



Using complaints to address healthcare violations



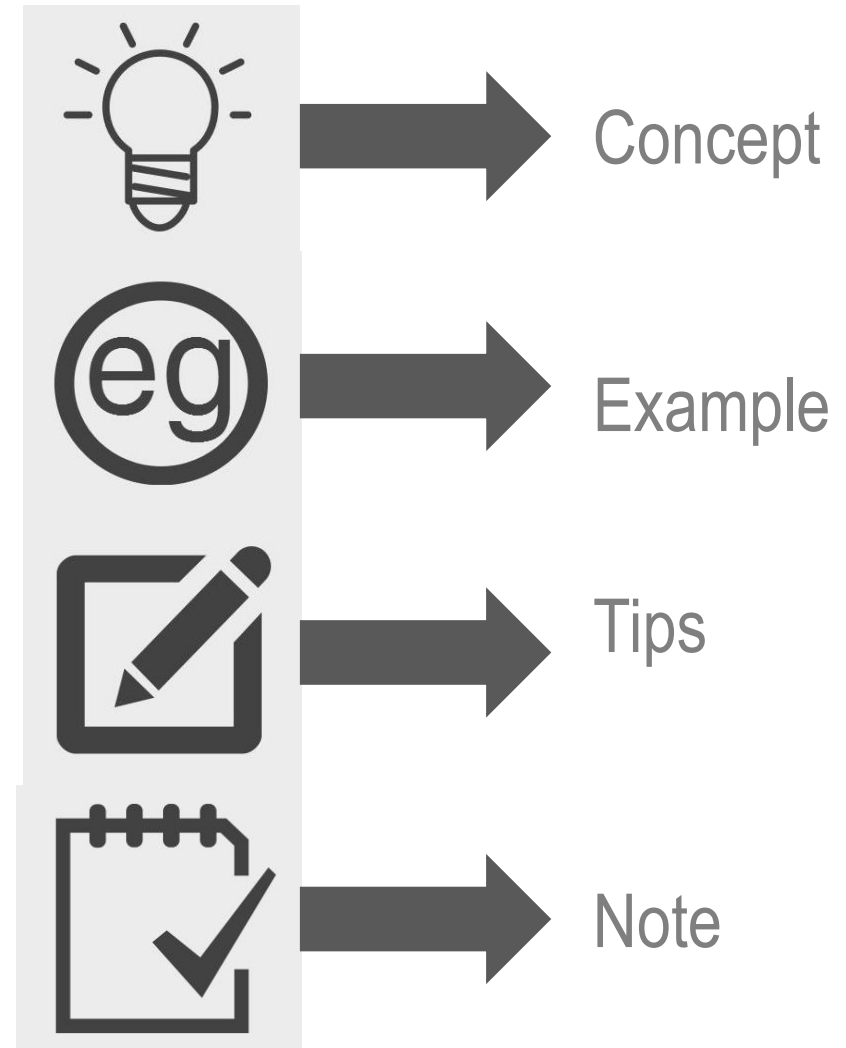
A GUIDE FOR HEALTHCARE USERS AND
COMMUNITY-BASED ORGANISATIONS

Using the Guidebook

1. Colour-coded sections

Health and human rights	1
Dealing with health rights violations	2
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Complaints processes in Botswana, Malawi and Zambia, and with the Global Fund	5

2. Find extra information



Health and human rights

1

What are human rights?



A human right is a claim that addresses a basic human need



Examples of human needs

Water
To be treated fairly
To be healthy
Freedom

Examples of matching human rights:

Right to water
Right to equality and non-discrimination
Right to health
Freedom of expression

Health and human rights

1

Does everyone have the same rights?



Universal

Every human being has the same rights



HUMAN RIGHTS ARE



Inalienable

You cannot give them away; they cannot be taken away

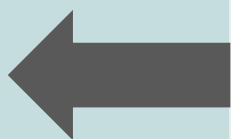


Health and human rights

1

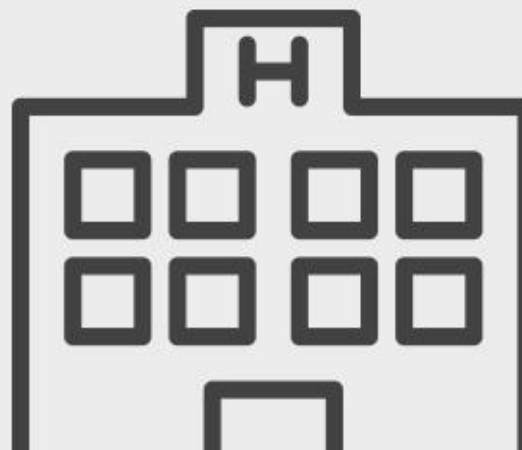
Health Rights Violations

Direct Actions



Failure to fulfill duty or provide service

Negligence



Discriminatory police, practice or attitude

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.



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.



What is informed consent?

- Getting information (being informed) + giving permission (consent).
- You have a right to decide what happens to your body.



What makes up informed consent?



- Information about your health (diagnosis).
- Recommended treatment and consequences.
- Risks.
- Alternatives / options.
- Asking questions.
- Can be withdrawn at any stage.



What if I can't give my informed consent?

- For example: you are unconscious.
- Family member acting in your best interests can consent.
- Advance directives.
- If no family, healthcare workers can give emergency treatment to save your life.



What happens if I don't give informed consent?



- Healthcare worker is not allowed to test you or treat you without informed consent.
- **You still have the right to receive other healthcare services even if you don't give informed consent for testing or another treatment.**

Dealing with health rights violations

2

Where do health rights come from?

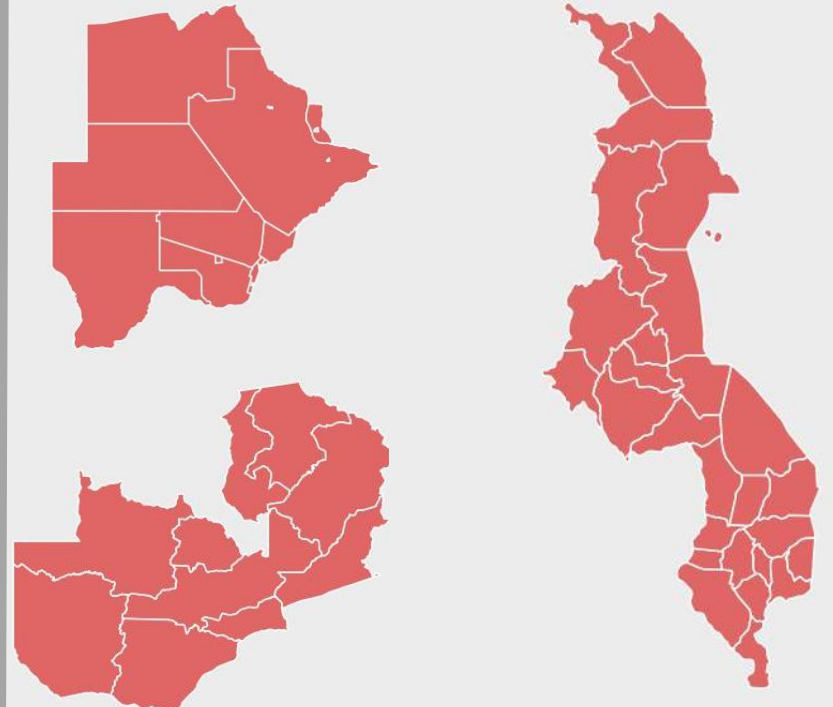
International law



Regional (African) law



Domestic laws, policies, & ethics



Dealing with health rights violations

2

Who is responsible for my human rights?

Rights holders and duty-bearers



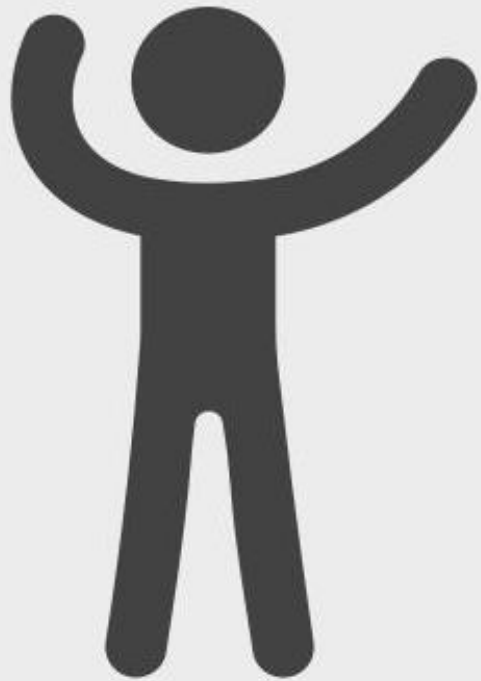
Healthcare workers have a duty to:

- Treat all healthcare users with dignity.
- Treat all healthcare users equally and without unfair discrimination.
- Act in the best interests of healthcare users.
- Respect the privacy of healthcare users and keep information about healthcare users confidential.
- Give healthcare users information so that they can make their own decisions about their health and bodies.
- Get informed consent before testing or treating.
- Respect the right of healthcare users to refuse treatment.
- Help people with disabilities, for example, to get up or down stairs, or access parts of a healthcare facility if they cannot do these things on their own.



Healthcare workers have a duty NOT to:

- Force people to have a test or treatment that they do not want.
- Ask for bribes or favours in exchange for providing services.
- Pass on confidential information that a healthcare user has shared in private, unless the healthcare user gave them permission to do this.
- Abuse healthcare users in any way, including verbally, sexually, physically or emotionally.
- Refuse to provide healthcare services to someone because of their sexual orientation, HIV status, disability or because they are a sex worker.



For every right, there must be an effective remedy – a way of sorting out the problem with a solution.

If the healthcare services you used were poor, unsafe or discriminatory, or if you think your human rights were not respected or violated, you have a right to a remedy:

- You have the right to take action.
- You have a right to hold the duty-bearer accountable.
- **You have the right to complain** and to take your case to court.

A *complaint* is a statement that something is unacceptable. It says that you are unhappy or dissatisfied about something that happened to you.

What can I complain about?

A healthcare user has the right to make a complaint about any wrongdoing, failure or bad service in healthcare, including human rights violations.

A complaint could be about:

- Not getting healthcare services or medicines.
- The standard of a healthcare facility.
- The quality of healthcare services.
- A hospital policy.
- The attitudes or behaviour of healthcare workers – if any of the doctors, nurses or other hospital staff made you feel uncomfortable, or treated you in a way that you think was unfair or discriminatory.



Dealing with health rights violations

2

Why should I complain?

Advantages for you, the healthcare user



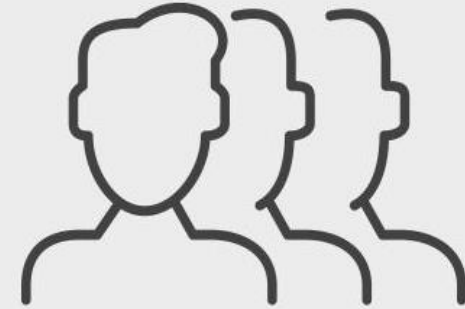
- Making a complaint can lead to something being done to make up for what happened to you.
- Complaining is a way of enforcing your rights and making sure you are getting the best possible healthcare services.
- Complaining can bring justice through compensating you and making wrongdoers accountable for their actions.

Advantages for other healthcare users

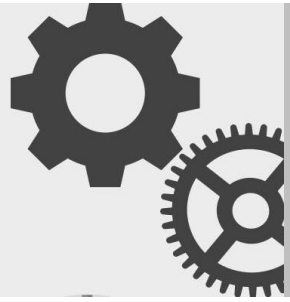


- People in charge might not always know what is going on inside their healthcare facilities.
- Through complaints, people in power can become aware of what is happening and might be able to take steps to prevent violations of healthcare rights.

Advantages for the whole community



- Complaining about healthcare sends a message that healthcare needs to be improved and can benefit the broader community through demanding these types of improvements:
 - ❖ Better healthcare facilities.
 - ❖ Better healthcare services.
 - ❖ Improved healthcare worker skills.
 - ❖ Better awareness of the rights of patients.
 - ❖ Better laws, policies and regulations.
 - ❖ Less stigma and discrimination against key populations and vulnerable people.
 - ❖ More responsive healthcare facilities that accommodate the needs of different users.



About the process

- **Complaint:** Less formal – you can make a complaint on your own without a lawyer.
- **Court:** More formal – there are strict rules about time, procedure and how things are presented in court, and you will usually need a lawyer to assist you.



Advantages

- **Complaint:** Complaints processes are usually quicker and cheaper than court processes.
- **Court:** Courts can set a new standard for how all people should be treated or respected.

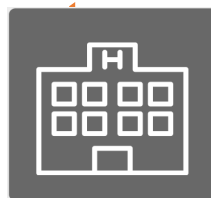


Disadvantages

- **Complaint:** Some complaints processes may not be effective.
- **Court:** Going to court can take a long time and can be very expensive.

A complaints process is the way you tell someone else about your complaint and ask them to do something about it

Generally, healthcare complaints processes are available



- Healthcare facilities;



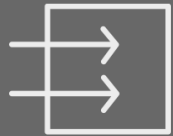
- Health professions and nursing councils;



- Human rights institutions, like national human rights commissions or ombudsman offices; and



- In some cases, bodies like the Office of People with Disability in Botswana or the HIV and AIDS Tribunal in Kenya have special complaints processes.

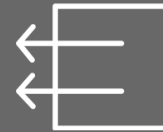


Internal complaints

Internal complaints can be reported at the hospital, clinic or doctor's rooms where you received healthcare.

For example, a complaint can be made with:

- The healthcare worker concerned.
- The head of the department.
- The nurse-in-charge.
- The clinic supervisor.
- The district health officer.
- The Ministry of Health



External complaints

External complaints are made outside of the healthcare facility at a body or council that has an interest in health or human rights.

For example, a complaint can be made with:

- Health professions councils.
- Nursing councils.
- National human rights institutions like Human Rights Commissions and Ombudsmen.
- Specialised bodies, like an office for people with disabilities or a tribunal for people living with HIV.

Making a complaint

3

Which process is right for me? ROLES



Internal complaints

Supervisors, managers and committees at healthcare facilities are responsible for the proper management and functioning of the hospital or clinic and the people who work there.



Health professions and nursing councils

Health professions and nursing councils monitor standards of ethical conduct and the professional competence of different health professionals.



National human rights institutions

Human rights institutions protect, promote and monitor human rights. Human rights commissions usually deal with complaints about human rights violation by any person or organisation. Ombudsmen / ombudspersons usually deal with complaints about injustice, unfairness or human rights violations by government departments, facilities and people who work for the government.



Specialised bodies

Specialised bodies are created for different purposes. They often aim to promote and protect certain groups of people, like people with disabilities or people living with HIV.



Police

The role of the police is to investigate criminal cases.



Internal complaints

- Discipline healthcare workers who did something wrong. E.g. to transfer a healthcare worker to another healthcare facility, order that a healthcare worker respect the healthcare user's right to refuse treatment, or order a healthcare worker to apologise to a healthcare user.
- Suggest changes to policies and procedures at the hospital or clinic.



Health professions and nursing councils

If a healthcare professional is guilty of improper or unprofessional conduct, the council that they are a member of has the power to discipline or punish them. Each council's powers are different, but these generally include the power to suspend a healthcare worker or to remove them from the list of people who are allowed to work as nurses or doctors.



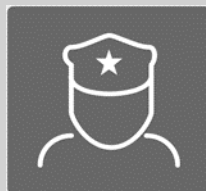
National human rights institutions

National human rights institutions usually have the power to investigate if they think that a human rights abuse is widespread; to inspect healthcare facilities; to gather evidence about human rights abuses; to review laws, policies and systems that affect human rights; to recommend to policy makers and duty bearers to make changes to laws and policies in a country; to recommend remedies for individual complainants; to bring people together to resolve the problem by mediation.



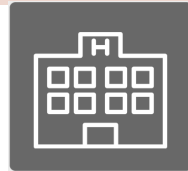
Specialised bodies

- Each specialised body will have different powers.



Police

- Police investigate crimes and can arrest people suspecting of crimes.
- The police can also offer protection to complainants or witnesses.
- Some police stations also have victim support units that offer counselling, first aid, advice and referrals.



Internal complaints



Advantages

- The process is generally informal: easy to use and access.
- The people who receive your complaint are usually directly responsible for the way the healthcare facility is run and for the healthcare workers who they employ. They then have the power to fix the problems that caused your complaint.



Disadvantages

- The informal way of complaining also means it is sometimes unclear how your complaint will be handled.
- Because the people who receive your complaint will often be working with the healthcare workers you are complaining about, their decisions may not always be objective or fair.



Health professions and nursing councils



Advantages

- There are usually clear legal procedures that must be fair and independent.
- The requirement to prove the facts can help to make sure the truth comes out.
- It is usually other nurses and doctors who decide on the complaint. This helps to make sure that other nurses and doctors also learn from what happened, and can take action to make sure nurses and doctors behave better in the future.
- If the council did not follow a fair procedure, it is sometimes possible to take the case to the courts to review the procedure. In some cases you can appeal the council's decision to the High Court.



Disadvantages

- The formality of the process can make it difficult to access these processes if you don't have the help of a lawyer.
- Sometimes it is difficult to get the evidence you need to prove what happened.
- If you make a complaint you also need to be willing to give evidence to the council. They may also access hospital records to investigate a case. If you are worried about confidentiality or staying anonymous, this can be a risk.
- Because nurses and doctors will be deciding on the complaint, it is possible that they will want to protect each other and will not be fair.



National human rights institutions (NHRIs)



Advantages

- NHRIs are supposed to be easy to access and use.
- They should be independent and make fair decisions.
- They have powers to gather evidence that you might not be able to get alone.
- Human rights bodies are often good at investigating and publicising issues that affect many people, for example: problems in the healthcare system as a whole.
- Human rights bodies usually have flexible processes. This means that you can ask for special protections if you are worried about your safety.



Disadvantages

- Human rights bodies might be difficult to reach, for example: for people living in the rural areas.
- They are often very busy and will receive many complaints in a year.
- Usually human rights bodies can't make enforceable decisions. This means they can only recommend a remedy and it is up to the government or person in charge of the healthcare facility to decide whether to follow their recommendation.



Specialised bodies



Advantages

Specialised bodies will be very good at understanding their specialised issues, such as HIV or disability, and helping people who are affected by the problems that they deal with.



Disadvantages

Every specialised body's powers and process will be different. You may need help in finding out more information on how to access the specialised body.



The Police



Advantages

A person who has committed a crime can be punished for what they have done wrong



Disadvantages

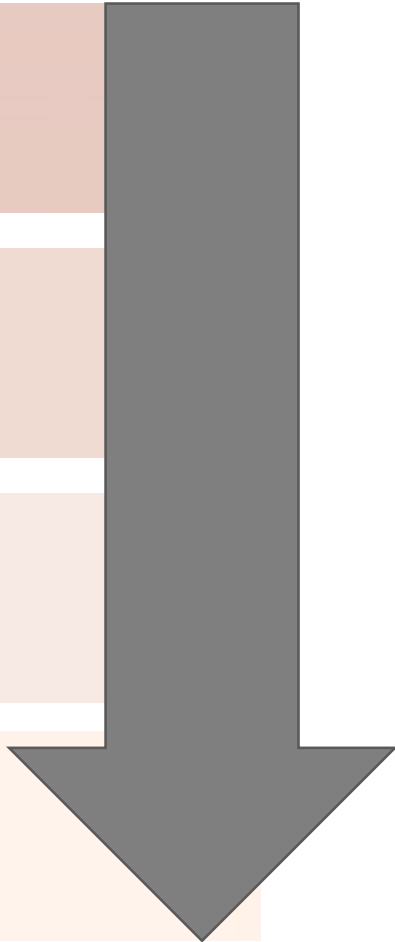
Sometimes people are scared to go to the police. For example, sex workers and LGBT people are often harassed or not helped by the police

1. Before you complain

2. Making the complaint

3. During the complaint

4. After the complaint



1. Before you complain



Start as soon as possible



Get advice and support



Gather evidence*

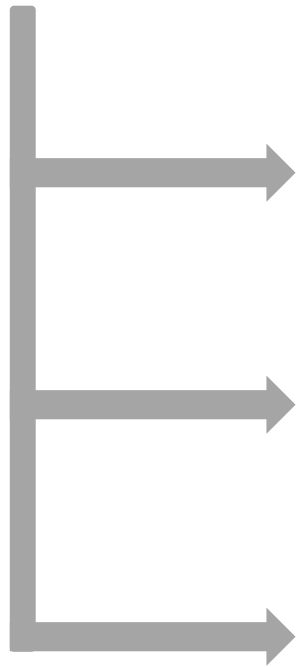
*Gathering Evidence:

Accessing your medical records

- If you ask to see your medical records, you don't need to give a reason.
- Ask if you can make a copy of your records to keep for yourself. There might be a small fee to pay for copies.
- Sometimes the hospital will refuse to show or give you a copy of your records. If you have asked to see your medical records and your request is refused, you should mention this is your complaint.



Choose a complaints process



The facts of your case

Your safety and privacy

The remedies you want



Choose a complaints process



The facts of your case

- Does your case involve a possible crime (e.g. sexual assault, physical assault, a bribe, corruption)?
- Is there a specialized body that deals with your type of case?
- Does the complaint involve a healthcare professional like a doctor or a nurse?
- Have your human rights been violated?
- Are you able to travel to make a complaint outside of the healthcare facility?



Choose a complaints process



Your safety and privacy

- Is it important that your identity is kept secret?
- Do you want to make a complaint yourself or do you want a family member, friend or community organisation to make the complaint on your behalf?
- Will the complaint expose you to harmful reactions by healthcare workers or community members?
- Are there family members, friends or organisations in your community that can assist you?



Choose a complaints process



The remedies you want

- Is it important that your complaint is dealt with as quickly as possible?
- What kind of remedy do you want? (e.g. an apology, policy change, training of healthcare workers, to be provided with healthcare services or treatment, suspension or discipline of the healthcare worker, compensation etc.)
- Do you know of any other people who have had similar experiences at the healthcare facility?



The form of the complaint



What should be in the complaint?

- ✓ Name and contact details (unless you want to remain anonymous.)
- ✓ The date.
- ✓ The date of the events that you are complaining about.
- ✓ All the facts that caused you to want to make a complaint in the order that they happened.
- ✓ If you tried to make an informal complaint, you should mention this and say what the response has been to your complaint.
- ✓ Copies of your medical records or hospital file, if necessary.
- ✓ What kind of outcome or remedy you want.
- ✓ Whether or not you are willing to give further information or oral (verbal) evidence.
- ✓ If your complaint is urgent and why.
- ✓ Statements from any witnesses, or give details of who the witnesses are and how they can be contacted.
- ✓ If your case is serious and you think you might want to take the case to court at a later stage, you should include this statement in your complaint: *“The information in this complaint is given without prejudice to my rights to take any further action, including legal action, at a later stage.”*
- ✓ Your signature or thumbprint.



Acknowledgment of receipt and updates on your complaint



The investigation and enquiry



The decision



Referring to a different complaint body



Escalating your complaint



Taking your case to court



Referring to the UN Special Rapporteur on the Right to
Health

Why should complainants be supported?



- Advancing access to justice.
- Enhancing access to & success of complaints.
- Empowering victims.
- Identifying systemic problems in healthcare system.
- Monitoring & demanding improvement in complaint processes.

4

Identifying vulnerability: Examples (1)



Socioeconomic status & rural location

- People with little money and who live in rural areas often have few places where they can access healthcare and medicines. Healthcare users may be scared that, if they complain, those places will stop giving them treatment.
- It can be expensive and difficult to access complaint processes that are far, or that need money to be able to make a complaint, for example: to make phone calls or to make copies of medical records.



Factors linked to HIV

- People living with HIV may be scared that their HIV-status is made public or disclosed to the community if they complain about discrimination.
- People living with HIV may fear that their healthcare provider will stop giving them medicines if they complain about treatment or services.



Women & Girls

- Social and cultural beliefs and practices can make it difficult for women and girls to complain. They may risk being isolated socially or economically, or risk violence from their intimate partners or spouses.
- Pregnant women may be fearful of being denied services that they need to deliver their babies safely if they make a complaint.

4

Identifying vulnerability: Examples (2)



Sex workers

- Sex workers are vulnerable to police abuse, violence and arrest. They may fear accessing health services or laying charges with the police.
- Sex workers may be worried about community members, families or friends finding out about their work or about customers finding out about their health status if they make a healthcare complaint.



Sexual orientation & gender identity

- LGBT people may be worried about having their sexual orientation or gender identity made public if they complain about poor services or discrimination.
- LGBT people may be at risk of violence if their status is made public.
- LGBT people can be more vulnerable to being refused health services or being discriminated against, for example: their right to equality, dignity and privacy not being respected.



People who use drugs

- People who use drugs may be fearful of being reported to the police or being arrested if they make a complaint.
- Some community-based organisations and community members may not want to support people who use drugs to complain, leaving them without necessary support structures.
- People who use drugs are often perceived by people in authority as lacking credibility when they complain.

4

Identifying vulnerability: Examples (3)



Undocumented migrants

Foreign citizens who don't have visas or the right documents to live or work in your country, may risk being identified by the authorities, or being arrested or deported if they make a public complaint.



Young people & children

- Social and cultural beliefs and practices can make it difficult for younger people to complain.
- Children may need support in their decision making.



Prisoners

- Sentenced or awaiting-trial prisoners may be victimised if they complain about healthcare services.
- Men who have sex with men (MSM) in prison may not receive the healthcare services they need, for example: access to condoms or treatment for STIs. This may be because of the attitudes of prison staff or healthcare workers, or the prisoner's own sense of stigma around having sex with men.



People with disabilities

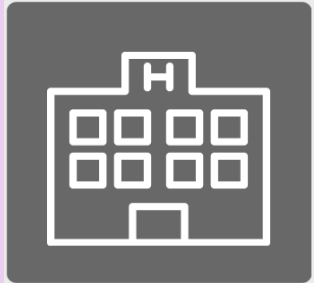
- People with disabilities may not be able to access information about complaints processes or to be able to make a complaint in the way that is expected, for example: to write it down.
- People with mental disabilities might need support in their decision-making to access healthcare and to access justice when their rights are violated.

4

How can we support a complainant?

- Information
- Advice
- Safety measures
- Complaining on someone's behalf
- Sustaining access to services and treatment
- Addressing complaints on a systemic level
- Social support
- Safety in numbers





Internal
complaints



Botswana Health
Professions Council
(BHPC)



Nursing and
Midwifery Council of
Botswana (NMBC)



Botswana Office of
People with
Disability

Complaints processes in
Botswana, Malawi and
Zambia, and with the
Global Fund

5

Malawi



Internal
complaints



Medical Council of
Malawi (MCM)



Nurses and
Midwives Council of
Malawi (NMCM)



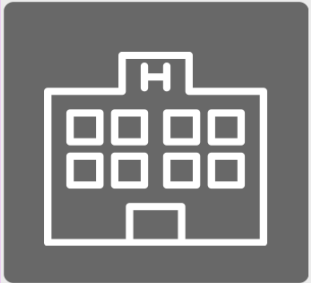
Malawi Human Rights
Commission (MCM)

Office of the Ombudsman

Complaints processes in
Botswana, Malawi and
Zambia, and with the
Global Fund

5

Zambia



Internal
complaints



Health Professions
Council of Zambia
(HPCZ)



General Nursing
Council of Zambia
(GNCZ)



Human Rights
Commission of Zambia
(HRCZ)

Any person or organisation who believes that they have experienced or witnessed a violation of any of the Global Fund's 5 minimum human rights standards, in any Global-Fund-supported programme, can make a complaint with the Inspector General. Complaints can be made over the telephone, by email or over the internet. After receiving a complaint, the Inspector General will assess and investigate the issue.

Safety and privacy

- Anonymous complaints are allowed.
- Organisations can file complaints on behalf of any individual or group but the organisation must have a letter of authorisation that they have permission from the individual or group to file the complaint.
- The identity of complainants will remain strictly confidential unless the complainant consents to their information being disclosed.

Accountability

The Global Fund process does not provide any remedies for complainants but can help to hold government and other programmes funded by the Global Fund accountable. This is because the Fund requires all organisations and governments who receive funding from it to sign a grant agreement that includes a commitment to its 5 minimum human rights standards.