

Right to Health



LEGAL ASSISTANCE CENTRE

A Publication of the AIDS Law Unit,
Legal Assistance Centre

Right to Health



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What are human rights?

Human Rights:

- Are human entitlements by virtue of one being a human being;
- Are guaranteed by international standards;
- Are legally protected;
- Focus on the dignity of the human being;
- Protect individuals and groups;
- Oblige states and state actors;
- Cannot be waived or taken away;
- Are interdependent and interrelated;
- Are universal.

Human rights are legally protected and guaranteed by law. They protect individuals and groups against actions that interfere with their basic freedoms and human rights. While the main emphasis in regard to civil and political rights is on freedom from state interference, a major element in regard to economic, social and cultural rights (which include right to health) is the claim on the state for protection and assistance. This requires active measure by the state to progressively realise them. These rights are mostly concerned with the relationship between you the individual and the government.

Human rights are **universal**. This means that every person has rights no matter who he/she is, where they live, their class, race, sex, age and social status among others. Human rights are also **inalienable**. This means that they cannot be taken away from you. The following are a few examples of human rights:



1. The right to food and nutrition
2. The right to information
3. The right to privacy
4. The right to education
5. The right to freedom from discrimination
6. The right to health



What is meant by the “Right to Health”?

“ The right to health can be understood as the right to an effective and integrated health system encompassing health, which is responsive to national and local priorities, and accessible to all. Underpinned by the right to health, an effective health system is a core social institution, no less than a court system or a political system.”

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2006).

What the right to health means is that the government has the responsibility to (and therefore must) put in place conditions in which you can be as healthy as possible. Examples of such conditions include making sure that adequate health services or health care (medical, preventive and mental) is available; that there are healthy and safe working conditions at your workplace; and making sure that there is enough housing and nutritious food for you. Government can do this by putting in place policies and action plans which will lead to available and accessible health care for everyone.



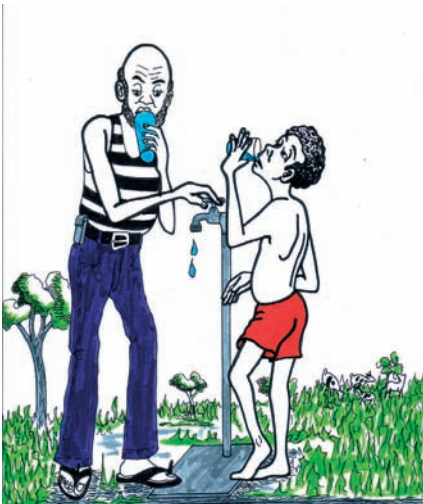
Chapter 3

What does the right to health entail?

When we talk about the right to health we are not just talking about the physical or mental well-being of a person. The right to health involves many other things without which you cannot enjoy good health. The most authoritative interpretation of the right to health is outlined in Article 12 of the International Covenant on Economic, Social & Cultural Rights (ICESCR) and has been ratified by Namibia and many other countries.

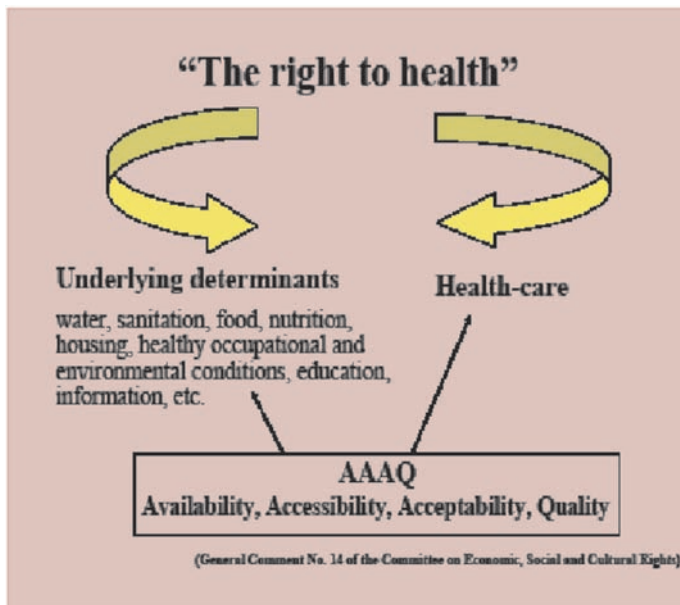
In May 2000, the Committee on Economic, Social and Cultural Rights, which monitors the Covenant, adopted a General Comment on the right to health. The general comment recognised the fact that the right to health is closely related to and dependent on the realisation of other human rights, such as the right to:

- housing
- access to sufficient health care (medical, preventative, and mental)
- nutrition
- sanitation



- non-discrimination
- clean water and air
- access to information
- job-related health consequences such as never-ending injuries and diseases resulting from unhealthy and dangerous working conditions.

The diagram below shows that for you to achieve your right to health, government must make clean water, proper sanitation, enough food, proper housing, and safe environment among others easily available and accessible to you. Government must also ensure that all these underlying determinants to right to health are of high quality and acceptable to you. The same applies for health-care services.



Which human rights are at issue in the context of health?

The main rights at issue in the context of health are:

- **The right to the highest possible standard of physical health (referred to as the “right to health”:** This is a claim to a set of social arrangements (norms, laws, an enabling environment) that can best secure the enjoyment of this right. The right covers mental health, reproductive health and sexual health.
- **The right to adequate standard of living and housing.** The right to adequate standard of living comprises, *inter alia*, three rights that are relevant to the environment context namely: the right to adequate food, the right to adequate water and the right to adequate housing.
- **The right to equal distribution of food.** The right to adequate food does not mean that government will be responsible for giving you food. Rather it means that government has a duty to facilitate your efforts to meet food needs by creating an economic, political, and social environment that will allow you to achieve food security. Only when you do not have the capacity to meet your food needs for reasons beyond your control e.g. disaster, famine, age and handicap, does the right to food imply that government physically provide food.
- **The right to access safe drinking water and sanitation.** Everyone requires access to adequate amounts of clean water. The water must be available in sufficient amounts, safe to use, and accessible to all who require it. The human right to water only applies to “basic needs” for drinking, cooking and fundamental domestic use. It does not mean that you have a right to an unlimited amount of water.

- **The right of equal access to health care regardless of sex, race, or other status:** You should be able to easily get to the health facility; you should be treated without any form of discrimination; you should be able to get health information without any difficulty; and you should be able to afford paying for the treatment received.
- **The right to a safe and healthy environment.** In the realisation of the right to health, government has a duty to take necessary steps for improvement of all aspects of environmental and industrial hygiene. Environmental hygiene covers all environmental factors that may affect your health such as pollution of water sources that limit access to clean water, unsafe disposal of human excrete, sewage and other refuse, global warming and its effects on human health causing skin disorder and eye damage.



- **The right to a safe and healthy workplace, and proper protection for pregnant women in work that can be harmful to them.** If you are pregnant, there are certain things, which can harm you or your unborn baby. For instance certain chemicals can increase the risk of a miscarriage or of you having a baby with a birth defect. You should therefore ensure that your work environment does not constitute a health risk to you or your unborn baby.
- **The right to freedom from discrimination and discriminatory social practices.** Examples of discriminatory social practices include female circumcision, the choosing of the sex of a baby before birth and the killing of female fetuses. Patients suffering from mental illness or people living with HIV and AIDS are often vulnerable to discrimination. This impacts negatively on their ability to access proper treatment and care; and the stigma associated with mental illness results in their experiencing discrimination in other aspects of their lives e.g. their rights to employment, adequate housing, and education among others.
- **The right to information on health, sexual and reproductive health:** Everyone has a right to access health-related education and information on sexual and reproductive health. Examples of such information includes but is not limited to contraceptives and family planning; abortions and the health risks of using abortion as a method of birth control. Examples of reproductive health rights of people living with HIV and AIDS are; not to be subjected to forced sterilisation but to have the right to chose whether or not to have children provided that they receive sufficient information on the implications of doing so.

Chapter 5

What are the minimum requirements for right to health?



When we say that there are some minimum requirements for right to health, what we mean is that there are some basic requirements which government must provide you with. The following are the minimum requirements that you can expect from government:

5.1 Availability

Government must ensure that you have enough functioning hospitals, clinics and nursing homes. This also includes clean drinking water, sanitation facilities, which are enough, essential drugs and trained medical and support staff receiving relatively good salaries; an ambulance, laboratory service among others. This should also include the underlying determinants such as safe water and adequate sanitation.

5.2 Accessibility

You should be able to easily get these health facilities, goods and services. Health care must be easy to get for everyone without discrimination. Accessibility has four overlapping dimensions:

- **Non-discrimination:**

You should be able to see a doctor, be examined, and get your drugs without being discriminated against on the basis of your race, gender, religion, age, sex, social standing, or other status. The young and old, both of who have special needs are especially vulnerable to the effects of poor health care. They are often unable to recognise or protest when their rights to care are violated. Without family support, they may not receive care from the government. Discrimination and stigma against people living with HIV and AIDS is a major contributing cause to people not seeking healthcare services.

- **Physical accessibility:**

Hospitals, clinics, doctors and medicines among others must be within safe physical reach for anyone who is feeling sick. This is especially so for weak or marginalized people such as:

- Ethnic minorities and indigenous populations
- Women
- Children
- Adolescents
- Older persons
- Persons with disabilities and
- Persons with HIV/AIDS
- Persons in the rural areas

The concentration of hospitals and clinics in cities also excludes many rural people.

- **Economically affordable**

Getting treatment from a doctor or nurse from a hospital or clinic, and thereafter buying the drugs must not be so expensive that you cannot afford

it. Right to health also means that health-care services whether privately or publicly provided, should be affordable for all. In many countries, the poor are often denied health care because they cannot afford it.

- **Information accessibility**

The government has a duty to provide you with education on current health problems and emphasise health promotional activities. You should be able to seek, receive and pass on information and ideas about health matters. However, this does not mean that your personal health information is not treated with confidentiality.

5.3 Acceptability

All hospitals, doctors and nurses must be respectful of medical moral values and culture. For people to have an acceptable image of health services, health care workers have to be professional in that they must treat patients with integrity and dignity, respect and courtesy, ensure privacy and confidentiality, and provide detailed information on treatment and intervention options.

5.4 Quality

The hospital equipment must be suitable and of good quality. The doctors and nurses must be highly skilled. The drugs must be the approved and un-expired. The hospital equipment must be in good working order, and the water safe. There should also be enough food and proper sanitation within the hospital or clinic.

What obligations does Government have?

As with every human right, the right to health entails certain obligations on the government. A government obligation is a duty or responsibility that the government owes you. The following are government's obligations with respect to health rights:

6.1 Respect

Government must not act directly counter to the human rights standard. It must avoid doing anything, which can interfere with the enjoyment of the right to health. For example, government cannot introduce a policy or law, which will interfere with the enjoyment of the right to health.

6.2 Protect

Government must act to stop others from violating the human rights standard.

6.3 Fulfill

Government has an affirmative duty to take appropriate measures to ensure that the right to health of everyone is realised. The extent to which government can fulfill this obligation will depend on available resources.



Where do we get these rights?

The Namibian Constitution

The African Charter on Peoples and Human Rights

The International Covenant on Social, Economics & Cultural Rights (ICESCR)

The Patient Charter

The Namibian Public Service Charter

We are human beings and as such we have rights, which must be retained at all times. The enjoyment of these rights is guaranteed and enshrined in numerous international and regional human rights treaties as well as national constitutions all over the world. In Namibia, we get the right to health from the following national, international and regional human rights instruments:

7.1 The Namibian Constitution

There is no clear right to health in the Namibian Constitution. But under the Article 95 of the Namibian Constitution that deals with Principles of State Policy, the Namibian Constitution states “the state shall enact legislation to ensure consistent planning to raise and maintain an acceptable standard of living for the country’s people” and to improve public health. To this end, the Namibian Government has come up with the following policies:

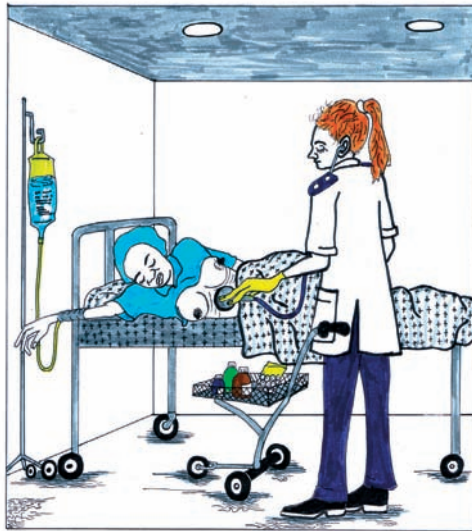
- a) National Policy on HIV/AIDS
- b) Patient Charter and others.

At the same time Article 144 of the Namibian Constitution states that “the general rules of public international law and international agreements binding upon Namibia form part of the law of Namibia.” This means that all the international agreements that Namibia signed become part of the law of our country. These laws and/or agreements are:

7.2 The African Charter on Peoples and Human Rights

The Government of Namibia signed the African Charter on Peoples and Human Rights, which states that “every individual shall have the right to enjoy the best attainable state of physical and mental health” and that “state parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”. In the Namibian context, this means that the government will put in place well equipped hospitals with fully qualified doctors to ensure that anyone who falls sick can and does get treatment.

7.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)



The Namibian government also signed the International Covenant on Economic, Social and Cultural Rights – (ICESCR) 12 (1), which provides that the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Steps for realising this right include measures by the Government of Namibia for the

prevention and treatment of diseases; and the creation of conditions, which would ensure that all those people who are sick receive medical attention.

7.4 The Patient Charter

A Charter is a document from the sovereign power of a country, which gives certain rights and privileges to a person or the people. The Ministry of Health and Social Services of Namibia wrote the Namibian Patient Charter. It was written for any person who gives or receives a health service. It recognises and protects the integrity and dignity of patients and clients. It sets out patients' rights and entitlements. It is also a yardstick to measure the quality of health care services provided at the health care institutions.

7.5 The Namibian Public Service Charter

The Namibian Public Service Charter is a document written by the Government of Namibia. It was written with a view to improving the quality of services delivered to all those people who live in or are visiting Namibia. The General Principles of the Namibian Public Service Charter are part of a wider reform programme, designed to provide efficient, effective and economic public services. According to these principles, the government is supposed to provide quality service that is efficient and affordable to the people.

Chapter 8

What is a patient?

A patient is a person who is waiting for, is receiving, or has already received health care services at a hospital or at a clinic. You can be an in-patient (a person admitted overnight or longer in a hospital), or you can also be an out-patient (a person who is examined, treated and goes away without having to sleep in hospital).



Do patients have “Patients rights”?

“**Patients rights**” refers to a set of rights, responsibilities and duties under which a person can seek and receive health care service. These rights are contained in The Patient Charter of Namibia. The following are your rights as a patient:

■ **Access to Services**

As a patient, you have the right to:

- receive care without any form of discrimination
- be examined and treated as soon as reasonably and practically possible
- receive emergency care at all hospitals and clinics during normal working hours and after hours
- be referred to the next relevant level of care if deemed necessary by the doctor or nurse
- have access to all the services provided by the Ministry of Health and Social Services
- receive the following services free of charge at selected service point:- Immunization services; TB and leprosy treatment; antenatal and postnatal services; counseling; family planning; health education and child growth monitoring.

■ **Integrity and Dignity**

As a patient, you have the right to:

- be treated with respect and politeness at all times
- have your values, culture, religion and dignity respected at all times
- to be listened to, and to be heard
- privacy when you go to see the doctor or nurse, when being examined, treated and to be consulted when choices exist
- confidentiality
- be clearly explained/ advised on your condition, illness and the treatment you are going to be given
- be told, if you ask, how to make any complaint and have it investigated

■ Access to information

As a patient, you have the right to:

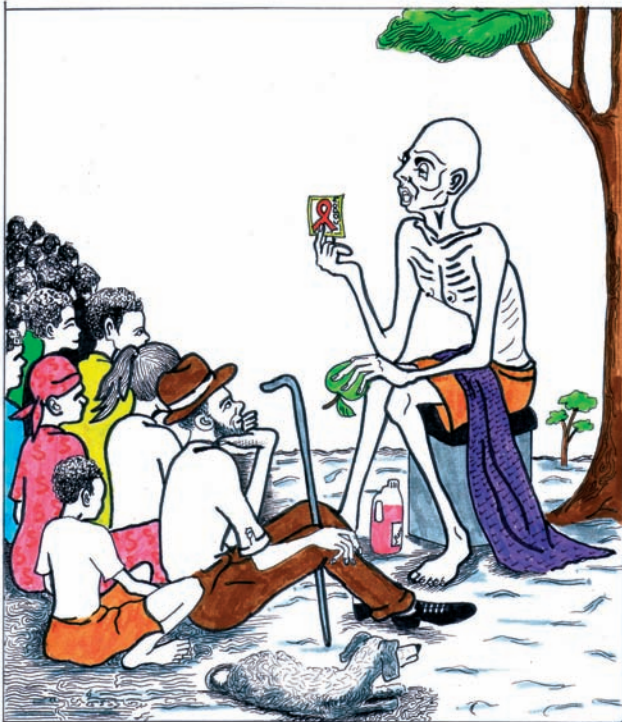
- Be told what health and social welfare services are offered and where to access them
- know the identity of the person attending to you
- and are entitled to your personal file (medical records) in the presence of a staff member



Do patients have responsibilities?

The Patient Charter gives patients certain responsibilities. These responsibilities are classified into three classes:

- General responsibilities
- Specific responsibilities
- Responsibilities related to community



What can a patient do to have their concerns addressed and their rights respected?

If you go to a hospital or clinic for medical treatment and thereafter feel that you were not well attended to by the doctor or nurse, or have any other grievance or complaint, there are a number of ways you can get help. These are listed below:

- a. Matron, Medical Superintendent or the Regional Health & Welfare Officers:** If you have a complaint or grievance, you should try and resolve this with the immediate service provider or the person in charge of the facility (Matron or Medical Superintendent). If you are not satisfied with the outcome you should contact the Regional Health & Welfare Officers. The contact details for all the regions are in Appendix I.
- b. Ombudsman:** You can complain to the Ombudsman about your health rights violations in the hospital or clinic.
- c. Legal action:** You have the right to take legal action against the health facility authorities as provided for under the Namibian Constitution (Article 25).
- d. Common law:** You have common law rights to sue for damages for instance for breach of the duty to confidentiality.
- e. Health Professionals Council of Namibia:** You can make a complaint to the Health Professionals Council of Namibia. The Health Professionals Council of Namibia is the only body mandated to protect the public by investigating allegations of unprofessional conduct in the medical field. It operates under the following Acts:
 - i.** The Nursing Act (Cap 6 of 2004)
 - ii.** The Medical and Dental Act (Cap 10 of 2004)
 - iii.** The Social Work and Psychology Act (Cap 6 of 2004)

- iv. The Allied Health Professionals Act (Cap 7 of 2004)
- v. The Pharmacy Act (Cap 9 of 2004)

How do you make a complaint to the Health Professionals Council?

If you feel that you have a complaint against a doctor, dentist, nurse or a pharmacist, you can go to the professional conduct desk at the Health Professional Council and make a formal complaint in writing. This written complaint will then be forwarded to the Professional Conduct Desk (PCD), which will then gather evidence by taking statements from the complainant, respondent and the witnesses. This evidence will then be presented to the relevant Preliminary Investigation Committee (PIC). If the complaint is nursing related, the evidence is presented to the Preliminary Investigating Committee, which is appointed by the nursing council.

After PIC has studied evidence, it will make a recommendation to the Council. The recommendation is either:

- The PIC could not establish evidence of e.g. negligence or improper conduct and case must be closed:

OR

- PIC could establish evidence of negligence, improper or unprofessional conduct and that a professional conduct inquiry be conducted.

If the recommendation is that the case goes for professional conduct inquiry (hearing) before the Professional Conduct Committee (PCC), and the Council ratifies the recommendation, then the case goes to the *proforma* complainant (PC). A PC is a lawyer appointed by the council on behalf of the complainant and will lead the evidence against the accused.

The accused person, complainant and witness will be requested to appear at the inquiry. If the practitioner is found guilty, sentence will be given out under the relevant Act.



If you have a complaint you can report to:

The Professional Conduct Desk
Health Professionals Councils of Namibia
37 Schonlein Street
P/Bag 13387
Bachbrecht, Windhoek West
Windhoek.
Tel: (061) 245 586
Fax: (061) 271 891
Email: cweyulu@hpcna.com.na

You can also report a complaint to:

The Legal Assistance Centre (LAC)
4 Korner Street,
P. O. Box 604
Windhoek.
Tel: 061-223356
Fax: 061-234953
Email: info@lac.org.na

Appendix I

If you have a complaint or grievance you should contact the Regional Health and Welfare Officers. The contact details for all the regions are as hereunder:

Regional Health & Welfare Officer
Otjozondjupa Region
Tel: (0651) 302950
P/Bag 2612
Otjiwarongo

Regional Health & Welfare Officer
Kavango Region
Tel:(067) 255392
P/Bag 2094
Rundu

Regional Health & Welfare Officer
Khomas Region
Tel:(061) 203 2388/2755
P/Bag 13198
Windhoek

Regional Health & Welfare Officer
Erongo Region
Tel:(064) 404770
P/Bag 5004
Swakopmund

Regional Health & Welfare Officer
Hardap Region
Tel:(063) 242726
P/Bag 2014
Mariental

Regional Health & Welfare Officer
Omaheke Region
Tel:(061) 563720
P/Bag 2099
Gobabis

Regional Health & Welfare Officer
Caprivi Region
Tel:(0677) 3012
P/Bag 1081
Katima Mulilo

Regional Health & Welfare Officer
Karas Region
Tel:(063) 223388
P/Bag 2102
Keetmanshoop

Regional Health & Welfare Officer
Kunene Region
Tel:(06562) 22/6
P/Bag 3003
Opuwo

Regional Health & Welfare Officer
Omusati Region
Tel: (06751) 62007/51021
P/Bag 5102
Outapi

Regional Health & Welfare Officer
Oshana Region
Tel: (06751) 20768
P/Bag 5538
Oshakati

Regional Health & Welfare Officer
Ohangwena Region
Tel: (06751) 70023/5
P/Bag 2006
Eenhana

Regional Health & Welfare Officer
Oshakati Region
Tel: (067) 221082 or 221206
P/Bag 2004
Tsumeb