health means in practice, the UN has developed a series of 'General Comments'. The General Comments guide states/governments on how fulfil their human rights obligations and deal with violations of rights. They also specify how international rights agreements should be implemented.

In the case of the right to health, General Comment 14 of the ICESCR provides authoritative guidelines on the implementation of the right to health and the obligations of governments related to the this right.<sup>23</sup>

General Comment 14 provides the following guidelines to help us assess whether the right to health has been met. The Comment suggests you should ask the following questions about health:

### *Are the basics for health Available?*

- Functioning health-care facilities (hospitals, clinics, enough staff), goods (drugs, equipment) and services (mental health care, family planning, immunisation), as well as programmes available in sufficient quantity to all communities.
- Access to the underlying conditions upon which health depends, such as safe and potable drinking water and adequate sanitation facilities.
- Urgent medical care for accidents and disasters.
- Trained medical and professional personnel.
- Access to essential drugs, as defined by the WHO Action Programme on Essential Drugs.

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<sup>23</sup> *Haki Zetu (Our Rights)*. Amnesty International

## *Are the basics for health Accessible?*

Accessibility means:

- **Physically accessible**

E.g. People should be able to get medical care in their region, at the community level (enough hospitals, sufficient opening hours, sufficient numbers of doctors, etc). Facilities must be accessible for disabled people (community transport for old people, access in health facilities for wheelchairs, etc).

- **Economically accessible**

Medicine and health care should be affordable to all. People with little or no revenue should receive financial aid from the government or have free access to essential medicines. Essential medicines are those who respond to the most pressing health needs of the population. The World Health Organisation (WHO) has established a 'model' list of essential medicines that countries can adapt to their own national needs. In South and Eastern Africa, medication against HIV/AIDS, tuberculosis and malaria are inscribed on the list of essential medicines. More and more countries also add chronic disease to that list, such as diabetes or cancer.

- **Accessible in a non- discriminatory way**

E.g. Governments must ensure that access to health-care and medications is realised in a non-discriminatory way. This means that nobody should be treated better or worse than the others based on discriminatory grounds. Women, children, people with HIV, disabled people and other vulnerable groups in the population should have access to health in the same way as any other person.

- **Accessibility of information**

E.g. People should be provided with enough information to get access to health care (explanation of disease and treatment in a language they can understand; access to health record; information on medical aid; etc).

## *Are the health services Acceptable?*

- Responsive and sensitive to patient needs, fostering a culture of dignity.
- All health facilities, goods and services must be respectful of medical ethics (informed consent).
- Treatment must be culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities.
- Translation/interpretation should be available as a standard service.
- Sensitive to gender and age.
- Designed to respect confidentiality/privacy and improve the health status of those concerned.



### *Are health products and services of good Quality?*

- Products and services must also be scientifically and medically appropriate and of good quality (safe, timely, patient-oriented).
- Standards for treatment must be enforced and there must be quality control.
- Public health programmes and strategies must be clear and meet health needs (e.g. launching a comprehensive and understandable preventive campaign against Ebola if there is a risk of outbreak).
- Skilled and trained medical personnel (e.g. how a nurse is trained must correspond to what they are confronted to in reality).
- Scientifically approved and unexpired drugs and hospital equipment.
- Quality of buildings.
- Safe water and adequate sanitation.

General Comment 14 on the right to health is relevant in any country, even if a State is not party to the ICESCR, because:

- Many regional treaties or national Constitutions have been modelled on international human rights instruments. The African Charter on Human and Peoples' Rights, as well as many Constitutions in Southern and East Africa, recognise the right to health. These provisions can be read in accordance with General Comment 14 (availability, accessibility, acceptability and quality of the basics for health).
- Some of the provisions of the ICESCR are part of international customary law. That means that it is applicable even if a State has not signed or ratified any human rights treaty protecting the right to health.
- National courts in Southern and East Africa sometimes refer to international human rights law when interpreting secondary national laws on human rights.



Work through the case study below with the larger group, before asking people to tackle the related activity on their own.

## Case-study

“My daughter is 24 years old; she was pregnant and had a baby in March last year. The baby was very small, but when I asked them about it at the hospital they said that the baby was normal and that there was nothing wrong. Later my daughter had to take the baby to the clinic. When she came back from the clinic she was crying and crying. When I asked her what was wrong she told me that the nurse at the clinic had spoken to her in front of all the other ladies and asked her why this baby is so small, she asked her in front of everyone if the baby is HIV-positive.” - (**Experience as related by the mother of the young woman**).

## Question

Is this an example of services not being accessible, available, acceptable or of good quality?

## Answer

This young woman is dealing with a violation of her right to privacy and confidentiality. She is not being treated with respect or dignity.

Clearly the health service provided is not **acceptable** because:

- The mother of the baby is not treated in a way that fosters a culture of dignity.
- The mother’s confidentiality and privacy is not respected, and in this way the service is not responsive to patient needs.

In addition one can ask questions about the **quality** of the health service provided:

- It is not medically appropriate to disrespect the privacy and confidentiality of the patient.
- One would need to look at whether staff are appropriately trained to deal with issues related to HIV and how clear the complaints procedure is at this facility (quality control).
- If the baby was born with HIV infection, then the programme to detect HIV-positive pregnant mothers failed to screen the mother or treat her effectively.

If the mother of the baby is too embarrassed to go back to the clinic, then she will not have proper access to health services.



## Activity 2

### **Purpose**

To apply knowledge gained on how to understand the different aspects of the right to health.

### **Process**

(Time: 50 minutes)

1. Divide the participants into four smaller groups. Hand out one case study to each of the four groups (see hand-outs for case studies 1-4).
2. Participants should read through the case study individually or one person could read it aloud to the rest of the group.
3. The members of each group should work together to answer the questions related to their particular case study and capture it on a flip chart. Each group will have an opportunity to report back on their answers to the larger group.



## Workshop Handouts

The pages that follow can be photocopied to give to workshop participants as handouts during the workshop.



## Rights related to Health

The Right to life

The Right to dignity

The Right to bodily and psychological integrity  
(make decisions, control over body, informed consent)

The Right to education

The Right to a healthy environment

The Right to food and water

The Right to housing

The Right to equality

The Right to access to information

The Right to participation

The Right to privacy



## Link between Health and Human Rights

### **A lack of human rights or the abuse of rights can affect health**

- ▣ When people are denied the right to access to clean water it could result in illnesses like diarrhoea or cholera.
- ▣ People who have been tortured can suffer terrible health problems both immediately and long after the torture.

### **Health problems can cause discrimination and violation of rights**

- ▣ Someone with a mental illness may be discriminated against in the workplace (for example by being denied the opportunity to work as a result of the employer knowing about their mental illness)
- ▣ People who are HIV positive being unable to join medical aids (they are denied of the right to be treated equally and will have to carry the full financial burden of being ill)

## Health problems make it difficult to claim other rights

- ☐ A child who is very sick and has to stay in bed, can't go to school and therefore is unable to access the right to education. Similarly, children denied access to sufficient food will be starving while at school, and unable to concentrate and learn.
- ☐ People with epilepsy may be denied the right to work, because employers are afraid to employ someone with this condition

## Health policies and programmes can deny rights to certain people

- ☐ The South African government's previous policy wanted to provide pregnant women with access to antiretroviral medicines (ARVs) **only in certain places**, and denied access to ARV medicine for people who didn't live in those areas.
- ☐ A common health policy is to encourage routine HIV testing in health facilities. If the health personnel are too enthusiastic in testing people for HIV without their consent, then patients' rights to bodily integrity and privacy are violated.



# Dimensions of the Right to Health

## Availability

- ▣ Functioning **health-care facilities** (hospitals, clinics, staff) **goods** (drugs, equipment) and **services** (mental health care, family planning, immunisation), as well as programmes available in **sufficient quantity to all communities**
- ▣ Access to **conditions for health**, such as safe and potable drinking water and adequate sanitation facilities
- ▣ Available **urgent medical care** for accidents/disasters
- ▣ Trained **medical and professional personnel**
- ▣ Access to **essential drugs**, as defined by the WHO Action Programme on Essential Drugs

## Accessibility

(physical, economic, non-discrimination, information)

- ▣ Existence of **services** at community level
- ▣ Health facilities, goods and services accessible to everyone **without discrimination** (esp. the vulnerable)
- ▣ Health care is distributed **equitably**  
(resources allocated according to need)
- ▣ This includes **physical accessibility** (access for disabled, distance to facility, opening hours)
- ▣ Facilities should be **affordable** for everyone
- ▣ **Information** should be readily accessible (simple explanations, health information, access to health records, language spoken)



## Acceptability

- ☐ **Responsive** and sensitive to patient needs, fostering a culture of **dignity**
- ☐ All health facilities, goods and services must be **respectful** of medical ethics (informed consent)
- ☐ Must be **culturally appropriate**, i.e. respectful of the culture of individuals, minorities, peoples and communities
- ☐ **Translation/interpretation** should be available as a standard service
- ☐ Sensitive to **gender** and **age**
- ☐ Designed to respect **confidentiality/privacy** and improve the health status of those concerned.

## Quality

- ☐ Goods and services must also be scientifically and medically **appropriate** and of good **quality** (safe, timely, patient-oriented)
- ☐ **Standards** for treatment are enforced and there is **quality control**
- ☐ Measured by how well programme **meets health needs**
- ☐ **Skilled and trained** medical **personnel**
- ☐ Scientifically **approved and unexpired drugs** and hospital **equipment**
- ☐ Quality of **buildings**
- ☐ Safe and potable **water**, and adequate **sanitation**



## Case Study 1

A woman goes to the local clinic to obtain contraceptive pills. The clinic sister asks her in front of everyone in the waiting room what type of medication she wanted. She asks her why she wants to take the pills. What was implied was that she wanted to have sex without having children. The woman leaves the clinic and never goes back to the clinic for contraceptives.

Question:

Is this a problem of availability, acceptability, quality or access? Explain why you say this.



## Case Study 2

Mr P goes to the clinic because he has a bad cough. The nurse tells him they don't have cough mixture and advises him to make his own home remedy. A month later he comes back to the clinic, complains of sweating a lot at night and he is still coughing, has lost weight and has no appetite. The nurse sends him home with cough medicine. Later he goes to a different clinic, where they diagnose him with TB that is very serious and ask him why he took so long to come for treatment.

Question:

Is this a problem of availability, acceptability, quality or access? Explain why you say this.



### Case Study 3

My mother is very old and she has to go to hospital X for her treatment. Because of the rules at the hospital she has to go in there alone - I can't go in with her to help her - and she is so sick that she can't speak, so no one will know what is wrong with her.

If you want to complain about something they always say you must speak to the head sister, but the head sister is never available, so you can't speak to her. You can also put a complaint in the complaints box, but nothing ever happens.

Question:

Is this a problem of availability, acceptability, quality or access? Explain why you say this.



#### Question 4:

I work at an Early Childhood Development (ECD) centre or crèche in the community. The nurses are supposed to go to all the ECDs in the area to do vaccinations with the children. They are supposed to come and give them those drops for polio, but on the date that they were supposed to come they didn't arrive.

I was worried and so I asked the parents to rather take their children to the clinic for the vaccinations. They had to take time off work to take their children to the clinic. The people there at the clinic they don't care about us. When these parents took their children to the clinic, they said they couldn't vaccinate the children because the date for it is over. They said to those parents "maybe you can come again next year". So some of the children haven't till now been vaccinated for polio.

#### Question:

Is this a problem of availability, acceptability, quality or access? Explain why you say this.

# Section 3: Health Rights and the Law



The goal of this third section is to understand how health rights are protected by the law. This implies a review of the provisions on the right to health in (1) international law; (2) constitutional law and (3) secondary law.

## The three layers of law

Human rights are given power through law because people can rely on the law in court to make sure that their rights are being respected by the State and/or by non-State actors.

The right to health, like all human rights, is protected by three layers of law:

- 1) International law
- 2) Constitutional law
- 3) Secondary law

**International law** is written in charters, conventions, covenants and other international agreements between States or international/regional organisations. All these instruments can be referred to as ‘treaties’. Many Southern and East African countries are parties to human rights treaties. Human rights treaties put legally binding obligations on States which are parties to them. However, the obligations stemming from these treaties only concern the State; private actors (like pharmaceutical companies, NGOs or citizens) are not subject to international human rights law. Furthermore, most of these international human rights obligations are of a progressive nature. This means that the State is under the duty to realise them step by step (instead of immediately), taking due consideration of its available resources. This is the reason why this layer of law is rather weak. In order to complement international law, it is necessary that the States implement the same human rights obligations in their own constitutional law and in secondary law.

**The Constitution** is the highest law of a country. Each State in the world has its own Constitution or a set of norms similar to a Constitution. Constitutions often define the relationship between the different entities of the State (the executive, the legislative and the judiciary branches). Because human rights are so crucial, they are also enshrined in the Constitution in a separate Bill of Rights. Everybody must respect the Constitution: the government as well as private actors.

**Secondary law** or **secondary legislation** refers to all the national laws adopted under the Constitution. Depending on the country or the body which has adopted them, they can be called ‘laws’, ‘acts’, ‘regulations’, ‘bills’, ‘ordinances’, decrees, etc. Secondary law may also be written in different codes (civil code, penal code, etc). All these laws must comply with the principles and rights set out in the Constitution. The right to health can be protected by different kinds of laws (for example: a law on the management of public hospitals, a law on the protection of the environment, a law prohibiting the selling of tobacco to minors, etc).

The right to health is better protected if it can be found in all three layers of the law, and if the enforcement mechanisms for the respect of these laws are available and effective. For example, if a country is a party to the ICESCR, but has not recognised the right to health in its Constitution, citizens of that country will have more difficulties to get their health rights respected. On the contrary, if a country has also recognised the right to health in its Constitution and has adopted a wide array of national laws relating to health, it will be easier for its citizens to ensure their right to health because they can rely on these different sources of law in court.

## First layer: International Law and the Right to Health

### Important concepts when working with international human rights instruments

#### Declaration

A document stating agreed standards or principles. It is not legally binding but has strong moral force, e.g. the Universal Declaration of Human Rights.

#### International human rights treaties

Written, legally binding agreements between states or international/regional organisations. An international human rights treaty can also be called a 'charter', 'convention' or 'covenant'. E.g. The Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Civil Rights (ICESCR).

#### Regional human rights treaties

Written, legally binding agreements between states in a particular region of the world. (Africa, Europe, South-America, etc). E.g. the African Charter on Human and People's Rights and the European Convention on Human Rights.

#### Signature and Ratification

If a government **signs an international human rights instrument**, it indicates that it supports the agreement in principle and it makes a commitment not to act against the agreement. After signing, governments are expected to ratify a treaty or covenant to become a 'party' to it. When a government **ratifies** a treaty or covenant, it means the government officially agrees to abide by the treaty. The government must amend its own laws or pass new laws in line with the treaty.<sup>24</sup>

There are many international treaties and conventions that are relevant for health. In 2005, Kamupira and London summarised the commitments made by countries in the region relevant for health.<sup>25 26 27 28</sup> These are updated below.

<sup>24</sup> Grant, K., Lewis, M., Nongogo, N. & Strode, A. 2005. *HIV/AIDS and the Law: A trainers manual*. Joint OXFAM HIV/AIDS Programme.

<sup>25</sup> Kamupira M, London L. An audit of human rights commitments relevant to health made by member states of the Southern African Development Community (SADC): Implications for advocacy for health equity and the realisation of the right to health. The Regional Network for Equity in Health in Southern Africa (EQUINET). Harare, 2005. Accessible at URL: <http://www.equinet africa.org/sites/default/files/uploads/documents/DIS25rights.pdf>

<sup>26</sup> [African Commission on Human and Peoples' Rights](#)

<sup>27</sup> [United Nations Treaty Collection](#)

<sup>28</sup> [International Labour Organization](#)

## International Covenant on Economic, Social and Cultural Right (ICESCR)

### *What is the ICESCR?*

The ICESCR is an international human rights treaty adopted by the UN General Assembly on 16 December 1966. It came into force in 1976. It plays a major role in the protection of economic, social and cultural rights, such as the right to education, the right to an adequate standard of living and the right to health.

### *What does the ICESCR say on the Right to Health?*

The ICESCR recognises the right to health as an essential human right.

Article 12 of the ICESCR provides:

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure medical service and medical attention to all in the event of sickness.

### *Is my country subject by the ICESCR?*

By 2017, the Covenant has 164 parties around the world. In Southern and East Africa (SEA), most countries have ratified the Covenant.

- **SEA states which have *ratified* the Covenant:** Angola, Democratic Republic of Congo (DRC), Congo Brazzaville, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Uganda, Zambia and Zimbabwe.
- **SEA states which have neither signed nor ratified the Covenant:** Botswana and Mozambique.

## International Convention on the Rights of the Child (CRC)

### *What is the CRC?*

The Convention on the Rights of the Child (CRC) is an UN human rights treaty adopted and opened for signature on 20 November 1989. It came into force on 2 September 1990 when enough States had ratified it. The Convention protects the right to life, liberty, education, culture, family life,



and health of children. It prohibits discrimination and physical or moral violence against children.

### *What does the CRC say on the Right to Health?*

**Article 3(3)** of the CRC provides: 'States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, **health**, in the number and suitability of their staff, as well as competent supervision.'

**Article 23** of the CRC protects the right to dignity, health care and development of disabled children. Assistance for disabled children must be provided '*free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child*'. Disabled children must have effective access to '*education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities*', so that disabled children may achieve '*the fullest possible social integration and individual development*' (3rd paragraph). The States parties to the CRC must assist each other in the improvement of health care and of medical, psychological and functional treatment for disabled children (4th paragraph). Particular attention should be paid to the needs of developing countries, so that they can improve their capabilities, skills and experience for disabled children's health care and assistance.

**Article 24 of the CRC** recognises the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illnesses and for rehabilitation of health. For that purpose, States must take action to (a) diminish child mortality; (b) ensure the provision of necessary medical assistance and health care to all children ; (c) combat disease and malnutrition, through the provision of adequate food and clean drinking water; (d) ensure appropriate pre-natal and post-natal health care for mothers; (e) ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents and (f) develop preventive health care, guidance for parents and family planning education and services. States must also seek to abolish traditional practices harmful to the health of children. Cooperation among States is encouraged, especially for helping developing countries to achieve all these objectives.

The CRC also protects children from economic exploitation (Article 32), from the illicit use of drugs (Article 33), sexual abuse (Article 34) or any other form of exploitation that could be harmful to their health (Article 36).

### *Is my country subject by the CRC?*

The CRC is the most widely ratified human rights treaty in the world. On October 2015, Somalia became the 194th nation to ratify the CRC. In Southern and East Africa, all states are parties to the CRC.

## Convention Against Torture and Other Cruel, Inhuman and

## Degrading Treatment or Punishment

### *What is it?*

The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) is an UN human rights treaty that was signed on 10 December 1984 and came into force on 26 June 1987. The CAT prohibits “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*”.

### *What does the CAT say on the Right to Health?*

Article 10(1) of the CAT requires State to ensure that education and information regarding the prohibition against torture are fully included in the training of **medical personnel**, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

### *Is my country subject by the CAT?*

Up to January 2018, the [CAT has 162 parties](#) around the world. In Southern and East Africa (SEA), most of the countries have ratified the Covenant.

- **SEA states which have *ratified* the CAT:** Botswana, DRC, Congo Brazzaville, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Uganda and Zambia.
- **SEA states which have *signed* the CAT:** Angola and Gambia.
- **SEA states which have neither signed nor ratified the CAT:** Zimbabwe.

## International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC)

### *What is the MWC?*

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC) was signed on 18 December 1990 and entered into force on 1 July 2003 to protect the rights of the migrants and their families in the host country where they reside.

### *What does the MWC say on the Right to Health?*

Article 28 states that: “Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.”

### *Is my country subject by the MWC?*

Up to January 2018, the MWC has only [51 parties](#) around the world. In Southern and East Africa (SEA), only four countries are party to the MWC.

- **SEA states which have *ratified* the MWC:** Lesotho, Mozambique, Seychelles and Uganda.
- **SEA states which have *signed* the MWC:** Congo Brazzaville.
- **SEA states which have neither signed nor ratified the MWC:** Angola, Botswana, DRC, Kenya, Madagascar, Malawi, Mauritius, Namibia, South Africa, Swaziland, Zambia, Zimbabwe.

## International Convention Concerning Forced Labour or Compulsory Labour (CFL)

### *What is the CFL?*

The Convention on Forced Labour is an international human rights treaty adopted on 28 June 1930 by the International Labour Organisation (ILO). It came into force on 1 May 1932. The aim of the Convention is to suppress or at least regulate the use of forced or compulsory labour in the countries that become party to the treaty. The Convention protects the cultural and political integrity of indigenous peoples.

### *What does the CFL say on the Right to Health?*

If workers are needed for compulsory work, the CFL requires that they are healthy, able-bodied males between the ages of 18 and 45. In case of compulsory labour for works of construction, Article 17(1) requires that States take all necessary measures to safeguard the health of the workers and to guarantee the necessary medical care and, in particular, (a) that the workers are medically examined before and during the work; (b) that there is adequate medical staff and medical facilities or equipment; and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, cooking utensils, clothing and housing (when necessary) are satisfactory.

### *Is my country subject by the CFL?*

Up to August 2014, [175 out of the 185 ILO](#) members have ratified the CFL. All Southern and East African countries concerned by this toolkit are ILO members, and they have all ratified the CFL.

## International Convention concerning Indigenous and Tribal Peoples in Independent Countries

### *What is it?*

The Indigenous and Tribal Peoples Convention is an ILO human rights treaty, adopted on 27 June 1989. It entered into force on 5 September 1991.

### *What does this Convention say on the Right to Health?*

Article 25(1) requires governments to ensure that adequate health services are made available to the indigenous and tribal peoples; or to provide them with resources, so that they may enjoy the highest attainable standard of physical and mental health.

### *Is my country subject by this Convention?*

Only 22 out of the 185 ILO members have ratified the Indigenous and Tribal Peoples Convention. In Africa, only one country has ratified it: The Central African Republic.

In the Southern and East African region, none has signed or ratified the convention yet. It is a very concerning situation because in almost all SEA countries there are groups of minority tribes which are in a vulnerable position. Issues such as access to health care, medicines, and health facilities should be addressed by the governments. It is thus important to campaign for more SEA countries to ratify this Convention and take action.

## African Charter on Human and People's Rights

### *What is the African Charter?*

The African Charter on Human and People's Rights is a regional human rights treaty aimed at promoting and protecting human rights on the African continent. The draft of the Charter was initiated during the 1979 Assembly of Heads of State and Government. It was approved in 1981 and came into force on 21 October 1986. The African Charter confirms human rights already enshrined at the international level. It also further secures these rights by setting up a Commission and a Court of Justice in charge of monitoring and interpreting these rights. Such a regional human rights treaty also exists in Europe (the European Convention on Human Rights) and in America (the American Convention on Human Rights).

### *What does the African Charter say on the Right to Health?*

Article 16 of the Charter provides:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of

their people and to ensure that they receive medical attention when they are sick.

### *Is my country subject by the African Charter?*

All the Southern and East African countries concerned by this toolkit are members to the African Charter.

## Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

### *What is the Maputo Protocol?*

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, better known as the Maputo Protocol, is a regional human rights treaty aimed at promoting and protecting women's rights on the African continent. The African Union officially adopted this Protocol on 11 July 2003 in Maputo, Mozambique. It became effective on 25 November 2005.

### *What does the Maputo Protocol say on the Right to Health?*

The Maputo Protocol guarantees women's right not to be discriminated against (Article 2), right to dignity (Article 3) as well as life, integrity and security of the person (Article 4). Most importantly, the Maputo Protocol condemns harmful practices against women, such as genital mutilation (Article 5) and protects their health and reproductive rights (Article 14). The Maputo Protocol also lays down women's right to food and water (Article 15), as well as their right to adequate housing (Article 16) and a healthy environment (Article 18). Elderly women, women with disabilities and women in situations of distress are offered special protection (Articles 22, 23 and 24 respectively).

### *Is my country subject by the Maputo Protocol?*

Up to January 2018, almost all Southern and East African (SEA) countries are parties to the Maputo Protocol.

- **SEA states which have *ratified* the Maputo Protocol:** Angola, DRC, Mozambique, Kenya, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Uganda, Zambia and Zimbabwe.
- **SEA states which have *signed* the Maputo Protocol:** Congo, Eritrea, Brazzaville, Madagascar, Mauritius and South Sudan.
- **SEA states which have neither signed nor ratified the Maputo Protocol:** Botswana.

## African Charter on the Rights and Welfare of the Child

### *What is it?*

The African Charter on the Rights and Welfare of the Child is also a regional human rights treaty. It

was adopted on 11 July 1990 in Addis Ababa (Ethopia) and entered into force on 29 November 1999.

### *What does this Charter say on the Right to Health?*

Article 14 states that every child shall have the right to enjoy the highest attainable state of physical, mental and spiritual health.

### *Is my country subject by the Charter?*

Up to January 2018, the African Charter on the Rights and Welfare of the Child has been ratified by [41 of the 54 states](#) of the African Union.

- **SEA states which have *ratified* the Charter:** Angola, Botswana, Democratic Republic of Congo (DRC), Congo Brazzaville, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Uganda and Zimbabwe.
- **SEA states which have neither signed nor ratified the Charter:** The Democratic Republic of Congo, Swaziland and Zambia.

## Second layer: Constitutional Law and the Right to Health

The Constitution is the highest law of a country. It defines the structure of the State and enshrines the most fundamental values the government and society must respect and pursue. Constitutional law often offers better protection for the people than international law. Therefore, it is important that States enshrine the right to health in their Constitution, as well as other fundamental rights inextricably linked to the realisation of the right to health (such as the right to life, food, housing, healthy environment, education, bodily integrity, etc).

There are two main reasons why Constitutional law offers better protection than international law:

- **Applicability:** When a violation of the right to health has occurred, people can go to court and ask a judge to interpret the law. However, it is often difficult to invoke provisions of international law before the national court. This is because international law is not always directly applicable at the national level. Most of the time, international law must be first incorporated into the national legal system (for example, by adopting a new law or adding provisions in the Constitution that reflect the content of international human rights treaties). If the right to health is written in the Constitution, it is more easily applicable. That means that people can rely on a constitutional provision before the court to get their right respected.
- **Enforceability:** In international law, the right to health is understood as a positive but *progressive* right. *Progressive* means that States do not have to immediately provide for the right to health, but must take steps to work towards the achievement of this right to health. In Constitutional law, the right to health might be spelled with more detail, and some cardinal aspects can be recognised as conferring a *positive* and *immediate* right to the individuals (e.g. the Constitution of Kenya, South Africa and Zambia recognise the positive and immediate right to receive emergency medical treatment. This right is directly enforceable).

In Southern and East Africa (SEA), not all Constitutions recognise the right to health. However, even if a Constitution does not explicitly describe a right to health, it is often still possible for Civil Society and community organisations to use a country's constitution to advance claims for the right to health. Appendix 1 provides an overview of the Constitutional provisions relating to health rights in the different countries covered by this toolkit.<sup>29</sup> You can go to the Appendix 1 to see the provisions for Angola, Botswana, Democratic Republic of Congo (DRC), Congo Brazzaville, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Uganda, Zambia and Zimbabwe.

Civil Society organisations have used the provisions of their country's constitution in different ways. Here are some examples:

In South Africa, the Treatment Action Campaign (TAC) used the Right of Access to Health Care in the South African Constitution to force government to provide anti-retroviral treatment to pregnant women with HIV to prevent transmission to their unborn babies. They took government to the Constitutional Court, which ruled that the South African Department of Health must roll out a treatment programme. However, the TAC also used the provisions to educate their members and the public about their rights and mobilised public opinion to

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<sup>29</sup> Mulumba M, Kabanda D, Nassuna V (2010): Constitutional provisions for the right to health in east and southern Africa; EQUINET Discussion Paper 81. Centre for Health, Human Rights and Development, Regional Network for Equity in Health in East and Southern Africa (EQUINET): Harare; URL: <http://www.equinet africa.org/sites/default/files/uploads/documents/Diss81%20ESAconstitution.pdf>

support their campaign as just. In that way, they helped to shape health policy to be more equitable.

Uganda: The Civil Society Organisation, the Centre for Health, Human Rights and Development, pursued a constitutional petition in 2011 following two cases of maternal death that resulted from health system failings.<sup>30</sup> Although Uganda's constitution does not have an explicit provision for the right to health, it does include health within its directive principles as part of other provisions. CEHURD, mobilising public opinion, argued that the failure to provide basic maternity service, aggravated by unprofessional conduct of health workers towards expectant mothers was inconsistent with the Ugandan Constitution and represented a violation of the right to health. Although the first court ruled against CEHURD on this case, citing deference to the executive in matters of policy and programmes, this ruling was overturned by a higher court, with the matter still currently undergoing review. More importantly, the case mobilised massive media coverage and public attention to the dismal state of maternity services in Uganda. It led CSOs working independently on maternal health issues to form the Coalition to Stop Maternal Mortality, which successfully lobbied for parliamentary action to increase in the budget to recruit, motivate, and retain health care workers. After they successfully encouraged members of Parliament to block a new budget that failed to address the Coalition's demands, a budget of approximately \$15 million dollars was allocated to address the health care workforce shortage - which was one of the key factors underlying the 2 deaths that prompted the petition. Going to court with the petition provided the Coalition with a focal point around which to organise their campaigns. In that way, even a negative decision court can be a catalyst to mobilize for broader health system changes.<sup>31</sup>

Zimbabwe: In 2014, the Harare municipality cut off the water supply to a resident, Mr Mushoriwa, claiming he was in arrears with his payments. He disputed this and provided evidence that all bills had been paid on time. The city authorities were able to do this because their by-laws gave them discretion to disconnect water supplies to any citizen as they saw appropriate. Mr Mushoriwa challenged the decision in court. The High Court noted that, because the constitution of Zimbabwe considers the right to water a fundamental right, the city could not simply "deny its citizens water at will without recourse to the law and the courts."<sup>32</sup> The court ruled in his favour and the City had to restore his water supply.<sup>33</sup>



## Activity 1

### Purpose

To apply knowledge gained on the Constitutional protection given to the right to health in Southern and East Africa.

### Process

(Time: 15 minutes)

1. Compare your own Constitution with the provisions on the right to health in the Constitution of

<sup>30</sup> CEHURD. (2011). Advocating for the Right to Reproductive HealthCare in Uganda. The import of Constitutional Petition No.16 of 2011. Centre for Health, Human Rights and Development (CEHURD). Kampala

<sup>31</sup> Dunn JT, Lesyna K, Zaret A. The role of human rights litigation in improving access to reproductive health care and achieving reductions in maternal mortality. BMC Pregnancy and Childbirth 2017, 17(Suppl 2):367

<sup>32</sup> *Mushoriwa v City of Harare* HH 195-14/HC 4266/13 (*Mushoriwa* case) (a 2014 case).

<sup>33</sup> Soyapi, CB. (2017). Water Security and the Right to Water in Southern Africa: An Overview. *PER: Potchefstroomse Elektroniese Regsblad*, 20(1), 1-26. <https://dx.doi.org/10.17159/1727-3781/2017/v20n0a1650>



Botswana, Lesotho, Swaziland and Zambia.

2. Divide these Constitutions in two groups: the ones that you think protect the right to health in a satisfactory manner, and the ones that do not provide sufficient protection.

3. Discuss which Constitution, in your opinion, offers the best protection and why.

## Third layer: Secondary Law and the Right to Health

### The adoption of public health laws

National legislation should be the departure point for improving and/or implementing health rights as protected in international law and constitutional law.

Governments must take legislative or non-legislative measures for ensuring the right to health. Legislative measures include enacting or amending health-related laws (e.g. Uganda Public Health Act; Angola's Water Act; South Africa's National Health Act; etc). Non-legislative measures include developing strategic plans, policies or guidelines for ensuring specific health rights (e.g. Angola's Water and Sanitation Sector Development Strategy; the South African Charter on Patients' Rights; etc).

In Southern and East Africa, public health laws and policies vary from one country to another because the needs of the population and the health risks are not always the same. The construction of laws related to health rights can be seen as a three-step process:

- **Assessment of health-related issues:** before adopting or amending public health laws, the government must identify the specific needs and existing health risks in the population.



For example, in one country the most pressing issue might be malnutrition, while in another country it might be the lack of sanitation. The government must assess which issues need to be prioritised and how they need to be addressed.

- **Adopting laws and public policies:** when the main health issues have been identified, the government must respond to it accordingly. It must adopt new laws or amend old ones to protect and fulfil the right to health. Adopting or amending public health laws requires a deep understanding of the roots of each problem.



For example, malnutrition might be an issue in two different countries, but not for the same reasons.

In the first country, malnutrition may be the result of repetitive droughts (people do not have access to food in sufficient quantity because of poor harvests).

In another country, malnutrition may be caused by adverse trade practices (the food is exported in mass amounts instead of being used for the local market), and the lack of sanitary checks on meat products (people get sick because of the poor quality of meat products). Public policies on food security must be designed in order to address these specific issues accordingly.

In the first country, the government should adopt a law on the prevention of famine (putting in place public storehouses to prevent starvation in case of drought). In the second country, it may be necessary to adopt a law limiting the exportation of food products, and another law reinforcing the sanitary check of meat and other animal products intended for human consumption.

In order to design comprehensive public health laws, communication between the different levels of the government, as well as between the government and private actors (e.g. NGOs, universities, health professionals, etc) is essential. Private actors can help the government in understanding the roots of each health-related problem and give advices on how to adequately respond to it.

- **Implementing and monitoring mechanism:** once the public policies have been designed, the government must implement them (i.e. put them in practice) and set up a monitoring program in order to evaluate them (i.e. is it working? how could it be improved?).



For example, a government might have adopted an environmental law for the treatment of waste and other hazardous substances. The law prohibits big factories or farms to pollute rivers. In the past, contaminated water caused many diseases among the urban and rural populations. Despite having implemented the law, it appears that some populations in rural areas are still suffering from diseases related to contaminated water. Research conducted by a local NGO shows that deep water wells in remote villages are still contaminated. The government must react accordingly (for example, by providing safe water to villagers who still depend on wells until all harmful substance to health is removed from the water). Another research project by an university shows that some companies still pollute rivers, because the fines established by the law are not high enough. The government might need to amend its law to put higher fines in case of deliberate pollution. Once again, communication between the government and actors on the ground is essential to ensure a good monitoring phase of health laws.

## The different aspects of the right to health in public health laws

The right to health is connected to many other human rights (e.g. right to water and sanitation, right to bodily integrity, right to a healthy environment, etc). In order to ensure and promote the right to health in its entirety, national laws should take into account these different aspects. For example, secondary law should at least cover:

- access to equitable and adequate health products and services (e.g. fair financing of health services and medicine; management of public hospitals; patenting of medical

products; marketing and selling of medical products; training of nurses, doctors and other health professionals; etc);

- prevention and suppression of diseases (e.g. HIV/AIDS prevention, mandatory vaccination, measures against epidemics, etc);
- right to reproductive health and bodily integrity (e.g. distribution of contraceptive means without taboo or discrimination; regulation on abortion; protection from traditional and other practices harmful to health, such as female genital mutilation or circumcision; prohibition of torture and physical or psychological abuses, etc);
- food security (e.g. public measures to prevent famine; regulation on the treatment, marketing and selling of food products; etc);
- sanitation and housing (e.g. ensuring water supplies in urban and rural areas for domestic and sanitation purpose; protection of water supplies; remedy dangers arising from unfit dwellings; etc);
- healthy environment (e.g. regulations against pollution and for the treatment of hazardous substances; laws on radioactive products; laws on the treatment of public waste; laws on the management of cemeteries; etc);
- prohibition of discrimination and special protection for the health rights of vulnerable groups in society (e.g. law on maternal care and parental leave; law on the rights of children to health, education, etc; law on the treatment of handicapped and elderly people; regulations on fair labour practice for workers and sickness leave; etc).
- right to information and privacy in health services (e.g. access to medical record; laws on the disclosure of medical information; information campaigns against threatening diseases; etc).

In different countries, the law affecting health rights have been used in different ways. Here are some examples:



Mr. and Mrs. Wainaina were residents of Baba Dogo estate in Nairobi. They started suffering from pollution coming from a close-by footwear factory owned by Kenafric Industries and Manil Industries. Liquid waste and corrosive chemicals were flowing near their house, causing damages to the building and endangering Mr. and Mrs. Wainaina's health. They decided to go to court to fight this nuisance, relying on the Public Health Act of Kenya.<sup>34</sup> The Public Health Act sets up a Central Board of Health to advise the Minister of Health on all matters affecting the public health, provides the legal framework for establishing health facilities and setting up health services, legislates for food safety and control of infectious diseases and places a duty on local authorities to control pollution dangerous to health. The Tribunal made an injunction to force the industries to stop their business activities until the flow of liquid waste and chemicals would stop, and grant Mr. and Mrs Wainaina damages for the deterioration of their house.

<sup>34</sup> National Environment Tribunal of Nairobi, *Gitiriku Wainaina & another v Kenafric industries, Tribunal Referral Net 8 of 2006*, Judgment of 24 May 2007.



In December 2002, Uganda's High Court declared smoking in public places a violation of non-smokers' constitutional rights to life and to a clean and healthy environment.<sup>35</sup> The judge ordered Uganda's National Environment Management Authority (NEMA) to make regulations to prohibit smoking in public places. In 2004, the NEMA issued the *National Environment (Control of Smoking in Public Places) Regulations 2004*. This is a concrete example of how individuals invoking their health rights in front of a judge can trigger legislative reforms. This also shows the importance of adopting laws and regulations to realise the health rights of citizens through concrete measures. But the 2004 Regulations were never backed with an effective policy on the ground. As a result, exposure to tobacco smoke through active and passive smoking in Uganda continued almost unabated.<sup>36</sup> This means that rights that are won in court are often not complete if they are not complemented by strong civil society mobilisation.



Zambia has an Environmental Protection and Pollution Control which provides for the protection of the environment and the control of pollution. In 2007, James Nyasulu and others, who lived in Chigola in the Zambian copper belt, sued Konkola Copper Mines (KCM) for discharging substances from its mining operations into the Mushishima river, from which they get their drinking water. In a landmark judgment, the Lusaka High Court ordered KCM to pay US\$2million to 2000 Chingola residents on Zambia's Copperbelt for polluting the Mushishima river.<sup>37</sup> The Zambia Environmental Management Agency (ZEMA) was also sued because it allegedly failed to carry out inspection or supervise maintenance of the pipes in accordance with the Environmental Protection and Pollution Control Act (EPPCA). However, ZEMA was exonerated in this case. The case highlights how there should be better public participation in environmental management.

Appendix 2 provides an overview of the main public health laws by the governments of Kenya, Uganda, South Africa, Zambia and Zimbabwe.

<sup>35</sup> Environmental Action Network Ltd v Attorney-General, Misc App No 39 of 2001 (Uganda 2002).

<sup>36</sup> <http://www.cehurd.org/wp-content/uploads/downloads/2013/11/Concept-for-Tobacco-Control-Advocates-Coalition-meeting.pdf>

<sup>37</sup> Nyasulu and Others v Konkola Copper Mines Plc and Others (2007/HP/1286) [2011] ZMHC 86 (Judgment of 1 January 2011).



# Workshop Handouts

The pages that follow can be photocopied to give to workshop participants as handouts during the workshop



# Rights are given Power through Law

National law - Constitution

International law (courts must consider this)

## **Conventions, Treaties, Charters**

Written legally binding agreements between states or organisations (ruled by International law): e.g.

The Convention on the Rights of the Child,  
International Convention on Civil and Political Rights,  
African Charter on Human and People's Rights

## **Declaration**

A document stating agreed standards or principles.  
Not a legally binding document but has strong moral force: e.g. Universal Declaration of Human Rights

## **Code**

A document setting out principles to guide states  
e.g. SADC Code on HIV and employment

## **Signing a treaty**

Government says they support the agreement in principle and make a commitment not to act against the agreement. After signing, governments are expected to ratify a treaty or covenant.

## **Ratification**

Government officially agrees to abide by the treaty. They must amend their own laws or pass new laws in line with the treaty.



## What is the Right to Health?

Right to health

- not necessarily the right to be healthy
- Right to access to health care
- Right to conditions needed for health (water, sanitation, food, housing, environment)

### Universal Declaration of Human Rights

#### **Article 25**

Everyone has the right to a standard of living sufficient to provide for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services; and also the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

### International Covenant on Economic, Social and Cultural Rights

#### **Article 12**

The right of everyone to enjoy the highest attainable standard of physical and mental health.

# Section 4: Dealing with Violations of Health Rights

“

Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works...Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

*(Eleanor Roosevelt)*

*“what will this world become if you don't have rights? You will feel that you are in prison.”*

*(Respondent in Thomas, 2008).*



The goal of the third section is to gain a deeper understanding of what it means when health rights are violated, and what an individual or group of people could do about such violations.





# Understanding Violations of Health Rights



## Activity 1

### **Purpose**

To examine participants' ideas and views about what it means to have health rights violated.

### **Process** (Time 30 minutes)

1. Ask the volunteers from the larger group to tell you about a situation when they felt their health rights were violated or saw someone else's health rights being violated.
2. Summarise the main points in the stories told on a flipchart.
3. Compare the information participants have given to the input on violations (pointing out which of the situations were actually violations) and distinguishing violations from wrongdoing or failures by health care workers.

## When has the right to health been violated?

### *The three obligations of the government*

The government has three main obligations: respect, protect and fulfil the right to health. Human rights violations occur when a government fails to meet one of these three obligations. This includes:

- **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 unaffordably expensive)
- **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 (like not having sign language

interpretation for deaf patients who use health care facilities)<sup>38</sup>

Not every situation of wrongdoing, failure or bad service by a government authority or health care worker is a violation of health rights. There may be good reasons why a government authority or a health care worker is unable to meet 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. Sometimes governments don't have the resources (money, buildings, manpower, knowledge) to meet its obligations (in such a situation the government is unable). However, if a government has deliberately taken wrong policy decisions, or money allocated for health issues is being embezzled (corruptive practices) or used for other reasons, the government is unwilling to comply with its obligations. In the latter case, government is responsible for a violation of the right to health.

## *Failure to respect, protect or fulfil the right to health*

Here are some concrete examples of violation of the right to health.

### **1. Failure to respect the right to health**

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 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. Failure 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

### **3. Failure to fulfil the right to health**

The government must also take reasonable steps towards the progressive realisation of the right to health.

The obligation to take **reasonable steps** towards the **progressive** realisation of the right to health does

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<sup>38</sup> *Haki Zetu (Our Rights)*. Amnesty International

not mean that the government must provide for everything immediately. The government has not unlimited resources; it cannot build new hospitals at every corner of the streets, or provide free medicine for everybody against all diseases.

It is important to note that this is not an excuse for the state to do nothing to improve health rights. They must do as much as they possibly can with the available money and resources. They can also appeal to other countries to provide them with financial or other assistance in order to fulfil their obligations or duties related to the right to health, or any other rights.

The obligation to take reasonable steps towards the progressive realisation of the right to health can be understood as follows: the government must allocate an appropriate budget to health-care services; focus on the most pressing health issues and the most desperate people first; put in place comprehensive, coherent and coordinate strategies at all levels of the government; ensure that financial and human resources are available; address the social determinants of health meaning those things that impact on your health, such as housing or overcrowding, etc.

Therefore, a violation will occur if the government does not act in a progressive and reasonable manner towards the achievement of the right to health. Examples include:

- Not allocating enough budget to health-care services
- Not having a plan to improve health care services
- Failing to adopt laws regulating the branding and marketing of medicines
- Failing to develop affirmative plans and strategies against an epidemic
- Failing to make progress so that essential medicines are available at health care facilities





Work through the cases below with the larger group, before asking people to tackle the additional activity on their own:

### *Involuntary sterilisation*

A young woman went for a termination of pregnancy (abortion) at a hospital. They did the termination, but two days later she had severe pain and she was admitted to hospital again. for emergency surgery. After the operation, the young woman found out that she had been sterilised. She had not been informed that this was possible nor had she given her permission for this procedure to be performed. She still wanted to have children later in life.

The organisation she went to for advice had experienced a number of cases where women had gone for a termination of pregnancy and ended up being unable to have children afterwards. This all happened at the same hospital and the organisation suspects that the hospital is routinely sterilising women who come for terminations without their permission.

### Case questions

Has the right to health been violated in this case? Explain why you say this.

Answer:

Yes. The right to health has been violated in this case. The government failed to protect the right to health. The health care providers had not sought informed consent before the procedure and had therefore not acted ethically. It is the duty of the government to protect people's right to health by ensuring that medical practitioners comply with ethics and to take action against practitioners who have not acted ethically.

## Accountability

It is not enough to know when our health rights have been violated. We also have to be able to do something about these violations by holding government or others accountable. When

we hold an institution **accountable** we make them aware of their responsibility and we ask them to give us answers about decisions they have made or to justify their actions.

As a duty-bearer the government is accountable (responsible) for ensuring that people's rights are realised. It can be held accountable on the realisation of the right to health in a number of different ways. A few examples are:



- ▣ checking that enough budget is put aside for providing health care and the services needed for health
- ▣ making sure that the government is appointing sufficient staff to provide health care and provides the infrastructure needed for health
- ▣ approaching bodies set up in law to which one can complain about rights violations
- ▣ using the law or the courts to enforce our rights
- ▣ demonstrations or marches, protesting against government not realising rights
- ▣ approaching civil society organisations that deal with violations of rights<sup>39</sup>

There are many organisations that hold government accountable. For example, some countries will have a Human Rights Commission, or an Ombudsman, or a Court that specifically focuses on questions of discrimination (an Equality Court). Health Professionals are also registered with a Medical, Nursing or other professional Council. These are usually statutory (created by law) structures which have some degree of power to make sure their findings have an effect. There are also Civil Society organisations such as NGOs or Advice Offices that might monitor government and produce reports, which expose lack of accountability through naming and shaming. These strategies may be complementary. Find out what organisations exist in your country that help to hold government accountable.



In another case in South Africa (*Stoffberg vs. Elliott*) a patient took a surgeon to court for performing surgery on him without his specific consent. Even though the surgeon did the surgery to prolong the patient's life, the court pointed out that any medical operation to which the patient does not consent is a violation of the patient's rights.

This right is not given up simply because the person went to hospital for treatment or as a result of them agreeing to another type of surgery.<sup>40</sup>

### *Emergency Medical Treatment*

In September 2004, in South Africa (Johannesburg), a 57 year old homeless man, Simon Radebe, was found lying in the street in need of an emergency medical treatment. Two paramedics were called to assist Mr Radebe. However, they refused to take him to hospital, claiming that he was too dirty to transport in the ambulance. Mr. Radebe died on the street in Johannesburg the same day.<sup>41</sup>

### Case questions

<sup>39</sup> UNCT. 2009. *Toolkit: a human rights based approach, a user friendly guide from UN staff in Viet Nam*.

<sup>40</sup> Hassim, A., Heywood, M. & Berger, J. 2007. *Health and Democracy: a guide to human rights, health law and policy in post-apartheid South Africa*. Cape Town: Siber Ink.

<sup>41</sup> From <http://www.cyberstoep.co.za/empathy-telling-tales-sas-homeless/>

Has the right to health been violated in this case? Explain why you say this.

Answer

Yes. his was a clear violation of Mr Radebe's right to emergency medical treatment. As a result, the two paramedics were dismissed from their position in emergency medical services and two years later the Health Professions Council took away their license to work as paramedics permanently.

### *Access to free medicine*

In 2012, in Kenya, Mr. Okwanada, an elderly retired person, was diagnosed with diabetes and Benign Hypertrophy (a life-threatening terminal disease). He claimed that the medication was too expensive his right to the highest attainable standard of health (Article 43 of the Kenyan Constitution) had been violated.<sup>42</sup>

Case questions

Has the right to health been violated in this case? Explain why you say this.

Answer

According to the High Court of Nairobi, the right to health of Mr. Okwanda had not been violated. The Court recognised that the State was under the obligation to take reasonable steps to achieve the right the highest attainable standard of health. However, Mr. Okwanda had failed to prove that the government was in breach its progressive obligation.

Here, we can clearly see that the obligation to fulfil the right to health does not require the government to immediately provide for health services. Rather, the government must take reasonable steps, within the limits of its resources, to achieve that right.

### *Provision of Maternal Care*

In Uganda, the Center for Health, Human Rights and Development (CEHURD), along with three other petitioners, claimed that the government had failed to provide basic indispensable health maternal commodities in public facilities. They also claimed that health workers had an unethical and imprudent behavior towards expecting mothers. The attitude of the government regarding these issues was in breach of several Constitutional provisions.

Case questions

Has the right to health of expecting mothers been violated in this case? Explain why you say this.

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<sup>42</sup> High Court of Nairobi, *Okwanda v. Minister of Health and Medical Services and Ors.*, Petition No. 94 of 2012.

## Answer

Whether the health rights of the expecting mothers were violated depends on the steps taken by the government of Uganda for the realisation of the mothers' health rights as defined under the Constitution.

In the present case, the Constitutional Court of Uganda declared it was reluctant to answer that question. It said that it was the responsibility of the executive branch of the government to formulate and implement policies in the health sector, and that the Court had no power on matters that require analysis of the health sector policies.<sup>43</sup>

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<sup>43</sup> Constitutional Court of Uganda, *CEHURD et alia v. Attorney General*, Petition No. 16 of 2011.



## Activity 2

### **Purpose**

To apply knowledge gained about violations of the right to health.

### **Process**

(Time 50 minutes)

1. Divide the group into four smaller groups. Distribute one of the four different case studies (see handouts at the end of the chapter for case studies 1-4).
2. Participants should read through the case study individually or one person could read it aloud to the rest of the group.
3. Each group should work together to answer the questions related to their particular case study and capture it on a flipchart. Each group will have an opportunity to report back on their answers to the larger group.

## What is My Role?

*“Every individual and every organ of society...shall strive by teaching and education to promote respect for these rights and freedoms...” (Universal Declaration of Human Rights)*

*“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.” (Margaret Mead)*

Human rights will only be met if individuals demand their rights. By demanding your rights as an individual, you can contribute to social change to benefit other people.

As individuals, we should be aware of our rights and check if they are respected.

For example:

- people should check that the government has allocated enough budget for providing health care and the services needed for health;
- people should make sure that the government is appointing sufficient staff to provide health care and provides the infrastructure needed for health;
- people should check whether the government is taking actions to correctly implement the law (e.g. if a federal law requires municipalities to distribute free contraceptive to women, the municipalities must do so);
- people should report to the police or complain in court against the persons who have violated



health rights (e.g. an employer who puts at risk the health of his workers; a fake doctor who practices dangerous operations or treatment on other persons; a company who pollutes a river by illegally discharging its waste; etc).

People may directly or indirectly be confronted to a violation of health rights committed either by a State actor or by a private actor. In that case, people can try to hold accountable the government or the person concerned in the following way:

- approaching civil society organisations that deal with violations of rights and ask them for help and guidance;
- complaining through non-judicial mechanisms which are available (e.g. local health committee; human rights commission; etc);
- using the law and go to court to get compensation (e.g. civil, penal or labour tribunals; constitutional court; etc);
- organising campaign and demonstrating in the streets to raise the awareness on the issue;
- work with NGOs (advocacy and lobbying);



### Activity 3



#### **Purpose**

For the group to think about their own experiences of complaining or standing up for their own rights or for the rights of other people.

#### **Process**

(Time 50 minutes)

1. Ask each person in the group to think about a time when they stood up for their own rights or for the rights of other people.
2. Create a flipchart with the following questions:
  - When was a time that I stood up for rights?
  - What happened when I did this?
  - Where did this happen?
  - Why did I stand up for rights?
  - Who or what helped or supported me with this?
  - Was there a time that I stood up for rights in a group with other people?
3. After 10 minutes each person should have their answers to these questions ready.

4. In the 10 minutes when everyone is thinking, the facilitator makes five headings on a flipchart, what, where, when, why and sources of support and individual or group complaints. As each person tells their story, the facilitator writes down the main points under the appropriate headings.

5. Draw attention to the fact that all the participants have already been human rights defenders and also to the things that are similar or very different in their stories. Also make a connection between what they have said and any strategies you have learnt about how to complain.<sup>31</sup>



In South Africa, the Aids Law Project brought a complaint to the Competition Commission about pharmaceutical companies Glaxo Smith Kline and Brehringer Ingelheim. The claimants said that the private drug companies were abusing the right to health care by charging prices that were too high for ARVs. This case examined the duties of drug companies to charge affordable rates for life-saving medicines. As a result, other companies were given the option (licenses) to produce or import affordable generic ARVs, thus bringing down the costs of these essential medicines.<sup>44</sup>

In 2008, the government of Kenya adopted an Anti-Counterfeiting Act which severely restricted access to affordable, essential medicines, including generic medicines for HIV-related diseases. A group of Kenyan citizens who were HIV-positive made a petition to the High Court of Nairobi, claiming that the new law was violating their fundamental right to life, dignity and health.<sup>45</sup> The Court agreed with them and ruled that the new law had to be amended in light of the Government's constitutional obligation to protect the fundamental right to health, which encompasses access to affordable medicines, including generic medicines for HIV-related diseases. After the judgment, NGOs and other health CSOs, such as AIDS Law Project, ITPC East Africa, KANCO, KELIN, NEPHAK, WOFAK committed themselves to ensure that the Anti-counterfeit Agency Act would be properly amended by the government to comply with the judgment.

## What is the value of pursuing a complaint?

If you lodge a complaint, then something can be done

- to redress the violation (make it right or to compensate you for what has happened to you)
- to prevent the violation from happening to others in the future
- to show that government can't deny that there are problems
- to monitor patterns or trends (to see if rights violations are getting better or worse or if the kinds of rights violations about which people complain are changing over time).

<sup>44</sup> Grant, K., Lewis, M. & Strode, A. 2006. *HIV/AIDS and Human Rights in Southern Africa*. AIDS and Rights Alliance for Southern Africa.

<sup>45</sup> High Court of Nairobi, *Patricia Asero Ochieng and Ors. v. Attorney General and Anr*, Petition No. 409 of 2009 [2012].

# Complaints mechanisms

In this section will explore human rights complaints mechanisms on international level, regional level and local level. Complaints mechanisms are a crucial part of the State duty to protect health rights. Victims of health rights violations can use these mechanisms to lodge complaints and have the violations addressed.

## *Complaint mechanisms at the International Level*

The ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties. There are three main procedures for bringing complaints of violations of the provisions of the human rights treaties before the human rights treaty bodies.<sup>46</sup>

### *Individual communications*

The basic concept of complaint mechanisms under the human rights treaties is that anyone may bring a complaint against a State party alleging a violation of treaty rights to the body of experts monitoring the particular treaty.<sup>47</sup>

There are nine core international human rights treaties. Each of these treaties has established a “treaty body” (Committee) of experts to monitor implementation of the treaty provisions by its States parties. An individual complaint alleging a violation/s of the ICCPR may be brought to the Human Rights Committee, the Committee that monitors the ICCPR.

Individual complaints may also be submitted to the Committee on Economic, Social and Cultural Rights (CESCR), because the Optional Protocol to the ICESCR (granting the right to submit complaints), entered into force in 2013. The CESCR may consider individual communications alleging violations of rights included in the ICESCR by States parties to the Optional Protocol (such as the right to health). Using this venue, any individual may bring a complaint of an alleged health right violation to the CESCR.<sup>48</sup> From the group of African States currently only Niger and Gabon have ratified this Protocol.



There may be several questions regarding individual communications:

### **Against whom can an individual complaint to a UN Human Rights Treaty Body be brought?**

First, it must be a party (through ratification or accession) to the UN human rights treaty. Second, the State party must have recognized the competence of the Human Rights Treaty Body to examine individual complaints.<sup>49</sup>

### **Who can bring a complaint?**

<sup>46</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

<sup>47</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure>

<sup>48</sup> [http://www.claiminghumanrights.org/iccsc\\_actions.html](http://www.claiminghumanrights.org/iccsc_actions.html)

<sup>49</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure>

Anyone can lodge a complaint with the Committee against a State that satisfies the above mentioned two conditions, claiming that his or her rights under the human rights treaty have been violated. One may also bring a claim on behalf of another person on condition that his/her written consent is obtained. In certain cases, one may bring a case without such consent, for example, where a person is in prison without access to the outside world.

### What happens when the Committee has decided a case?

The Committees' decisions represent an authoritative interpretation of the treaty concerned. These recommendations to the State party, made by the Committee, are however not legally binding upon the States. All Committees have developed procedures to monitor whether States parties have implemented their recommendations (follow-up procedures). When the Committee concludes that a violation of the treaty has taken place, the State is invited to provide information (within 180 days) on the steps it has taken to implement the recommendations. If the State party fails to take appropriate action, the case is kept under consideration by the Committee under the follow-up procedure. A dialogue is thus pursued with the State party and the case remains open until satisfactory measures are taken.



### Advantages and disadvantages of individual communications

#### Advantages:

- The complaint mechanisms are designed to be accessible to the layperson. It is not necessary to be a lawyer or even familiar with legal and technical terms to bring a complaint under the treaties concerned.<sup>50</sup>
- It is not necessary to have a lawyer prepare the complaint (though legal advice may improve the quality of the submissions).
- Information related to follow-up to the Committees' Views and recommendations is not confidential and the meetings during which this information is discussed are public.
- The resulting body of decisions may guide NGOs and individuals in interpreting the contemporary meaning of the treaties concerned.<sup>51</sup>

#### Disadvantages:

- The recommendations by the Committee are not legally binding upon the state concerned.



In a 2004 case before the Human rights Committee, it was found that the State of Zambia violated the following provisions of the ICCPR:<sup>52</sup>

- Article 6 (right to life). The Committee decided this based on the premature death of the Mr. Chiti (the alleged victim and husband of the author of the communication) due to torture, lack of access to medication for prostate cancer while in detention, inadequate diet and unclean environment in detention despite medical requirements due to being HIV-positive.
- Article 7 (torture and ill-treatment<sup>53</sup>). The Committee based this determination on the torture of the author while in detention, suffering of the victim's family as a result of his arrest and torture and as a result of the eviction from their home. In conjunction with article 2(3)

<sup>50</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>.

<sup>51</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>

<sup>52</sup> Chiti v Zambia (Communication No. 1303/2004)

<sup>53</sup> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

- (effective remedy), as there was a lack of effective investigation by the State.
- Further, the Committee also found a violation of Article 14 (3)(g) (Fair trial, self-incrimination); Article 17 (Privacy) and Article 23 (1) (Protection of family).

The State was requested to: (i) carry out a thorough and effective investigation into the victim's torture; (b) provide the author with detailed information on the results of its investigations; (c) prosecute, try, and punish those responsible for the torture; (d) provide appropriate compensation to the victims and; (e) give information to the Committee on the follow-up of these different requests. The Committee also requested the information on follow-up from the State party within 180 days and the State party to publish its views.

### *State-to-state complaints*

Several of the human rights treaties contain provisions to allow for State parties to complain to the relevant treaty body (Committee) about alleged violations of the treaty by another State party. These procedures have however never been used.

### *Inquiries*

Upon receipt of reliable information on serious, grave or systematic violations by a State party of the conventions they monitor, the CESCR<sup>54</sup> may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party. Inquiries may only be conducted with respect to States parties that have recognized the competence of the relevant Committee in this regard.



An (hypothetical) example of an inquiry related to health rights: let us imagine that state X decides to adopt and enforce the single-child policy already existing in China, and therefore forces pregnant women who already have a child to abort. When abortion is not voluntarily, it can be detrimental to both the mental and physical health of the woman. If reliable information is given to the CESCR that state X is forcing women to abort in conditions which constitute a systematic violation of Art. 12 of the ICESCR<sup>55</sup>, the Committee can decide to initiate the inquiry procedure to assess the situation. The CESCR will then invite state X to submit observations, so doing cooperating in the examination of the information. On the basis of these observations, the CESCR may decide to conduct an inquiry. This inquiry may include a visit to country X, where warranted and consented to by country X. The findings of the CESCR and any comments and recommendations are then transmitted to State X. State X will be requested to submit its own observations to the CESCR's findings and to inform it of measures taken in response to the inquiry. The inquiry procedure is confidential and the cooperation of the State party shall be sought at all stages of the proceedings.

The Special Procedures of the Human Rights Council and the Human Rights Council Complaint Procedure are international complaints mechanisms that fall outside the treaty body system.

<sup>54</sup> Article 11 of the Optional Protocol to ICESCR

<sup>55</sup> Right to the highest attainable standard of physical and mental health.

## ***Special Procedures of the Human Rights Council***<sup>56</sup>

The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights. As of 1 October 2014, there are 39 thematic and 14 country mandates.

With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), special procedures

- undertake country visits;
- act on individual cases and concerns of a broader, structural nature by sending communications to States and others in which they bring alleged violations or abuses to their attention;
- conduct thematic studies and convene expert consultations;
- contribute to the development of international human rights standards;
- engage in advocacy;
- raise public awareness;
- and provide advice for technical cooperation.

Special procedures are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group composed of five members, one from each of the five United Nations regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group.

Thematic mandates directly relevant to the right to health:

- Special Rapporteur on the human right to safe drinking water and sanitation:<sup>57</sup> the Special Rapporteur considers that the rights to water and sanitation require that these are available, accessible, safe, acceptable and affordable for all without discrimination.
- Special Rapporteur on the right to food:<sup>58</sup> for the Special Rapporteur, the right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.

## ***Human Rights Council Complaints Procedure***<sup>59</sup>

This complaint procedure was established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. The complaint procedure addresses communications submitted by individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations.

This procedure is confidential, with a view to enhance cooperation with the State concerned. The new complaint procedure has been improved, where necessary, to ensure that the procedure is

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<sup>56</sup> <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>

<sup>57</sup> <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>

<sup>58</sup> <http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>

<sup>59</sup> <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedure.aspx>

impartial, objective, efficient, victims-oriented and conducted in a timely manner.

A communication related to a violation of human rights and fundamental freedoms is admissible, provided that:

- It is not manifestly politically motivated and its object is consistent with the UN Charter, the UDHR and other applicable instruments in the field of human rights law;
- It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
- Its language is not abusive;
- It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms;
- It is not exclusively based on reports disseminated by mass media;
- It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other UN or similar regional complaints procedure in the field of human rights;
- Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.



In the year 2000, the human rights situation in the Democratic Republic of the Congo (DRC) was worrying. The complaint procedure was triggered. On 27 September 2011, the Human Rights Council decided to keep under review the human rights situation in the DRC as well as to recommend that the Office of the High Commissioner for Human Rights provide the DRC with technical cooperation, capacity-building, assistance or advisory services as needed in both situations examined under the complaint procedure.<sup>60</sup>

## *Complaints mechanisms at the regional level*

### *The African Commission on Human and People's Rights<sup>61</sup>*

Established by the African Charter on Human and Peoples' Rights (ACHPR), the African Commission on Human and Peoples' Rights is charged with ensuring the promotion and protection of Human and Peoples' Rights throughout the African continent.

The procedure followed by the Commission in considering complaints is of a highly confidential nature. Complaints can be made by States (against other States Parties) or by others (physical or moral person, private or public, African or international persons).

#### *Provisional measures*

If the victim's life, personal integrity or health is in imminent danger, the Commission has the powers<sup>62</sup> to adopt provisional measures, thereby urging the State concerned not to take any action that will cause irreparable damage to the victim until the case has been heard by the Commission. The Commission can also adopt other urgent measures as it sees fit.

<sup>60</sup> A/HRC/18/2, Report of the Human Rights Council on its eighteenth session, 18 November 2011. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.2.pdf>

<sup>61</sup> <http://www.redress.org/regional-human-rights-mechanisms/african-mechanisms>

<sup>62</sup> Under Rule 111 of its Rules of Procedure

### ***Admissibility of complaints***

Individuals and organisations may lodge a complaint with the African Commission alleging that a State Party to the Charter has violated one or more of the rights guaranteed by the Charter. For a complaint to be admissible:

- The communication must include the author's name;
- The communication must be compatible with the Charter of the OAU and with the present Charter;
- The communication must not be written in insulting language directed against the State or the OAU;
- The communication must not be based exclusively on news from the media;
- The complainant must have exhausted all available domestic legal remedies;
- The communication must be submitted within a reasonable time from the date of exhaustion of domestic remedies;
- The communication must not deal with a matter which has already been settled by some other international human rights body.

### ***Decision and remedy***

If a violation is found, the Commission will make recommendations to the State Party concerned. However, the Commission does not have much power to secure compliance with its recommendations.



In 1996, an NGO called SERAC brought a complaint to the Commission against the government of Nigeria. The communication alleged that Nigeria had been directly involved in oil production through several companies, including with Shell Petroleum Development Corporation (SPDC).<sup>63</sup>

Oil operations had caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people. The government did not require the concerned oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations, despite the obvious health and environmental crisis in Ogoniland. The government has even refused to permit scientists and environmental organisations from entering Ogoniland to undertake such studies.

SERAC alleged in front of the Commission that the Nigerian government violated the right to health and the right to a clean environment as recognised under articles 16 and 24 of the African Charter by failing to fulfil the minimum duties required by these rights. The Federal Republic of Nigeria was declared in violation of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights. The Commission requested the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by taking several measures, including giving proper compensation to the victims, and ensuring that appropriate environmental and social impact assessments are prepared for any future oil

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<sup>63</sup> Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)



development.<sup>64</sup>

## ***The African Court on Human and Peoples' Rights***

An African Court on Human and Peoples' Rights was established in 2004. Those who are entitled to submit cases to the Court include:<sup>65</sup> the Commission, the State Party which has lodged a complaint to the Commission, the State Party against which the complaint has been lodged at the Commission, the State Party whose citizen is a victim of the human rights violation and African Intergovernmental Organizations. In addition, Article 5(3) specifies that "*the Court may entitle relevant Non-Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it.*"<sup>66</sup>

Article 27 of the Protocol specifies that: "if the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary."

The Court has been criticized because it has achieved very little. Despite its potential, in ten years, it has only heard three cases: two against Senegal in 2009 and one against Lybia in 2011. So far, no case relating to health rights has been brought to this Court.

## ***Complaints mechanisms at the national level***

At the national level, victims of human rights violations have access to national courts and tribunals. Judgments rendered by the judiciary are particularly effective because they can be enforced by state's authorities. Several examples have been already provided in this toolkit.



Let us look at two cases from Kenya as examples.

***Constitutional Petition No. 2 of 2011 (Garissa)***<sup>67</sup> concerns the implementation of economic, social, and cultural rights based on Kenya's new constitution and international human rights law; international human rights norms and their application in domestic jurisdiction; justiciability of economic, social, and cultural rights; access to legal remedies and due process.

More than 1,000 individuals, located in six communities (known as the Medina Location of Garissa municipality), were violently evicted from their homes and from public land that they had occupied since the 1940s. Their homes were demolished by officials of the provincial administration and the Municipal Council of Garissa. They never received any written notice nor did the Respondents consult with them prior to their eviction.

<sup>64</sup> See on this case, F. Coomans, The Ogoni Case before the African Commission on Human and Peoples' Rights, *International and Comparative Law Quarterly* (2003), 749-760.

<sup>65</sup> Under Article 5 of the Protocol on the Establishment of an African Court on Human and Peoples' Rights

<sup>66</sup> In accordance with article 34 (6) of the Protocol.

<sup>67</sup> <http://www.escri-net.org/node/364786>

The Court ruled for the evicted nationals and reiterated the justiciability of ESC Rights by declaring (amongst other violations) a violation of the right to life, the right to water and sanitation, the right to physical and mental health, the right to clean and safe water, the right to be free from hunger as well as the right of the elderly to pursue personal development, to live in dignity, respect and freedom from abuse and to receive reasonable care.

In *Patricia Asero Ochieng and 2 Others v. the Attorney General & Another (2009)*<sup>68</sup> three HIV positive patients brought a petition to the Kenyan High Court to challenge the constitutionality of Kenya's Anti-Counterfeit Act of 2008, due to its negative impact on accessing generic anti-retroviral medications for people living with HIV and AIDS. The Kenyan Anti-Counterfeit Act contained an excessively broad definition of what constitutes a 'counterfeit' product that had the potential to include legally-manufactured generics.<sup>69</sup> The petitioners claimed a violation of the constitutional rights to life, health and human dignity.

The court held that three sections of the Kenya Anti-Counterfeit Act are unconstitutional, infringing the petitioners right to life, dignity and health. The Court cited in its opinion the ICESCR and held that the state's failure to promote conditions in which its citizens can lead a healthy life means that it has violated, or is likely to violate, their right to health. Furthermore, the judgment emphasizes (in paragraph 86) that individual intellectual property rights should not supersede the right to life and health. The decision is therefore also important on the broader question of law - can the enforcement of Intellectual Property (IP) rights constitute a legitimate limitation to fundamental rights?<sup>70</sup>

A vast majority of people living with HIV and AIDS in Kenya depend on generic medicine for their survival. This ruling marks a major victory for millions of Kenyans who rely on generic medicine for their treatment.

## *Complaints mechanisms at the local level*

At the local level, complaint mechanisms are usually also made available to the population. These local complaint mechanisms do not belong to the judiciary. In that sense, they can be described as systems of mediation, conciliation or amicable dispute resolution. Besides managing complaints, local mechanism is usually put in place to improve health standards at the local level by addressing specific local issues.

Actors for health rights at the local level can take various forms:

- hospital boards;
- ward councillors;
- health committees;
- NGOs involved in the defense of health rights;

In most countries, **health committees** are the formal organisations set up for improving health standards locally. Most clinics or health centres have a health committee to represent the interests of community members.

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<sup>68</sup> <http://www.escr-net.org/node/365108>. Petition 409 of 2009.

<sup>69</sup> <http://dontradeourlivesaway.wordpress.com/2012/04/24/landmark-decision-on-medicines-and-anti-counterfeiting-law-by-kenyan-high-court/>

<sup>70</sup> <http://dontradeourlivesaway.wordpress.com/2012/04/24/landmark-decision-on-medicines-and-anti-counterfeiting-law-by-kenyan-high-court/>

# Approach to making a complaint

There are important things to remember if you lodge a complaint.

Firstly, you must keep copies of all the letters you have sent or forms you completed.

If you complain in writing and make copies of your complaint letter, then you have proof of your complaint.

Most government institutions have a procedure (a formal series of steps that need to be followed) when you complain. If you work through these steps, you are possibly 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.

- Start 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, then complain to that person's boss or manager (e.g. Sister in Charge, Facility manager)
- You should approach the clinic health committee if there is one at your facility. neither the sister in charge nor the Facility manager can resolve your complaint or if they don't respond to you
- If you are not successful, approach higher officials in the Health Department (e.g. in the sub-district or district, or province or higher level.
- At some point, you might also want to approach NGOs and other Civil Society Organisations.

## 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



In Zimbabwe a health committee at the Mwanza clinic in Goromonzi district raised funds within the community in order to improve health services at the clinic. The fundraising started when they wanted to hire a guard to protect the clinic from thefts. The health committee then

had a meeting with community members where they discussed the idea of charging a small fee to all community members and users of the clinic. The funds they raised were not only used to hire a guard for the clinic, but also to build toilets, purchase benches for patients to sit on and to supply transport costs for health staff having to travel to fetch essential medicines. The health committee decided with community members on how funds were spent and all have benefited from the improvements at the clinic.<sup>71</sup>

By receiving complaints or proactively investigating on a specific issue, health committees can greatly contribute to the protection of health rights or the improvement of health service locally.



A health committee in South Africa helped to reduce excessively long waiting periods at a clinic. Committee members would ask patients how long they had been waiting and respond to unusually long wait times by investigating further and informing the facility manager. Another committee noted that patients were being questioned about health problems in an open area. They argued that patient privacy was not being respected and, as a result of their objections, the facility manager corrected the situation.<sup>72</sup>

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<sup>71</sup> Loewenson, R & Rusike, I. 2004. *Assessing the impact of health centre committees on health system performance and health resource allocation*. EQUINET discussion paper 18.

<sup>72</sup> Glattstein-Young, G. 2010. *Community Health committees as a vehicle for community participation in advancing the right to health*. University of Cape Town. Masters thesis.



## Workshop Handouts

The pages that follow can be photocopied to give to workshop participants as handouts during the workshop.



## Violations of Rights

- 1. State deliberately prevents realisation of a right (failure to RESPECT the right to health)** Denying access to health care facilities, goods, services
- 2. State allows others to prevent realisation of a right (failure to PROTECT the right to health)** State allows private medical aids that don't cover those who are HIV positive
- 3. State does not act when able to deliver a right (failure to FULFIL the right to health)** Not enough budget for health
- 4. Retrogression (taking steps backwards, moving away from progress that has been made)**  
Closing of existing health care facilities Stopping treatment of HIV positive people with ARVs



## Case 1

There isn't good medication for our children, for our people. Sometimes the Sister says; no we only got so many pills, we can't give all of you pills. You must come tomorrow to get more pills. Many people take the day off to come and get their pills. Now the person must stay at home tomorrow again to get those pills. There is never enough medication... The treatment is not good. There are never pills, there is never medication. People come here for a certain illness. Then there is never this or that...there is never enough of anything.

## Case 2

When you go to the doctor, you know what you feel in your body. But these doctors, they don't listen to you. He doesn't listen when you tell him that the medicine (for high blood) is making you feel bad, making you feel very hot and making your tears come down and making you not able to sleep. He doesn't believe you and he argues saying he knows best because he studied medicine. If you argue too much about the medicines then they will refuse to even give you a prescription.

## Case 3

A young woman who was pregnant went to the clinic because she had stomach pains. They told her it was not her time yet... not time yet to deliver. And she was given some tablets, and she wasn't sure if it was the right tablets, and they sent her home with all the tablets and told her to drink all those tablets. I think it was 6,7, or 9 tablets... And just after she took the tablets, she got severe cramps and stuff and she called the ambulance and the ambulance came and she delivered triplets, but two of them died immediately.

On the way to the hospital the third one also died. She wasn't aware of the fact that she was having triplets, she was told it was twins. She went to the clinic... the sister said she wasn't sure what's wrong with her. And they didn't deal with her in the way she wanted to be dealt. The sister just examined her stomach...gave the tablets, and sent her home. She had to call the ambulance by herself at home, and that's where according to her, her problems started...

## Case 4

I went to the clinic in February 2010 for treatment for a sexually transmitted infection (STI). I was embarrassed in the reception area when I was asked very private questions about the treatment I needed in front of a number of people.



I spoke to the nurse about the STI and she told me that I had to have an HIV test. I said that I didn't want an HIV test and that I had only come for treatment for an STI. The nurse (who wore no name tag) then said we will not treat your STI unless have a HIV test. I then did an HIV test so that I could get treatment for the STI. I felt that I had no choice about having the HIV test.

### Questions

Has the right to health been violated in this case? Explain why you say this.

# Section 5: Citizen Participation in Health

“

The price of freedom is never-ending watchfulness... we should never take our freedom for granted...and we should never be afraid to ask [government] the awkward questions... (Archbishop Desmond Tutu) ”

The goal of the fourth section of the toolkit is to understand how members of the community can be part of making sure that the right to health is realised through their participation.



## Activity 1

### **Purpose**

To understand the potential role participants play in how the country is governed.

### **Process**

(Time 20 minutes)

1. Ask participants if they think they are part of running government. If they respond that they are part of running government ask them for examples of how they do this. If they say they are not part of running government ask them why they aren't.
2. Give some examples of how people do have a role in running government in a democracy (see information below).<sup>73</sup>

<sup>73</sup> This activity has been sourced from *Train-the-trainer manual: participation. Civic education and community mobilisation*. Netherlands Institute for Southern Africa.

# What is a democracy?



A democracy is a type of government in which citizens rule, either directly or through representatives that they have chosen. This way of governing is meant to prevent a situation where power is held in the hands of only a few select people. In a democracy community should partner with government in making the decisions that affect their lives.<sup>74</sup>

## Who are citizens?

“  
Citizens are the owners of society. The government is made  
by the people. People are you and me simply.<sup>75</sup>”  
Zimbabwean

A citizen is someone who has full rights and duties in a country either by being born in that country or by applying to adopt the country as their own. It involves a relationship between an individual and the state that is recognised by law.

There are a number of different qualities of citizenship. Citizenship can relate to:

- ☐ A legal relationship between a person and the state (through rights of residence, obeying the law and having the protection of the law)
- ☐ The political power of individuals (to vote, write petitions and participate in political parties)
- ☐ A social responsibility to respect other citizens and support or serve one's community or country
- ☐ Psychological identity, a subjective sense of membership of or belonging to a country and of having an identity of which one is proud.<sup>76</sup>



<sup>74</sup> McQuoid-Mason, David. (ed). 1994. *Democracy for all: education towards a democratic culture*. Kenwyn: Juta and Co Ltd.

<sup>75</sup> VeneKlasen, L. & Miller, V. 2002. *A New Weave of power, people and politics: The Action Guide for Advocacy and Citizen Participation*. United States: Stylus Publishing

<sup>76</sup> From <http://plato.stanford.edu/entries/citizenship>

Citizens have a variety of rights and privileges as set out in the Constitution of our country, but they also have a set of duties or responsibilities. In previous sections of this toolkit we have spoken quite a lot about the rights of citizens of South Africa. As citizens people also have duties to:

- ☐ obey the law
- ☐ vote
- ☐ pay rates
- ☐ pay taxes to government
- ☐ to be productive members of society
- ☐ to be involved in how government runs the country (participate)
- ☐ be part of the military (if necessary to defend the country)<sup>77</sup>

Active citizenship can involve the following:

- ☐ Exercising rights
- ☐ Treating others equally and respecting the rights of others
- ☐ Objecting when rights are violated
- ☐ Being concerned about the rights of vulnerable groups
- ☐ Teaching others about their rights
- ☐ Being informed about issues
- ☐ Attending community meetings
- ☐ Debating issues
- ☐ Protesting government actions
- ☐ Contributing in the community to support a cause (volunteer at a soup kitchen, join a NGO)
- ☐ Starting community or grass roots organisations
- ☐ Working with government to solve problems<sup>78</sup>



## What does it mean to be a representative?

In a democracy it is not always possible for all citizens to be directly involved in governing the country. So what happens is that people in the country are represented by the political parties that they have chosen, or on a local level through local government representatives (e.g. ward councillors), or even represented through NGOs or members of the community who speak out about problems on their behalf.

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<sup>77</sup> VeneKlasen, L. & Miller, V. 2002. *A New Weave of power, people and politics: The Action Guide for Advocacy and Citizen Participation*. United States: Stylus Publishing

<sup>78</sup> McQuoid-Mason, David. (ed). 1994. *Democracy for all: education towards a democratic culture*. Kenwyn: Juta and Co Ltd.



A **representative** is someone who has been chosen to speak, act and make decisions on behalf of a large number of people. Normally the group of people that the representative speaks for is called a **constituency**. Representatives should give feedback to the group (giving them the different options available) and asking them which decision or action they support. Once the whole group has agreed to support a specific decision or has chosen a course of action, then the representative has a **mandate** from that group.



For example, ward councillors are chosen to represent the people who live in a ward or a specific area. They represent the interests of communities at municipal meetings. A ward councillor should be in touch with the issues and key problems in the area, know the environment of the ward (housing, schools, hospitals, clinics, shops) and understand and monitor development and service delivery. The ward councillor should meet regularly with community members to ensure that he/she knows their opinions and views on municipal proposals and plans. All this information about the ward coming from community members should be fed into the municipality's planning process.

## Participation



Political representatives, community leaders or local government members should be representing the needs of the community. Even if this is the case it is still vitally important for citizens or community members to be informed, consulted and to have the power to influence decisions that affect their lives.

Participation is a process in which individuals and groups in communities discuss and reach agreement with government and other interested parties on:

- ▣ how information is shared
- ▣ requests for changes in laws
- ▣ how policies are set and implemented
- ▣ how tax resources are allocated
- ▣ how benefits are parcelled out
- ▣ how government programmes are operated
- ▣ how government programmes are evaluated<sup>79</sup>

Another more organised way in which citizens can participate and work together is through **advocacy**. Advocacy consists of:

“...organised efforts and actions based on the reality of **‘what is’**... to influence public attitudes and to enact and implement laws and public policies so that visions of **‘what should be’** in a just, decent society become a reality.”<sup>80</sup>

<sup>79</sup> Arnstein, Sherry. 1969. A Ladder of Citizen Participation. *Journal of the American Institute of Planners*, 35(4) 216-224

<sup>80</sup> VeneKlasen, L. & Miller, V. 2002. *A New Weave of power, people and politics: The Action Guide for Advocacy and Citizen Participation*. United States: Stylus Publishing

Advocacy is very much a part of challenging power relationships through people's participation that:

“ supports and enables people to better negotiate on their own behalf, for basic needs and basic rights **(ActionAid (UK)<sup>81</sup>)** ”



## Why is it important to participate?

### Activity 2

#### **Purpose**

To discuss and uncover some of the reasons why people decide to participate and how participants in the group are already participating through the work of the NGO they are involved with.

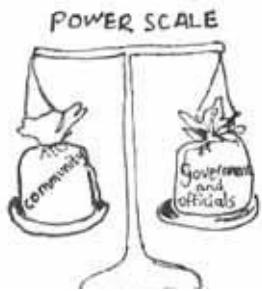
#### **Process**

(Time 20 minutes)

1. Ask members of the audience why they think people are part of NGOs or why they are part of a specific NGO.
2. Note down their responses on a flipchart.
3. Make a connection between their responses on why participation is important to them and some of the reasons why participation is listed as being important (see list that follows).



<sup>81</sup> VeneKlasen, L. & Miller, V. 2002. *A New Weave of power, people and politics: The Action Guide for Advocacy and Citizen Participation*. United States: Stylus Publishing



When citizens participate it leads to:

- ☐ Communities that are able to challenge the current situation/status
- ☐ People having the opportunity to create and to see positive change
- ☐ People having access to information about government decisions and strategies
- ☐ People having equal opportunities to influence decision making
- ☐ People being more likely to be committed to government programmes or policies
- ☐ Government working with and building on the strengths and knowledge of communities
- ☐ The redistribution of power (meaning that power is more equally shared between government and its officials on one hand and communities on the other)<sup>82</sup>

Active participation means that communities are able to:

- ☐ Provide government with the information it needs to make better decisions by bringing different needs, concerns and perspectives into the decision-making process

When citizens participate they can:

- ☐ Make sure that government is held accountable (held responsible for its decisions)
- ☐ Pressurise government to provide improved delivery of public services
- ☐ Try to make sure that leaders do not abuse their powers
- ☐ Try to make sure that the interests of their communities are advanced<sup>83</sup>



Participation can build stronger communities by:

- ☐ Educating and empowering communities by making them more aware of problems and involving them in finding the solutions to these problems
- ☐ Encouraging communities to promote their vision for themselves and/or society
- ☐ Promoting community solidarity (communities standing and working together)<sup>84</sup>

<sup>82</sup> Train the trainer manual: participation. Civic education and community mobilization. Netherlands Institute for Southern Africa

<sup>83</sup> From [www.idasa.org.za](http://www.idasa.org.za)

<sup>84</sup> Train the trainer manual: participation. Civic education and community mobilization. Netherlands Institute for Southern Africa

# The right to participation

The right to participate is a basic human right, which is set out in the Universal Declaration of Human Rights (UDHR) as well as in the International Covenant on Civil and Political Rights (ICCPR). Both these human rights instruments guarantee people the right to participate in government as well as the right to participate in free and fair elections. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) includes:

- ☐ the right to participate in public affairs (directly or through chosen representatives)
- ☐ voting rights
- ☐ the right of equal access to public services<sup>85</sup>

The right to participate is also set out in the South African Constitution which stipulates that:

“  
People’s needs must be responded to, and the public must be encouraged to participate in policy-making.”

“  
Transparency must be fostered by providing the public with timely, accessible and accurate information.”

The right to participation can only be exercised if citizens have access to other important rights like:

- ☐ the right to have access to information
- ☐ the right to vote
- ☐ the right to stand for election
- ☐ the right to make free political decisions
- ☐ the right to freedom of expression
- ☐ the right of freedom of association
- ☐ the right to freedom of assembly, demonstration, petition and picket<sup>86</sup>

In South Africa, government has to provide the financial, administrative and practical assistance to help communities participate effectively. The government also has to provide information to citizens about how they make decisions and what they are doing. This system is one where government can be held **accountable** (asked to explain their decisions or failures).

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<sup>85</sup> from [http://www.osce.org/documents/odhr/1996/07/1707\\_en.html](http://www.osce.org/documents/odhr/1996/07/1707_en.html)

<sup>86</sup>Potts, Helen. 2009. *Participation and the right to the highest attainable standard of health*. University of



# Participation and the Right to health

“

Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.

(World Health Organisation Constitution)

”

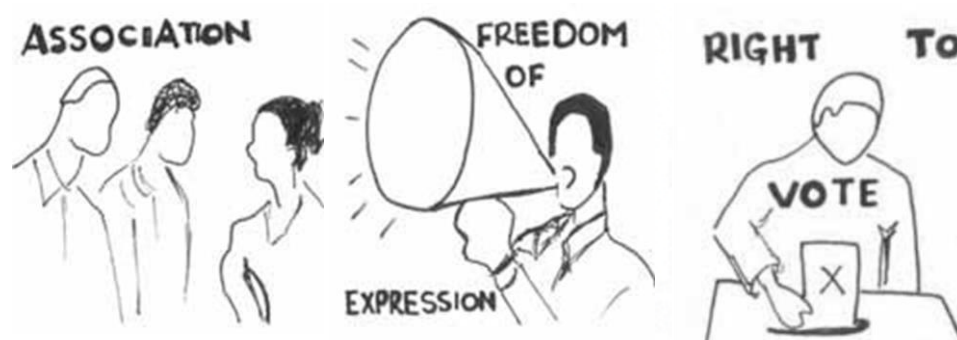
Participation is both a right itself and also involved in the fulfilment of other rights, including the right to health.



For example, in order for people to exercise their right to vote, they would need to participate in elections. In order to realise their right to fair working conditions, people may participate in the activities of a trade union. At the heart of the right to bodily and psychological integrity is the principle that people should always be able to participate in any decisions related to their body or their wellbeing.

One of the key principles of the right to health is the right of communities to participate in decision-making (including the design and implementation of policies) that affect their health.<sup>87</sup> Participation is essential to ensure that there are accessible, available, quality and acceptable health care services and that the conditions that support health are in place.

In order to make sure that health care services are **available**, people need to participate to inform government that they don't have health care facilities in the area where they live, that there are an insufficient number of health care workers or that they don't have access to essential drugs. People should also be involved in questioning health budgets to make sure that resources are shared fairly (prioritising those who need services the most).<sup>88</sup>



<sup>87</sup> Asher, Judith. 2004. *The Right to Health: A Resource Manual for NGO's*. London. The Commonwealth Medical Trust.

<sup>88</sup> Potts, Helen. 2009. *Participation and the right to the highest attainable standard of health*. University of Essex: Human Rights Centre



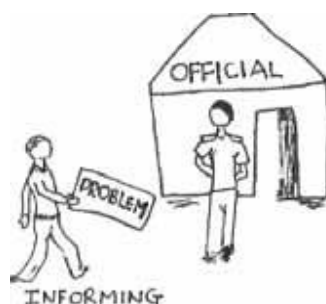
Health committees are the formal organisations set up for community participation in health. Most clinics or health centres have a health committee to represent the interests of community members at the clinic or more broadly. A health committee in the Eastern Cape said that they had negotiated and managed to get more ambulances made available in their area. They also found ways to make sure that medicines were regularly available at the clinic at all times. This is a clear example of how community members have participated to realise the right to health by making sure that goods and services were available.<sup>89</sup>

In order to make health services accessible people need to participate in planning for health services. Citizens should be involved in making suggestions on how to make health services more physically accessible, affordable or how to ensure that services don't discriminate unfairly against certain groups. Access to information is a key element that makes participation possible because people can only participate effectively if they have information on government policies on health, budgets for health or on how health decisions are being made.



A health committee in the Western Cape assisted in making the clinic in their area, which used to only be open during working hours, into a 24-hour facility. This made emergency services accessible for many more people, including vulnerable groups.<sup>90</sup>

**Quality** (meeting required standards) and **acceptable** (culturally appropriate) health facilities and services can only exist in a context where government and health care workers can be held accountable. Participation by communities and the feedback that they provide about services is essential in assessing the quality or acceptability of services.<sup>91</sup>



<sup>89</sup> Padarath, A & Friedman, I. 2008. The status of clinic committees in primary level public health sector facilities in South Africa. Durban: Health Systems Trust.

<sup>90</sup> Glattstein-Young, G. 2010. Community Health committees as a vehicle for community participation in advancing the right to health. University of Cape Town. Masters thesis.

<sup>91</sup> Potts, Helen. 2009. Participation and the right to the highest attainable standard of health. University of Essex: Human Rights Centre

# Health committees

Health committees (sometimes called Health Centre Committees) are structures for community participation in health. In most countries across Southern Africa, they represent the community's voice to the health services. Different countries have different legal and policy provisions for such committees. However, in almost all countries in the region, there is an expectation that committees to represent community views should be incorporated into the local health system.

Members of health committees generally include:

- ▣ members of the community who use the health facility
- ▣ members of local community organisations involved in health
- ▣ In South Africa, the local elected councillor for the ward
- ▣ In some countries, the facility manager is part of the committee



Community members can participate in health through being part of health committees. If the health system is functioning properly then community concerns should be communicated to the Health District structures. But it is also important there are ways that local health committee concerns can be taken to higher levels of the health system, otherwise, there is often not much change possible. This makes participation rather tokenistic.

Health committees are set up to:

- ▣ Represent the interests of communities at clinics and health centres
- ▣ Take steps to ensure that the needs, concerns and complaints of patients and the community are properly addressed by the management of the facility

# Possible roles for Health Committees

Health committees or similar structures for community participation exist in a number of countries in Southern Africa. The following are some examples of what roles health committees play in countries such as Zimbabwe, Zambia or in South Africa.

If health committees are intended to be structures for community participation in governance or management of health, they should be involved in:

## 1. Planning and decision making related to health issues

It is important for health committees to be involved in decision-making and problem-solving at the health-systems level. They could do this by:

- ▣ actively participating in the Health Department's annual planning
- ▣ informing government of urgent health problems (through meetings, submissions to Parliament)
- ▣ liaising with other health groups (e.g. Hospital Boards, District Councils)
- ▣ making linkages with ward and municipality health structures



At a clinic level health committees can:

- ▣ identify health related problems in the community for purposes of planning
- ▣ give information on local priorities for action
- ▣ become involved in clinic-level decisions regarding how budget and resources are distributed
- ▣ give information to authorities on community health needs for inclusion in the budget

## 2. Monitoring and evaluating health services or health issues

Health committees should be involved by:

- ▣ making sure that there is good quality of care at health facilities by dealing with community complaints and holding clinic or health centres accountable

- ☐ ensure patients' rights are upheld
- ☐ assisting in monitoring that drugs and other clinic materials are available at all times
- ☐ checking that health policies are being implemented correctly
- ☐ monitoring health in people's working environment (e.g. factories, plantations, bus and taxi ranks) and in their homes<sup>92</sup>



A health committee in South Africa helped to reduce excessively long waiting periods at a clinic. Committee members would ask patients how long they had been waiting and respond to unusually long wait times by investigating further and informing the facility manager. Another committee noted that patients were being questioned about health problems in an open area. They argued that patient privacy was not being respected and, as a result of their objections, the facility manager corrected the situation.<sup>93</sup>

### 3. Advocating for the community

Health committees are supposed to act as the connection between community members and the clinic or health committee. An important part of this role is for them to look after the interests of the community by:

- ☐ Making sure there is a supply of safe drinking water for communities
- ☐ Advocating for improved housing for communities
- ☐ Taking up sanitation issues with the local municipality
- ☐ Ensuring that refuse is collected regularly



A health committee in the Eastern Cape approached the municipality about illegal dumping in their community. The municipality agreed to clean the dump site and the community was warned about not dumping in the area again.

“

Now it's the community members who are monitoring that site. They are very determined that no-one should dump there again. That was a really big achievement for us.<sup>94</sup>

**(Community Health Committee, sub-district B) ”**

<sup>92</sup> Loewenson, R & Rusike, I. 2004. *Assessing the impact of health centre committees on health system performance and health resource allocation*. EQUINET discussion paper 18.

<sup>93</sup> Glatstein-Young, G. 2010. *Community Health committees as a vehicle for community participation in advancing the right to health*. University of Cape Town. Masters thesis.

27. Boulle, T., Makhama, N., Goremuheche, R & Loewenson, R. 2008. *Promoting Partnership between Communities and Frontline Health Workers: Strengthening Community Health Committees in South Africa*. Community Development Unit, Nelson Mandela University South Africa. Harare: EQUINET

<sup>94</sup> 27. Boulle, T., Makhama, N., Goremuheche, R & Loewenson, R. 2008. *Promoting Partnership between Communities and Frontline Health Workers: Strengthening Community Health Committees in South Africa*. Community Development Unit, Nelson Mandela University South Africa. Harare: EQUINET

- ☐ initiating or supporting nutrition projects (e.g. for schools, old people)
- ☐ running community vegetable gardens at the clinics
- ☐ making community members aware of the availability of health services
- ☐ assisting community members to identify priority health problems in the community
- ☐ fundraising for additional services and health programmes at the clinic required by the community
- ☐ organising community health actions and campaigning for better government health services (distributing leaflets, holding demonstrations, organising petitions)
- ☐ identifying groups in the community and the area that don't have access to health services
- ☐ working with traditional midwives to refer people to the clinic
- ☐ keeping a register of disabled children or people needing periodic home visits
- ☐ making home visits to the sick and providing health information, food and medicine during home visits
- ☐ embarking on income generating projects to provide home based care for HIV-affected families
- ☐ having regular meetings with the community to identify health needs
- ☐ giving regular feedback to community members and being accountable to the community<sup>95</sup>

A health committee in the Cape Town area in South Africa gave patients information about what services the clinic offers and told patients when there were staff shortages at the clinics so that patients were aware when they would have to wait longer than usual.<sup>96</sup>

#### 4. Providing support to the clinic/health centre

In South Africa a number of health committees play a supportive role at clinics or health centres. Although it can be part of improving a community's sense that they are "owners" of the clinic, there is also a danger in the work of health committees being limited to this supportive role only. Health committees provide support to the clinic by:

- ☐ bringing community views to health workers
- ☐ negotiating for additional health care workers at the clinic
- ☐ helping to improve supplies of essential medicines
- ☐ raising funds to contribute to purchases of medicines for the clinic
- ☐ notifying the clinic of outbreaks of disease in the community
- ☐ being actively involved in the planning and implementation of health campaigns (in collaboration with the clinic)

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<sup>95</sup> Ngulube, T.J., Mdhlu, L., Gondwe, K & Njobvu, C.A. 2004. *Governance, participatory mechanisms and structures in Zambia's health system: An assessment of the impact of Health Centre Committees (HCCs) on equity in health and healthcare. EQUINET discussion paper: Harare*

<sup>96</sup> Glattstein-Young, G. 2010. *Community Health committees as a vehicle for community participation in advancing the right to health. University of Cape Town. Masters thesis*

- ▣ assisting with monitoring that TB patients are taking their medicines
- ▣ volunteering their services in the facility
- ▣ organising broader community groups to undertake work activities at their clinics or health centres
- ▣ assisting the department in ensuring the security and safety of clinic premises and staff<sup>97</sup>



In Zimbabwe a health committee at the Mwanza clinic in Goromonzi district raised funds within the community in order to improve health services at the clinic. The fundraising started when they wanted to hire a guard to protect the clinic from thefts. The health committee then had a meeting with community members where they discussed the idea of charging a small fee to all community members and users of the clinic. The funds they raised were not only used to hire a guard for the clinic, but also to build toilets, purchase benches for patients to sit on and to supply transport costs for health staff having to travel to fetch essential medicines. The health committee decided with community members on how funds were spent and all have benefited from the improvements at the clinic.<sup>98</sup>

## 5. Health promotion in the community

Health care is not only about the treatment of illness, but also about preventing illness and promoting healthy behaviours. Health committees become involved in health promotion in communities by:

- ▣ providing health information to communities (healthy nutrition, the importance of hygiene)
- ▣ using effective methods to spread health messages at their clinics (community drama providing information on HIV & AIDS in their communities)
- ▣ participation in health promotion activities in things such as promoting community hygiene, refuse disposal
- ▣ promoting healthy living in their communities by encouraging positive changes to improve health (e.g. not drinking alcohol during pregnancy or giving up smoking)



In South Africa one health committee created their own pamphlets and used a free local newspaper to circulate health information and any news from the health facility.<sup>99</sup>

<sup>97</sup> Padarath, A & Friedman, I. 2008. *The status of clinic committees in primary level public health sector facilities in South Africa*. Durban: Health Systems Trust.

<sup>98</sup> Loewenson, R & Rusike, I. 2004. *Assessing the impact of health centre committees on health system performance and health resource allocation*. EQUINET discussion paper 18.

<sup>99</sup> Glattstein-Young, G. 2010. *Community Health committees as a vehicle for community participation in advancing the right to health*. University of Cape Town. Masters thesis.

# What can community members do if they want to join a health committee?

Members of health committees are normally chosen by patients and community members at the annual general meeting of the existing health committee. Health committee members can also be chosen (by a show of hands) at a community meeting specially called to establish a committee if there is no existing health committee.

Sometimes members of the community volunteer to join the health committee; members may be elected by the facility manager or staff at the clinic; or even selected by the local councillor. These methods are not as effective as allowing community members to elect the health committee and may even lead to excluding important potential members from the community. A health committee is only really representative of the community if the members have been chosen by the community and are supported by it.<sup>100</sup>

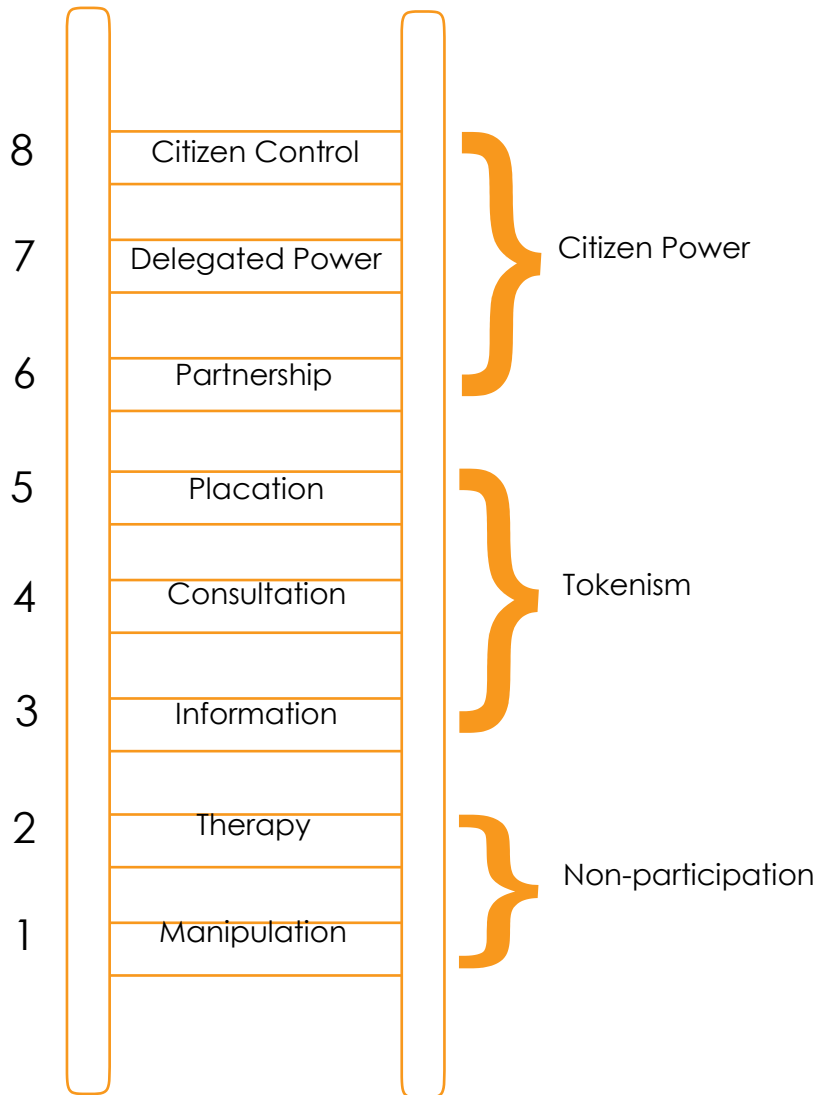
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<sup>100</sup> Padarath, A & Friedman, I. 2008. *The status of clinic committees in primary level public health sector facilities in South Africa*. Durban: Health Systems Trust



# Levels of Participation

## Arnstein's Ladder of Citizen Participation



According to Arnstein there are degrees or levels of participation. There could be little or no community participation in decision- making or there could be a situation where community members have complete control of decision making. Situations exist where participation falls between these two extremes (of no power for communities or complete power for communities).<sup>35</sup>

When she speaks of **Non-Participation** Arnstein includes:

1. **Manipulation** which involves situations where the support of citizens is used by officials to get what they want. Officials persuade and advise citizens who have no real understanding of the issues and citizens simply do what those in power suggest.



For example, when community members are invited to participate in a planning meeting, but don't really understand the plans being discussed. Yet they are persuaded to agree with what is being planned and officials can claim that there was community participation in all the planning for the project.

2. **Therapy** as a form of participation exists where officials work with community members to help them 'adjust' to problems such as high levels of crime or poor access to health care. The focus is moved from the community or societal problem to changing the individual or teaching them to cope with or adapt to these problems.



A father took his sick baby to the clinic. At the clinic the father was told to take baby home and feed it sugar water. That same day the baby died of pneumonia and dehydration. When the father wanted to lodge a complaint he was invited to attend child-care sessions for parents (therapy). No attempt was made to start an investigation of the child's death or to take any action to prevent similar cases that could lead to the death of more children.<sup>36</sup>

When she speaks of **Tokenism** Arnstein includes:

- 3. Informing** which involves officials giving people information about alternatives or decisions that they have made. This could be a step in the direction of genuine citizen participation. But if the officials don't ask for feedback from citizens and citizens have no power to negotiate or change things, then it amounts to tokenism.

An example of this would be if health officials made an announcement to all community members in Khayelitsha that a decision had been made that they were going to close all existing clinics in the area and build one new larger clinic which would be about 20kms outside of the township.



- 4. Consultation** involves asking citizens about their concerns and ideas (through surveys, neighbourhood meetings or public hearings) and could also be a step towards real citizen participation. It is not real participation if nothing is done with the needs and concerns identified by citizens and consultation is about going through the motions of participation by gathering information from communities, but not doing anything with this information.

An example of consultation could be when people come and do research surveys about what problems are in the community. Those who participate in the survey never hear anything about the results and no change happens as a result of the information community members provided.



- 5. Placation** involves a situation where citizens have some degree of influence. They can advise or participate in planning, but officials still have the final say whether they will use the input or advice of community members or not. Placation is when people are consulted, but officials modify their plans based on this consultation only if it is absolutely necessary.

For Arnstein, real **Citizen Power** and instances where officials collaborate with communities in a meaningful way include:

6. **Partnership** which means that real negotiation and collaboration takes place between citizens and power holders where they share in both planning and decision making. Officials may have a tentative plan, but are open to change this plan based on the input of those who are affected (community members).
7. **Delegated Power** requires that there is more equality in the relationship and that citizens have power over certain agreed functions or decisions and officials cannot influence these decisions. In this kind of situation a problem is presented to the community and officials stipulate how much money can be spent or set other limits on the project. The community makes the decisions and comes up with a plan and officials need to negotiate with them about the plan
8. When there is complete **Citizen control** of participation then citizens handle the entire job of planning and managing a programme or project without any interference at all from officials. The community identifies the problem and makes all decisions while officials are called on to provide help or input where needed.





#### Activity 4

##### **Purpose**

To apply knowledge on the different degrees to which people actually participate and how much decision-making power is involved for communities on each of these levels.

##### **Process**

(Time 30 minutes)

1. Photocopy and enlarge the cards with stories below. Divide the larger group into small groups and give each group a copy of the ladder of participation.
2. Ask the groups to place each card where they feel the story fits on the ladder of participation.
3. Create a flipchart with the eight rungs of the ladder of participation. After the small groups are finished ask one group to volunteer to place their participation cards along the ladder on the flipchart. Ask for some discussion from the larger group of whether they agree with how the cards are placed and why



<p>A health committee is asked to attend a meeting to participate in planning and budgeting for a clinic. They are given no information on the budget or what they will be planning for, but have to agree to the budget at the meeting</p>	<p>Community members are unhappy that there is no medicine for high blood pressure available at the clinic. The clinic responds by inviting them to a talk on how to manage their high blood pressure.</p>
<p>The health committee is informed that the health centre is going to reduce the hours they are open. There is no opportunity for either community members or the health committee to respond. The decision has already been made</p>	<p>Community members are asked to answer questions and give their opinion on what their main health problems are. Even though they give useful input, officials decide not to use the information and stay with their idea of what the main health problems are</p>
<p>A health committee is asked to come up with a plan to shorten waiting times at the clinic. The committee had identified this as a problem and they decide there is a need for extra staff. They go back to the clinic to convince the facility manager to motivate for two additional nurses at the clinic. The facility manager is able to get one new nurse</p>	<p>Community members are worried about litter and pollution in their community. A number of people volunteer their time to clean up certain areas. The city council is also asked to remove refuse more regularly and they agree to do this.</p>



## Workshop Handouts

The pages that follow can be photocopied to give to workshop participants as handouts during the workshop



“The will of the people shall be the basis of the authority of government... ”  
**(Universal Declaration of Human Rights)**

## What is participation?

Participation is a process in which individuals and groups in communities discuss and reach agreement with government and other interested parties on:

- ▣ how to take the needs of communities into consideration when making decisions
- ▣ how information is shared
- ▣ responding to comments and requests for changes in laws
- ▣ how goals and policies are set and implemented
- ▣ decisions that affect their lives
- ▣ how tax resources are allocated
- ▣ how benefits are parcelled out
- ▣ how government programmes are operated
- ▣ how government programmes are evaluated





## Being a representative

Some definitions:

- ▣ A **representative** is someone who has been chosen to speak, act and make decisions on behalf of a large number of people
- ▣ A **constituency** is the group of people that the representative speaks for
- ▣ A **mandate** is the strength of support that a representative has for a particular course of action

A good representative:

- ▣ Represents an agreed point of view
- ▣ Represents all parts of their community
- ▣ Reports back to community members
- ▣ Includes hard to reach members of the community in discussions (elderly, HIV-positive, people with disabilities, immigrants and refugees)



## The right to participation

Article 25 of the **International Covenant on Civil and Political Rights** (ICCPR) includes:

- ▣ the right to participate in public affairs  
(directly or through chosen representatives)
- ▣ voting rights
- ▣ the right of equal access to public services

The right to participate is also set out in many constitutions and laws across Southern Africa.

## Rights related to the right to participate

- ▣ Right to access to information
- ▣ Right to free political choices
- ▣ Right to stand for election
- ▣ Right to vote
- ▣ Freedom of assembly, demonstration, petition and picket
- ▣ Freedom of association
- ▣ Freedom of speech and expression



## Possible roles for health committees

**Planning and decision-making** related to health issues. For example: actively participating in planning, informing government of urgent health problems and priorities, link to ward and municipality health structures, engaging over decisions regarding how budget and resources are distributed.

**Monitoring and evaluating** health services. For example: ensuring good quality of care, dealing with community complaints, holding facilities accountable, monitor availability of medicine and essential treatment, check that health policies are being implemented correctly

**Advocating for the community:** ensuring safe drinking water for communities, improved housing, availability of sanitation, refuse removal, support food security initiatives, organising community health campaigns, identifying groups who don't have access to care.

**Raising awareness:** making community members aware of available health services, regular meetings with the community to identify health needs and give feedback

**Providing support** to the facility: For example: assisting implementation of health campaigns (e.g. immunisation), raising funds for the clinic, lobbying

for sufficient staff, monitoring patient adherence to medication, assisting in securing facility and staff safety.

**Health promotion in the community:** For example, providing health information to communities, communicating health messages, promoting healthy living in communities, health promotion activities.

# Conclusion

This toolkit has given you an overview of the right to health: how to claim these rights; identify violations; deal with those violations; and also participate effectively in the realisation of the right to health. It has provided you with some tools to better understand and work with human rights concepts, specifically the right to health.

As a result we hope that you will be:

- Better informed about what the right to health is;
- Empowered to claim your rights;
- Able to hold government and other parties accountable for violations;
- Able to assist in getting satisfactory answers and responses for victims of violations;
- Able to use complaints mechanisms to get your rights respected and contribute to the improvement of health standards

The toolkit has also provided you with materials you can use to empower others in your organisation or community to build their understanding of the right to health - so that they too can take action.

It's important to remember that the ideas and strategies on realising the right to health in this toolkit could be applied to other rights issues, such as education, food security, housing or social assistance.

Now it's time for you, your organisation or your community to take action in starting to claim rights and protesting violations. It's up to you to make certain that violations of health rights are responded to effectively, and that people are able to see rights as something that are real and not just promises on a piece of paper.

So, stand up, speak out, do something!

# Appendix 1: Constitutional Provisions on the Right to Health in Southern and East African countries

## Angola

### *Right to health*

Article 21(f) and (i) of the Constitution of Angola defines two of the fundamental tasks of the government as making **primary health care universal and free** and **investing in human capital for health care**.

**Article 77 of the Constitution** recognises the right to health in the following terms:

1. The state shall promote and guarantee the measures needed to ensure the universal right to medical and health care, as well as the right to child care and maternity care, care in illness, disability, old age and in situations in which they are unable to work, in accordance with the law.

2. In order to guarantee the right to medical and health care, the state shall be charged with:

- Developing and ensuring an operational health service throughout national territory;
- Regulating the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis;
- Encouraging the development of medical and surgical training and research into medicine and health care.

3. Private and cooperative initiatives in the spheres of health care, welfare and social security shall be overseen by the state and exercised under the conditions prescribed by law.

### *Right to health of the most vulnerable groups*

Article 35(6) of the Constitution provides that the **rights of the child to health care, education and living conditions** are “*an absolute priority*”. Article 80(2) provides that public policies relating to health, education and family must be based on the interests of the child, as a means of guaranteeing their full physical, mental and cultural development.

Article 78 protects **consumers** against the manufacture and supply of goods and services that are harmful to health and life. Misleading advertising is also prohibited.

### *Other rights related to the right to health*

Article 31 of the Constitution protects the right to personal integrity. Article 36 recognises the right to **physical freedom and personal security** (i.e. prohibition of violence, prohibition of

medical or scientific experiments without consent, prohibition of torture and cruel, inhumane or degrading treatment, etc).

Article 39(1) recognises the **right to live in a healthy and unpolluted environment** and the duty to defend and preserve it. Article 39(3) further provides that acts that endanger or damage conservation of the environment shall be punishable by law.

Article 74 recognises **the right to every citizen, either individually or collectively, to take legal action** to annul acts which are harmful to public health, the environment, quality of life or any other collective interest.

Article 85 recognises the right to **housing and quality of life**.

Article 23 enshrines **the right to equality** and the prohibition of any discrimination based on gender, religion, race, ethnicity, colour, disability, etc.

Article 75 stresses that the State is liable for any actions and omissions committed by its organs or officers which result in a violation of the rights enshrined in the Constitution.

## *Botswana*

### *Right to health*

The Constitution of Botswana does not recognise the right to health as such.

### *Other rights related to the right to health*

Article 7 of the Constitution prohibits torture and cruel, inhumane or degrading treatment. Article 15 prohibits discrimination on the ground of race, gender, religion, etc. However, the Constitution does not contain any specific provision on the right to education, food, safe water, housing or healthy environment. Neither does it contain a provision on the right to the highest attainable standard of living or health.

## *Democratic Republic of Congo (DRC)*

### *Right to health*

Article 47 of the Constitution provides that: *“the right to health and to food security is guaranteed.”*

Article 53 provides that the State must ensure the protection of the health of the population.

Article 204(18) provides that the provinces are competent for the assignment of the medical personnel, the elaboration of programs for sanitation and the fight against epidemic and endemic diseases in conformity with the national plan. The provinces are also in charge of the application and control of the national medical and pharmaceutical legislation as well as the organisation of health services (clinics, hospitals, missionary services, etc.), medical laboratories and pharmaceutical services. The provinces must also organise and promote



primary health care measures.

### *Right to health of the most vulnerable groups*

Article 41 of the Constitution prohibits **child** exploitation or abuse. Article 42 requires public authorities to protect **the youth** against any attack on their health, education or integral development.

Article 49 provides that special protection must be granted to **aged and handicapped persons** with regard to their physical, intellectual and moral needs.

Article 18 protects the right to life, physical and mental health and dignity of **prisoners**.

### *Other rights related to the right to health*

Article 16 of the Constitution recognises the right to life and **physical integrity**. It prohibits cruel, inhumane or degrading treatment as well as forced labour.

Article 53 provides that all persons have the right to a **healthy environment**. The State must ensure the protection of the environment and the health of the population.

Article 48 provides that the right to decent **housing, the right of access to drinking water and to electric energy** are guaranteed. The conditions for the exercise of these rights must be found in secondary law.

Article 43 recognises the **right to education**. Primary education is compulsory and free in the public establishments.

Article 12 guarantees the **right to equality** for all Congolese. Article 13 prohibits discrimination based on religion, race, social status, etc. Article 14 provides for the elimination of all forms of discrimination against women.

## *Congo Brazzaville*

### *Right to health*

Article 30 of the Constitution provides that the right to health is guaranteed by the State. The law regulates the right to establish private health facilities.

### *Right to health of the most vulnerable groups*

Article 30 of the Constitution provides that elderly and handicapped persons must be protected according to their particular needs. Article 32 guarantees the rights of mothers and children.

Article 33 and 34 protect the youth against social or economic exploitation. Child labour is prohibited until the age of 16.

### *Other rights related to the right to health*

Article 35 of the Constitution guarantees the right to a healthy environment. The State must protect and maintain the environment.

Article 9 prohibits torture and cruel, inhumane or degrading treatment.

Article 23 guarantees the right to education, which is mandatory and free until the age of 16.

Article 8 recognises the right to equality and prohibits discrimination on the grounds of gender, religion, race, etc. Article 44 provides that each citizen must treat other persons without discrimination.

Article 184 provides that duly ratified international treaties are superior to secondary law.

## *Kenya*

### *Right to health*

Article 43(1)(a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services and reproductive health care.

Article 43(2) recognises the right to emergency medical treatment.

Article 43(3) provides that the State must offer appropriate social security to persons who are unable to support themselves and their dependants.

### *Right to health of the most vulnerable groups*

Article 21 of the Constitution is a general provision, providing that all State organs and all public officers have the duty to address the needs of **vulnerable groups within society**, including women, elderly members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

Article 53 provides that **children** have the right to (a) education, (b) basic nutrition, shelter and health care and (c) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhumane treatment and punishment, and hazardous or exploitative labour.

Article 54 protects **disabled persons**. They must be treated with dignity and must be given access to facilities in order to achieve their full integration in the society.

Article 56(e) requires the State to put in place action programmes designed to ensure that **minorities and marginalised groups** have reasonable access to water, health services and infrastructure.

Article 57(c) protects the rights of the **elderly people**; older persons have the right to live in dignity and respect and be free from abuse. They must receive reasonable care and assistance from their family and the State.

Article 46(1) provides that **consumers** have the right (a) to goods and services of reasonable quality, (b) to the information necessary for them to gain full benefit from these goods and services and (c) to the protection of their health and safety. The State must adopt law to provide for consumer protection and for honest advertising.

### *Other rights related to the right to health*

Article 43(1) of the Constitution provides that every person has the right (a) to accessible and adequate **housing**, and to **reasonable standards of sanitation**; (b) to be free from hunger, and to have **adequate food** of acceptable quality; (c) to **clean and safe water** in adequate quantities; (d) to **social security**; and (e) to **education**.

Article 26 protects the **right to life**. Abortion is prohibited unless the life or health of the mother is endangered, according to the opinion of a trained health professional.

Article 27 guarantees the **right to equality** and prohibits any discrimination on the grounds of gender, religion, ethnicity, etc. Health status and disability are also cited as prohibited grounds of discrimination.

Article 28 protects **human dignity** and Article 29 guarantees bodily integrity. Torture, (whether physical or psychological) and cruel, inhumane or degrading treatment are strictly prohibited.

Article 42 provides that every person has the **right to a clean and healthy environment**. In case of violation of this right, Article 70 provides that persons may apply to a court for redress.

## *Lesotho*

### *Right to health*

Article 21 of the Constitution recognises the **right to health**. The State must adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens, including policies designed to (a) provide for the reduction of infant mortality and for the healthy development of the child; (b) improve environmental and industrial hygiene; (c) provide for the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) create conditions which would assure medical service and medical attention to all in the event of sickness; and (e) improve public health.

### *Right to health of the most vulnerable groups*

Article 32 of the Constitution protects the rights of children. Article 32(c) prohibits the employment of children and young persons in work harmful to their morality or health.

Article 33 protects the rights of disabled persons. Policies must be adopted in order to provide for training facilities, including specialised institutions (public or private).

### *Other rights related to the right to health*

Article 8 of the Constitution ensures **the right to bodily integrity** by prohibiting torture and inhumane or degrading treatment.

Article 36 provides that the State must endeavour to assure to all citizens a **sound and safe environment adequate for their health and well-being**.

Article 18 prohibits discrimination on the grounds of gender, race, religion, etc. Article 19 recognises the **right to equality**.

## *Madagascar*

### *Right to health*

Article 19 of the Constitution provides that the State recognises and organises for all individuals **the right to the protection of health** from the moment of their conception. The State is responsible for the organisation of free public health care.

### *Right to health of the most vulnerable groups*

Article 21 of the Constitution protects **the rights of the mother and child**. These rights must be guaranteed through legislation and appropriate social institutions.

Article 30 provides that the State must make efforts to overcome the needs of **elderly or handicapped people** who find themselves incapable of working.

### *Other rights related to the right to health*

Article 8 of the Constitution protects **the right to life** and prohibits **torture and cruel or inhumane treatment**. Article 8 particularly prohibits to submit a person without their free consent to a medical or scientific experiment.

Article 25 ensures **the right to shelter**. It provides that the State must facilitate the access of citizens to housing through appropriate financing mechanisms.

Article 28 prohibits **discrimination at work**. It provides that no one may be prejudiced in their work or in their employment for reason of gender, age, religion, etc.

Article 17 guarantees **the rights to individual integrity and to dignity**, as well as the right to full physical, intellectual and moral development.

Article 23 and 24 guarantees **the right to education**. The State must organise free and accessible public education for all. Primary education is compulsory and free.

## *Malawi*

### *Right to health*

Article 13(c) of the Constitution requires the State to progressively adopt and implement policies and legislation aimed at providing adequate health care, commensurate with the health needs of Malawian society and international standards of health care.

### *Right to health of the most vulnerable groups*

Article 13(e) of the Constitution provides that the State must enhance **the quality of life in rural communities**.

Article 13(h) protects the rights of the child. The State must encourage and promote conditions conducive to their full development and health.

Article 13(j) protects **elderly people**. The state must provide community services for ensuring their integration in society.

Article 23(4)(c) protects **children** against abuse, economic exploitation or other treatment that could be harmful to their health or to their development.

Article 24(2)(a) protects **women** against any discriminating practices such as sexual abuse, harassment and violence.

### *Other rights related to the right to health*

Article 30 of the Constitution recognises **the right to development**. Article 30(1) provides that women, children and the disabled must be given special consideration in the application of this right. Article 30(2) requires the State of Malawi to take all necessary measures for the realisation of the right to development, including **access to basic resources, health services, food and shelter**.

Article 13(b) protects **the right to food**. It requires the State to progressively adopt and implement policies and legislation aimed at achieving adequate nutrition for all in order to promote good health and self-sufficiency.

Article 13(d)(ii) requires the State to provide a **healthy living and working environment** for the people of Malawi.

Article 13(f) recognises **the right to education**. The State must provide adequate resources to ensure free and compulsory primary education, and facilitate the access to higher education, without any discrimination.

Article 16 recognises the **right to life**.

Article 19 recognises **the right to dignity**. Article 19(5) specifies that no person can be subjected to medical or scientific experimentation without his or her consent.

Article 20 guarantees **the right to equality** and prohibits any discrimination on the grounds race, colour, sex, disability or other status.

Article 25 also recognises the **right to education**.

## *Mauritius*

### *Right to health*

The Constitution of Mauritius does not protect the right to health as such. Being a party to the ICESCR and the African Charter on Human and Peoples' Rights, Mauritius has the obligation to ensure that its citizens' right to health is protected. It should amend its Constitution in order to include the right to health.

### *Other rights related to the right to health*

Article 4 of the Constitution protects the right to health.

Article 5 provides that no one should be deprived of his/her personal liberty unless authorised by the law. Article 5 (g) and (h) provides examples of such cases authorised by the law: to prevent the spread of a contagious disease or for the purpose of the care and treatment of a person suspected to be addicted to drugs or alcohol.

Article 7 prohibits torture and cruel or inhumane treatment.

Article 16 prohibits discrimination on the grounds of sex, race, colour, etc.

## *Mozambique*

### *Right to health*

Article 89 of Mozambique's Constitution provides that all citizens have the right to medical and health care.

Article 45(e) requires individuals to defend and promote health.

Article 81(2)(b) protects the right to advocate the prevention, termination or judicial prosecution of offences against public health through popular action.

### *Right to health of the most vulnerable groups*

Article 47(1) of the Constitution provides that **children** have the right to protection and the care required for their well-being.

Article 85(2) protects the right to health of **workers**.

Article 92(1) protects the rights of **consumers**, including quality goods and services and the protection of their health.

Article 95 protects the right to assistance of **disabled and old people**. The State has the duty

to promote and encourage the creation of conditions for realising this right.

### *Other rights related to the right to health*

Article 91 of the Constitution protects **the right to housing**. It provides that the State, in accordance with national economic development, must create the appropriate institutional, normative and infra-structural conditions for the right to a suitable home.

Article 36 guarantees **the right to equality**. Article 37 provides that disabled citizens enjoy fully the rights enshrined in the Constitution.

Article 40 protects **the right to life, human dignity and prohibits torture and cruel or inhumane treatment**.

Article 88 guarantees **the right to education**.

Article 90 provides that citizens have **the right live in a balanced environment**.

## *Namibia*

### *Right to health*

There is no express provision on the right to health in the Constitution of Namibia. However, Article 95 requires the State to promote the welfare of the people of Namibia. Article 95(b) more specifically requires the State to enact laws to protect the health of workers, men, women and children of Namibia.

### *Right to health of the most vulnerable groups*

Article 15 of the Constitution entitles children to be protected from economic exploitation or employment that is hazardous or could interfere with their health or development.

Article 95(f) and (g) provides that senior citizens, incapacitated, indigent or disadvantaged persons are entitled to social benefits adequate for the maintenance of a decent standard of living.

### *Other rights related to the right to health*

Article 95(e) of the Constitution requires the State to ensure that every citizen has **access to public facilities and services**.

Article 95(j) requires the State to raise and maintain an acceptable level of **nutrition and standard of living** for all Namibians, as well as to improve **public health**.

Article 95(l) requires the State to protect **the environment**, including by taking measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Article 6 protects that **the right to life** and Article 8 the right to **human dignity**. Article 8(2)(b) prohibits torture and cruel, inhumane or degrading treatment.

Article 10 ensures **the right to equality** and freedom from discrimination.

Article 20 protects **the right to education**.

## *Seychelles*

### *Right to health*

Article 29 of the Constitution of Seychelles recognises the right of every citizen to protection of health and to the enjoyment of the highest attainable standard of physical and mental health. For these purposes, the State must (a) take steps to provide for free primary health care in state institutions for all its citizens; (b) take appropriate measures to prevent, treat and control epidemic, endemic and other diseases; (c) take steps to reduce infant mortality and promote the healthy development of the child; (d) promote individual responsibility in health matters; (e) allow for the establishment of private medical services.

### *Right to health of the most vulnerable groups*

Article 31 of the Constitution protects **the rights of the child**. Children may not be subjected to work likely to cause harm to their health, morals, education or development. They must be especially protected against economic exploitation, as well as moral or physical dangers.

Article 35(d) protects the **health rights of workers**. It requires the State to ensure safe, healthy and fair conditions of work.

Article 36 protects the **rights of the elderly and the disabled**. The State must take measures to improve the quality of life, the welfare, maintenance and development of the elderly and disabled.

### *Other rights related to the right to health*

Article 34 of the Constitution provides that every citizen is entitled to adequate and decent **housing** conducive to health and well-being. The State undertakes to facilitate the effective realisation of this right.

Article 15 protects **the right to life** and Article 16 **the right to dignity**. It prohibits torture and cruel, inhumane or degrading treatment.

Article 18 ensures **the right to liberty**. However, Article 18(2)(c) and (d) provides that a person may be detained to prevent the spread of infectious or contagious diseases, or for his treatment and rehabilitation in case of an unsound mind or an addiction to drugs.

Article 23 protects **the right to education**. Primary education is compulsory and free for at least 10 years.



Article 37 provides that the State undertakes to maintain a system of **social security** to ensure the right of every citizen to a decent and dignified existence.

Article 38 protects the right to a **safe environment**. The state recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment.

## *South Africa*

### *Right to health*

Article 27 of the Constitution of South Africa protects the right to health, together with the rights to food, water and social security.

Article 27 provides that everyone has the right to have access to health care services, including reproductive health care; sufficient food and water; and social security, including appropriate social assistance if they are unable to support themselves and their dependents. No one may be refused emergency medical treatment in public health facilities.

Article 27 requires the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

Article 184(3) provides that the South African Human Rights Commission must, on a yearly basis, monitor the efforts of the State to ensure the rights to housing, health care, food, water, social security, education and the environment.

### *Right to health of the most vulnerable groups*

Article 28 of the Constitution provides that every **child** has the right to basic nutrition, shelter, health care services and social services.

### *Other rights related to the right to health*

Article 24 of the Constitution provides that everyone has the right to an **environment** that is not harmful to his/her health or well-being. It requires the State to take reasonable legislative and other measures to prevent pollution and ecological degradation.

Article 26 provides that everyone has the right to have access to **adequate housing**. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Article 9 recognises **the right to equality**. No one may be discriminated against on the grounds of race, gender, pregnancy, age, disability, etc. National legislation must be enacted to prevent or prohibit unfair discrimination. Article 9(2) provides that legislative and other measures, designed to protect persons disadvantaged by unfair discrimination, may be taken.

Article 10 recognises the right to human dignity and Article 11 the **right to life**.

Article 12 protects **the right to freedom and security of the person**. Article 12(1)(d) and (e) prohibits torture and cruel, inhumane or degrading treatment. Article 12(2) recognises the right to bodily and psychological integrity, which includes the right (a) to make decisions concerning reproduction; (b) to security in and control over their body; and (c) not to be subjected to medical or scientific experiments without their informed consent.

Article 29 recognises the right to education.

## *Swaziland*

### *Right to health*

The Constitution of Swaziland has no express provision on the right to health.

#### *Right to health of the most vulnerable groups*

Article 27(4) of the Constitution protects the **rights of children and mothers**. They are entitled to special care and assistance by the society and the State.

Article 27(6) requires the government, subject to the availability of its resources, to provide facilities and opportunities for **needy or elderly people**.

Article 28 protects **the rights of women**. Article 28(2) requires the State, subject to the availability of its resources, to provide facilities and opportunities necessary to enhance the welfare of women.

Article 29 protects the **rights of children**. Article 29(1) provides that children have the right to be protected from work that constitute a threat to their health, education or development. According to Article 29(7)(d), the Parliament must enact laws to protect children against physical or moral dangers.

Article 30 protects the right to human dignity of **disabled persons**. The State and the society must take the appropriate measures to ensure that these persons realise their full physical and intellectual potential.

Article 32 protects the health rights of **workers**. It requires Parliament to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions.

#### *Other rights related to the right to health*

Article 15 of the Constitution protects the **right to life**. It restricts abortions to medical and therapeutic grounds, or when the pregnancy resulted from rape, incest or unlawful sexual intercourse.

Article 16 protects the **right to personal liberty**. However, Article 16 (g) and (h) permits detention of a person for preventing the spread of contagious disease or for the purpose of treatment and care of persons suspected to be addicted to drugs or alcohol.

Article 18 recognises the **right to human dignity**. It prohibits torture or cruel, inhumane or degrading treatment.

Article 20 recognises the **right to equality**. It prohibits discrimination on the grounds of sex, race, religion, disability, etc.

## *Uganda*

### *Right to health*

The Constitution of Uganda has no express provision on the right to health as such. However, Objective XIV(b) of the Constitution requires the State to ensure that all Ugandans enjoy access to health services. Objective XX provides that the State must take all practical measures to ensure the provision of basic medical services to the population.

### *Right to health of the most vulnerable groups*

Article 23 of the Constitution protects **the rights of minorities**. It requires the State to take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

Article 33(3) requires the State to protect **the rights of women**, taking into account their unique status and natural maternal functions.

Article 34 protects the **rights of the child**. Article 34(3) provides that no child should be deprived by any person of medical treatment. Article 34(4) entitles children to protection from social or economic exploitation as well as work that is likely to be harmful to their health.

Article 35 recognises the right to human dignity of **disabled persons**. It requires the State and society to take appropriate measures to ensure that they realise their full mental and physical potential. The Parliament must enact law for their protection.

### *Other rights related to the right to health*

Article 39 of the Constitution affirms that every Ugandan has the right to a **clean and healthy environment**.

Article 21 recognises **the right to equality and freedom from discrimination**.

Article 22 protects **the right to life**. Article 22(2) provides that no person has the right to terminate the life of an unborn child, unless authorised by law.

Article 23 recognises **the right to personal liberty**. However, Article 23(1)(d) and (f) provide that a person may be detained for preventing the spread of an infectious or contagious disease or for treatment in case that person is suspected to be addicted to drugs or alcohol.

Article 24 recognises **the right to human dignity**. It prohibits torture and cruel, inhumane or degrading treatment.

## *Zambia*

### *Right to health*

Article 52(1) of the Constitution of Zambia recognises the right to (a) health care, along with (b) the right to decent housing; (c) food of acceptable standard; (d) clean and safe water; (e) decent sanitation; (f) social protection and (e) education. Article 51(2) further provides that no one will be denied emergency medical treatment.

### *Right to health of the most vulnerable groups*

Article 59 of the Constitution protects **elderly members of the society**. They are entitled to personal development and social protection.

Article 60(3) protects the health rights of the **family**. Article 60(3) provides that the State must ensure (a) the right of women to adequate maternity leave; (b) ensure the availability of adequate paternity leave; (c) ensure the availability of maternal health care and child health care; and (d) promote the establishment of childcare facilities.

Article 61 protects the health rights of the **child**. Article 61(4) provides, among other things, that children must not to be subjected to corporal punishment or other forms of violence, cruel or inhumane treatment in the home, school or an institution responsible for their care. They must be protected from all forms of sexual exploitation, abuse and harmful cultural rites or practices. Children may not be engaged in work that is exploitative or likely to be hazardous or adverse to their health or welfare. Article 61(5) (d) and (e) recognise the rights of the child to adequate nutrition, shelter, basic health care services, social protection and social services; and to a standard of living adequate for the their physical, mental, spiritual, moral and social development.

Article 63 protects the **youth** from exploitation. It prohibits young people from engaging in any occupation or employment that would prejudice their health or education or interfere with their physical, mental or moral development.

Article 64 protects the health rights of **disabled people**, including the right to: access to public facilities and services; be addressed or referred to in a manner that is not demeaning, derogatory or discriminatory; personal development and independent living; and social protection.

### *Other rights related to the right to health*

Article 27 of the Constitution protects the **right to equality** and prohibits discrimination on the grounds of sex, race, religion, disability, etc. The law can discriminate among people but only for affirmative actions (e.g. to protect the rights of minority groups).

Article 28 recognises **the right to life**. The death sentence may not be imposed on pregnant women or children.

Article 30 recognises the right to **personal security**. It prohibits torture and cruel, inhumane or degrading treatment.

Article 57 recognises the right to a **safe, clean and healthy environment**.

Article 51, on the equality of men and women, entitles individuals to the right of reproductive health, including family planning and access to related information and education.

Article 61(5)(B) recognises the right to education. Primary and secondary education is free and compulsory.

Article 58 requires the State to take reasonable measures for the **progressive realisation of all economic, social, cultural and environmental rights**. Where a claim is made against the State for inaction, it is the responsibility of the State to show that the resources are not available. Article 58(3) restricts the role of the Constitutional Court, which cannot interfere with a decision by the State concerning the allocation of available resources.

## *Zimbabwe*

### *Right to health*

Article 29 of the Constitution of Zimbabwe recognises the rights to health services. It requires the State to take appropriate measures to ensure that (1) basic, accessible and adequate health services are provided throughout Zimbabwe; (2) no person is denied emergency medical treatment; (3) the spread of diseases are prevented, including through education and public awareness programmes.

Article 76 specifies in more detail that : (1) Every citizen and permanent resident of Zimbabwe has the right to basic health-care services, including reproductive health-care services; (2) every person suffering from a chronic illness has the right to have access to basic health-care services; (3) no person may be refused emergency medical treatment in any health care institution; and (4) the State must take appropriate measures, within the limits of its available resources, to realise these rights.

Article 30 recognises the right to social welfare. It requires the State to take appropriate measures, within the limits of its available resources, to provide social security and care for those who are in need.

### *Right to health of the most vulnerable groups*

Articles 19 and 81 of the Constitution protect the **health rights of the child**. Article 19(2)(b) provides that the State must adopt reasonable policies and measures, within the limits of its available resources, to ensure that children have shelter and basic nutrition, health care and

social services. Article 19(3)(b) protects children against work that are inappropriate for their age or place their well-being, education, physical or mental health, or moral and social development at risk. Article 81 confirms these rights.

Article 20 protects the **rights of the youth**. Article 20(1)(e) requires the State to take measures, including affirmative action programmes, to protect young people from harmful cultural practices, exploitation and all other forms of abuse.

Article 21 and 82 protects the **rights of elderly persons**. According to Article 21(2)(b) and (d), the State must endeavour, within the limits of its available resources, to provide facilities, food and social care for elderly people who are in need, as well as to foster social organisations aimed at improving the quality of life of elderly persons. Article 82 confirms these rights.

Article 22 and 83 protect the **rights of persons with disabilities**. According to Article 22, disabled people must be treated with respect and dignity. Within the limits of its available resources, the State must assist them so they can achieve their full potential. Article 22(3)(c) and (d) more specifically requires the State to encourage the use and development of forms of communication suitable for persons with physical or mental disabilities and to foster social organisations aimed at improving the quality of life of disabled people. Article 22(4) further requires the State to take appropriate measures to ensure that disabled people can have access to public buildings and facilities. Article 83 confirms these rights. Article 83(d) further requires the State to take appropriate measures, within the limits of its available resources, to ensure that disabled people are given access to medical, psychological and functional treatment.

Article 25 protects the **rights of the family**. Article 25(a) requires the State to adopt, within the limits of its available resources, measures for the care and assistance of mothers, fathers and other family members who have the custody of children, as well as measures for the prevention of domestic violence.

Article 80 protects the rights of **women**. Article 80(3) states that all laws, customs, traditions and cultural practices that infringe on the rights of women are void.

### *Other rights related to the right to health*

Article 15 of the Constitution protects the **right to food**. Article 15(c) provides that the State must encourage and promote adequate and proper nutrition through mass education and other appropriate means.

Article 28 recognises the **right to shelter**. It requires the State to take reasonable legislative and other measures, within the limits of its available resources, to enable every person to have access to adequate housing.

Article 77 confirms the **right to food and shelter**. It states that every person has the right to safe, clean and potable water as well as sufficient food. The State must take appropriate measures, within the limits of its available resources, to realise these rights.

Article 73(1)(a) requires the State to take measure, within the limits of its available resources, to ensure that every person has the right to an **environment** that is not harmful to his/her health or well-being.

Article 27 guarantees the right to basic **education** for children, which is free and compulsory. Article 75 recognises the right to education to all people from Zimbabwe, including the right to basic State-funded adult education.

Article 48 protects the **right to life**. Article 48(2)(c) and (d) prohibit the imposition of the death penalty on minors (people under 21), elderly persons (people older than 70) and women. Article 48(3) provides that abortion is permitted only under the conditions of secondary law.

Article 51 recognises the right to **human dignity**. It states that: *“every person has inherent dignity and their private and public life, and the right to have that dignity respected and protected.”*

Article 52 and 53 protects the right to **personal security**. Article 52 provides that every person has the right to bodily and psychological integrity. This includes the right: (a) to be free from all forms of violence from public or private actors; (b) to make decision concerning reproduction, in accordance with the rules on abortion; (c) not to be subjected to scientific or medical experiment, or the extraction of their bodily tissue, without their informed consent. Article 53 prohibits torture and cruel, inhumane or degrading treatment.

Article 56 protects the **right to equality**. Nobody may be discriminated against on the grounds of sex, age, religion, disability, etc. Article 56(6) requires the State to take reasonable measures to promote the achievement of equality among society, for example by adopting laws to advantage people usually suffering from unfair discrimination.

# Appendix 2: National Laws on the Right to Health

## Kenya

### *Food, Drugs and Chemical Substances Act (1965)*<sup>101</sup>

This Act, revised in 2012, makes provision for the prevention of adulteration of food, drugs and chemical substances and for matters incidental thereto and connected therewith.

- Article 3 prohibits the sale of of unwholesome, poisonous or adulterated food.
- Article 4 prohibits the labelling, packaging, treatment, processing, sale or advertisement of any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety.
- Article 7 prohibits the preparation of food under insanitary conditions.
- Similar provisions in the Act apply to drugs, cosmetics, devices and chemical substances.

### *Meat Control Act (1972)*<sup>102</sup>

This Act was revised in 2012. The Act defines and regulates:

- regulation-making powers of the Minister responsible for veterinary services in respect of the licensing, control and regulation of slaughterhouses and of premises where meat is processed in any manner for human consumption;
- health, sanitary and hygiene standards in slaughterhouses and meat processing premises;
- packing and labelling of meat;
- storage and transport of meat;
- the licensing and control of imports and exports of meat;
- and other matters relative to the manufacture, processing and marketing of meat.

### *Medical and Dental Practitioners Act (1978)*<sup>103</sup>

Article 4 of this Act provides for the establishment of a Medical Practitioners and Dentists Board. Article 11A sets out the supervisory functions of this Board. Article 11A(1): The Board shall satisfy itself that courses of study to be followed by students for a degree in medicine or dentistry, including the standard of proficiency required for admission thereto and the standards of examinations leading to the award of a degree, are sufficient to guarantee that the holder thereof has acquired the minimum knowledge and skill necessary for the efficient practice of medicine or dentistry.

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<sup>101</sup> [faolex.fao.org/docs/texts/ken62523.doc](http://faolex.fao.org/docs/texts/ken62523.doc)

<sup>102</sup> <http://faolex.fao.org/docs/pdf/ken63549.pdf>

<sup>103</sup> <http://www.kenyalaw.org:8181/exist/kenyalex/actviewbyid.xql?id=KE/LEG/EN/AR/M/CHAPTER%20253>



### ***Malaria Prevention Act (1983)***<sup>104</sup>

This Act, revised in 2012, does not deal with the right to health as such, but rather with the technical prohibitions and guidelines on how to prevent a Malaria outbreak.

### ***Use of Poisonous Substances Act (1983)***<sup>105</sup>

Revised in 2012, this Act provides for the protection of persons against risks of poisoning by certain substances, and for matters incidental thereto and connected therewith. Article 3(1) determines that provision may be made by regulations under this Act for the purpose of protecting persons against risks of poisoning by poisonous substances arising from (a) the use of those poisonous substances; and (b) the employment of employees at places in which or on which such poisonous substances are being or have been used.

### ***Radiation protection Act (1984)***<sup>106</sup>

One of the aims of this Act is to protect the public and workers from the dangers arising from the use of devices or material capable of producing radiation damageful to health.

### ***Dairy Industry Act (1984)***<sup>107</sup>

This Act was revised in 2012. The aim of this Act is the improvement and control of the dairy industry and its products. The Act demands and deals mainly with the establishment of a Kenya Dairy Board, to regulate that the production and sale of milk complies to human rights health standards.

### ***Public Health Act (1986)***<sup>108</sup>

The original version has been amended a few times to better address health issues and to better protect the health rights of the people of Kenya. The last amendment was made in 2012.

The Public Health Act covers many aspects of the right to health, and mainly:

- Article 3 establishes a Central Board of Health. It must advise the Minister of Health on all matters affecting the public health (i.e. preventing and guarding against the introduction of infectious diseases into Kenya from outside; promotion of public health and the prevention or suppression of diseases within Kenya; advice to and direct contact with local authorities with regard to matters affecting the public health; to promote or carry out research and investigations in connection with the prevention or treatment of human diseases; to prepare and publish reports and statistical or other information relative to public health).
- Article 21 to 42 provide in more detail for the procedure for the prevention and

<sup>104</sup> <file:///C:/Users/MargotS/Downloads/MalariaPreventionAct19of1929.pdf>

<sup>105</sup> <http://policy.mofcom.gov.cn/english/flaw!fetch.action?id=98CEDCAC-33C6-487F-B7E0-4A7D22FD5EEC>

<sup>106</sup> <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20243>

<sup>107</sup> <http://faolex.fao.org/docs/pdf/ken63519.pdf>

<sup>108</sup> <http://faolex.fao.org/docs/pdf/ken129231.pdf>

suppression of infectious diseases (i.e. examination of persons, quarantine, cleaning of infected premises, etc). Article 32 to 34 provide for the construction and management of hospitals by local authorities. Article 33 and 34 provide that local authorities may charge patients for its stay at the hospitals or for the provision of medicines. Article 35 to 42 specifically deal with epidemic, endemic of formidable infectious diseases. They establish preventive and curative rules for that purpose.

- Article 127 deals with the protection of food in warehouses or buildings of whatever nature used for the storage of foodstuffs, from rat invasion. Article 131 to 133 deals with the prohibition on the sale of unwholesome food. Article 134 deals with the rules for the protection of food. It gives authority to the Minister to, on the advice of the board, make rules regarding specific matters relating to the protection of food.
- Article 129 and 130 deal with the protection of water resources. Article 129 provides that it shall be the duty of local authorities to take all lawful, necessary and reasonably practicable measures (a) for preventing any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes; and (b) for purifying any such supply which has become so polluted, and to take measures (including, if necessary, proceedings at law) against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

### ***Pharmacy and Poisons Act (1989)<sup>109</sup>***

The purpose of this Act, revised in 2002, is to make better provision for the control of the profession of pharmacy and the trade in drugs.<sup>110</sup> Section 44 of this Act sets out detailed Pharmacy and Poisons rules. It is crucial to regulate the the production of, trade in and administration of drugs. The lack of such regulation could be very detrimental to the health of citizens.

### ***Narcotic Drugs and Psychotropic Substances Control Act (1994)<sup>111</sup>***

This Act deals with the prohibition of, possession of, and trafficking in narcotic drugs and psychotropic substances and cultivation of certain plants.

### ***National Hospital Insurance Fund Act (1998)<sup>112</sup>***

Article 3 of this Act provides for the establishment of the National Hospital Insurance Fund. Financially enabling people to receive medical attention is an important step towards fulfilling the right the the highest attainable standard of living.

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<sup>109</sup> <http://apps.who.int/medicinedocs/documents/s18245en/s18245en.pdf>

<sup>110</sup> Preamble

<sup>111</sup>

<http://www.issafrica.org/cdct/mainpages/pdf/money%20laundering/legislation/kenya/narcotic%20drugs%20and%20psychotropic%20substances%20control%20act%20no.pdf>

<sup>112</sup> [http://admin.theiguides.org/Media/Documents/NationalHospitalInsuranceFundAct\\_No9of1998.pdf](http://admin.theiguides.org/Media/Documents/NationalHospitalInsuranceFundAct_No9of1998.pdf)

### ***Medical Laboratory Technicians and Technologists Act (1999)*<sup>113</sup>**

The purpose of this Act is to provide for the training, registration and licensing of medical laboratory technicians and technologists, to provide for the establishment, powers and functions of the Kenya Medical Laboratory Technicians and Technologists Board, and for connected purposes.<sup>114</sup>

### ***Water Act (2002)*<sup>115</sup>**

This act was drafted to provide for the management, conservation, use and control of water resources and for the acquisition and regulation of rights to use water in Kenya; to provide for the regulation and management of water supply and sewerage services. Article 11(1): The Minister shall formulate, and publish in the Gazette, a national water resources management strategy in accordance with which the water resources of Kenya shall be managed, protected, used, developed, conserved and controlled.

The Draft Water Bill (2012), which establishes the Water Resources Regulatory Authority, is an example of how the government aims to better regulate the management and use of water resources. Article 46 determines that Every person in Kenya has the right to clean and safe water in adequate quantities, and to reasonable standards of sanitation as stipulated in Article 43 of the Constitution of Kenya.

### ***Nurses Act (2002)*<sup>116</sup>**

The purpose of this Act, revised in 2012, is to make provision for the training, registration, enrolment and licensing of nurses, to regulate their conduct and to ensure their maximum participation in the health care of the community and for connected purposes.<sup>117</sup>

### ***The Traditional and Alternative Medicine Bill (2003)***

This Bill was met with dissent for controlling the traditional medicine sector and was therefore never adopted. However, in 2014 The Health Bill<sup>118</sup> was drafted, which integrates concerns regarding traditional and alternative medicines. Part VIII of this Bill with traditional and complementary medicines.

- Article 42(1): The national government department of health shall formulate policies to guide the practice of traditional and alternative medicine.
- Article 43(1): There shall be established regulatory body by an Act of Parliament, to regulate the practice of African traditional medicine and alternative medicine.

### ***HIV and AIDS Prevention and Control Act (2006)*<sup>119</sup>**

- Article 4(1) provides that the Government shall promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV

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<sup>113</sup> <http://kmlttb.org/KMLTTB%20ACT.pdf>

<sup>114</sup> Preamble

<sup>115</sup> <http://faolex.fao.org/docs/pdf/ken37553-a.pdf>

<sup>116</sup> [http://nckkenya.com/wp-content/uploads/2013/09/NursesAct\\_Cap257.pdf](http://nckkenya.com/wp-content/uploads/2013/09/NursesAct_Cap257.pdf)

<sup>117</sup> Preamble

<sup>118</sup> [http://healthservices.uonbi.ac.ke/sites/default/files/centraladmin/healthservices/THE\\_HEALTH\\_BILL\\_2014\\_-\\_1st\\_JULY.pdf](http://healthservices.uonbi.ac.ke/sites/default/files/centraladmin/healthservices/THE_HEALTH_BILL_2014_-_1st_JULY.pdf)

<sup>119</sup> [http://www.chr.up.ac.za/undp/domestic/docs/legislation\\_35.pdf](http://www.chr.up.ac.za/undp/domestic/docs/legislation_35.pdf)

and AIDS through a comprehensive nationwide educational and information campaign conducted by the Government. Article 5 goes on to provide for HIV education in institutions of learning; Article 6 HIV education as a health care service; Article 7 HIV education in the workplace and Article 8 HIV education in communities.

- Article 18 provides for the confidentiality of HIV results. Article 20 to 22 also deals with the privacy guidelines and the confidentiality of records
- Article 19(1) determines that every health institution, whether public or private, and every health management organisation or medical insurance provider must facilitate access to health care services to persons with HIV without discrimination on the basis of HIV status. Article 19(2) places the duty on the Government to, to the maximum of its available resources, take the steps necessary to ensure the access to essential health care services, including the access to essential medicines at affordable prices by persons with HIV or AIDS and those exposed to the risk of HIV infection.
- Article 31 prohibits discrimination on the grounds only of the person's actual, perceived or suspected HIV status in the workplace and Article 32 discrimination in schools. Article 36 prohibits such discrimination in health institutions.

### ***Sexual Offences Act (2006)***<sup>120</sup>

The purpose of this Act is to make provisions about sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes.

### ***Environmental Management and Coordination (Waste Management) Regulations (2006)***

Currently, different types of waste are dumped haphazardly, posing serious environmental and health concerns in Kenya. These Regulations are meant to streamline the handling, transportation and disposal of various types of waste. The aim of the Regulations is to protect human health and the environment. The regulations place emphasis on waste minimization, cleaner production and segregation of waste. The regulations classify various types of waste and recommend appropriate disposal methods for each waste type.<sup>121</sup>

### ***Occupational Health and Safety Act (2007)***<sup>122</sup>

The Act, revised in 2010, was drafted to provide for the safety, health and welfare of workers and all persons lawfully present at workplaces, to provide for the establishment of the National Council for Occupational Safety and Health and for connected purposes.

Part VI deals with general health measures:

- Article 47(1): Every workplace shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance;
- Article 48(1): An occupier shall ensure that his workplace shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons

<sup>120</sup> [http://www1.chr.up.ac.za/undp/domestic/docs/legislation\\_40.pdf](http://www1.chr.up.ac.za/undp/domestic/docs/legislation_40.pdf)

<sup>121</sup> [http://www.nema.go.ke/index.php?option=com\\_content&view=article&id=137&Itemid=490](http://www.nema.go.ke/index.php?option=com_content&view=article&id=137&Itemid=490)

<sup>122</sup> [http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/OccupationalSafetyandHealth\(No.15of2007\).pdf](http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/OccupationalSafetyandHealth(No.15of2007).pdf)

employed therein.

Part VII deals with machinery safety while Part VIII contains general safety provisions:

- Article 76(1): Machinery, equipment, personal protective equipment, appliances and hand tools used in all workplaces shall comply with the prescribed safety and health standards and be appropriately installed, maintained and safe guarded.

Part X contains general welfare provisions:

- Article Article 91(1): Every occupier shall provide and maintain an adequate supply of wholesome drinking water at suitable points conveniently accessible to all persons employed.

### ***Employment Act (2007)***<sup>123</sup>

This Act aims to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate employment of children, and to provide for matters connected with the foregoing.

- Article 4(1): Prohibition against forced labour.
- Article 5(3): No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee (a) on grounds of disability, pregnancy, mental status or HIV status.
- Article 6: Prohibition of sexual harassment of employees.
- Article 27(2): The right of employees to be granted at least one rest day every seven days (notwithstanding article 27(1): An employee shall regulate the working hours of each employee).
- Article 29(1): A female employee shall be entitled to three months maternity leave with full pay.
- Article 30(1): After two consecutive months of service with his employer, an employee shall be entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service,
- Article 32: An employer shall provide a sufficient supply of wholesome water for the use of his employees at the place of employment.
- Article 34(1): An employer shall ensure the provision sufficient and of proper medicine for his employees during illness and if possible, medical attendance during serious illness.
- Article 46(g): An employee's HIV status or disability do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty.
- Article 53(1): Prohibition of worst forms of child labour.
- Article 62: An authorised officer may require a child in employment to be medically examined at any time during the period of the child's employment.

### ***Work Injury Benefits Act (2007)***<sup>124</sup>

This Act was drafted to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes.

- Part III lays out the right to compensation. Article 10(1): An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.

<sup>123</sup> <http://www.ilo.org/dyn/travail/docs/505/Employment%20Act%202007.pdf>

<sup>124</sup> <http://www.ilo.org/dyn/natlex/docs/SERIAL/77501/82173/F1543038369/KEN77501.pdf>

- Part VI deals with occupational diseases. Article 38 relates specifically to compensation for scheduled and unscheduled diseases.
- Part VII deals with medical aid and Article 45(1) specifically first aid in the work place for employees.

### ***Tobacco Control Act (2007)***<sup>125</sup>

The aim of this Act is to provide a legal framework for the control of the production, manufacture, sale, labelling, advertising, promotion, sponsorship and use of tobacco products, including exposure to tobacco smoke, in order to:

- Protect the health of the individual;
- Protect the purchasers or consumers of tobacco products from misleading and deceptive inducements to use tobacco products and consequent dependence on them; and inform them of the risks of using tobacco products and exposing others to tobacco smoke;
- Protect the health of persons under the age of eighteen years by preventing their access to tobacco products;
- Inform, educate and communicate to the public the harmful health, environmental, economic and social consequences of growing, handling exposure to and use of tobacco and tobacco products, and tobacco smoke;
- Protect and promote the right of non-smokers to live in a smoke-free environment;
- Promote and provide for rehabilitation and cessation programmes for consumers of tobacco products.

### ***Occupational Safety and Health Act (2007)***<sup>126</sup>

This Act applies to all workplaces where any person is at work, whether temporarily or permanently.<sup>127</sup> The purpose of the Act is to (a) secure the safety, health and welfare of persons at work; and (b) protect persons other than persons at work against risks to safety and health arising out of, or in connection with, the activities of persons at work.<sup>128</sup>

- Article 6(1) determines that every occupier shall ensure the safety, health and welfare at work of all persons working in his workplace. Article 6(2) goes on to describe the duties of the occupier in detail. Article 6(3) places on occupiers the obligation to carry out appropriate risk assessments in relation to the safety and health of persons employed and, on the basis of these results, adopt preventive and protective measures to ensure that under all conditions of their intended use, all chemicals, machinery, equipment, tools and process under the control of the occupier are safe and without risk to health.
- Article 9(1) orders every occupier to establish a safety and health committee at the workplace.

### ***Children Act (2007)***<sup>129</sup>

<sup>125</sup> <http://www.tobaccocontrolaws.org/files/live/Kenya/Kenya%20-%20Tobacco%20Control%20Act%20-%20national.pdf>

<sup>126</sup> <http://www.ilo.org/dyn/natlex/docs/SERIAL/78264/83534/F789589155/KEN78264.pdf>

<sup>127</sup> Article 3(1)

<sup>128</sup> Art 3(2)

<sup>129</sup> [https://www.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/95bcf642e7784b63c1257b4a004f95e8/\\$FILE/Children's%20Act.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/95bcf642e7784b63c1257b4a004f95e8/$FILE/Children's%20Act.pdf)

The Children Act, revised in 2010, in details enshrines the right of children in Kenya. In the Act, “child” means any human being under the age of eighteen years.<sup>130</sup>

- Article 4(1): Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.
- Article 9: Every child shall have a right to health and medical care the provision of which shall be the responsibility of the parents and the Government
- Article 12: A disabled child shall have the right to be treated with dignity, and to be accorded appropriate medical treatment, special care, education and training free of charge or at a reduced cost whenever possible.
- Article 13(1): A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.
- Article 14: No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development.
- Article 16: Every child shall be entitled to protection from the use of hallucinogens, narcotics, alcohol, tobacco products or psychotropic drugs and any other drugs that may be declared harmful by the Minister responsible for health and from being involved in their production trafficking or distribution.
- Article 18(1): 18. (1) No child shall be subjected to torture, of cruel treatment or punishment, unlawful arrest or liberty, deprivation of liberty.

### ***Nutritionist and Dietitians Act (2007)***<sup>131</sup>

This Act aims to provide for the training, registration and licensing of nutritionists and dietitians; to provide for the regulation of the standards, and practice of the profession; to ensure their effective participation in matters relating to nutrition and dietetics, and for connected purposes.<sup>132</sup>

### ***Housing Bill (2009)***<sup>133</sup>

The goal of this Bill, revised in 2012, is to ensure adequate housing to people. Adequate housing is defined in the Bill as "housing with adequate space, privacy, safety, lighting, ventilation, and security of tenure, basic and social infrastructural services and free from environmental hazards". Inadequate housing posing health risks to tenants and infringe on the right to shelter. This Act further aims to provide for the effective coordination, facilitation, capacity building and monitoring of the housing and human settlement sector; to establish

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<sup>130</sup> Article 2.

<sup>131</sup> <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20253B>

<sup>132</sup> Preamble

<sup>133</sup> [http://www.kecosce.org/downloads/SIMPLIFIED\\_HOUSING\\_BILL%5B1%5D.pdf](http://www.kecosce.org/downloads/SIMPLIFIED_HOUSING_BILL%5B1%5D.pdf)

the Kenya Housing Authority and the National Social Housing and Infrastructure Fund for the provision of housing and for connected purposes.

### ***Mental Health Bill (2014)***<sup>134</sup>

Article 3 sets out the purposes of the Act, amongst which is the promotion of the mental health and well-being of all, including reducing the incidences of mental illness.<sup>135</sup> Please note that this bill hasn't been adopted yet by Kenya. Most importantly:

- Article 4(1) provides that mental health services must be affordable, equitable and accessible to all.
- Article 5(a) provides that mental health services shall be of the highest quality possible and shall be provided in a manner that preserves the dignity of the person with mental illness.
- Article 11(1) prohibits health insurance companies from discriminating against any person with mental illness.
- Article 15(1) enshrines the right to the highest attainable standard of health.
- Article 15(2) demands the human and dignified treatment of mentally ill persons. It also provides for the right of mentally ill persons to have their privacy respected.
- Article 15(3) provides for the right to be protected from physical, economic, social, sexual and other forms of exploitation, abuse and degrading treatment.
- Article 16 prohibits discrimination on the ground of mental illness.

### ***The Health Bill (2014)***<sup>136</sup>

The preamble determines that the Bill aims to establish a unified health system, to coordinate inter-relationship between the national government and county government health systems, to provide for regulation of health care service and health care service providers, health products and health technologies and for connected purpose.

- Article 3 sets out the specific aims of the act, of which Article 3(b) is the aim to protect, respect, promote and fulfil the health rights of all person in Kenya to the progressive realisation of the right to the highest attainable standard of health, including reproductive health care and the right to emergency medical treatment.
- Article 3(c) is the aim to protect the right of children to basic nutrition and health care.
- Article 3 (d) is the aim to protect, respect, promote and fulfil the rights of vulnerable groups.
- Article 4 places the fundamental duty on the State to observe, respect, protect, promote and fulfil the right to the highest attainable standards of health including reproductive health care and emergency medical treatment
- Article 5(1): Every person has the right to the highest attainable standard of health which shall include progressive access for provision of preventive, curative and rehabilitative services.
- Article 5(2): Every person shall have the right to be treated with dignity, respect and have their privacy respected
- Article 6(1): Every person has right to reproductive health care.
- Article 7(1): Every person has the right to emergency medical treatment.
- Article 38(1): The National health system shall devise and implement measures to promote health and to counter influences having adverse effect on health of the

<sup>134</sup> <http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2014/MentalHealthBill2014.pdf>

<sup>135</sup> Article 3(a)

<sup>136</sup> [http://healthservices.uonbi.ac.ke/sites/default/files/centraladmin/healthservices/THE\\_HEALTH\\_BILL\\_2014\\_-\\_1st\\_JULY.pdf](http://healthservices.uonbi.ac.ke/sites/default/files/centraladmin/healthservices/THE_HEALTH_BILL_2014_-_1st_JULY.pdf)



people including, amongst other, (b) ensuring that food and water available for human consumption are hygienic and safe

- Part VII relates to mental health. Article 41(a) determines that appropriate legislation shall be developed by the National government department of health to protect rights of any individual suffering from any mental disorder or condition.

### *Penal Code, Chapter 63*<sup>137</sup>

- Article 160 relates to abortion. Any person who unlawfully supplies or procures for anyone a medicine, mixture or device, knowing that it is intended to be unlawfully used to artificially induce the miscarriage of a woman whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years.
- Article 186: Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour
- Article 191: Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour
- Article 192: Any person who voluntarily vitiates the atmosphere in any place, so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

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<sup>137</sup> [http://www.kenyalawreport.co.ke/Downloads/Acts/Penal%20Code%20Cap%2063\(%202009Final%20Final\).pdf](http://www.kenyalawreport.co.ke/Downloads/Acts/Penal%20Code%20Cap%2063(%202009Final%20Final).pdf)

# South Africa

## ***National Health Act***

The National Health Act 61 of 2003 (NHA) is a law passed by Parliament to ensure the right of everyone to have access to health care services.

The purpose of the NHA is to

- ☐ Regulate national health with a national health system that includes public and private health care providers
- ☐ Provide the people of South Africa with the best possible health services that available resources can afford (in a way that is fair)
- ☐ Set out the rights and duties of health care providers, health workers, health services and users
- ☐ Protect, respect, promote and fulfil the rights of people in South Africa by progressively realising the right of access to health care services, including reproductive health care
- ☐ To provide the people of South Africa with an environment that is not harmful to their health or well-being
- ☐ To provide vulnerable groups such as women, children, older persons and persons with disabilities with access to health care services
- ☐ To provide children with basic nutrition and health care services<sup>138</sup>

In addition the NHA requires:

### 1. All users to have **full knowledge**

- ☐ of their health status
- ☐ the different tests and treatment options
- ☐ the benefits, risks and costs associated with each treatment option
- ☐ their right to refuse health services and to have the implications and risks of refusal explained to them.
- ☐ all the information above should be provided in a language the user understands

### 2. All users to have access to **emergency medical treatment**

### 3. **Free health care** services for

- ☐ Pregnant and breast-feeding women who are not members of medical aids
- ☐ Children below the age of six who are not members of medical aids
- ☐ All persons who are not members of medical schemes (this refers to primary health care only)
- ☐ Pregnant women who require termination of pregnancy services<sup>139</sup>

<sup>138</sup> Hassim, A., Heywood, M & Honermann, B. (eds). *The National Health Act 61 of 2003: a guide*. Cape Town: Siber Ink.

<sup>139</sup> Hassim, A., Heywood, M & Honermann, B. (eds). *The National Health Act 61 of 2003: a guide*. Cape Town: Siber Ink.

4. All users to **provide informed consent** for treatment after being informed

- ☐ What the treatment or the test is
- ☐ Why the treatment or test is being done
- ☐ What the result of the treatment or test could mean for him or her
- ☐ That they have a right to agree to the treatment or test or to refuse treatment<sup>140</sup>

5. All users to **participate in any decision** affecting his or her health and treatment

6. The Department of Health to **disseminate information** about

- ☐ the types and availability of health services
- ☐ the organisation of health services
- ☐ operating schedules and timetables of visits
- ☐ procedures for access to health services
- ☐ other aspects of health services which may be of use to the public
- ☐ procedures for laying complaints
- ☐ the rights and duties of users and health care providers

7. All users to have the **confidentiality** of their information respected (this means that the person has to give their permission for information about their illness or treatment to be given to any other person).<sup>141</sup>

8. Any person to be able to **lay a complaint** about the manner in which he or she was treated at a health establishment and have the complaint investigated.<sup>142</sup>

### ***The Patients' Right Charter***

The Patients' Rights Charter is an example of a policy that provides guidelines about health rights. It is not legally binding like the National Health Act, but a means to put into practice the principles related to access to health care in the Constitution and in the National Health Act and to provide a way for users of services to realise their rights to health. It is also a way for users to be able to lodge complaints against health care providers and facilities if they feel their rights were violated by them.

The adoption of the Patients' Rights Charter by the National Department of Health was a result of widespread civil society mobilisation. A campaign to raise awareness and understanding of patient rights was led by the National Progressive Primary Health Care Network (NPPHCN) which comprised a number of health organisations and non-governmental organisations (NGOs).<sup>143</sup>

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<sup>140</sup> Hassim, A., Heywood, M & Honermann, B. (eds). *The National Health Act 61 of 2003: a guide*. Cape Town: Siber Ink.

<sup>141</sup> Grant, K., Lewis, M., Nongogo, N. & Strode, A. 2005. *HIV/AIDS and the Law: A trainers manual*. Joint OXFAM

<sup>142</sup> Hassim, A., Heywood, M & Honermann, B. (eds). *The National Health Act 61 of 2003: a guide*. Cape Town: Siber Ink.

<sup>143</sup> London, L., Holtman, Z. et al. 2006. *Operationalising Health as a Human Right: Monitoring tools to support the Implementation of the Patient Rights Charter in the Health Sector*. Health Systems Trust

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;
  - 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;
  - vii. and 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
- A 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

# Uganda

## ***Public Health Act (1935)***<sup>144</sup>

This Act was drafted to consolidate the law regarding the preservation of public health. Article 5 lays down the general duties of local authorities: Every local authority shall take all lawful, necessary and reasonably practicable measures for preventing the occurrence of, or for dealing with any outbreak or prevalence of, any infectious, communicable or preventable disease and to safeguard and promote the public health.

Part VI deals with the prevention of introduction of infectious diseases, a crucial obligation of the State to ensure the right to health of its citizens.

Part XIII deals with the protection of water food supplies and Article 103 in this Part determines: It shall be the duty of every local authority to take all lawful, necessary and reasonably practicable measures (a) for preventing any pollution dangerous to health of any supply of water which the public within its district has a right to use and does use for drinking or domestic purposes, and (b) for purifying any such supply which has become so polluted, and to take measures, including, if necessary, proceedings at law, against any person so polluting any such supply or polluting any stream so as to be a nuisance or danger to health.

## ***Public Health (Notifiable Diseases) Rules, S-I 281—21***<sup>145</sup>

Article 2 of these rules list all the diseases that are legally required to be reported to government authorities.

## ***Food and Drugs Act (1959)***<sup>146</sup>

This Act aims to to make provision for the prevention of adulteration of food and drugs and for matters incidental thereto and connected therewith. Article 2 prohibits persons to add any substance to food, use any substance as an ingredient in the preparation of food, abstract any constituent from food or subject food to any other process or treatment so as in any such case to render the food injurious to health, with intent that the food shall be sold for human consumption. It also prohibits adding any substance to, or abstracting any constituent from, a drug so as to affect injuriously the quality, constitution or potency of the drug, with intent that the drug shall be sold.

## ***Pharmacy and Drugs Act (1971)***<sup>147</sup>

This Act aims to amend and to consolidate the law relating to the control of the profession of pharmacy and trade in and use of drugs and poisons, and other purposes connected therewith.

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<sup>144</sup> <http://www.ulii.org/ug/legislation/consolidated-act/281>

<sup>145</sup> [http://hingx.org/Share/Attachment/762?fileName=uganda public health act notifiablediseasesmulumba-recd-august17-12.pdf](http://hingx.org/Share/Attachment/762?fileName=uganda%20public%20health%20act%20notifiablediseasesmulumba-recd-august17-12.pdf)

<sup>146</sup> <http://www.ulii.org/ug/legislation/consolidated-act/278>

<sup>147</sup> <http://www.ulii.org/ug/legislation/consolidated-act/280>

## ***National Environmental Act (1995)*<sup>148</sup>**

One of the general principles of this Act is the right to a decent environment and its purpose is to provide for sustainable management of the environment; to establish an authority as a coordinating, monitoring and supervisory body for that purpose; and for other matters incidental to or connected with the foregoing.

- Article 3: Every person has a right to a healthy environment.
- Article 4: The National Environment Management Authority shall be established.
- In Part VI the Act determines the various environmental aspects for which standards should be set, for example: Article 24 is air quality standards, Article 25 is water quality standards, Article 30 is soil quality standards and Article 31 standards for minimising radiation.
- Article 41 proposes that guidelines are issued to conserve biological diversity.
- Article 51 demands identification and proper management of materials and processes dangerous to human health and the environment.
- Article 56: Prohibition of discharge of hazardous substances, chemicals, oil, etc. into the environment.
- Article 66: The authority shall prepare guidelines or plans for coordinating national responses to environmental disasters

## ***Nurses and Midwives Act (1996)*<sup>149</sup>**

This Act was drafted to provide for the training, registration enrollment and discipline of nurses and midwives of all categories and for other matters connected to the above.

## ***Water Act (1997)*<sup>150</sup>**

This Act was drafted to provide regulations for the use, protection and management of water resources and supply; to provide for the constitution of water and sewerage authorities; and to facilitate the devolution of water supply and sewerage undertakings.

## ***Children Act (1997)*<sup>151</sup>**

This Act aims to reform and consolidate the law relating to children; to provide for the care, protection and maintenance of children; to provide for local authority support for children; to establish a family and children court; to make provision for children charged with offences and for other connected purposes.

- Article 5(1): It shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular, that duty gives a child the right to education and guidance; immunisation; adequate diet; clothing; shelter; and medical attention.
- Article 7: It shall be unlawful to subject a child to social or customary practices that are harmful to the child's health.
- Article 8: No child shall be employed or engaged in any activity that may be harmful to his or her health, education or mental, physical or moral development.
- Article 9: The parents of children with disabilities and the State shall take appropriate

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<sup>148</sup> <http://www.ulii.org/ug/legislation/consolidated-act/153>

<sup>149</sup> <http://www.ulii.org/ug/legislation/consolidated-act/274>

<sup>150</sup> <http://www.ulii.org/ug/legislation/consolidated-act/152>

<sup>151</sup>

steps to see that those children are assessed as early as possible as to the extent and nature of their disabilities; offered appropriate treatment; and afforded facilities for their rehabilitation and equal opportunities to education.

### ***Medical and Dental Practitioners Act (1998)***<sup>152</sup>

This Act aims to consolidate the law relating to the medical and dental practice and to deal with connected issues. Article 28 (duty to supply drugs): If a pharmacist carrying on or employed in a pharmacy business is requested during normal business hours to dispense a valid prescription, or to supply any drug to a registered medical practitioner, a veterinary surgeon or dentist for use in immediate treatment, he or she shall comply with the request unless there are reasonable grounds for his or her failing to do so.

### ***National Environment (Waste Management) Regulations (1999)***<sup>153</sup>

These Regulations were made under sections 53(2) and 107 of the National Environment Act. It applies to: (a) to all categories of hazardous and non-hazardous waste; (b) to the storage and disposal of hazardous waste and their movement into and out of Uganda; and (c) to all waste disposal facilities, land fills, sanitary fills and incinerators.

The Regulations contribute to the realisation of the right to an healthy environment by providing rules for the handling and disposal of waste that could be harmful to health. Among other things, the Regulations aim at encouraging cleaner production methods, create a licence for transportation or storage of waste, give powers to environmental inspectors, regulate packaging and labelling of waste, establish rules for waste treatment plant or disposal site, require the conduct of environmental impact assessments, and provide for notification procedures.<sup>154</sup>

### ***National Drug Policy and Authority Act (2002)***<sup>155</sup>

The National Drug Policy (NDP), which this Act provides for, aims to contribute to the attainment of a good standard of health by the population of Uganda, through ensuring the availability, accessibility and affordability at all times of essential drugs of appropriate quality, safety and efficacy, and by promoting their rational use.

### ***National Drug Policy and Authority Act, Chapter 206***<sup>156</sup>

The purpose of this Act is to establish a national drug policy and a national drug authority to ensure the availability, at all times, of essential, efficacious and cost-effective drugs to the entire population of Uganda, as a means of providing satisfactory health care and safeguarding the appropriate use of drugs.

Article 30 provides that: Any person who (a) sells any drug, medical appliance or similar article which is not of the nature, substance and quality demanded or which, unless

<sup>152</sup> <http://www.ulii.org/ug/legislation/consolidated-act/272>

<sup>153</sup> [http://www.nemaug.org/regulations/waste\\_management\\_regulations.pdf](http://www.nemaug.org/regulations/waste_management_regulations.pdf)

<sup>154</sup> [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=132674&database=faolex&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=132674&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL)

<sup>155</sup> <http://apps.who.int/medicinedocs/documents/s16463e/s16463e.pdf>

<sup>156</sup> [http://www.cehurd.org/wp-content/uploads/downloads/2011/10/national-drug-policy-and-authority-act-Chapter\\_206.pdf](http://www.cehurd.org/wp-content/uploads/downloads/2011/10/national-drug-policy-and-authority-act-Chapter_206.pdf)



otherwise agreed at the time of demand, does not conform to the standards laid down in the authorised pharmacopoeia; or (b) supplies any drug which is unwholesome or adulterated or which does not conform to the prescription under which it is supplied, commits an offence.

### *Access to Information Act (2005)*<sup>157</sup>

Article 21 of this Act, which provides for the right of access to information pursuant to article 41 of the Constitution, prohibits the disclosure of health records by information officers. Provisions like these protect citizens against invasion of personal privacy.

### *Occupational Safety and Health Act (2006)*<sup>158</sup>

The main purpose of this Act is to ensure the progressive integration of health and safety principles and standards into workplaces. Employer and workers must comply with a number of requirements in order to guarantee the safety, health and welfare of people at work.

Articles 13 to 27 specify the duties of the employer, for example:

- Article 13 puts a general duty on employers to (a) take all appropriate measures for the protection of his or her workers and (b) ensure, to the greatest extent possible, that the working environment is kept free from any hazard due to pollution;
- Article 21 further specifies that the employer must supervise the health of the workers who are exposed to hazards due to pollution or any other harmful agents, for example by establishing prework and periodic medical examinations;
- Article 26 requires from employers to take all reasonable measures to keep the premises safe and without risk to health.

Articles 28 to 34 specify the duties of manufacturers, suppliers and transporters of chemical substance to ensure that their products do not represent any risk for the health of the persons (for example, by ensuring that adequate and clear information are given regarding the use of such products, and that necessary conditions are respected for preventing any risk to health).

Articles 35 to 39 further lay down the rights and duties of the workers to ensure their own safety and health. They must, for example, report dangerous situations to their supervisor, and must be careful not to interfere with safety measures. They have the right to move away from dangerous situations at work, and cannot be penalized by their employer for complying with the Act.



As said above, the adoption of legislative measures, such as this Act, is necessary to realise the right to health of individuals as written in the Constitution. However, health laws will have little if no impact if they are not respected and properly enforced. It is therefore important that the government take measures to ensure the good application of the

<sup>157</sup> [http://www.freedominfo.org/documents/uganda\\_ati\\_act\\_2005.pdf](http://www.freedominfo.org/documents/uganda_ati_act_2005.pdf)

<sup>158</sup> <http://www.mglsd.go.ug/wp-content/uploads/2013/07/Laws/occupational%20safety%20and%20Health%20Act%202006.pdf>[https://www.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/738fcd999d6976a8c125767e004c5fa6/\\$FILE/THE%20CHILDREN%20ACT.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/738fcd999d6976a8c125767e004c5fa6/$FILE/THE%20CHILDREN%20ACT.pdf)

law. The Ministry of Health of Uganda, for example, has developed guidelines for the application of the Occupational Safety and Health Act (2006).<sup>159</sup> It is intended to be a practical tool for managers, supervisors and health workers at all levels, for the planning, implementation and monitoring of workplace safety and health programmes. For that purpose, it contains several annexes that stakeholders can use, such as a pre-drafted checklist for workplace inspection, incident reporting forms, etc.

### *Penal Code*<sup>160</sup>

- Article 124: A person convicted of rape is liable to suffer death.
- Article 128: Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.
- Article 141 (abortion): Any person who, with intent to procure the miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means, commits a felony and is liable to imprisonment for fourteen years.
- Article 142 prohibits procuring your own miscarriage and Article 143 prohibits the supplying of drugs or other means to procure abortion.
- Article 160 prohibits common nuisance, for instance by causing any common injury, or danger or annoyance.
- Article 171 prohibits negligent acts likely to spread the infection of diseases.
- Article 172 prohibits the Adulteration of food or drink so as to make the article noxious as food or drink; and Article 173 prohibits specifically the sale of noxious food or drink.
- Article 174 prohibits the adulteration of drugs and Article 175 the sale of such drugs.
- Article 176 prohibits the corrupting or fouling of water of any public spring or reservoir and Article 177 the fouling of air.
- Article 200: It is the duty of the head of a family, who has charge of a child under the age of fourteen years, to provide the necessaries of life for such child.
- Article 222 prohibits the unlawful injuring or poisoning of another.

### *National Environment (Control of Smoking in Public Places) Regulations (2004)*

Article 3(1) of the Regulations recognises that : Every person has the right to a clean and healthy environment and the right to be protected from exposure to second hand smoke. These regulations aim at protecting individuals from active or passive smoking by prohibiting or restricting smoking in public places.

The regulations:

- prohibit smoking in specific public spaces such as offices and work places including individual offices, corridors, lounges, eating areas, lifts, escalators, toilets, etc (see Part I of the Schedule).
- restrict smoking in public places of lodging, bars, restaurants and discotheques (see Part II of the Schedule) by requiring that a “smoking room” be established, which must be separated from the rest of the premises and correctly ventilated.<sup>161</sup>

<sup>159</sup>[http://www.google.com/url?q=http%3A%2F%2Feprolineplus.org%2Fsystem%2Ffiles%2Fresources%2Foccupational\\_safety\\_uganda.pdf&sa=D&sz=1&usg=AFQjCNF39Ju31FKLerxQcJJC48SQ\\_Mc9Q](http://www.google.com/url?q=http%3A%2F%2Feprolineplus.org%2Fsystem%2Ffiles%2Fresources%2Foccupational_safety_uganda.pdf&sa=D&sz=1&usg=AFQjCNF39Ju31FKLerxQcJJC48SQ_Mc9Q)

<sup>160</sup> <http://www.ulii.org/ug/legislation/consolidated-act/120>

<sup>161</sup> <http://www.tobaccocontrolaws.org/files/live/Uganda/Uganda%20-%20SF%20Regs%202004%20-%20national.pdf>

If the owner of a public place does not comply with these requirements, or if a person smoke where it is not allowed to, they can be fined.

Article 3(3) further provides that: “Every head of family is responsible for creating a climate for children to be free of second hand smoke.”

## Zambia

### ***Public Health Act, Chapter 295 (1930)***<sup>162</sup>

This Act aims to provide for the prevention and suppression of diseases and generally to regulate all matters connected with public health in Zambia.

- Part III deals with notification of infectious diseases and Part IV with the prevention and suppression of such diseases.
- Part V contains provisions regarding epidemic diseases.
- Part VII deals with the prevention of introduction of diseases.
- Part IX aims to regulate sanitation and housing.
- Part X: protection of foodstuffs.
- Part XI: regulations regarding water and food supplies.

### ***National Food and Nutrition Commission Act, Chapter 308 (1967)***

This Act aims to establish the National Food and Nutrition Commission; to provide for its membership; to specify its functions; and to provide for matters incidental thereto. It was revised in 1975.

### ***Food and Drugs Act, Chapter 303 (1972)***<sup>163</sup>

This Act was revised in 1994. Its aim is to protect the public against health hazards and fraud in the sale and use of food, drugs, cosmetics and medical devices; and to provide for matters incidental thereto or connected therewith. Article 3 contains a prohibition against sale of poisonous, unwholesome or adulterated food.

### ***Termination of Pregnancy Act, Chapter 304 (1972)***<sup>164</sup>

This Act, revised in 1994, aims to amend and clarify the law relating to termination of pregnancy by registered medical practitioners; and to provide for matters incidental thereto

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<sup>162</sup> <http://www.parliament.gov.zm/downloads/VOLUME%2017.pdf>

<sup>163</sup> <http://www.zamlii.org/zm/legislation/consolidated-act/303>

<sup>164</sup> <http://www.zamlii.org/zm/legislation/consolidated-act/304>

and connected therewith. Art 3(1) provides that a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner. The Termination of Pregnancy Regulations was also drafted in 1972 as subsidiary legislation.

### ***Environmental Protection and Pollution Control (amendment) Act, Chapter 204 (1990)***

This Act aims to provide for the protection of the environment and the control of pollution; to establish the Environmental Council and to prescribe the functions and powers of the Council; and to provide for matters connected with or incidental to the foregoing.

### ***Nurses and Midwives Act, Chapter 300 (1997)***<sup>165</sup>

The purpose of this Act is to revise the law regulating the professional conduct of nurses and midwives; to repeal and replace the Nurses and Midwives Act, and to provide for matters connected with or incidental to the foregoing.

### ***National HIV/AIDS/STI/TB Council Act (2002)***<sup>166</sup>

This Act aims to establish the National HIV/AIDS/STI/TB Council, define its functions and provide for its composition; to constitute the Secretariat of the Council, define its functions and provide for its composition; and to provide for matters connected with or incidental to the foregoing.

### ***Pharmaceutical Act (2004)***<sup>167</sup>

This Act repealed the Pharmacy and Poisons Act (Chapter 299). The purpose of the Act is to establish the Pharmaceutical Regulatory Authority; to provide for the registration and regulation of pharmacies; to provide for the registration and regulation of medicines and to provide for the regulation and control of medicines and herbal medicines.

### ***National Health Services Act (2005)***<sup>168</sup>

This Act repealed the National Health Services Act of 1995. It aims to provide for the winding up and dissolution of the Central Board of Health and of management boards; to vest the undertaking of the Central Board of Health and of management boards in the Government; and to provide for matters connected with or incidental to the foregoing.

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<sup>165</sup> <http://www.zambialaws.com/Principal-Legislation/CHAPTER-300NURSES-AND-MIDWIVES-ACT.html>

<sup>166</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_127558.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127558.pdf)

<sup>167</sup> <http://www.parliament.gov.zm/dmdocuments/The%20Pharmaceutical%20Act,%202004A.PDF>

<sup>168</sup> <http://www.zambialii.org/files/zm/legislation/act/2005/17/nhs2005251.pdf>

### ***Health Professions Act (2009)***

This Act repealed the Medical and Allied Professions Act, Chapter 297 (1977, revised in 1994)<sup>169</sup>. The aim of the Act is to provide for the registration of health practitioners and regulate their professional conduct; provide for the licensing of health facilities and the accreditation of health care services provided by health facilities; provide for the recognition and approval of training programmes for health practitioners; and provide for matters connected with or incidental to the foregoing.

### ***Water Resources Management Act (2011)***<sup>170</sup>

The purpose of this Act is to:

- establish the Water Resource Management Authority and define its functions and powers;
- provide for the management, development, conservation, protection and preservation of the water resource and its ecosystems;
- provide for the equitable, reasonable and sustainable utilisation of the water resource;
- ensure the right to draw or take water for domestic and non-commercial purposes, and that the poor and vulnerable members of the society have an adequate and sustainable source of water free from any charge;
- create an enabling environment for adaptation to climate change; provide for the constitution, functions and composition of catchment councils; sub-catchment councils and water users associations; and
- provide for international and regional cooperation in, and equitable and sustainable utilisation of, shared water resources.

### ***Persons with Disabilities Act (2012)***<sup>171</sup>

Article 27 of this Act determines that appropriate measures shall be taken to ensure access for persons with disabilities to health services (that are gender-sensitive) and to health-related rehabilitation.

## Zimbabwe

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<sup>169</sup> <http://www.zamlii.org/zm/legislation/consolidated-act/297>

<sup>170</sup> [http://www.zambialii.org/files/zm/legislation/act/2011/21/Water\\_Resources\\_Management\\_Act%5B1%5D.pdf](http://www.zambialii.org/files/zm/legislation/act/2011/21/Water_Resources_Management_Act%5B1%5D.pdf)

<sup>171</sup> [http://www.zambialii.org/files/zm/legislation/act/2012/6/The%20Persons%20with%20disabilities%20act,%202012%20\(1\).PDF](http://www.zambialii.org/files/zm/legislation/act/2012/6/The%20Persons%20with%20disabilities%20act,%202012%20(1).PDF)

### ***Public Health Act (1924)***<sup>172</sup>

This Act was amended in 2002. The Act creates the legal framework for the protection of public health in Zimbabwe. It provides for powers of the administration to regulate and control slaughter of animals, food production and handling, food and water supply, animal diseases, etc.

The Act is divided into 10 Parts: Preliminary (I); Notification of infectious diseases (II); Venereal diseases (III); International sanitary regulations (IV); Water and Food supplies (VI); Infant nutrition (VII); Slaughter-houses (VIII); Sanitation and housing (IX); General (X).<sup>173</sup>

### ***Dangerous Drugs Act (1956)***<sup>174</sup>

This Act aims to control the importation, exportation, production, possession, sale, distribution and use of dangerous drugs; and to provide for matters incidental thereto.

### ***Medicines and Allied Substances Control Act (1969)***<sup>175</sup>

This Act aims to establish a Medicines Control Authority of Zimbabwe; and to provide for certain prohibitions, controls and restrictions relating to medicines and other substances; and to provide for matters connected with or incidental to the foregoing.

### ***Food and Food Standards Act (1971)***<sup>176</sup>

This Act aims to provide for the sale, importation and manufacture for sale of food in a pure state; to prohibit the sale, importation and manufacture for sale of food which is falsely described; and to provide for the fixing of standards relating to food and matters incidental thereto.

### ***Hazardous Substances and Articles Act (1971)***<sup>177</sup>

This Act, amended in 2001, establishes the Hazardous Substances and Articles Control Board and makes provision for the declaration and regulation of hazardous substances and articles.

### ***Medical, Dental and Allied Professions Act (1971)***<sup>178</sup>

This Act aims to provide for the constitution, functions and powers of the Health Professions

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<sup>172</sup> <http://faolex.fao.org/docs/pdf/zim21475.pdf>

<sup>173</sup> [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=016128&database=FAOLEX&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=016128&database=FAOLEX&search_type=link&table=result&lang=eng&format_name=@ERALL)

<sup>174</sup> [http://www.parlzim.gov.zw/attachments/article/101/DANGEROUS\\_DRUGS\\_ACT\\_15\\_02.pdf](http://www.parlzim.gov.zw/attachments/article/101/DANGEROUS_DRUGS_ACT_15_02.pdf)

<sup>175</sup> <http://faolex.fao.org/docs/pdf/zim24977.pdf>

<sup>176</sup> [http://www.parlzim.gov.zw/attachments/article/101/FOOD\\_AND\\_FOOD\\_STANDARDS\\_ACT\\_15\\_04.pdf](http://www.parlzim.gov.zw/attachments/article/101/FOOD_AND_FOOD_STANDARDS_ACT_15_04.pdf)

<sup>177</sup> [http://www.parlzim.gov.zw/attachments/article/101/HAZARDOUS\\_SUBSTANCES\\_AND\\_ARTICLES\\_ACT\\_15\\_05.pdf](http://www.parlzim.gov.zw/attachments/article/101/HAZARDOUS_SUBSTANCES_AND_ARTICLES_ACT_15_05.pdf)

<sup>178</sup> [http://www.parlzim.gov.zw/attachments/article/114/MEDICAL\\_DENTAL\\_AND\\_ALLIED\\_PROFESSIONS\\_ACT\\_27\\_08.pdf](http://www.parlzim.gov.zw/attachments/article/114/MEDICAL_DENTAL_AND_ALLIED_PROFESSIONS_ACT_27_08.pdf)

Council and to provide for the registration and control of health institutions and the regulation of services provided therein or therefrom.

### ***Termination of Pregnancy Act (1977)*<sup>179</sup>**

Article 4 lists the circumstances under which pregnancy may be lawfully terminated:

(a) where the continuation of the pregnancy so endangers the life of the woman concerned or so constitutes a serious threat of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health, as the case may be; or

(b) where there is a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will permanently be seriously handicapped; or

(c) where there is a reasonable possibility that the foetus is conceived as a result of unlawful intercourse.

### ***Traditional Medical Practitioners Act (1981)*<sup>180</sup>**

This Act aims to establish a Traditional Medical Practitioners Council; to provide for the registration and regulation of the practice of traditional medical practitioners; and to provide for matters incidental to or connected with the foregoing

### ***Disabled Person Act (1992)*<sup>181</sup>**

This Act was amended in 2002. Its purpose is make provision for the welfare and rehabilitation of disabled persons. Article 8(1): No disabled person shall, on the ground of his disability alone, be denied (a) admission into any premises to which members of the public are ordinarily admitted; or (b) the provision of any service or amenity ordinarily provided to members of the public.

### ***Water Act (2000)*<sup>182</sup>**

The purpose of this Act is to provide for the development and utilisation of the water resources of Zimbabwe. Fundamental to the right to health, it aims to provide for the control of the use of water when water is in short supply; and provide for the protection of the environment and the prevention and control of water pollution.

### ***Medical Services Act (2001)*<sup>183</sup>**

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<sup>179</sup> <http://www.refworld.org/docid/4c46c4de2.html>

<sup>180</sup> [http://www.parlzim.gov.zw/attachments/article/114/TRADITIONAL\\_MEDICAL\\_PRACTITIONERS\\_ACT\\_27\\_14.pdf](http://www.parlzim.gov.zw/attachments/article/114/TRADITIONAL_MEDICAL_PRACTITIONERS_ACT_27_14.pdf)

<sup>181</sup> <http://archive.kubatana.net/docs/legisl/disab021201.pdf>

<sup>182</sup> <http://faolex.fao.org/docs/pdf/zim26168.pdf>

<sup>183</sup> [http://www.parlzim.gov.zw/attachments/article/101/MEDICAL\\_SERVICES\\_ACT\\_15\\_13.pdf](http://www.parlzim.gov.zw/attachments/article/101/MEDICAL_SERVICES_ACT_15_13.pdf)

The purpose of this Act is to ensure the provision and maintenance of comprehensive hospital services in Zimbabwe; and to provide for the admission of persons to Government hospitals and the fixing of fees in respect of services provided thereat.

### ***Labour Act (2005)***<sup>184</sup>

Article 2A determines that the purpose of this Act is to advance social justice and democracy in the workplace. The Act aims to, amongst other things:

- declare and define the fundamental rights of employees;
- to define unfair labour practices;
- to regulate conditions of employment and other related matters; .

Article 6: Protection of employees' right to fair labour standards.

Article 8: Prohibition of unfair labour practices by employer.

Article 14: Sick leave.

Article 18: Maternity leave.

### ***Environmental Management Act (2006)***<sup>185</sup>

This Act aims to provide for

- the sustainable management natural resources and protection of the environment;
- the prevention of pollution and environmental degradation;
- the preparation of a National Environmental Plan;
- the establishment of an Environmental Management Agency and an Environment Fund.

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<sup>184</sup> [http://archive.kubatana.net/docs/legisl/labact\\_060201.pdf](http://archive.kubatana.net/docs/legisl/labact_060201.pdf)

<sup>185</sup> <http://www.law.co.zw/downloads/statutes/20/Environmental%20Management%20Act.pdf>



## Appendix 3: Treaty ratifications SADC members

**Table 1. Summary of the treaty ratifications by SADC member states**

	ACHPR	ACRC	ACRW	ICESCR	ICCPR	ICERD	CRC	CEDAW	CAT	ICRMW	CPPCG	CCL
<b>Angola</b>	2 Mar 90	11 Apr 92	30 Aug 07	10 Jan 92	10 Jan 92	24 Sep 13	5 Dec 90	17 Sep 86	24 Sep 13	-	-	4 Jun 76
<b>Botswana</b>	17 Jul 86	10 Jul 01	-	-	8 Sep 00	20 Feb 74	14 Mar95	13 Aug 96	8 Sep 00	-	-	5 Jun 97
<b>DRC</b>	20 Jul 87	-	09 Jun 08	1 Nov 76	1 Nov 76	21 Apr 76	27 Sep 90	17 Oct 86	18 Mar 96	-	31 May 62	20 Jun 01
<b>Djibouti</b>	11 Nov 91	-	02 Feb 05	5 Nov 02	5 Nov 02	30 Sep 11	6 Dec 90	2 Dec 98	5 Nov 02	-	-	03 Aug 78
<b>Eritrea</b>	14 Jan 99	22 Dec99	25 Apr 12	17 Apr 01	22 Jan 02	31 Jul 01	3 Aug 94	5 Sep 95	25 Sep 14	-	-	22 Feb 00
<b>Lesotho</b>	10 Feb 92	27 Sep99	26 Oct 04	9 Sep 92	9 Sep 92	4 Nov 71	10 Mar92	22 Aug 95	12 Nov 01	16 Sep 05	29 Nov 74	14 Jun 01
<b>Madagascar</b>		30 Mar05	28 Feb 04	22 Sep 71	21 Jun 71	7 Feb 69	19 Mar91	17 Mar 89	13 Dec 05	13 May15	-	06 Jun07
<b>Malawi</b>	09 Mar 92	16 Sep99	20 May05	22 Dec 93	22 Dec 93	11 Jun 96	2 Jan 91	12 Mar 87	11 Jun 96	-	14 Jul 17	19 Nov99
<b>Mauritius</b>	19 Jun 92	14 Feb92	29 Jan 05	12 Dec 73	12 Dec 73	30 May72	26 Jul 90	9 Jul 84	9 Dec 92	-	-	2 Dec 69
<b>Mozambique</b>	22 Feb 89	15 Jul 98	09 Dec 05	-	21 Jul 93	18 Apr 83	26 Apr 94	21 Apr 97	14 Sep 99	19 Aug13	18 Apr 83	16 Jun 77
<b>Namibia</b>	30 Jul 92	23 Jul 04	11 Aug 04	28 Nov 94	28 Nov 94	11 Nov 82	30 Sep 90	23 Nov 92	28 Nov 94	-	28 Nov 94	15 Nov00
<b>Seychelles</b>	13 Apr 92	13 Feb92	09 Mar06	5 May 92	5 May 92	7 Mar 78	7 Sep 90	5 May 92	5 May 92	15 Dec 94	5 May 92	6 Feb 78
<b>South Africa</b>	9 Jul 96	07 Jan 00	17 Dec 04	12 Jan 15	10 Dec 98	10 Dec 98	16 Jun 95	15 Dec 95	10 Dec 98	-	10 Dec 98	5 Mar 97
<b>South Sudan</b>	-	-	24 Jan 13	-	-	-	23 Jan 15	30 Apr 15	30 Apr 15	-	-	29 Apr 12
<b>Swaziland</b>	15 Sep 95	29 Jun92	05 Oct 12	26 Mar04	26 Mar 04	7 Apr 69	7 Sep 95	26 Mar 04	25 Apr 04	-	-	23 Oct02
<b>Tanzania</b>	18 Feb 84	16 Mar03	03 Mar07	11 Jun 76	11 Jun 76	27 Oct 72	10 Jun 91	20 Aug 85	26 Mar 04	-	5 Apr 84	30 Jan 62
<b>Zambia</b>	10 Jan 84	28 Feb92	02 May06	10 Apr 84	10 Apr 84	4 Feb 72	6 Dec 91	21 Jun 85	7 Oct 98	-	-	22 Feb 65
<b>Zimbabwe</b>	30 May 86	19 Jan95	15 Apr 08	13 May91	13 May 91	13 May91	11 Sep 90	13 May 91	-	-	13 May 91	27 Aug 98

NB. The date indicated in black is the date of accession or ratification. The date indicated in red indicates that the state is only a signatory. The icon '-' indicates the countries have not yet ratified the treaty.

## LEARNING NETWORK

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