

Workshop Report:

“Using complaints to address
healthcare violations in
Botswana, Malawi and Zambia”

15 February 2017

Lusaka, Zambia



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Background

The Southern Africa Litigation Centre (SALC) is a regional non-profit organisation that works to advance human rights and protect the rule of law in southern Africa. Research conducted by SALC in 2016 ([“Accountability and redress for discrimination in healthcare in Botswana, Malawi and Zambia”](#)) detailed experiences of discrimination in healthcare faced by women living with HIV, lesbian, gay, bisexual and transgender (LGBT) persons, sex workers, and people with disabilities. The research identified a number of processes outside of the courts and available at local levels for healthcare users to seek accountability and redress when experiencing human rights violations and discrimination in healthcare. The research indicated, however, that there is a capacity gap amongst healthcare users, community-based organisations (CBOs) and non-governmental organisations (NGOs) working with human rights, health rights, key populations and vulnerable populations, to make effective and safe use of complaints processes to advance accountability and redress when human rights violations and discrimination occurs in healthcare settings.

With funding from the Africa Regional Grant on HIV, SALC has developed a Guidebook on [“Using complaints to address healthcare violations”](#) in an effort to address these capacity gaps. Through the same Grant, SALC hosted workshops in Botswana, Malawi and Zambia on *“Using complaints to address healthcare violations.”* A workshop was held in Zambia on 15 February 2017 for participants from CBOs and NGOs.

Workshop Objectives

The purpose of the workshop was to develop the capacity of in-country CBO and NGO partners to identify and take up cases through complaints processes and to be able to support healthcare users when doing so. The training aimed to expose participants to knowledge and skills to promote and improve the rights of persons living with HIV and persons disproportionately affected by HIV (key populations) and vulnerable groups through the use of these processes.

Outcomes

The ultimate outcome of these workshops will be the increased, safe and effective use of complaint processes to achieve accountability and redress for victims of discrimination and human rights violations in healthcare settings, particularly for key populations and vulnerable groups. SALC seeks to work with CBO and NGO partners to:

- Build partner capacity through working with partners to identify cases and make complaints.
- Provide appropriate support to complainants.
- Identify strategic interventions to improve the accessibility, effectiveness and sufficiency of complaint processes.

Welcome and Introduction

SALC commenced the workshop by welcoming participants and explaining the background and purpose of the research and workshop aims. SALC highlighted that the request for training on the issues were highlighted in interviews with CBO and NGO partners.

SALC noted that a separate meeting had been held the day prior with a representative of the National HIV/AIDS/STI/TB Council (NAC) and the Human Rights Commission but that the Health Professionals and General Nursing Councils, while invited, did not attend. SALC noted that the decision to conduct the meetings separately was taken in consultation with partners following sensitivities and security concerns for groups working with key population in attendance.

Participants noted what they wanted to get out of the training. Some participants stressed their interest in understanding experiences of discrimination. Others stated that follow up on human rights complaints typically ended at the documentation stage and that complaints could offer an alternative. Other participants noted that the meeting was seen as an opportunity to think about strategic interventions to engage with different actors involved in health service delivery and complaints processes.

Health and Human Rights

Participants discussed health rights in Zambian law and the duties and ethical obligations of healthcare workers.

It was noted that stigma and discrimination violate human rights and are barriers to effective HIV prevention and treatment. Legal protections and policy commitments in Zambia prohibit discrimination in broad terms and emphasise commitments to equitable access to quality healthcare.

It is not a crime to be a sex worker in Zambia and LGBT persons are not criminalised in themselves – even if certain same-sex sexual acts are criminalised.

Healthcare workers are ethically and legally bound not to discriminate unfairly against healthcare users and need to respect their inherent human dignity.

Experiences of discrimination in healthcare

SALC and Chipso Nkhata, a lawyer and research consultant, commenced the session with the presentation of the findings of its research report on [Accountability and Redress for Discrimination in Healthcare in Botswana, Malawi and Zambia](#).

The report details anecdotal accounts from people with disabilities, sex workers, women living with HIV, and LGBT persons in the three countries showing serious and varied experiences of discrimination in healthcare in Botswana, Malawi and Zambia, based on a number of grounds. These include health and HIV-status, gender, sexual orientation, disability, socio-economic status, occupation, and rural location.

The conduct described by vulnerable persons through various focus groups across the three countries included:

- Treatment denial.
- Abusive language.
- Failure to properly examine healthcare users before providing treatment.
- Sexual coercion and abuse.
- Physical abuse such as slapping and hitting.
- Failure to observe healthcare users' confidentiality, including health-status confidentiality and confidentiality relating to healthcare users' sexual orientation, gender identity, and occupation.
- Failure to conduct proper informed consent procedures.
- Failure to provide reasonable accommodation for persons with disabilities.
- Denial of access to sexually-transmitted infection (STI) and HIV testing, counselling and treatment, in the absence of (heterosexual) sexual partners.
- Blaming healthcare users for their health status.
- Segregation and the use of identifying practices for people living with HIV.
- Failure to accommodate the particular healthcare and access needs of sex workers, persons with disabilities, gay and transgender persons in particular.

Participants and research partners raised further issues from their experiences. It was noted that attitudinal barriers, in society and amongst healthcare workers, remain barriers to equitable healthcare access in Zambia.

Participants noted in addition the perception that different standards of care existed between private and public healthcare facilities, stating that healthcare workers who work in both sectors offered superior treatment when working in private healthcare facilities.

Panel Discussion: Strategies for dealing with health rights violations

Participants discussed strategies to deal with human rights violations in healthcare.

There are various options to relate complaints of discrimination in healthcare outside of the formal court process. However, these processes provide for varying levels of availability, effectiveness, and sufficiency in holding healthcare workers and systems to account and in providing healthcare users with the right to redress.

The complaints bodies analysed included facility-level or internal complaints processes within the Ministry of Health, the Health Professionals Council of Zambia (HPCZ), the General Nursing Council of Zambia (GNCZ), and the Human Rights Commission of Zambia (HRCZ).

Participants and research partners noted in addition that an Office of the Ombudsman was being developed but had not yet been formalised. It is understood that the Ombudsman would function as a public protector and work on issues relating to public administration.

It was noted that the Ministry had been using suggestion boxes at healthcare facilities but that there was a lack of clarity as to how these should be processed and followed-up.

Participants noted the barriers to complaints being successfully made. These included that rights holders and key populations in particular do not understand their human rights. Persons living in rural areas do not typically have access to CSOs or support organisations to assist them.

Many participants stressed that in order to deal effectively with stigma and discrimination in healthcare settings, efforts needed to be made to sensitize both healthcare workers and communities about healthcare users' rights. It was noted as

important to feed information about discrimination and human rights abuses in healthcare into the curricula of healthcare practitioners during their training.

Making a complaint

Participants and presenters shared information about best practices in making complaints. The participants worked through the complaint process, including sharing guidance on how to select a complaint process that best serves the complainant's needs and interests as detailed in the Guidebook.

Supporting vulnerable complainants

Participants discussed the needs of complainants who are vulnerable to abuse and secondary victimisation when complaining and shared strategies on how CBOs and NGO could support complainants.

A number of issues were discussed including the impact of criminal law regimes on the safety and security of sex workers and LGBT persons, the important role of support organisations, the need for healthcare users to understand their rights and the processes to enforce them, and fears of treatment denial, breaches of confidentiality, and social reprisals leading people to fear making complaints.

Next steps

Participants discussed difficulties in supporting complainants and in representing vulnerable complainants in particular in cases where support organisations are not able to legally register. Participants considered the practicalities of organisations working together to form coalitions when making complaints. Suggestions were made that it would be important to establish MOUs to frame the terms of inter-organisational support. Participants finally noted that the Zambia Equality Forum (ZEF) may have a role to play.

In giving feedback on the workshop, participants noted a need for further support, training and resources on the following issues:

- Technical and financial support to carry our sensitization workshops with women and girls living with HIV and healthcare workers together.
- Financial support to conduct similar workshops with healthcare users.
- Further training on domestic legal protections and ethical frameworks.
- Further training on strategies to protect vulnerable complainants.
- Training for paralegals on health and related human rights issues.
- Support for collaboration with experienced lawyers in handling victims of healthcare abuses.

Addendum: Agenda

Wednesday 15 February 2017	
08:30-09:00	Registration
09:00-09:30	Welcome, overview and introductions
09:30-10:30	Health and Human Rights
10:30-11:00	Health Break
11:00-12:30	Experiences of discrimination in healthcare: Findings in the SALC Report
12:30-13:30	Lunch
13:30-14:00	Panel and discussion: Strategies for dealing with health rights violations
14:00-15:30	Making a complaint: Procedures in Zambia
15:30-16:00	Health Break
16:00-16:45	How to support complainants
16:45-17:00	Close and feedback

Copies of the training materials and research report are available for free download on SALC's website:

Guidebook: Using complaints to address healthcare violations:

<http://www.southernafricalitigationcentre.org/2016/12/15/guidebook-using-complaints-to-address-healthcare-violations/>

Research Report: Accountability and redress for discrimination in healthcare in Botswana, Malawi and Zambia:

<http://www.southernafricalitigationcentre.org/2016/09/28/research-report-accountability-and-redress-for-discrimination-in-healthcare-in-botswana-malawi-and-zambia/>

Hardcopies can be requested at Enquiries@salc.org.za