

Using complaints to address healthcare violations



A GUIDE FOR HEALTHCARE USERS AND
COMMUNITY-BASED ORGANISATIONS

August 2016



SALC GUIDEBOOK

Using complaints to address healthcare violations

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About the Southern Africa Litigation Centre

The Southern Africa Litigation Centre (SALC), established in 2005, aims to provide technical and financial support to human rights and public interest initiatives undertaken by domestic lawyers in Southern Africa. SALC works in Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe. Its model is to work together with lawyers in each country who are litigating public interest cases involving human rights or the rule of law.

About the Africa Regional Grant on HIV

The Africa Regional Grant on HIV – Removing Legal Barriers is generously funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria. The grant addresses human rights barriers faced by vulnerable communities in Africa, and facilitates access to lifesaving health care. The grant is the first of its kind and covers 10 countries including Botswana, Côte d'Ivoire, Kenya, Malawi, Nigeria, Senegal, the Seychelles, Tanzania, Uganda and Zambia. The grant also works at continental and regional levels with the African Union and key Regional Economic Communities (SADC, ECOWAS, EAC) to promote alignment of national laws and policy with regional and international human rights commitments. UNDP is the Principal Recipient of this grant, in collaboration with four African civil society organizations - the AIDS and Rights Alliance for Southern Africa (ARASA), ENDA Santé, KELIN, and the Southern Africa Litigation Centre (SALC).

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Acronyms and abbreviations

AIDS	Acquired Immunodeficiency Syndrome
ART	Anti-retroviral treatment
BHPC	Botswana Health Professions Council
BOPD	Botswana Office of People with Disability
CBO	Community-based organisation
FEDOMA	Federation of Disability Organisations in Malawi
GNCZ	General Nursing Council of Zambia
HCAC	Health Centre Advisory Committee (Malawi)
HIV	Human Immunodeficiency Virus
HPCZ	Health Professionals Council of Zambia
HRCZ	Human Rights Commission of Zambia
LGBT	Lesbian, gay, bisexual and transgender
MCM	Medical Council of Malawi
MHRC	Malawi Human Rights Commission
NGO	Non-governmental organisation
NMCB	Nursing and Midwifery Council of Botswana
NMCM	Nurses and Midwives Council of Malawi
NONM	National Organisation of Nurses and Midwives of Malawi
SALC	Southern Africa Litigation Centre
STI	Sexually transmitted infection
TB	Tuberculosis
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
WHO	World Health Organisation

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Important words and definitions

Access

Being able to use or get something. For example, a wheelchair user would have access to a clinic if there is a ramp outside of the clinic and not only stairs.

Accountable

Having to answer for and be responsible for your actions, words and attitudes.

Anonymity

Keeping your identity a secret through not giving your name or personal information.

Complainant

The person making a complaint.

Complaint

A statement that you are unhappy or dissatisfied with a service that you have received.

Complaints process

The steps you can take to protect and claim your human rights by telling someone else about your complaint and asking them to do something about it.

Confidentiality

Keeping your personal information secret from the public and the media. For example, not having the details of your complaint disclosed to the public or any person who is not involved in the complaint process.

Direct discrimination

When you are treated differently and unfairly because of who you are or what you do. For example, being treated differently and unfairly because you are: living with HIV, transgender, gay, a sex worker, a woman, a person with a disability, or a drug-user.

Ethics

A set of rules and standards that say what is right and wrong. Doctors and nurses have professional ethics that state what is right and wrong in healthcare.

External complaints processes

When you take a complaint to an outside body like a professional council or a human rights commission.

Healthcare facility

A place where you can get healthcare services, such as a clinic, hospital or doctor's office.

Healthcare services

All the services that a person needs to be healthy, for example: accessing medicines, tests, treatments, rehabilitation, surgery and operations, emergency medical treatment, reproductive healthcare, dental work, and any special services for people with disabilities.

Healthcare user

A person who uses healthcare services – also called "patient".

Healthcare worker

A person who works in healthcare services. This includes professional healthcare workers like doctors, nurses, midwives, pharmacists and specialists, as well as non-professional healthcare workers, for example: people responsible for administration, security or cleaning, community health workers, counsellors, volunteers or medical students.

Human rights

All the rights and freedoms you have as a human being and based on your human needs – they are usually set out in a constitution, bill of rights or charter of rights.

Indirect discrimination

A practice, policy or rule that applies to everyone in the same way but has a worse effect on some than others.

Informed consent

Freely giving your agreement to something after hearing and understanding all the information you need.

Interim order

When a complaints body or court makes an order for something to happen in the meantime until the case is finally decided, such as protecting you from harm during the complaints process.

Internal complaints processes

Making a complaint within a health facility, such as a hospital or clinic.

Key populations

Groups of people who are seen to be particularly vulnerable to HIV and lack access to adequate healthcare. The Joint United Nations Programme on HIV and AIDS (UNAIDS) considers men who have sex with men, sex workers and their clients, injecting drug users and transgender persons as the 4 main groups at risk of being exposed to HIV and at risk of discrimination, stigma and unfair treatment in their societies.

LGBT

Lesbian, gay, bisexual and transgender persons.

MSM or men who have sex with men

Males who have sex with males, but who do not necessarily see themselves as being gay or bisexual.

Negligence

Failing to behave reasonably when you have a duty to do so. For example, a healthcare worker is negligent if they fail to behave like a reasonable health worker to make sure that a healthcare user receives proper treatment.

Ombudsman / ombudsperson

An independent office set up to monitor and investigate complaints and human rights abuses.

Paralegals

People with legal skills, knowledge and experience who assist with making complaints, and other legal and human rights issues, for example: in community-based advice offices, NGOs and human rights bodies. Paralegals are not trained lawyers.

Reasonable accommodation

Taking reasonable and fair steps to make sure people with special needs enjoy equal rights and services. For example: reasonable accommodation for a deaf healthcare user may be to have someone at the clinic who can help communicate through sign language.

Remedies

The solution to a human rights abuse and the result of a complaints process investigation, for example: compensation, an apology, being suspended from practising as a nurse.

Sexual orientation

Your sexual identity that describes the gender of people you are generally attracted to. For example: identifying as a heterosexual ("straight"), homosexual (lesbian or gay), and bisexual person.

Stigma or stigmatising

Negative labelling or attitudes towards someone because they are seen as belonging to a particular group.

Transgender

People who identify themselves or express their gender in a way that is different to their biological sex when they were born. For example, you may have been born as a female but you see yourself as a man. Some transgender people have surgery or hormone therapy to change their appearance.

Unfair discrimination

Being treated differently in an unfair or abusive way.

Violation

Doing something that is not allowed by the law, or not respecting someone's human rights.

Vulnerabilities

Vulnerabilities are factors and conditions that put people at risk of human rights abuses. They include things like a person's age, sex, gender, sexual orientation, social or economic status, HIV status or a disability. They can also include any other social, cultural, political, legal or economic factors or practices that leave people disempowered or at risk of human rights abuse.

Introduction

What is the purpose of this guide?

The World Health Organisation says that health is a state of complete physical, mental and social well-being.¹ Health is one of the most basic needs of all human beings.

International law tells us that we have the right to enjoy the highest possible standard of health. However, around the world there are people whose basic health needs are not respected. There are many reasons for this.

Sometimes, stigma and negative beliefs about some people in society may drive healthcare workers and decision-makers to discriminate against people. Laws and policies can also sometimes get in the way of people enjoying their right to health and their human rights. In other cases, it may be because the country does not have enough resources to provide adequate healthcare services to the community.

Some groups of people face particular risks of being discriminated against or mistreated when they use healthcare services. They experience unique challenges in accessing justice when this happens.

The Joint United Nations Programme on HIV and AIDS (UNAIDS) considers men who have sex with men, sex workers and their clients, injecting drug users and transgender persons as the 4 main groups at risk of being exposed to HIV and at risk of discrimination, stigma and unfair treatment in their societies ("key populations"). Other people who may be vulnerable to discrimination in healthcare include people with disabilities, lesbian, gay and bisexual people, women, people living in rural areas, and people who are economically disadvantaged.

There may be many reasons why we don't get the highest possible standard of health. But as users of healthcare services, we should demand that we are treated equally, fairly, and with respect. Healthcare facilities should not abuse our human rights. We need to create a culture of respect for the human rights of both healthcare users and healthcare workers.

One of the ways that we can do this is by complaining when our rights are violated. This guide gives you information about how you can do this by giving you the following information:

1. The rights you have when you use healthcare services.
2. How to deal with violations of your health rights.
3. How to make a complaint about discrimination or poor services in healthcare.
4. How community organisations can support people who complain.
5. Additional information on healthcare complaints processes in Botswana, Malawi and Zambia and how to complain to the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund).

The guide focuses on key populations and other people who may experience vulnerabilities.

This guide covers making complaints about healthcare in the public sector or at government healthcare facilities. Particular information about complaints processes is given for Botswana, Malawi and Zambia.

Who should use this guide?

This guide is for anyone who has a complaint about healthcare services. If you are unhappy about the quality of healthcare services you received or were neglected, mistreated or discriminated against, you can use this guide.

The guide can also be used by community-based organisations, support groups, health advocacy organisations, paralegals, healthcare workers, community leaders, and the friends and families of healthcare users.

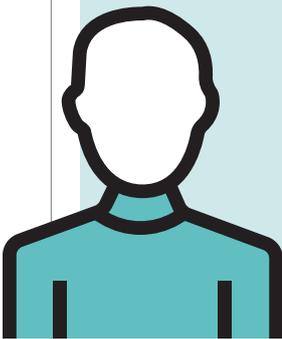
¹ Constitution of the World Health Organisation (1946) 14 UNTS 185, available at: http://www.who.int/governance/eb/who_constitution_en.pdf.

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: ²

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.

² N Fick et al Toolkit on the Right to Health. Cape Town: Learning Network (2011), available at: http://q3w.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.

Dealing with health rights violations

2

Who is responsible for my human rights?

For every human right, there is a matching responsibility, usually called a “duty”. This means that for every human right, there is a rights holder and a duty bearer:

- A rights holder is someone who can claim rights.
- A duty bearer is someone who is responsible for making sure that a human right can be enjoyed, like a healthcare worker, or the Ministry of Health.



For example:

Irene is a sex worker. She is a rights holder: She has the rights to health, to access healthcare without discrimination, and to equality. When she goes to the clinic, healthcare workers have a duty to provide her with adequate healthcare services, to treat her fairly and not to discriminate against her: The healthcare workers are duty-bearers.

What are the duties of healthcare workers?

Different healthcare workers have different duties in each country, depending on the laws and policies of each country. We will discuss the healthcare duties of all healthcare workers, including healthcare workers in Botswana, Malawi and Zambia.



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.



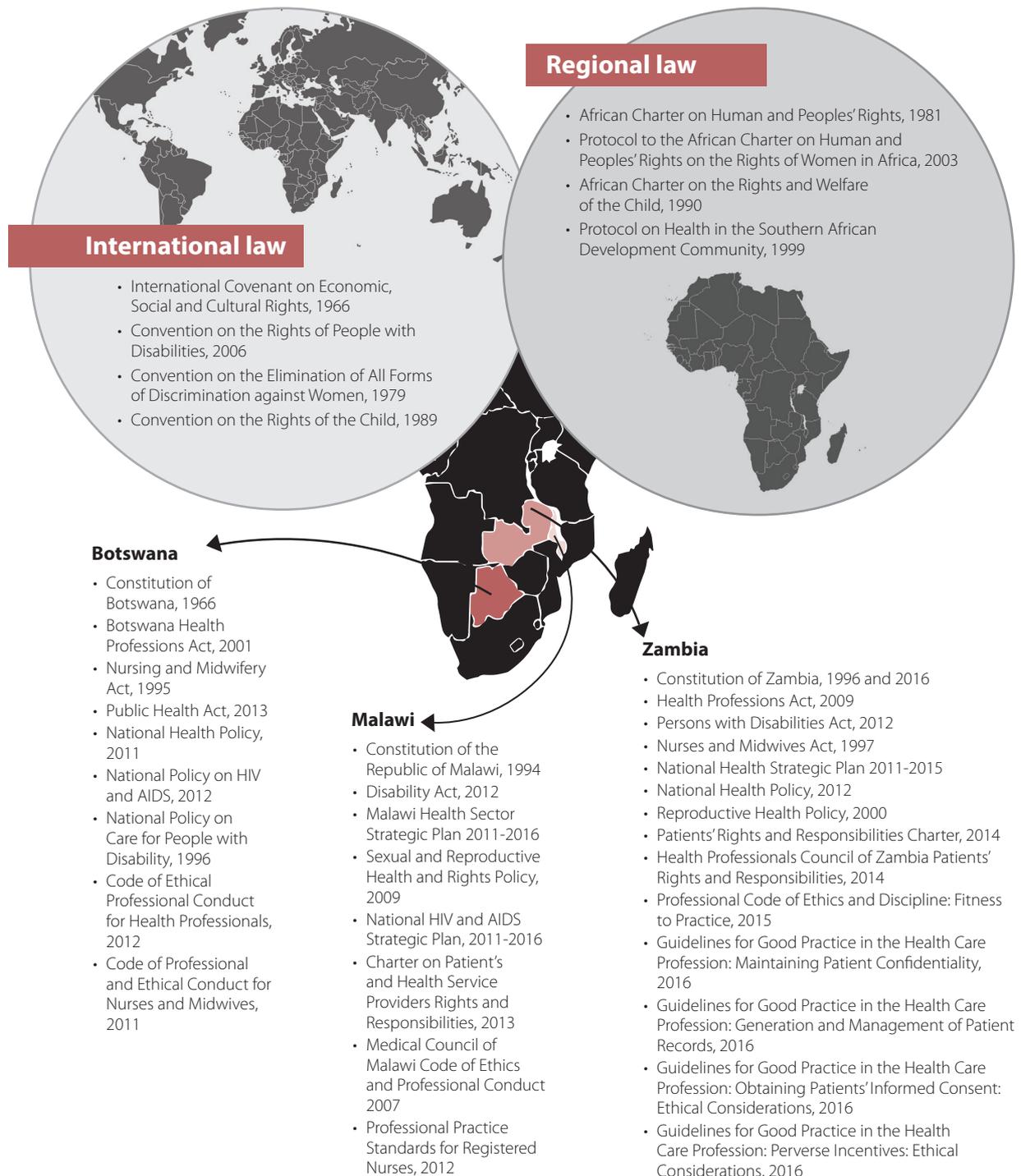
Healthcare workers have a duty NOT to:

- 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.

Where do health rights and healthcare duties come from?

There are international, regional and national laws that protect your health rights and set out the duties of healthcare workers. In addition to these laws, there are also government policies, patient charters and professional codes of conduct that list the rights of healthcare users and the duties of healthcare workers.

If you are a healthcare user in Botswana, Malawi or Zambia, your health and human rights, and the duties of healthcare workers, come from some of these sources:



The right to complain about poor healthcare

It is a basic rule under all law that for every right, there must be *a remedy* – a way of sorting out the problem with a solution, like an apology or compensation. This means that if a human right is violated, there should be an effective remedy.

All people have the right to complain and ask for a remedy if they believe their rights have been violated. If human rights are violated in a healthcare facility, or if the quality of healthcare services or facilities was not good enough, healthcare users have the right to complain.

Your have a right to a remedy when your rights are violated:

- You have the right to take action 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 the right to complain and to take your case to court.

If a rights holder has been prevented from claiming their rights or if a duty bearer has failed in their responsibilities to protect human rights, then the duty bearer should be held accountable.



Note:

There are many ways to hold a duty bearer accountable. For example, you can use the courts or you can make a complaint. This guide is about how to use complaints processes.

What is a complaint?

A *complaint* is a statement that something is unacceptable. It says that you are unhappy or dissatisfied about something that happened to you. Remember you have a right to complain if you receive inadequate healthcare services.

With healthcare, a complaint can 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.

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.

Why should I complain?

There are a few good reasons why people should complain about healthcare. Making a complaint can have benefits or advantages for the individual healthcare user, for other healthcare users and for the whole community.

Why should I complain?





Advantages for 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:

- Managers and supervisors 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.

How is making a complaint different from going to court?

If a healthcare user's rights are violated, you can make a complaint or take the case to court. If you understand the differences between these processes, it will help you to decide which one is best for you.





Here are some general differences between making a complaint and taking a case to court:

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.

Making a complaint

3

What is a complaints process?

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

The way that you make a complaint may be different depending on the complaint body (the organisation or person who you complain to). Complaints bodies may have different powers and duties.

Generally, healthcare complaints processes are available at:

- 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.

What are the types of complaints processes?

We will cover 2 main types of complaints processes:

- Internal complaints – made at a healthcare facility.
- External complaints – made outside a healthcare facility.



Internal complaints

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

They are sometimes called 'facility level complaints' and include complaints reported to:

- Hospital or clinic management.
- Bodies that have been set up to monitor healthcare facilities.

Internal complaints can be informal or formal:

- An **informal complaint** is a complaint that can usually be dealt with as soon as it happens in an easy and unofficial way.



For example:

Fostino is visually impaired and is living with HIV. He asks his sister to help him to go to the clinic. After he has been examined at the clinic, his doctor calls Fostino's sister and starts to explain to her the results of Fostino's latest HIV viral-load test. Fostino interrupts and says to the doctor: "Please stop that. Speak to me directly. I can hear you. I have a right to confidentiality. I have not given you permission to talk to my sister about my health status. I have a right to be treated like other patients." Fostino has complained directly to his doctor in an informal way.

A complaint can also be made to the head of the department or supervisor where the incident happened, for example: to the nurse-in-charge.

- A **formal complaint** is a complaint made at the hospital or clinic, and will usually be made to the boss of the healthcare provider that the complaint is about.

Formal complaints at the healthcare facility will often be made in writing.

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.

External complaints processes include:

- Health professions and nursing councils.
- National human rights institutions.
- Specialised bodies, like an office for people with disabilities or an office for people living with HIV.

**For example:****An example of an external complaints process: The HIV and AIDS Tribunal of Kenya**

Kenya's HIV and AIDS Tribunal is the only HIV-specific body in the world that was established by law and that has the power to decide cases relating to violations of HIV-related human rights.³

The Tribunal has the legal power to "hear and determine complaints arising out of any breach of the provisions of Kenya's HIV Prevention and Control Act of 2006".⁴

After hearing a complaint, the Tribunal is allowed to make any order that it thinks is appropriate in the circumstances. It can order that:

- Damages are paid to compensate for loss, suffering or an attack on your dignity.
- Steps are taken to stop a discriminatory practice from happening again.⁵

Although the Tribunal is not allowed to impose criminal penalties, it can make recommendations to the government about how it can better protect people living with HIV.

The Chairperson of the Tribunal has previously written to the Kenyan Cabinet Secretary for Health requesting that they work quickly to develop guidelines on privacy and confidentiality of HIV status in health care settings, as they are supposed to do under the HIV Prevention and Control Act.⁶

Who can make a complaint?

There are 3 options:

1. If you are a healthcare user acting in your own interests, you can make a complaint.
2. Sometimes people who have an interest in the health or human rights of another healthcare user can make a complaint on behalf of someone else – for example: a parent, partner or family member.
3. Sometimes human rights violations happen repeatedly to many people at the same hospital or clinic. In these cases, community-based organisations or groups of people can bring a complaint on behalf of everyone who experienced the abuse and in the interests of the broader community.

**Note:**

If you are bringing a complaint on behalf of somebody else, you must get this person's consent before you can make the complain.

3 The body was established under section 25 of the HIV Prevention and Control Act of 2006, available at: http://www1.chr.up.ac.za/undp/domestic/docs/legislation_35.pdf (accessed 12 May 2016).

4 Section 26(1)(a) of the HIV Prevention and Control Act of 2006, available at: http://www1.chr.up.ac.za/undp/domestic/docs/legislation_35.pdf (accessed 12 May 2016).

5 Section 27(7)(c)(i) and (ii) of the HIV Prevention and Control Act of 2006, available at: http://www1.chr.up.ac.za/undp/domestic/docs/legislation_35.pdf (accessed 12 May 2016).

6 Patrick Eba, 2016 "The HIV and AIDS Tribunal of Kenya: an effective mechanism for the enforcement of HIV related human rights?" published by the Health and Human Rights Journal, available at: <http://www.hhrjournal.org/2016/02/the-hiv-and-aids-tribunal-of-kenya-an-effective-mechanism-for-the-enforcement-of-hiv-related-human-rights/> (accessed 12 May 2016).

Who should I complain to?

Different complaints processes have different roles and offer different remedies or outcomes. Deciding who you should complain to will depend on your needs.



Concept:

Remedies are solutions to human rights abuses, for example: compensation, an apology, being suspended from practising as a nurse.

The table below shows some general differences in complaints processes that may be available in your country and the different kinds of remedies they can give.

Internal complaints processes

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.

You can complain internally at a healthcare facility if you are unhappy about the services or the behavior of the healthcare workers at the facility.

Remedies:

- Internal complaints bodies usually use remedies to discipline healthcare workers who did something wrong. For example, they will 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.
- Internal complaints bodies in healthcare facilities also have the power to suggest changes to policies and procedures at the hospital or clinic.

External complaints processes

Health professions councils and nursing councils

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

You can use this process if your complaint is about the attitude, conduct or behaviour of a professional healthcare worker like a nurse, midwife or doctor.

Remedies:

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 generally they have these powers:

- To give a caution or warning to the healthcare worker, or set conditions for how they must work in future.
- In serious cases, to suspend healthcare workers from the profession or remove them from a health professionals or nurses register altogether. If this happens, the healthcare worker will not be able to practise anymore as a doctor or nurse anywhere in the country.
- In some countries, to order the healthcare worker to pay a fine to the council or another person.

National human rights institutions, such as human rights commissions, ombudspersons, and gender commissions

You can complain to a human rights body if you think your human rights have been violated. Human rights institutions protect, promote and monitor human rights, and can:

- Investigate abuses of human rights.
- Promote transparency and accountability.
- Sometimes take cases to court if they are in the public interest.

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.

In some countries, gender commissions exist where you can make complaints about human rights violations that also deal with issues about gender equality or gender discrimination.

Remedies:

National human rights institutions usually have the power to:

- Investigate if they think that a human rights abuse is widespread.
- Inspect healthcare facilities.
- Gather evidence about human rights abuses.
- Review laws, policies and systems that affect human rights.
- Recommend to policy makers and duty bearers to make changes to laws and policies in a country.
- Recommend remedies for individual complainants.
- Bring people together to resolve the problem by mediation.

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. You can complain to a specialised body if your complaint is to do with the issues the body deals with.

Remedies

- Each specialised body will have different powers.

Police

The role of the police is to investigate criminal cases.

If you have been assaulted or raped, or if you think that a crime has been committed, you can report this to the police.

Many police stations also have victim support units that offer counselling, first aid, advice and referral for survivors of sexual abuse, rape, and other offences where privacy and confidentiality are very important.

Remedies:

- The police will investigate the crime and, if appropriate, arrest the person who committed the crime. This person may then be charged in court and, as the complainant, you can be called to give evidence as a witness.
- The police can also offer protection to complainants or witnesses.

How do I choose which complaint process is best for me?

It might be difficult for you to decide which complaint process is right for you. The table below shows some advantages and disadvantages between the different ways of complaining:

Internal complaints processes

👍 ADVANTAGES	👎 DISADVANTAGES
<ul style="list-style-type: none"> The process is generally informal which means it can be 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, for example: by changing a clinic's policy or by disciplining the healthcare worker. 	<ul style="list-style-type: none"> The informal way of complaining also means it is sometimes unclear how your complaint will be handled, for example: it may not be clear who will make the decision about your complaint. 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.

External complaints processes

Health professions councils and nursing councils	👍 ADVANTAGES	👎 DISADVANTAGES
	<ul style="list-style-type: none"> The process is usually quite formal. This means that there are legal procedures that the council must follow. The people who make the final decision must be fair and independent. You usually have to prove what the healthcare worker did by showing evidence. These 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. 	<ul style="list-style-type: none"> 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. Making sure that the councils stick to the procedures written in their rules is an important way to ensure the decision is fair.

Human rights bodies, such as human rights commissions or ombudspersons	<p> ADVANTAGES</p> <ul style="list-style-type: none"> • Human rights bodies are supposed to be easy to access and use. • Human rights bodies 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, for example: by making a complaint anonymously or having an organisation make a complaint on your behalf. 	<p> DISADVANTAGES</p> <ul style="list-style-type: none"> • 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. <p> Note:</p> <p>Since, 2016, the Human Rights Commission of Zambia has expanded powers to give enforceable remedies for human rights violations.</p>
Specialised bodies	<p> ADVANTAGES</p> <ul style="list-style-type: none"> • 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. 	<p> DISADVANTAGES</p> <ul style="list-style-type: none"> • 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.
Police	<p> ADVANTAGES</p> <ul style="list-style-type: none"> • A person who has committed a crime can be punished for what they have done wrong. 	<p> DISADVANTAGES</p> <ul style="list-style-type: none"> • 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.

The complaints process

A complaints process has 4 steps:

1. *Before you complain* – the incident leading to the complaint and deciding on the best way to handle it.
2. *Making your complaint* – how to present your complaint and what to include in it.
3. *During the complaint* – what to expect while your complaint is investigated and decided.
4. *After the complaint* – what to do if you are unhappy with the result.

1. Before you complain

Start as soon as possible

If you have identified a case and you want to make a complaint, you should start the process as soon as possible.



Note:

The reason for starting a complaint quickly is:

- You will need evidence to support your complaint and it is easier to gather all your evidence as soon as possible after the event, for example: before any of your files or other documents are lost.
- Some complaints processes might refuse to hear cases if they happened a very long time ago.

Try to get advice and support

Complaints bodies should be able to guide you on the procedure for making and handling complaints. Ask for guidance on how to make a complaint before you begin.

For many people, the thought of making a complaint can be scary and the process might seem confusing. For this reason, you can ask family, friends and community organisations to support you through the process.

Gather evidence

Often healthcare abuses and rights violations happen in private. It can be very difficult to prove what happened. Before making a complaint, gather as much information as possible:

- If there are any witnesses who you trust to give evidence that will support your case, try to speak to them and get a statement from them about what happened. Ask their permission if you want to identify them as a witness.
- If you have suffered any injuries, take photographs or videos if possible.
- Ask to see your medical records or hospital files and, if possible, make copies of them.



Note:

Medical records

Your medical records should be a full record of:

- Your patient history.
- The doctors that treated you.
- The dates you received healthcare services.
- A list of medicines prescribed for you.
- Other information that is relevant to your treatment and care.

In many countries around the world, healthcare users have a right to access their medical records. This does not always mean that you can take the records away with you, but it usually means that you have a right to look at your records and request a copy of them.

Even in countries where the law gives you a right to access your medical records, it can be difficult to get them. This can sometimes be because healthcare facilities don't have good filing systems or because healthcare workers are afraid of getting into trouble, and may hide or change information in the records.

The African Charter on Human and Peoples' Rights is clear that everyone has the right to access information, especially when that information is about them.⁷

This right has been understood to mean that everyone should have the right to access, update and correct their personal information. Because your health records and hospital files have information that is personal, you should have the right to access them.

Some countries in Africa have laws which guarantee that everyone has the right of access to information. Other countries have policies and codes that give healthcare users the right to access medical records for reasons such as making a complaint.



For example:

- In **Botswana**, the Code of Ethical Professional Conduct says that that all doctors, dentists, pharmacists and other registered health professionals, except for nurses and midwives, must allow patients access to their medical records.⁷

- The Constitution of **Uganda** says:

"Everyone shall have the right to access information, which is in the hands of the state as long as it does not put the state or the security of the state at risk."⁸

In 2014, a couple, whose baby had gone missing at a public hospital, successfully relied on the Constitution to demand access to their medical records.⁹

- The Constitution of **Malawi** says:

"Every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights."¹⁰

This right can be used by people who need to access their medical records.

- In **Zambia**, the Health Professions Council of Zambia has a Patients' Rights and Responsibilities Charter that says all healthcare users have the right to access personal medical records.



Tips:

Tips on asking for your medical records:

- If you ask to see your medical records, you don't need to give a reason. It may be safer not to mention that you want to see the records because you are thinking of making a complaint.
- 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.

7 Section 1.15 of the Botswana Health Professionals Council's 2012 "Code of Ethical Professional Conduct", available at: <http://hcp.moh.gov.bw/hprs/BHPCHome.aspx> (accessed 5 June 2016).

8 Section 41, Constitution of the Republic of Uganda, 1995, available at: http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf (accessed 19 May 2016).

9 Amy Fallon, 2014 "Ugandans Fight for the Right to Access their Own Medical Records" published by the Inter Press Service News Agency, available at: <http://www.ipsnews.net/2014/03/ugandans-fight-right-access-medical-records/> (accessed 19 May 2016).

10 Section 37 of the Constitution of the Republic of Malawi, 1994, available at: [https://www.icrc.org/ihl-nat.nsf/0/4953f2286ef1f7c2c1257129003696f4/\\$FILE/Constitution%20Malawi%20-%20EN.pdf](https://www.icrc.org/ihl-nat.nsf/0/4953f2286ef1f7c2c1257129003696f4/$FILE/Constitution%20Malawi%20-%20EN.pdf) (accessed 19 May 2016).

Choose a complaints process

It can be difficult to decide which complaints process is right for you. Key factors will be:

- The facts of your case
- Your safety and privacy
- The remedies you want

The facts of your case



Tips:

The facts of your case: key questions

1. Does the complaint involve something that is a criminal case?

If your complaint is about sexual assault, sexual abuse, physical assault, a bribe or corruption, you should go to the police.

2. Is there a specialised body that you can approach?

People with disabilities and people living with HIV might be able to approach a specialised body in some countries.

3. Is the complaint about a healthcare professional, like a doctor or nurse?

If your complaint is about the conduct, behaviour or attitude of a healthcare professional, you could report this internally *and* take the complaint to the health professions council.

4. Have your human rights been violated?

If you think your human rights have been violated, you could take your complaint to a human rights commission.

5. Are you able to travel to make a complaint outside of the healthcare facility?

If you don't want to make your complaints at the healthcare facility where you received services, you can instead go to the offices of an external complaints body. See if there is an organisation in your area that could assist you to access an external complaints body.

Safety and privacy

Safety is an important concern when choosing a complaints process.

If you are concerned about your safety or if you don't want people to know about your complaint, you should choose a complaints process that will allow you to make an anonymous or confidential complaint.



Concept:

What is the difference between confidentiality and anonymity?

- **Anonymity** means that it is not possible to identify the individual behind the complaint. This happens when no personal information is given that might link the complaint to the complainant.
- **Confidentiality** means that, although personal information about the individual behind the complaint is given, that information must be kept safe. It should not be disclosed unless it is necessary *and* it may not be shared with anybody who is not directly involved in handling the complaint.

When you want to stay anonymous as a complainant:

- No personal information should be in the complaint.

**Concept:**

Personal information is any information that identifies you or could identify you as an individual, including your name, where you live, or any information about your health condition, age, gender or sexual orientation that might be used to identify you.

- Removing personal details from a complaint may mean that the information in the complaint is not complete. But if it is your wish to remain anonymous, your decision must be respected.

Handling your complaint confidentially:

- You can ask that the complaint is handled confidentially and that all personal information is treated as private.
- If there is a chance that as a healthcare user you might be denied further medical care or might be harmed because of making the complaint, you can ask that the healthcare workers are told not to have contact with you. You can say in the complaint form that you are worried about the risk of being denied services or harmed by the healthcare worker concerned, and want your complaint to be handled confidentially.
- In handling the complaint, the complaints body should then make every effort to treat all personal information in the complaint as privately as possible. The complaints body should also try make sure that none of the personal information is leaked to anybody who is not involved in the complaints process, including the media.

Other ways of protecting yourself:

- You can ask someone you trust to make the complaint on your behalf to feel safer in making a complaint.
- You can ask a family member, friend or community organisation to make a complaint on your behalf if you are worried about making the complaint yourself.
- Some complaints processes have the power to issue interim orders.

**Concept:**

Interim orders are instructions that can be made as soon as a complaint is made, and before it is fully investigated and decided. They protect you from harm during the complaints process.

- Interim orders could include keeping your identity anonymous, offering you special protection during an investigation, or ordering that evidence, such as medical records, is not destroyed.

**For example:**

The Nursing and Midwifery Council in Botswana has the power to make interim orders to stop or control the activity of a nurse or midwife if it thinks there is a chance of risk or harm to any person.

**Tips:**

Some important questions about safety and privacy before you make a complaint:

1. Is it important that your identity is kept secret?

- If you do not want to be identified during the complaints process, you need to find a complaints process that will protect your anonymity or confidentiality.
- Make sure you inform the complaints body about your need for confidentiality and that your details are not disclosed to any other person or the media.

2. 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?

- Does the complaints process allow for a complaint to be made on behalf of someone else?
- If yes, you must give your permission before someone else can make the complaint for you.

3. Will the complaint make the doctor, nurse or other healthcare worker angry?

- Is there a chance the people you are complaining about will attack, intimidate or harass you or any of the witnesses involved?
- If you think that anyone might try to harm, intimidate or harass you or any of the witnesses involved in the complaint, inform the complaints body about this and ask for help.

**For example:**

Ask that you are transferred to a different clinic, or that a different healthcare worker treats you.

4. Are there family members or friends who can support and assist you with the complaint?

- It can be helpful to tell trusted family and friends that you have made a complaint so that they can give you support through the process.

Remedies

An effective complaints body should have the power to investigate complaints, gather evidence and provide an appropriate remedy or solution to help you.

Different complaints processes offer different kinds of remedies (see pages 15 and 16 above).

**Tips:****Questions to help choose a complaints process****1. Is it important that your complaint is handled as quickly and urgently as possible?**

- If your complaint is time sensitive, you should take it to a complaints process that can resolve it very quickly.
- Internal complaints processes are sometimes much quicker than external processes.

2. What kind of remedy do you want? Options:

- An apology.
- A change in policy.
- Training for healthcare workers.
- To be provided with healthcare services or treatment.
- Money as compensation.
- An order that a doctor, nurse or other healthcare worker is disciplined or suspended.

3. Do you know of any other people who have had similar experiences at the healthcare facility?

- In cases where many people have the same complaint, it might be better to take the complaint to an external body, like a health professions council or a human rights body. External bodies have more power to recommend training and changes in law or policy that could prevent the situation from happening again.
- If you take the complaint to local bodies, which deal with complaints from health facilities in the area, they might be in a better position to monitor whether the remedy is implemented, and if the behaviour or services at the facility has changed.
- Where the same facility abuses the rights of a number of patients, a group of healthcare users complaining at the district Department of Health might force it to take action to address abuses at the hospital or clinic.

2. Making your complaint

How should I make a complaint?

Depending on the complaints process you are using, complaints are usually made face-to-face, in writing, over the telephone or through a combination of these ways.

Generally, complaints should be in writing although sometimes the complaints body will accept a verbal complaint and write down the details for you. If you make a complaint verbally, ask for a copy of the written record of the complaint.

Before making a complaint, it is a good idea to check whether there is a standard complaints form which you should use.

What must be in the complaint?

Whether the complaint is made verbally or in writing, this information should be in your complaint:



Checklist:

- ✓ Name and contact details of the person making the complaint or someone else who can be contacted if you wish to remain anonymous.
- ✓ The date on which you are making the complaint.
- ✓ 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.



Tips:

Give all details needed to investigate the complaint, including:

- Type of healthcare service.
 - Hospital department treating the healthcare user.
 - The nurses, doctors and other healthcare workers responsible. If you don't know the healthcare worker's name, give the date and time of the incident, so that the people investigating the complaint can see who was on duty at the time.
- ✓ Specific information about poor treatment or discriminatory attitudes, and how this has affected you. If you think that one of your human rights was violated, say this.
 - ✓ 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. If you asked to see a copy of your medical records or hospital file but your request was refused, say this in your complaint.
 - ✓ What kind of outcome or remedy you want, for example: an apology, compensation.
 - ✓ Whether or not you are willing to give further information or *oral* (verbal) evidence about the case.
 - ✓ If your complaint is urgent and you want it to be handled quickly, you should give reasons for why it should be handled urgently.
 - ✓ 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."
 - ✓ If your complaint is in writing, you should sign it. If you are not able to sign it, a thumbprint is often also accepted.

**Note:**

It is useful to keep track of the dates and details of all the communication and contact you have had with the person or facility that you are complaining against. This includes all verbal and written communications before, during and after you make a complaint.

You should keep copies of all your written communications with the person or facility you are complaining against, even if you do not include these in your complaint. If you do want to include these communications in your complaint, include a copy and keep the original somewhere safe.

3. During the complaint

What to expect after you have made a complaint

After a complaint has been made to a complaints body, you should be given an **acknowledgement** (a formal note or receipt) that the complaint has been received. You should ask to receive this acknowledgement in writing.

After making a complaint, you usually have the right to receive updates on the progress of the complaint. The complaints body should give you information about where your complaint is in the complaints process, for example: is it being investigated?

**Tips:**

Tips for following up on your complaint:

- Ask for the name and contact details of the person who will handle the complaint.
- Ask for a reference number of the complaint.

The investigation and enquiry

After you have made a complaint and it has been recorded by the complaints body, it will begin an investigation of all the facts:

- If you left any important details out of your complaint, the person or body investigating the complaint might contact you if they need more information.
- If any of your contact details change, make sure you inform the complaints body.
- You or any witnesses might be asked to give evidence about the complaint.
- If you submitted your complaint to a health professions council, you might be asked to explain your side of the story at a disciplinary hearing.
- What you say at a disciplinary hearing will help the complaints body decide whether or not they need to suspend or discipline a healthcare professional or, in extreme cases, prevent them from practising. The disciplinary hearing is usually closed to the public.
- During the investigation and enquiry stage, you can ask for information on how far the complaint process has gone.

The decision

After the complaint has been investigated, the complaints body will make a decision about the complaint. They will decide on whether or not a healthcare worker or healthcare facility did something wrong and what should be done about this.

Depending on the complaints body that you took your complaint to, different orders can be made at this stage on what remedies to give.

4. After the complaint

Here are a few options if you are unhappy with the outcome of your complaint or the way it was handled:

Referring the complaint to a different complaints body

It may be possible to take your complaint to a different complaint body. For example, if you took a complaint about a healthcare professional to a health professions council and you are unhappy about how it was handled, you could take your complaint to a human rights commission.

Escalating your complaint

If you made a complaint internally, for example, with the nurse-in-charge, and are unhappy with the outcome, you could *escalate* your complaint – in other words, take it to a higher level. For example, take your complaint to the district health officer or complain directly to the Ministry of Health.

Taking your complaint to court

If you are unhappy about the way your complaint was handled, or you feel that the procedure was unfair or the decision was wrong, you may have the right to go to court:

- Taking a case to court can be expensive and time-consuming.
- You may need the help of a lawyer.
- You will have to move quickly to take the case to court, as there are usually time limits for how long you can take to go to court after a decision by the complaints body.
- If your case did not succeed at the complaints body because there was not enough evidence, it may be risky to go to court. If you lose in court, you may have to pay the legal costs of the other side.

Referring the complaint to the United Nations Special Rapporteur on the Right to Health

Individual people and community organisations can send complaints to the United Nations (UN) Special Rapporteur on the Right to Health. The Special Rapporteur is a person appointed by the UN to investigate, monitor and recommend solutions to problems around the world about the right to health.

If the Special Rapporteur thinks that there has been a serious violation of the right to health, they will send a letter to your government asking that they prevent or correct any wrongdoing. The information in your complaint may be made public. Although it is possible to request that specific information is kept confidential, a summary of the complaint is usually published in the annual reports of the Special Rapporteur.¹¹



Note:

You may need a lawyer or human rights NGO to help you make a complaint to the UN.

¹¹ See pages 8 and 23 of a publication by International Federation of Health and Human Rights Organisations, 2009 "The United Nations Special Rapporteur on the Right to Health: A Guide for Civil Society", available at: http://www.ifhro.org/images/stories/ifhro/manuals_and_guidelines/4_3_2_un_rap_guide_2009.pdf (accessed 31 May 2016).

Information for community-based organisations: How to support complainants

4

Community-based organisations (CBOs), non-governmental organisations (NGOs), support groups, paralegals, families and friends have an important role to play in supporting healthcare users to make complaints.

People who are vulnerable to human rights abuses may need specific kinds of support to make sure they are able to complain and to do this in a way that is safe.

How should complainants be supported?

- Supporting healthcare users to use complaints processes is a way to advance access to justice and accountability in the healthcare system.
- Healthcare users may not be able to access some complaints processes without help. Support from organisations and other people can also ensure that a complaint is taken seriously.
- Being supported can empower healthcare users who are vulnerable to being victimised if they complain alone.
- Complaint processes do not always work fairly and transparently. CBOs can help to monitor these processes when supporting complainants, and can identify and demand changes to make sure the systems themselves are fair and accountable.
- By supporting complaints, organisations working on healthcare issues can identify problems in the healthcare system, and work with complainants and communities to resolve these problems, to improve laws and policies, and to improve healthcare services.

How can we identify vulnerability?

With issues like HIV and sexual orientation, **vulnerability** results from a number of factors in a person's life that reduces their ability to claim their legal and human rights.

Social, cultural, political, legal and economic factors that make people vulnerable may include:

- Personal factors like a lack of knowledge on how to protect themselves.
- The quality of health and other services, and access to them, may be limited because of distance, cost and other factors.
- Unequal opportunities, unemployment and poverty.
- Harsh laws, and social and cultural practices, beliefs and attitudes that stigmatise and disempower people, and act as barriers to essential HIV prevention messages.¹²

These same factors may make it difficult for people to access healthcare services or to access justice when they are mistreated or discriminated against.

¹² UNAIDS "UNAIDS Terminology Guidelines" (2015), available at: http://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf.

Because every community is different, it may be important for CBOs to ask communities about who is vulnerable and how best your organisation can be a support.



For example:

Examples of vulnerabilities when making a complaint

Where people live and their socio-economic status

- 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 about a particular nurse or doctor, they 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.

Sexual orientation and 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.

Disability

- 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.

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.

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.

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.
- People who use drugs may be fearful of being denied healthcare treatment and services if they complain.
- 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.

Women and 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.

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 and 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.

How can we support a complainant?

Information

Healthcare users can be supported by sharing information about what their rights are, and where and how they complain.

Advice

Helpful advice from a community-based organisation or human rights body can be very important when healthcare users are upset about something that happened to them. CBOs can support these healthcare users by advising what can be done and what their options are for making a complaint.

Safety measures

CBOs have a very important role to play in helping healthcare users to complain safely. CBOs can assess a healthcare user's vulnerability, and give advice and assist with making sure they can complain safely.

For more, see *How can we identify vulnerability* on page 27 and *Safety and privacy* on page 21.

Complaining with someone or on someone's behalf

A healthcare user may face risks if they complain in their own name. CBOs might be able to make a complaint together with the healthcare user or complain on their behalf.

**Note:**

- If the complaint is made on behalf of somebody else, mention this in the complaint.
- You should also mention that you have permission from the person on whose behalf you are making the complaint.
- If they have not given you permission to use their name, you should say that the person behind the complaint wishes to remain anonymous.
- Be careful to verify information before filing a complaint on someone else's behalf. Making false allegations against someone in public can expose you to legal action.

Access to services

CBOs can make sure that healthcare users can continue to access healthcare and other services safely after they complain.

**For example:**

- Accompany a healthcare user to access services and collect medication if they are scared.
- Connect healthcare users with service providers who are trusted or who are known to provide services to people without discrimination, for example: for LGBT people and sex workers.
- Assist with transport to access alternative healthcare providers or medical supplies.

Addressing a complaint on a systemic level

CBOs can also help address problems on a **systemic** level – in other words, to tackle healthcare problems affecting the health system more widely.

**For example:**

- Do research to gather information about problems happening widely in the health system.
- Put pressure on government to make changes to laws, policies or procedures.
- Refer large-scale complaints to human rights commissions.

Social support

CBOs can offer important emotional and social support to healthcare users during the complaint process, for example: giving counselling after a traumatic experience.

Safety in numbers

When dealing with very sensitive complaints or vulnerable complainants, people and individual organisations can be put at risk. CBOs can offer support by standing with complainants.

It may also be important for CBOs themselves as activists to build coalitions with other organisations to stand together when making a complaint. This can also help show that issues that affect the human rights of a few people have important social and health impacts on the broader community.

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

5

In this section you will find information about specific complaints procedures in Botswana, Malawi and Zambia. You will also find information about how to make a complaint to the Global Fund. See the Annexures at the end of this Guide for complaints forms and useful contacts and links.

Botswana

If you live in Botswana and you want to make a complaint, these are your options:

- An internal complaint to the hospital or clinic.
- An external complaint to the Botswana Health Professions Council, the Nursing and Midwifery Council of Botswana, the police or the Botswana Office of People with Disability.

Internal complaints

Who should I complain to?

You can make a complaint at the healthcare facility where you received services. The Ministry of Health says you can complain to the following people:

- The supervisor in charge
- The public relations officer
- The matron
- The hospital manager or chief administrative officer
- The hospital superintendent or chief medical officer.

If you are unhappy with the outcome of your complaint, the Ministry of Health says you can escalate your complaint through the following bodies in the Ministry of Health:

- The Ministry of Health headquarters
- The Director of the relevant Department
- The Permanent Secretary
- The Minister or Assistant Minister of Health
- The Office of the President.

How should I complain?

Your complaint should be in writing, although verbal complaints may also be accepted. It may be possible for a complaint to be made on behalf of someone else.

Safety and privacy

Healthcare facilities may not be able to guarantee confidentiality or allow for complaints to be made anonymously. You should check this with the healthcare facility.

Remedies

- If your rights have been violated, healthcare workers who did something wrong can be disciplined or punished. The healthcare facility will not be able to make big policy changes but might be able to change the way things are run in that particular facility.
- A hospital manager may decide to refer a complaint that was made internally at the facility to an external complaints body. Then the complaint will be referred to the District Health Team and someone at the District Health Team will handle the case on behalf of the healthcare user.

Botswana Health Professions Council (BHPC)

How should I complain?

Complaints can be made against any professional healthcare worker who is registered with the BHPC. Complaints must be in writing and must set out what happened and why you think that a healthcare worker acted in a way that was unprofessional.

Safety and privacy

It is not clear if the BHPC will accept a complaint made on behalf of others, anonymously or confidentially. But the BHPC does have the power to make an order that the identity of a witness or other person is kept secret if it is in the interests of the BHPC performing its duties.

Remedies

If a healthcare professional has acted unprofessionally, the BHPC has the power to caution, reprimand, suspend or prevent the healthcare professional from practising.

Nursing and Midwifery Council of Botswana (NMCB)

All registered nurses and midwives in Botswana have a duty:

- To respect the dignity and privacy of their patients.
- To be sensitive to the needs and decisions of their patients.
- To ensure they get consent for treatment.
- To minimise the possibility of risk to patients and healthcare users.
- To maintain professional competence.

How should I complain?

- Anyone has the right to make a complaint to the Nursing and Midwifery Council of Botswana, including fellow nurses and midwives, patients, families, the police or other people.
- Complaints should be in writing and should give information about the nurse or midwife involved, the dates of the incident or patterns of behaviour, and an outline of what the complaint is about.

- Complaints can be sent by email, post or fax, or they can be delivered by hand.

Safety and privacy

- Complaints can be made on behalf of someone else.
- As soon as a complaint is made, and even before it is investigated, the Nursing and Midwifery Council can make any interim order it thinks is necessary to protect any person at risk of harm.
- If you are concerned about your safety as a complainant, you should request in your complaint that interim orders are considered to guarantee your safety and protection.

Remedies

If the Council decides a nurse or midwife has committed an offence, or ignored their professional duties and standards, the Council can:

- Reprimand the nurse or midwife;
- Order the nurse or midwife to pay a fine; and
- In serious cases, stop the nurse or midwife from practising.

Botswana Office of People with Disability (BOPD)

The BOPD falls under the Office of the State President. Its role is to coordinate implementing disability policy in Botswana by developing strategies and programmes to empower people with disabilities. There are currently no procedures written in law or policy for how the complaints process at the BOPD works. The process is therefore flexible.

How should I complain?

Any person who has a complaint relating to disability can make a complaint in writing in either Setswana or English. Complainants can make their complaints personally at the Office in Gaborone.

In rural areas, complaints can be made at the district Disability Committee. Social workers can assist in making the complaint in writing and directing it to the relevant department.

Safety and privacy

You can request to have your complaint handled confidentially, you can make a complaint anonymously, or other people can make a complaint on your behalf.

Remedies

The BOPD's aim is to:

- Address discriminatory practices in the public service.
- Prevent discriminatory behavior.
- Collect information about human rights issues affecting people with disabilities.

The BOPD does not have any particular powers to order remedies or to enforce change.

However, because the BOPD is a part of the Office of the President, it can access policy-makers and key people in government. This places the BOPD in a good position to make recommendations, to mediate and to push for policy changes on your behalf.



Botswana case study

Tina is a sex worker in Botswana. She was diagnosed with TB and has been receiving treatment at Gaborone Hospital for the past 2 months.

Although she is getting better, Tina was told that she needs to continue with her treatment for at least 6 months. Each month, she goes to Gaborone Hospital for a check-up and to receive a one-month supply of her medicine.

When she last visited the hospital, the nurse she saw refused to give her the medicine. The nurse told her she is sick because God is angry with her and said that she will not stick to the treatment anyway because she is “unreliable”.

What rights are violated?

- Tina has been unfairly discriminated against.
- Healthcare users who are sex workers have the same rights as anyone else to access and use safe and non-discriminatory healthcare services.

What can Tina do?

Tina has a number of options available to her:

- She can make a complaint internally at Gaborone Hospital where she is treated.
- She can also make a complaint with the Nursing and Midwifery Council of Botswana, because the nurse has not followed the code of professional and ethical conduct that she is supposed to respect. The nurse has not treated Tina with dignity, and has not given Tina the medical attention and treatment that she has a right to receive.
- If Tina is worried about her safety and privacy, she could ask the Nursing and Midwifery Council of Botswana to make an interim order to guarantee her safety and privacy while the complaint is being investigated. She can also ask that her name should not be disclosed in the records.

Tina does not have to admit in the complaint that she is a sex worker if she does not want to. The nurse is not allowed to unfairly discriminate against patients and must treat them all equally.

Malawi

If you live in Malawi and you want to make a complaint, these are your options:

- An internal complaint to the hospital or clinic.
- An external complaint to the Medical Council of Malawi, the Nurses and Midwives Council of Malawi, the police, the Malawi Human Rights Commission or the Office of the Ombudsman.

Internal complaints

Who should I complain to?

- You can make an internal complaint through senior staff and management at a healthcare facility, a hospital ombudsperson or through a Health Centre Advisory Committee (HCAC).
- Approach the HCAC for assistance and advice about your complaint. If they are not able to help you, the head of the healthcare facility, a hospital ombudsperson or a district health officer might be able to receive your complaint.

How should I complain?

It is always better to make your complaint in writing so that you have a detailed record of what happened.

Safety and privacy

It may be possible for the HCAC, a traditional leader or a community organisation to make the complaint on behalf of a healthcare user who would prefer to be private. However, you should check this with the hospital or clinic first.

Remedies

Internal complaints bodies in Malawi do not have wide powers to order remedies like compensation or big policy changes. However, an internal complaints body might be able to transfer a healthcare worker to another facility, to ask the healthcare worker to apologise, or they could pass on suggestions for policy changes to the local authorities.

Medical Council of Malawi (MCM)

If the complaint is about the behaviour, attitude or conduct of a particular health professional, such as a doctor or nurse, it can be made with the Medical Council of Malawi or the Nurses and Midwives Council of Malawi.

How should I complain?

You can make a complaint to the Medical Council of Malawi over the phone, in writing or by going to see the Registrar at the offices of the MCM.

Safety and privacy

Anonymous and third-party complaints may be accepted by the MCM. The MCM can then decide if it wishes to refer the complaint for further investigation by the Disciplinary Committee or to call for more information.

**Note:**

An accused medical practitioner has the right to be heard in disciplinary proceedings. This may include the possibility of cross-examining a complainant. The MCM can also summon a witness to give evidence in disciplinary proceedings. Healthcare users should be aware that they may have to give evidence if they make a complaint.

Remedies

The MCM can make an order to discipline a healthcare professional. This includes orders:

- to suspend the practitioner for a period of time
- to impose conditions on their practice.
- to pay a penalty; and
- in serious cases, to deregister the healthcare professional and prevent them from working in healthcare.

**Note:**

Any person who is unhappy with a decision of the MCM can appeal the decision by going to a High Court within 3 months.

Nurses and Midwives Council of Malawi (NMCM)

How should I complain?

The NMCM is allowed to consider any complaint about a registered nurse or midwife in Malawi. You should make your complaint in writing, so that you have all the facts on record.

Safety and privacy

The NMCM will receive third-party and anonymous complaints. The NMCM does not, however, encourage anonymous complaints to ensure thorough investigations are possible.

Remedies

If the NMCM can discipline nurses and midwives in a number of ways. This can include an order:

- to pay a penalty to the NMCM;
- suspending the nurse or midwife from working for a period of time;
- that the nurse or midwife can only work under certain conditions; and
- in serious cases, deregistering the nurse or midwife so that they can no longer work.

The police

Police stations in Malawi have Victim Support Units. Their functions include offering counselling, referrals, advice and first aid in cases of sexual abuse, rape, defilement, and domestic violence.

If your complaint is about a sexual offence or an offence which needs privacy and confidentiality, you should talk to the police to arrange this.

Malawi Human Rights Commission (MHRC)

The MHRC can investigate complaints about violations of the Constitution of Malawi or any other law. However, if the case is before a court, the MHRC cannot hear it.

How should I complain?

- Complaints should be made in writing, either by letter or by filling out a standard complaints form, which is available on the MHRC's website.
- Complaints can also be made in person by visiting the offices of the MHRC in Blantyre or Lilongwe. Your complaint should include the names and contact details of the **complainant** (healthcare user) and the **respondent** (healthcare worker).

Safety and privacy

A friend, family member or an NGO can make a complaint on behalf of someone else. The MHRC says that it treats all matters in a confidential way. If safety and privacy are important, ask how the complaint will be handled and whether any extra privacy or confidentiality steps can be arranged.

Remedies

After hearing a complaint, the MHRC can:

- Take a decision, make a recommendation or take any other action it believes is necessary.
- Order a settlement.
- Refer the complaint to another complaints process.
- Order mediation.
- Propose changes to law or policy.
- Refer the case to the police.
- Take the case to court on behalf of the complainant.



Tips:

See the MHRC complaints referral form in the Annexures. Fill out as much of the information in the form as you can and that is safe for you to include. If you do not know some of the information, however, you can leave it out.

Office of the Ombudsman

You can make a complaint with the Office of the Ombudsman about an abuse of rights or unfair discrimination while accessing or using healthcare services at a public healthcare facility.

The Office of the Ombudsman handles "any and all cases of injustice" including widespread abuses, but they only have the power to investigate public offices like government hospitals and departments.



Note:

The Office of the Ombudsman cannot help you with a complaint about healthcare services at a private healthcare facility that is not run by the government.

How should I complain?

- You can make a complaint in writing or verbally at any of the regional offices of the Ombudsman in Blantyre, Lilongwe, Balaka or Mzuzu, or directly to the national office.
- Before complaining to the Office of the Ombudsman, you may be asked to try to resolve the complaint through internal complaints processes. You are supposed to say on your complaint form what you have done to try to resolve the issue before coming to the Ombudsman, like speaking to a hospital supervisor.
- If making an internal complaint is not available to you, or is not safe, you should mention this on your complaints form.

Safety and privacy

While the Office of the Ombudsman says it will keep the name of the complainant confidential, summaries of the cases heard by the Office are published each year in an annual report and also on the Internet, often with the name of the complainant.

If safety and privacy are important to you, making a complaint with the Ombudsman might not be your best option.

Remedies

- After investigating your complaint, the Office of the Ombudsman will make a determination. This may include recommendations to the healthcare facility or healthcare worker.
- But the Office of the Ombudsman does not have the power to force healthcare facilities or workers to obey its recommendations.

**Tips:**

See the Office of the Ombudsman complaints form in the Annexures. Fill out as much of the information in the form as you can and that is safe for you to include. If you do not know some of the information, however, you can leave it out. This form is also available in Chichewa from the Office of the Ombudsman.



Malawi case study

Felix lives in a rural community and is living with HIV. There is only one health centre in the community. Felix developed anal warts after having sex without a condom with a male partner. When he goes to the health centre to collect his anti-retroviral treatment (ART), he asks to see the nurse so he can get treatment for his anal warts. Felix does not say anything about how he got the warts but asks for help from the nurse.

When the nurse examines him, she starts to laugh at him and call him rude names. She sends him away without treatment for his anal warts but gives him his ART. Later in the week, when he greets his neighbour, his neighbour says to him: "I don't want to talk to you. The nurse told me you are gay."

Felix is angry about how he was treated and that he hasn't received medication for his condition. But he is afraid that if he complains, the nurse might refuse to give him his ART. He is also afraid that the rest of the community will find out that he has sex with men, and will stigmatise him or hurt him.

What rights are violated?

Felix's health and human rights have been violated:

- His right to access treatment has been violated by the nurse's refusal to treat his anal warts.
- The nurse has discriminated against him and not respected his right to dignity.
- The nurse has violated his right to privacy and confidentiality by disclosing his health condition to other people.

What can Felix do?

Felix can complain to the district health officer, the Nurses and Midwives Council of Malawi (NMCM), the Malawi Human Rights Commission or the Office of the Ombudsman.

Because Felix has a number of concerns about his safety and access to healthcare, he decides it is a good idea to contact an organisation that works with LGBT rights to ask for help:

- Felix first asks the organisation to refer him to a healthcare worker who is safe to use and who has been trained on working with LGBT healthcare users. He goes to this healthcare worker to access treatment for his anal warts.
- The LGBT organisation tells him that they have been documenting similar cases of people being denied healthcare services when healthcare workers presume they are gay.
- They decide together that the LGBT organisation will include Felix's story anonymously in a big complaint to the Malawi Human Rights Commission, together with the stories of other healthcare users that were treated in a similar way.
- In the complaint, the LGBT organisation asks the MHRC to investigate the problem of treatment refusal and breaches of confidentiality for LGBT healthcare users, and also to negotiate with the NMCM to train its members on non-discrimination and the importance of confidentiality.

Zambia

If you live in Zambia and you want to make a complaint, these are some options:

- An internal complaint at the healthcare facility.
- An external complaint to the Health Professionals Council of Zambia, the General Nursing Council of Zambia, the police or the Human Rights Commission of Zambia.

Internal complaints

Who should I complain to?

- Complaints can be made to the person in charge of the health facility or the Neighbourhood Health Committees or Health Centre Committees, where these are available.
- Some health facilities have formalised complaints processes. For example, at the University Teaching Hospital in Lusaka, verbal or written complaints can be made in a number of ways, including by phone, email or suggestion boxes, or to the sister-in-charge, the public relations office, or the managing director, amongst others.

How should I complain?

It is always best to note the complaint in writing so that you have a good record of what happened.

Safety and privacy

It may be possible for a family member, a friend or a community organisation to make a complaint on behalf of a healthcare user who would prefer to be private. There are, however, no guarantees in place that the complaint will be processed if anonymous or made by a third-party.

Remedies

Internal complaints bodies in Zambia do not have wide powers to order remedies but they may be able to offer you an apology, to discipline the healthcare worker, or to explain what went wrong. In cases where hospital management is not able to resolve the complaint, they might refer it to an external body for more investigation.

Health Professionals Council of Zambia (HPCZ)

If the complaint relates to the behaviour, attitude or conduct of a particular health professional, such as a doctor, it can be made with the Health Professionals Council of Zambia.

How should I complain?

- You can make a complaint to the HPCZ if you feel that a healthcare professional in Zambia has acted unlawfully, or has done something which goes against the HPCZ's Code of Ethics or the Health Professions Act.
- Your complaint must be in writing and can be sent by post to the Registrar of the HPCZ. You should include the name of the healthcare professional, the name of the healthcare facility and details to support your complaint.
- You should make your complaint as soon as possible after the incident.

Safety and privacy

Complaints to the HPCZ can be made on behalf of someone else. The HPCZ does not however ordinarily accept anonymous complaints – only in special circumstances will an anonymous complaint be accepted.

The HPCZ will make an effort to keep the details of your complaint confidential. If the HPCZ holds a hearing on the complaint, it will be closed to the public.

Remedies

If a healthcare professional is found guilty, the HPCZ has the power:

- To cancel the healthcare worker's licence to practise.
- To impose conditions on how the healthcare professional must practise.
- To caution the healthcare professional.
- To order the healthcare professional to pay a fine to the HPCZ.
- To order the healthcare professional to pay compensation to the person who was affected by the healthcare professional's misconduct.

General Nursing Council of Zambia (GNCZ)

How should I complain?

- Any person who is unhappy about incompetence, negligence or abuse by a registered nurse or midwife in Zambia can make a complaint in writing to the GNCZ or in person as a "walk-in-client".
- Complaints can be in writing or verbally. Your complaint should include information about the incident, with details of the healthcare facility and the nurses and midwives involved.

Safety and privacy

The GNCZ does accept anonymous and third-party complaints.

Remedies

After investigating a complaint, the GNCZ can issue a warning to a nurse or midwife, suspend them or stop them from practising.

Human Rights Commission of Zambia (HRCZ)

The aim of the HRCZ is to uphold and protect the human rights set out in the Bill of Rights in the Constitution of Zambia.

How should I complain?

- Complaints can be made in person at any of the provincial offices of the HRCZ in Livingstone, Ndola, Chipata, Kasama or Mongu, or at the national office in Lusaka.
- Complaints can also be made over the phone or by email.

Safety and privacy

The HRCZ can receive complaints of human rights abuses from:

- Someone acting on behalf of a person who has experienced an abuse of their rights.
- Individuals, organisations or associations acting in the interests of an individual, a group of people or its members.

Remedies

If you make a complaint to the HRCZ, it has the power:

- To investigate and report on how rights are being abused.
- To take steps to make sure that the abuse of rights and freedoms is stopped.
- To make sure that duty bearers and other stakeholders obey its decisions and orders.
- To make interim orders around safety and protection if it thinks they are necessary for the investigation.



Zambia case study

A nurse takes a sample of blood from Mukasi and tests her blood for HIV. The nurse did not tell Mukasi that she would be testing for HIV. The nurse also did not give Mukasi information about HIV and HIV testing, and did not ask her for informed consent before testing.

Mukasi has heard that many other people have had the same problem with other nurses at the clinic. She wants nurses to change their behaviour and to respect healthcare users more.

What rights are violated?

- The nurse has violated Mukasi's right to participate in decisions affecting her health. Mukasi has the right to make her own decisions about her body and her health, and she could have refused the HIV test if she did not want it.
- The nurse did not give Mukasi full information about HIV and HIV testing, and did not ask her for permission to test for HIV. The nurse has therefore violated Mukasi's right to give informed consent to an HIV test.

What can Mukasi do?

Mukasi has these options:

- To make an internal complaint at the healthcare facility where she was treated.
- To make a complaint against the nurse with the General Nursing Council of Zambia.
- To complain that her human rights have been violated with the Human Rights Commission of Zambia.

Mukasi decides to make a complaint with the person in charge of the clinic: the clinic manager. She asks the Neighbourhood Health Committee to assist. Mukasi asks the Neighbourhood Health Committee to set up a meeting with the clinic manager. At the meeting, Mukasi explains what happened to her. She says that she wants the clinic manager to call a meeting with the nurses and the Neighbourhood Health Committee to discuss informed consent and why it is important. She also wants the nurse to apologise to her.

This is a good option for Mukasi's problem because she wants all the nurses in the clinic to respect patients and to make sure informed consent is taken for all HIV tests in future.

The Global Fund to Fight AIDS, Tuberculosis and Malaria

The Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) is an international financing institution that provides funding to governments around the world to fight HIV, tuberculosis and malaria. Many countries in Africa accept funds from the Global Fund for the HIV programming and services.

The Global Fund is committed to protecting and promoting human rights. It understands that focusing on key populations and vulnerable people and ending discrimination is important to defeating HIV, tuberculosis and malaria.

To make sure that it does not support programmes that violate human rights and to play its part in removing human rights barriers to health services, the Global Fund has created a complaints process.

How should I complain?

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 Global Fund's Inspector General. Complaints can be made over the telephone, by email or over the internet.

What are the minimum human rights standards for programmes supported by the Global Fund?

1. Programmes financed by the Global Fund are expected to grant non-discriminatory access to services to all people, including people in detention, LGBT persons, people who use drugs, and sex workers.
2. Programmes financed by the Global Fund are expected to employ only scientifically sound and approved medicines or medical practices.
3. Programmes financed by the Global Fund are expected not to use methods that constitute torture or cruel, inhuman or degrading treatment.
4. Programmes financed by the Global Fund are expected to respect and protect informed consent, confidentiality and the right to privacy for any medical treatment, testing or services.
5. Programmes financed by the Global Fund are expected to avoid medical detention and involuntary isolation of healthcare users. This may only be done as a last resort.

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.



Tips:

See the contact details for the Global Fund's complaints process in the Annexures.

Annexures

Sample complaints statement

[Date on which complaint is made])

I, the undersigned, [give full names, address and contact details of complainant]

OR [give your full names, address and contact details] **acting on behalf of** [give full names, address and contact details of complainant]

OR [if you can make an anonymous complaint, do not state your name and say:]

“I am making this complaint anonymously”

Want to make a complaint about [name of healthcare facility and town]

OR [name of healthcare worker, facility and town]

[Indicate if the complaint is urgent and give reasons for why it must be handled quickly]

The details of the incident are:

[Include date and time of healthcare services]

[Include full details of what happened]

[Say if you have any witnesses]

[Say if you asked to see a copy of your medical records]

[Say whether or not you tried to resolve the complaint using an internal complaints process]

Remedies

[Say what remedies you want]

Confidentiality, privacy and safety

[Indicate any concerns around privacy, confidentiality or safety. Ask for your complaint to be handled confidentially if you don't want the details of the complaint to be made public]

[Say whether or not you will be able to give further information if asked]

[If you think you might go to court after making a complaint, say on the complaint that:

“The details of this complaint and my assessment of events is *without prejudice* to my right to take this case to court at a later stage”]

[Signature]

Malawi Human Rights Commission complaint registration form



MALAWI HUMAN RIGHTS COMMISSION COMPLAINT REGISTRATION FORM

Name of Complainant/

Representative:

(Mr / Mrs / Ms / Dr / Rev)

(Legal Person)

Age of alleged victim:

Sex of alleged victim:

Religion of alleged victim:

Contact details of complainant / representative:

Postal address:

.....

Physical address:

.....

Tel. / Fax / email:

Individual / Group represented:

Name(s) of alleged

Respondent(s):

(Mr / Mrs / Ms / Dr / Rev)

(Legal Person)

REFERENCE / FILENUMBER:.....

Office of the Ombudsman complaint form

FORM OMB1



Office of the Ombudsman Complaint form

SECTION A: DETAILS OF COMPLAINANT

Title (Mr / Ms / Mrs / Other):	First Name:
Last Name:	Date of Birth:
Contact Address:	Physical Address:
Contact Number:	Email Address:

SECTION B: DETAILS OF COMPLAINANT'S NEXT OF KIN

Title (Mr / Ms / Mrs / Other):	First Name:
Last Name:	Date of Birth:
Contact Address:	Physical Address:
Contact Number:	Email Address:

SECTION C: IF YOU ARE COMPLAINING ON BEHALF OF SOMEONE PLEASE GIVE YOUR DETAILS BELOW

Title (Mr / Ms / Mrs / Other):	First Name:
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Contact Address:	Physical Address:
Contact Number:	Email Address:

SECTION D: DETAILS OF THE COMPLAINT

Which public body / Bodies is your complaint against?

Brief Summary of Complaint:

*Please use a separate piece of paper if you need more space.

- Please tell us the main points of your complaint (what happened? Where and when did it happen? Who was involved?)

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In your opinion what wrongs were committed by the public body / bodies against you in your complaint?

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How have you suffered as a result of what happened?

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What would you like the public body / bodies to do, to put things right?

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What internal procedures or internal review / appeal procedures existing in the public body / bodies, did you try to use before bringing the complaint to the Ombudsman? What was the outcome of this internal process?

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SECTION E: GENERAL COMMENTS

How did you hear about Office of the Ombudsman (Radio, Newspaper, Friend, referred by another office)?

.....

Have you reported this complaint anywhere else? (e.g. Court, Anti-Corruption Bureau, Human Rights Commission)?

.....

*To support your complaint please attache **copies** of any letters and documents which you feel will assist in the investigation of your complaint. **Take note that all information provided is treated as confidential.**

Date:	Signature:
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*If complaint is recorded by Office of the Ombudsman member of staff:

Date:	Name:	Signature:
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Useful contacts and links

International resources

United Nations (UN) Special Rapporteur on the Right to Health

The Special Rapporteur on the Right to Health is a person appointed by the UN to investigate, monitor and recommend solutions to problems around the world to do with the right to health. Individuals, groups and communities can send complaints to the United Nations Special Rapporteur on the Right to Health.

E-mail: urgent-action@ohchr.org
 Post address: Special Rapporteur on the Right to Health, Office of the United Nations High Commissioner for Human Rights Palais des Nations 8–14, avenue de la Paix CH–1211 Geneva 10 Switzerland.

World Health Organisation (WHO)

The World Health Organisation (WHO) works to promote health and provide leadership in health for all people around the world. See the WHO fact sheet on the right to health for more information about your health and human rights: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

Website: www.who.int/en

Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund)

The Global Fund is a partnership between governments, civil society, the private sector and people affected by HIV, AIDS, tuberculosis and malaria. The Global Fund provides financial support to countries to respond to HIV, AIDS, tuberculosis and malaria.

Website: www.theglobalfund.org/en
 Free reporting service for complaints
 Telephone: (+1) 794 541 6918
 Email: inspectorgeneral@globalfund.org
 Website: www.theglobalfund.org/eng/oig/reportfraudabuse/

National resources

BOTSWANA

Botswana Health Professions Council (BHPC)

The BHPC was set up to regulate and control the practice of health professions in Botswana. Their main aim is to promote the highest standards in the practice of health care, and safeguard the welfare and interests of Botswana's people in delivering health services.

Telephone: (+267) 391 4672
 Postal address: Private Bag 0038, Gaborone
 Website: <http://hcp.moh.gov.bw/hprs/BHPCHome.aspx>

Botswana Office of People with Disabilities (BOPD)

The BOPD is set up under the Office of the President. Its mission is to coordinate the implementation of disability policy in Botswana by developing strategies and programmes to empower people with disabilities.

Telephone: (+267) 395 0800 / (+267) 395 0867
 Postal address: Office of the President, Private Bag 001, Gaborone

Ministry of Health

Toll-Free telephone: 0800 600 740

Nursing and Midwifery Council of Botswana (NMCB)

The NMCB regulates nursing and midwifery education and practice. Its goals are to ensure quality nursing services, public safety and protection through implementing and enforcing set standards.

Telephone: (+267) 395 1939
 Physical address: Plot 725, Unit 3, Main Mall, Gaborone
 Website: <http://hcp.moh.gov.bw/hprs/nmcbHome.aspx>

MALAWI

Medical Council of Malawi (MCM)

The MCM aims to set and maintain standards of health care in premises, equipment, supplies and staff. They monitor the qualifications and credentials of personnel employed at health facilities, as well as behaviour and conduct towards patients and clients.

Email: medcom@medcommw.org
 Telephone: (+265) 01 759 762/760; (Toll-Free): 59494
 Physical address: The Registrar, Medical Council House, Area 6, Opposite Lingadzi Inn, Along the Paul Kagame Highway, Lilongwe.
 Postal address: P O Box 30787, Lilongwe 3.
 Website: www.medicalcouncilmw.org

Nurses and Midwives Council of Malawi (NMCM)

The NMCM is the sole regulatory body of nursing and midwifery education, training, practice and professional conduct in Malawi. Their overall aim is to develop, maintain, monitor, evaluate and control the profession of nursing and midwifery, and through this to contribute to the national health goal of raising the health status of Malawians.

Email: nmcm@nmcm.org.mw
 Telephone: (+265) 111 772 044
 Physical address: The Registrar, Nurses and Midwives Council of Malawi, Anamwino House, City Centre opposite TAMA House
 Postal address: P O Box 30361, Lilongwe
 Website: <http://www.nmcm.org.mw>

Malawi Human Rights Commission (MHRC)

The MHRC is responsible for protection, investigation and recommendations around complaints of human rights violations. The MHRC also has a duty to examine any legislation, judicial decisions or administrative procedures, and to make recommendations to ensure that all of these respect fundamental human rights principles.

Website: <http://www.hrcmalawi.org/>

Blantyre

Email: infobt@malawihrc.org
 Telephone: (+265) 1 831 953/945
 Physical address: The Executive Secretary, Malawi Human Rights Commission, Fatima Arcade, Haile Selaise Road
 Postal address: P O Box 505, Blantyre

Lilongwe

Email: info@malawihrc.org
 Telephone: (+265) 1750 900
 Physical address: The Executive Secretary, Malawi Human Rights Commission, HB House, off Paul Kagame Highway
 Postal address: Private Bag 378, Lilongwe

Office of the Ombudsman

The Office of the Ombudsman is mandated by the Constitution of the Republic of Malawi to "investigate any and all cases where it is alleged that the person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or there is no other practicable remedy".

Website: <http://www.ombudsmanmalawi.org/>
 Email: ombudsman@ombudsmanmalawi.org

Head Office / Central Region (Lilongwe)

Telephone: (+265) 01 714 899
 Physical address: St. Martins House, City Centre
 Postal address: Private Bag 348, Lilongwe

Balaka (Eastern Region)

Telephone: (+265) 111 624 912
 Physical address: Mwamwa House, opposite the Mosque

Blantyre (South Region)

Telephone: (+265) 1833317
 Physical address: Kannabar House
 Postal address: Private Bag 171, Blantyre

Mzuzu (North Region)

Telephone: (+265) 111 643 778
 Physical address: Grace Building, Opposite Reserve Bank of Malawi
 Postal address: Private Bag 12, Mzuzu

ZAMBIA

Health Professionals Council of Zambia (HPCZ)

The HPCZ aims to achieve increased enforcement of regulations and standards to safeguard public health and safety. Its mission is to regulate and monitor the professional conduct of health practitioners, health facilities and training institutions to make sure they respect and follow set standards and provide quality health services.

Email: hpcz@iconnect.zm
Telephone: (+260-1) 236241
Postal address: PO Box 32554, Lusaka, Zambia
Website: <http://hpcz.org.zm/>

General Nursing Council of Zambia (GNCZ)

The GNCZ regulates the profession of nursing in Zambia through a variety of policies, projects and programmes, with the support of government and cooperating partners.

Email: gncz@nursing.org.zm
Telephone: (+260) 211 221284
Postal address: PO Box 33521, Lusaka
Website: <http://www.gnc.org.zm/>

Human Rights Commission of Zambia (HRCZ)

The HRCZ is mandated to ensure that Zambia's Bill of Rights is respected and protected. It does this through investigating, reporting and taking steps to redress human rights abuses, and resolving disputes through negotiation, mediation or conciliation, together with research and civic education on human rights.

Email: director@hrc.org.zm
Telephone: +260-211-251327/251357
Postal address: PO Box 33812, Lusaka
Website: www.hrc.org.za

