Discrimination in healthcare: Making use of complaints mechanisms

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“Strengthening accountability and redress for discrimination in healthcare in Botswana, Malawi and Zambia”

A preliminary study on healthcare discrimination against select key populations and the availability, effectiveness and sufficiency of complaints mechanisms

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SOUTHERN AFRICA LITIGATION CENTRE

Key findings: Legal, policy and ethics framework

- Legal protections and policy commitments:
  - prohibit discrimination in broad terms;
  - emphasise commitments to equitable access to quality healthcare;
  - However, not many explicit protections for key populations and vulnerable populations.

- It is not a crime to **be** a sex worker in Botswana, Malawi or Zambia nor are LGBT persons criminalised in themselves even if certain same-sex sexual acts are criminalised in all three countries.

- Healthcare workers are ethically and legally bound not to discriminate against patients unfairly and to treat patients with due respect to their inherent human dignity.

Key findings: Experiences of sex workers, LGBT persons, women living with HIV, and persons with disabilities

- Pervasive discrimination in healthcare based on, inter alia, health and HIV-status, gender, sexual orientation, disability, socio-economic status, occupation, and rural location.

- Effects include healthcare avoidance, self-medication, and social alienation amongst others.

Examples of experiences of discrimination

Sex workers	LGBT persons	Women living with HIV	Persons with disabilities
• Treatment refusal especially for STIs. • PEP issues in Zambia. • Sexual violence and coercion by healthcare workers. • Confidentiality and informed consent. • Mobility needs not accommodated. … Closely linked to police abuse.	• Inability to access particularised care. • Denial of HIV testing absent intimate partners. • Significant verbal abuse. • Confidentiality breaches: Health status AND sexual orientation. … Treatment avoidance. … Fear of reporting to police.	• Segregation and identifying practices. • Informed consent. • Intersectional discrimination: especially if disability and if socio-economically disempowered. • Derogatory and abusive language.	• Denial of particular forms of healthcare E.g. contraception • Failure to provide for reasonable accommodation. E.g. physical access / reading labels. • Confidentiality and informed consent. • Abuses against women especially in context of SRH.

Key findings: Complaints mechanisms

- Variety of options outside of court process.
- Varying levels of availability, effectiveness and sufficiency.
- Options include facility-level or internal complaints processes, health professions and nursing councils, national human rights institutions and specialized bodies e.g. dealing with persons with disabilities.
- Some potential for use by healthcare users <u>BUT:</u>
  - Require significant investment and improved procedural clarity and consistency.
  - Greater sensitivity to needs of key populations and vulnerable groups needed.
  - Support required to complain.

Key findings: Complaints mechanisms

Internal & facility-level complaints	HPCs and Nursing Councils	NHRIs	Specialised bodies
• Generally informal: - *Accessible.* - *Indiscernible procedure / inconsistency / low transparency.* • High sufficiency potential for accountability and redress. • Potential for use of ombudspersons / village advisory committees etc.	• Narrow mandate: discipline of HCW. • Generally formalised processes: - Standards of proof. - Unlikely anonymity for complainant. - Possibility to take decisions on review? • Independence?	• High availability and flexibility to accommodate safety concerns. • Possibility for systemic analyses / policy input & conciliatory options. • Generally low enforceability (exception: Zambian HRC)	• Highly varied in terms of powers / mandate. • Group-specific accommodations. • Usually close to government.

Why use complaints processes?

- Addressing healthcare providers' behaviour: individual and collective levels.

- Options to achieve accountability and redress in a manner responsive to healthcare users' needs:
- Most respondents wanted change > compensation.
- Options for those unwilling to litigate: access to justice.
- Safety accommodations: anonymity / third-party complaints / group complaints.

- System input and self-regulation.

- Speed of resolution.

- Cost-effectiveness.

- Stimulating demand for community participation and democratising service delivery.

What is the role for lawyers?

- **Supporting NGO and CBO partners and patients:**

- Forum shopping
- Gathering evidence
- Framing statements
- Articulating demands
- Protecting against secondary victimisation / anticipating safety concerns
- Follow up and enforcement
- Ensuring options for litigation remain open
- Improving systems – prospects to incorporate demands of administrative justice standards?
- Training and enabling paralegals / NGOs / CBOs / support groups and individuals to drive their own processes.
- Developing jurisdiction-specific information on what is available.

Filling the gaps: The Role of Lawyers

Key population healthcare users	CBO and NGO respondents	Complaints bodies
• Low expectations and knowledge of entitlements or rights in context of healthcare. • Unaware of possibility to complain. • Often fearful of consequences of complaint.	• Largely unaware of options for complaint outside of internal / facility-level complaints / formal legal process. • Often unaware of professional ethical frameworks.	• HPCs / nursing councils – unversed in concept of discrimination or notion that constitutional / legal obligations – focus on codes of ethics/ • NHRIs unaware of professional ethical frameworks.

Next steps

- SALC research report: “Strengthening accountability and redress for discrimination in healthcare in Botswana, Malawi and Zambia”.

- Training Tool.

- **We want to work with you!**
- Supporting complaints to be made.
- Documenting processes.
- Advocating for concrete system improvements.
- Ensuring accommodation of key populations and persons with vulnerabilities.
- Litigation to improve systems where appropriate.

Any experiences of using complaints mechanisms?