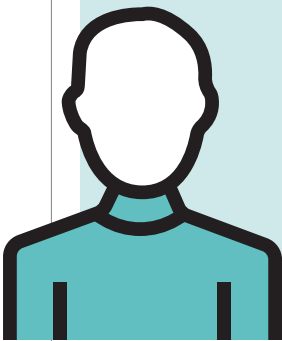


# Health and human rights

# 1

## What are human rights?

As a human being, you have human rights. A human right is a claim that addresses a basic human need.



### Here are some examples of basic human needs and their matching human rights: <sup>2</sup>

#### Human beings need:

Water



To be treated fairly



To be healthy



Freedom



#### Matching human rights:

Right to water

Right to equality and non-discrimination

Right to health

Right to freedom of movement and physical integrity

Right to freedom of religion

Right to freedom of expression

The goal of human rights is to set minimum standards for what people need and how people should be treated. In this way, human rights try to make sure that the basic needs of all people are met and that all people are protected from being abused.

## Is health a human right?

Internationally, health is recognised as a fundamental human right. Under the Universal Declaration of Human Rights, the right to health is understood as part of your right to an adequate standard of living, which includes food, clothing, housing and medical care.

Under the African Charter on Human and Peoples' Rights, everyone has a right to enjoy the highest possible standard of physical and mental health.

## What healthcare rights do I have?

All people are ill from time to time and need healthcare to get better. People who are not ill may also need healthcare services. For example, a healthy woman might want contraceptive medicine to give her control over the time and spacing of her children.

<sup>2</sup> N Fick et al Toolkit on the Right to Health. Cape Town: Learning Network (2011), available at: [http://g3w.be/sites/default/files/generated/files/news/toolkit\\_final\\_version.pdf](http://g3w.be/sites/default/files/generated/files/news/toolkit_final_version.pdf).

## Whether you are ill or healthy, you have the rights to:

### Access healthcare

- Everyone has the right to access healthcare services regardless of age, sex, gender, sexual orientation, disability, HIV or other status.
- You also have the right to access emergency care, as well as other services you might need to be healthy, including medicine, tests, procedures, treatments, rehabilitation, surgery, dentistry, and sexual and reproductive healthcare services.
- You have the right to receive information about healthcare and your health condition. This is important for you to be involved in decisions about your treatment.

### Adequate and non-discriminatory healthcare

When you use healthcare services, you have these rights:

- The right to receive adequate services – to receive medicines and services that are medically suitable and of good quality.
- The right to safety – not to be sexually abused, threatened, harassed or assaulted when you access healthcare services.
- The right to receive non-discriminatory healthcare services – to be treated with respect and in the same way as other healthcare users.
- The right to informed consent – to get information to make decisions about your health and your body, and then to make these decisions freely and without pressure.

See *What is informed consent?* on page 7 for more details.

- The right to participate in decisions affecting your health – to say “no” if you do not want to take the medicine, or have the treatment or test that your healthcare worker recommends.
- The right to privacy – to talk to healthcare workers and to be examined in private. It also means that the information you share with healthcare workers, or information that they learn because they are providing healthcare services, should be kept confidential.



#### Concept:

**Confidentiality** means you have the right to expect that healthcare workers will not tell other people what you have told them and will not share information with others about your health status unless you have given them permission to do this.

### To dignity

- Dignity is the basic value and worth of all human beings. Dignity is a part of all other human rights.

### To life

- If your health is at risk, this can threaten your right to live.

### To bodily and psychological integrity

- This means that you have a right to control your body, health and mind. You should be free from violence and should be allowed to make your own decisions about your health and your life without interference from other people.

## Does everyone have the same human rights?



Human rights are **universal**. This means that no matter who you are, where you are from or what you do, every human being has the same human rights.

Human rights are also **inalienable**. This means that you cannot give them up and they cannot be taken away from you.



Around the world, different countries recognise different human rights in their laws:

- Some human rights are recognised by most countries in the world, like the right to life or the right to vote.
- Some human rights are not widely recognised in national laws, such as the right to have time for rest and leisure.
- The right to health is recognised as a specific human right in the national constitutions of Kenya, Madagascar and South Africa.
- Some countries do not recognise health as a specific human right. In these countries, including Botswana, Malawi and Zambia, the right to health is protected by other rights, for example: the right to life.

### When are special steps needed?

Some people face barriers to participating in society equally with everyone else. Different people also have different needs. Because of this, there are laws that give special attention and protection to some groups of people so that they can enjoy their basic human rights in the same way as everyone else.



#### For example:

- Governments have a duty under international law to make sure that women are able to access healthcare services when they are pregnant, including free services where necessary. This is because women have different needs during and after pregnancy.
- Governments have a duty under international law to take special action to make sure women in rural areas can access healthcare services. This is because rural women face barriers in accessing healthcare services that people in the cities might not face.

There are times when it is necessary to take special steps or make changes to the way things are normally done so that all people can enjoy their rights. These steps and changes are sometimes called **reasonable accommodation**, particularly when talking about people with disabilities.

The aim of these special steps is to remove the barriers that prevent people from enjoying their human rights. The human right to freedom from discrimination says that, for people with disabilities, reasonable accommodation must be made so that they can use health services and enjoy their rights like everyone else.



#### For example:

A healthcare user with a visual impairment may not be able to read the information written down on their medicines, like the name of the medication, and when and how to take it. Healthcare workers have a duty to make reasonable accommodation to ensure the healthcare user can access this information, such as explaining the information or reading it to the healthcare user in private.

## Special protections for people with disabilities

### If you have a disability, you have the right:

- To reasonable accommodation when you access and use healthcare services. If necessary, healthcare workers must change how they do things or help people with disabilities to easily access and use healthcare facilities.
- To be able to get to every part of a healthcare facility, including toilets, examination rooms and other areas.
- To get assistance to access information privately. For example: a doctor may need to make reasonable accommodations to make sure a hearing-impaired healthcare user can find out information about their health status confidentially. This could include offering to write information down for the healthcare user or making a sign-language interpreter available.

### Can my human rights be limited in any way?

There are times when the government is allowed to limit or restrict human rights.

When human rights are restricted, the restriction must be for a good reason or purpose. The restriction must also be proportional to its purpose – in other words, the restriction must be reasonable and fair in the circumstances.

In cases where the government or any other duty bearer has taken away or restricted your rights but without a good reason, there has probably been a human rights violation.



### For example:

People generally have a right to freedom of movement. But this right can be restricted. So, if there is an outbreak of Ebola, the virus could spread very quickly if people with Ebola moved around to other parts of the country. In this case, it could be reasonable for the government to restrict the right of people who might have Ebola to move around freely in the country.

But in this example the government must not take away more rights than are necessary to prevent the spread of Ebola:

- If only one person in the whole country was suspected of having Ebola, the government would probably not be allowed to restrict the right of **all** people to move around freely in the country for the next 6 months.
- This type of restriction would go too far because it isn't necessary or proportional to the government's aim of preventing the spread of Ebola.
- If rights are restricted, there should be clear conditions and limits on how they are restricted so that human rights are affected for the shortest possible time and in the smallest possible way.
- Communities should also be consulted and participate in decisions about how to restrict rights.

### How are human rights violated in healthcare?

In healthcare, human rights violations happen when healthcare workers, healthcare facilities, governments or other organizations do not respect human rights, or fail in their duties and responsibilities to protect or fulfill human rights.

Amongst others, human rights violations in healthcare can happen because of:

1. Duties to provide services.
2. Negligence by healthcare workers or people in charge. Negligence means the deliberate failure of a healthcare worker to make sure that a healthcare user receives proper services.
3. Discriminatory policies, practices or attitudes, which make it hard for people to access and use healthcare services.

#### 4. Failures to fulfill duties to provide services.

Human rights violations in healthcare often involve discrimination and failing to apply proper informed consent.

Here are some examples of how human rights can be violated in healthcare



#### For example:



#### Direct actions

A healthcare worker tells a healthcare user that because she is HIV positive, she should not be having sex and cannot have contraceptive medicine.

The healthcare worker has discriminated against the healthcare user because of her HIV status, and has violated the patient's right to access healthcare services, her right to dignity and her right to make her own decisions about her health and body.



#### Negligence

A pharmacist at a clinic has not kept proper records of his stock of ART and has therefore not placed an order in time for new medicines before they all run out at the clinic. When a healthcare user travels to the clinic to collect his ART, there is no medicine in stock for him. The healthcare user is forced to go without treatment for a week.

The pharmacist has been negligent because a reasonable pharmacist would have made sure that essential medicines like ART had been ordered in time. The healthcare user's right to access adequate healthcare services has been violated through the pharmacist's negligence.



#### Discriminatory policies, practices or attitudes

A nurse tells all the other nurses during lunch that she thinks one of her male patients is having sex with men. She tells them that the patient told her he doesn't have a girlfriend. As he has a sexually transmitted infection (STI), the nurse is sure that he must be gay. For the rest of the day, all the other nurses shake their heads and give the patient looks that make him feel ashamed and embarrassed.

The nurse gave other nurses confidential information about her patient, such as the fact that he has an STI. This has violated the healthcare user's right to privacy and the nurse has failed in her duty to keep information confidential. The attitudes of the other nurses, and the looks they gave to the patient, violate his right to receive non-discriminatory healthcare services and to be treated with dignity



#### Failure to fulfil a duty to provide services

A pregnant woman who is in labour goes to a district hospital to give birth. When she arrives, the healthcare workers tell her that the hospital has no delivery kits and that she must go and buy her own plastic sheet, razor blade, cotton and gloves. The healthcare workers say that the government stores have stopped sending the delivery kits even though the government policy says these must be available in all hospitals and clinics. The woman has no money and is not able to buy the things she needs.

The government department in charge has failed to fulfill its duty to provide adequate healthcare services by making sure that delivery kits are in all hospitals and clinics. The pregnant woman's right to access healthcare services has been violated.



## Concept: What is discrimination and when is it unfair?

Discrimination is the different treatment of individuals or groups based on prejudice, ignorance, fear or stereotypes. Different treatment is not always wrong. But different treatment is discrimination when it happens because of HIV status, race, gender, sexual orientation, occupation or another reason.

### Discrimination can be

#### Direct

Direct discrimination is when someone is treated worse than others because of who they are.

or

#### Indirect

Indirect discrimination happens when practices, policies, rules or procedures have a worse effect on some people than on others. The policy or procedure seems neutral but its impact is unequal.



#### For example:

A nurse refuses to treat sex workers for sexually-transmitted infections. When a sex worker comes in for treatment she says: "It's your fault that you are sick."



But it is not always unfair discrimination to treat people differently.

To decide whether or not a healthcare user has been unfairly discriminated against, there are 2 important questions to ask:

#### 1. What is the reason for treating people differently?

There are sometimes good reasons for treating someone differently.



#### 2. Is the difference in treatment appropriate and proportional ('fair') in the circumstances?

Even if there is a good reason for treating someone differently:

- The difference in treatment must be connected with the purpose for treating people differently, and
- The difference in treatment should be only the smallest difference necessary to achieve that purpose.



#### For example:

A healthcare user with tuberculosis (TB) might be asked by a doctor to stay in a separate room (in 'isolation') in a clinic while they are taking their treatment. This is because tuberculosis is infectious and the doctor has a duty to make sure that other healthcare users in the clinic don't also get sick.

A doctor can explain to a healthcare user with TB that they need to be kept in a separate room (isolation) to prevent others from getting sick and should ask the healthcare user to do this.

This would be different treatment to other healthcare users, but there is a good reason for it.

However, it would not be appropriate or necessary for a doctor to keep a healthcare user in isolation after they are no longer infectious.



### Concept:

## Informed consent



### What is informed consent?

Informed consent is a process of getting information (being informed) and giving permission (consent):

- The healthcare worker should talk to a healthcare user to share information so that the healthcare user can make their own decision about whether to accept or refuse a test or treatment.
- The healthcare user will then have to say whether or not they give the healthcare worker permission to go ahead with the recommended test or treatment.
- The healthcare worker may not use pressure, force or threats to get a healthcare user to give their permission – the healthcare user must agree freely and without pressure.

Informed consent is always important because you have a right to decide what happens to your body.



### What makes up informed consent?

A healthcare worker should usually talk to a healthcare user about:

- Their healthcare condition or diagnosis.
- The purpose of the treatment or procedure that is being recommended and its consequences.
- The risks involved with the treatment or procedures.
- Any other treatments or procedures that might be available instead of the one recommended.
- The risks and benefits if the healthcare user says “no” to the treatment.

In addition, as a healthcare user you should be able to ask questions about your health status and treatment options, and get all the information you need.

You are allowed to withdraw your consent at any stage if you later decide that you do not want the particular treatment any more.



### What if I am not able to give my informed consent?

At times, a healthcare user might not be able to make a decision or even receive information.



#### For example:

Pam has just been involved in a car accident and is not conscious. She cannot receive information or give her consent. In this situation, a family member, who is acting in the best interests of the healthcare user, can give permission on behalf of Pam. If nobody is able to give consent on her behalf, doctors and nurses are allowed to give emergency treatment if it is necessary to save Pam's life.



### What happens if I do not give my informed consent?

If you do not give your permission to have a particular test or treatment, then the healthcare worker is not allowed to give you that test or treatment. For example, if you have not given consent to test for HIV, then a healthcare worker is not allowed to test your blood for HIV.



#### Note:

If you do not give your permission for a test or treatment, you still have the right to receive other healthcare services. It is your right to refuse a healthcare service you do not want and if you refuse, this does not affect your right to receive any other healthcare services.