Obstetric Violence
Know Your Rights Handbook
and Pilot Project

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PURPOSE OF THE HANDBOOK

The leadership of Women Affected by Mining United in Action (WAMUA) approached the Centre for Applied Legal Studies (CALS) in 2021 to partner in developing a series of handbooks and/or training guides around gender-based violence (GBV). This emerged from increased requests by various community members for training around specific forms of GBV and how to negotiate the criminal justice and judicial systems.

This specific handbook deals with the forms of violence girls and women are subjected to when seeking reproductive healthcare, especially during maternity and childbirth. It offers a summary and analysis of the national legal frameworks governing reproductive healthcare delivery in South Africa. It aims to protect women's rights, especially their sexual, reproductive health rights.

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ARV	Anti-Retroviral
CALS	Centre for Applied Legal Studies
GBV	Gender-based violence
HIV	Human Immunodeficiency Virus
SAPS	South African Police Service
SORMA	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
STI's	Sexually Transmitted Infections
WAMUA	Women Affected by Mining United in Action

DEFINITIONS1

Antenatal care	• Antenatal care is the routine health control of presumed healthy pregnant women without symptoms (screening), in order to diagnose diseases or complicating obstetric conditions without symptoms, and to provide information about lifestyle, pregnancy and delivery.
Autopsy	• A post-mortem examination to discover the cause of death or the extent of disease
Birthing people	• Gender-neutral term for people who give birth.
Cervix dilation	• As labour nears, the cervix may start to thin or stretch (efface) and open (dilate). This prepares the cervix for the baby to pass through the birth canal (vagina).
Episiotomies	• A surgical cut made at the opening of the vagina during childbirth, to aid a difficult delivery and prevent rupture of tissue.

1 With definitions which have specific legal criteria, the definition as set out in law is referenced first and then a 'plain language' definition is supplied.

Gynaecologist	• A doctor who deals with the diseases and routine physical care of the reproductive system of women.
Legal duty	• This is an obligation that someone has that is set out in law. Sometimes failing to do this can be a criminal offence.
Obstetrician	• An obstetrician is a doctor who specialises in pregnancy, childbirth, and a woman's reproductive system.
Histology	• The study of tissues and cells under a microscope.
Paupers' burials	• A grave paid for at public expense because the deceased person's family could not afford one.
Perpetrator	• A person who commits a criminal offence.
Postpartum depression	• Depression suffered by a mother following childbirth, typically arising from the combination of hormonal changes, psychological adjustment to motherhood, and fatigue; postnatal depression.
Postnatal care	• Postnatal care takes place in the period after the delivery of the baby. This includes routine

	clinical examination and observation of the woman and her baby.
Rape	• Legal: any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape.2 • Plain language: the intentional and non-consensual sexual penetration of one person by another. Examples include: (1) The genital organs of Lee into the genital organs, anus or mouth of Mpho, (2) Any other part of Lee's body or, any object, into the genital organs or anus of Mpho; (3) or the genital organs of an animal into the mouth of Mpho.3
Reporting officer	• The person at SAPS that a complainant reports a criminal offence to.

2 Section 3 of Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 ('SORMA').

3 Centre for Applied Legal Studies and Tshwaranang, *A summary of the Criminal Law Sexual Offences Amendment Act 32 of 2007*. Available at https://shukumisa.org.za/wp-content/uploads/2017/09/A-summary-of-the-Criminal-Law-Sexual-Offences-Amendment-Act-CALS-and-TLAC.pdf.

Sexual Assault	• Legal: (1) A person ("A") who unlawfully and intentionally sexually violates a complainant ("B"), without the consent of B, is guilty of the offence of sexual assault. (2) A person ("A") who unlawfully and intentionally inspires the belief in a complainant.4 • Plain language occurs when Lee intentionally sexually violates Mpho without the consent of Mpho. Sexual assault is also committed where Lee threatens to sexually violate Mpho. 'Sexual violation' includes any act which causes – direct or indirect contact between the genital organs, anus or female breasts of one person, and any part of the body of another person, an animal, or object; the mouth of one person and genital organs, anus or breasts of another; the mouth of another person; any other part of the body of another person which causes sexual arousal; any object resembling genital organs, anus or breasts; Mpho's mouth and the genital organs or anus of an animal; Masturbation of one person by another; or the insertion of any object similar to the genital organs of a person or animal into or beyond Mpho's mouth.

4 Section 5 of SORMA.

	For example, when Lee touches Mpho's breasts or kisses Mpho without Mpho's consent.5
Sexual offence	• Legal – Any offence set out in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) or in the common law. • Plain language – Sexual offences refer to any crimes of a sexual nature that are recognised in South African law. This includes (but is not limited to) rape, sexual assault, grooming, being forced into committing a sexual offence, being forced to watch a sexual offence, forcing children to watch pornography.
Still birth	• A stillbirth is the death or loss of a foetus before or during delivery. Both miscarriage and stillbirth describe pregnancy loss, but they differ according to when the loss occurs.
Survivor	• This is a person against whom a criminal offence was committed. Individuals often choose to be described as a 'victim' or a 'survivor'.

5 As above.

Ultrasound scans	• An ultrasound scan, sometimes called a sonogram, is a procedure that uses high-frequency sound waves to create an image of part of the inside of the body. An ultrasound scan can be used to monitor an unborn baby, diagnose a condition, or guide a surgeon during certain procedures.
Victim	• This is a person against whom a criminal offence was committed. Individuals often choose to be described as a 'victim' or a 'survivor'.

CHAPTERS

CHAPTER 1

WHAT IS OBSTETRIC VIOLENCE?

Did you know?

The overwhelming majority of South African's –over 80 percent– rely on the public health system. Furthermore, 88% of girls and women give birth in clinical settings with professional care. However, only 40% seek antenatal care before 20 weeks gestation, and a minority of women attend the recommended four antenatal visits. (May 2019 UN Special Rapporteur on Violence Against Women).

- Formal definition:

  The term "obstetric violence" originated in South America in 2007 and is often used for this particular kind of maltreatment. It is also defined as the disrespectful, aggressive and humiliating treatment of women and girls during labour and birth.

  It is an expression of violence during the provision of health care, which occurs in a social environment favouring the development of power relationships between patients and health care practitioners.

  The term encompasses problematic practices such as neglect, verbal and emotional abuse, physical abuse, and sexual abuse, lack of confidentiality and consensual care, and inappropriate use of medical intervention, such as episiotomies, inductions and unnecessary caesarean sections.

- Plain language definition:

  The term obstetric violence is the physical, sexual, and/or verbal abuse, bullying, coercion, humiliation, and/or assault that occurs to labouring and birthing people by medical staff, including nurses, doctors, and midwives. In short, obstetric violence is anytime a person in labour or birth experiences mistreatment or disrespect of their rights, including being forced into procedures against their will, at the hands of medical personnel.

- Why is it a problem:

  Women's integrity can be violated in many ways during childbirth. Obstetric violence captures all the different ways that this might occur. This means that 'obstetric violence' is very broad in scope.

  The nature of obstetric violence is such that we are working with a system that is based on violence against women. Obstetric violence does not refer to everything that happens during hospital and clinical based childbirth, it refers to those interactions with healthcare personnel or healthcare systems that violate women's integrity.

  We do not ask if her doctor or midwife intended to hurt her, if there are physical injuries, or if they used excessive force.

  To identify obstetric violence, we ask things like, was she treated as a 'piece of meat'? Was she listened to? Was she included in the decision-making process? Did she have a say about who could touch her, where she could be touched, or when she could be touched? Was she objectified?

- Prevalence of obstetric violence in world and SA?

  When looking at childbirth in South Africa and a number of other countries, themes that emerge are overt aggression, lack of support, lack of privacy and gender inequality. In South Africa, a large divide exists between those able to access private healthcare and those forced by poverty to rely solely on the services offered by the government.[6]

  When specifically researching obstetric violence in South Africa, Chadwick reported that:

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[6] Chadwick, Rachelle Joy. Obstetric violence in South Africa. *SAMJ, S. Afr. med. j.* [online]. 2016, vol.106, n.5 [cited 2021-08-10], pp.423-424. Available from: <http://www.scielo.org.za/scielo.php?script=sci_arttextandpid=S0256-95742016000500002andlng=enandnrm=iso>. ISSN 2078-5135. http://dx.doi.org/10.7196/samj.2016.v106i5.10708

“Violence in obstetric contexts in SA is multi-layered and complicated by the fact that it includes both individual acts of abuse and structural components such as degrading spatial configurations that lead to lack of privacy and impede the use of labour companions”.

In May 2019 the Commission for Gender Equality (CGE), an independent statutory body whose mandate is to promote respect for, protect, develop and attain gender equality within all spheres of South Africa, released a submission provides an overview of the forms of violence girls and women are subjected to when seeking reproductive healthcare, especially during maternity and childbirth.

The submission also summarises key analysis of the causes and drivers of this particular violence against women. This submission has established that violence against women and mistreatment within reproductive health services is a persistent problem in South Africa.

Violence against women during pregnancy and childbirth is widespread globally. The World Health Organization (“WHO”) stated that the abuse of women during facility-based (hospital and clinics) childbirth occurs in both low-income and high-income countries. This means it is likely for women and birthing persons to experience psychological and/or physical violence when they give birth in a clinic or hospital. Those who are vulnerable because of poverty, nationality, disease status, and other factors are more likely to be abused.

The abusive treatment towards women, girls and birthing persons during child birth is a reflection of the way they are treated in society, which is why this form of violence falls under gender-based violence. Women, girls and birthing persons are vulnerable in society and the only ones that will experience this type of violence as they are the only ones who can get pregnant.

In South Africa, the supplying and receiving of services related to birthing is affected by racial and class inequalities. Since 1998, obstetric violence has been documented in several provinces, in cities and rural areas, and in the

public system in day hospital clinics to specialised hospitals. This particular form of gender-based violence violates women and birthing persons dignity and sexual and reproductive health rights.

Although, we are twenty-seven years into democracy, the private and public healthcare systems, remain divided along racial and class lines. Most white people (and growing numbers of middle-class black people) give birth in private hospitals and most black and ‘vulnerable’ women give birth naturally in under-resourced public hospitals.

CHAPTER 2

CONTEXT AND PROBLEM

- Reproductive health services:

In South Africa, when women and birthing people are pregnant, they seek health services to support themselves and their pregnancy. Usually, an individual will go to a public or private healthcare provider or clinic to have a consultation, pregnancy test and examination. If the person's decision is to support the pregnancy, then also 'to book' antenatal and childbirth services.

Health services are available in the public system free of cost, and in private systems for fees. Both systems provide services to assist women and birthing people throughout their pregnancy and after childbirth. If the person is getting public services, they typically go to a primary care hospital or clinic and are seen by a midwife[7].

If they are ill or become ill or have complications, they are referred to a more specialised hospital and are seen by an obstetrician. When women and birthing people go to private healthcare networks for services, they often visit an obstetrician/gynaecologist who assists them throughout the pregnancy.

Generally, women and birthing persons are healthy during pregnancy and childbirth. So, the role of healthcare during this time is to educate, inform, and support women and birthing people, and to ensure they make the most informed decisions about their pregnancy and childbirth.

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7 Chadwick, Rachelle Joy. Obstetric violence in South Africa. *SAMJ, S. Afr. med. j.* [online]. 2016, vol.106, n.5 [cited 2021-08-10], pp.423-424. Available from: <http://www.scielo.org.za/scielo.php?script=sci_arttextandpid=S0256-95742016000500002andlng=enandnrm=iso>. ISSN 2078-5135. http://dx.doi.org/10.7196/samj.2016.v106i5.10708

CHAPTER 3
TYPES OF OBSTETRIC VIOLENCE

- Psychological Abuse:

  - Neglect: occurs, for instance, when women and birthing people in labour are turned away from facilities, told to pay (for a free service), told to go to Trauma Units instead of maternity services, denied care by not being attended to when in active labour, or left soiled from childbirth.

  - Verbal assaults: are based on those that judge women and girl's sexuality and fertility choices, their age, economic and disease status, nationality or ethnicity. For instance, shouting instructions and assaults during childbirth that accuse women of having little morals, and often blame women for poor birth outcomes. Examples of verbal abuse include "your baby died because "you didn't listen to me" or "don't be dramatic, lie on your back." Such assaults can be forms of intimidation, and coercion.

- Physical abuse

  - Assault: this includes slapping especially in the face and legs, dragging women by the ear on the ground, applying pressure to the fundus (abdomen) during labour, isolating and abandoning women in active labour. Women have explained this as torture. This can also take the form of coercive and forced medical procedures (including, c-sections, administration of contraception, and sterilisation).

- Unnecessary and routine medical procedures

  - Including vaginal exams / cervical checks: this is where women have described this as feeling like sexual assault. (These procedures are to be performed once every 2 hours to indicate progression of labour by checking cervix dilation). This also includes routine episiotomies (surgical cuts to vagina to aid childbirth).

- Denial of pain medication: this especially happens at the primary care day hospital level.

- Informed consent:

  - Many of the abuses relating to medical procedures relate to lack of patients' informed consent'. Informed consent is a legal term that refers to the factors that need to be in place in order for a person to decide for themselves what they want in regards to their healthcare and for them to realise that decision.

  - South African legislation explains healthcare providers must inform every patient of full and accurate information in a language and manner they can understand in order to make informed consented to decisions.[8]. This includes full and accurate information about the nature of one's health, every diagnostic procedure, the proposed treatment, including the benefits, consequences and risks and the costs involved, if any. And including that patients have the right to refuse procedures and treatments, and that their consent to a procedure or treatment can be withdrawn at any time. A patient's consent is only valid if all of the above has been fulfilled.

- Routine abuses

  - Existing information shows routine abuses take the form of verbal assaults (lying, threatening, shaming), denial of pain medication, and coercive administration of contraception, especially the injectable contraception.

- Possible impacts of obstetric violence

[8] Bateman, C. (2014). Dismal obs/gynae training contributing to maternal deaths - Motsoaledi. *South African Medical Journal*, 104 (10), pp. 656-657

- It is thought that obstetric violence can result in trauma, post-partum depression, and physical damages to women/birthing people, foetus, and new-borns, which can result in death and life-long disabilities. An important factor here is that the physical damages result from *preventable and unnecessary acts.*

- The lifelong physical damages for women and birthing people relating to damages during childbirth include for example loss of fertility, sexual pleasure, dignity; issues of incontinence, pain, cosmetic damages and preventable maternal death.

- The lifelong physical damages for new-borns relating to damages during childbirth include, new-born death and disability. Preventable maternal and neonatal disability (for instance anaemia, hormonal imbalances, pelvic inflammatory disease for mothers and cerebral palsy for new-borns).

	Form	Description
	A. FORCED OR COERCED PROCEDURES – NOT PROPER CONSENT	
1.	Forced or coerced sterilisation due to HIV/AIDS	Here it is important that the sterilisation was: 1. Without consent: 1.1. Not asked for consent; 1.2. Not explained what the procedure was; 1.3. Not explained in a language preferred by woman; 1.3 Felt pressured to sign a permission form; 1.4 Was not allowed to ask questions; 1.5 Was rushed into signing; 1.6 Other **AND** 2. The person has HIV/AIDS and considers this to be the reason for the sterilisation
2.	Forced or coerced sterilisation for other reason	Here it is important that the sterilisation was: 1. Without consent: 1.1. Not asked for consent; 1.2. Not explained what the procedure was; 1.3. Not explained in a language preferred by woman; 1.4. Felt pressured to sign a permission form; 1.5. Was not allowed to ask questions; 1.6. Was rushed into signing; 1.7. Other. **AND** 2. Here reasons include: • Possible death; • Further infection; • Perceptions around having too many children; • Age; • Physical or mental disability; • Arbitrary or other discriminatory grounds.
3.	Caesarean section (C-section)	1. Without consent: 1.1. Not asked for consent; 1.2. Not explained what the procedure was;

		1.3. Not explained in a language preferred by woman; 1.4. Felt pressured to sign a permission form; 1.5. Was not allowed to ask questions; 1.6. Was rushed into signing; 1.7. Other.
4.	Episiotomy *- is a surgical incision of the perineum and the posterior vaginal wall generally done by a midwife or obstetrician.* *** Experts agree these should not be done unless really needed.	1. <u>Without consent:</u> 1.1. Not asked for consent; 1.2. Not explained what the procedure was; 1.3. Not explained in a language preferred by woman; 1.4. Felt pressured to sign a permission form; 1.5. Was not allowed to ask questions; 1.6. Was rushed into signing; 1.7. Other. **<u>AND/OR</u>** 2. Done without proper surgical equipment. <u>Such as nurses' nails</u> 3. Students (without consent)
5.	Other procedures (not limited to below) • Using forearm, elbow or whole body to push the baby out manually ***Kristellar Manoeuvre	1. <u>Without consent:</u> 1.1. Not asked for consent; 1.2. Not explained what the procedure was; 1.3. Not explained in a language preferred by woman; 1.4. Felt pressured to sign a permission form; 1.5. Was not allowed to ask questions; 1.6. Was rushed into signing; 1.7. Other.
PHYSICAL VIOLENCE – BEFORE AND/OR DURING AND/OR AFTER LABOUR		
6.	Physical violence during procedures	1. Using too much force during procedures. 2. Using fingers or hands instead of medical tools. 3. Inserting fingers, hands or arms into vagina <u>without consent.</u>
7.	Physical violence generally	1. Hitting, slapping, punching by staff. E.g. slapping thighs to open. 2. Pulling the patient or pushing the patient.

8.	Forcing patient to do something	1. Forcing the patient to wash her own wounds. 2. Forcing a patient to pull out her child or placenta. 3. Clean up herself or room after giving birth. 4. Forced to walk up and down stairs. 5. Buy your own medical supplies. E.g. gauze or bandages.
B. INJURY AND/OR DEATH OF MOTHER OR CHILD		
9.	Injury/death of mother before/during/after birth	1. Was there some type of negligence by the medical staff that resulted in death?
10.	Injury/death of child during birth or after	1. Was there some type of negligence by the medical staff that resulted in death?
C. PRIVACY		
11.	Medical students present	1. This should occur with one or more of the above. 2. Without consent (see consent above) 3. This can include watching the patient giving birth. 4. Can also include watching other procedures.
12.	Sharing personal medical information to third parties	1. This should occur with one or more of the above. 2. This can include speaking about a patient's HIV status. 3. Even if this is speaking loudly and having it overheard. 4. Not only HIV any other private information. 5. Nurses using code words such as 'contact' which can be an STI. No consent.
D. CONTRACEPTIVES		
13.	After giving birth	1. This should occur with one or more of the above. 2. Forced to take contraceptives. 3. Not given information on contraceptive. 4. Not given information around side effects. 5. E.g. Insert UID without consent.
E. MEDICATION ETC THAT WAS ADMINISTERED WITHOUT CONSENT AND CAUSED HARM		
14.	Any medication that was given/administered without consent	1. No consent (see above) 2. Caused or seemed to cause harm to the patient or child. 3. E.g. Have flu and leaves sterilised. Go in for one procedure and come out with another.
F. REFUSAL TO GIVE MEDICATION		
15.	Refusal to give pain medication when requested	1. This should occur with one or more of the above. 2. Unjustified refusal.

		3. E.g. Sometimes experience so painful and traumatising, you change mind around having more children.
	G. STILL BIRTH	
16.	Still birth	1. Caused by negligence or perceived negligence. 2. Lack of sonar checks and baby has died months ago, carrying dead foetus (both clinics and hospitals). 3. Being kept in a ward where women with new born babies are with their children.
	H. NOT INFORMED OF CHILD PHYSICAL/MENTAL DISABILITY	
17.	Not given choice around child's birth when e.g. disability	1. E.g. Not informed child had Down Syndrome and given no choice around child's birth.
	I. TERMINATIONS/ABORTIONS	
18.	Refusal by staff to administer	1. Not being permitted to have an abortion (where permitted by law – timelines). 2. <u>If delayed and go past timelines, please include here.</u> 3. Conscientious objection, made to feel abortion is wrong, or embarrass/humiliate you (unlawful). 4. Offered sonar for termination (felt forced to do this) (unlawful). 5. Forced to go to an illegal provider ('street abortion' or 'backstreet abortion'). 6. Other tactics to prevent you accessing service (e.g. Asked for proof residence).
19.	Abortion occurred without consent	1. Consent - where medical provider forced or did not tell you (see above). 2. E.g. Diagnosed with HIV.
	J. FAILING TO PERFORM EMERGENCY MEDICAL TREATMENT	
20.	Where failure results in injury or death of patient and/or child.	1. An emergency procedure was delayed or did not happen, and harm was the result.
	K. DISCRIMINATION	
21.	Discrimination can be based on: HIV status; Language; Culture; Gender; Sexual orientation; Nationality; Race; Mental disability/physical; Disability; Disadvantaged. **** Not a closed list ****	1. This should occur with one or more of the above.
22.	Birthing fee	1. Migrants

Example testimonies

Mother testimony example 1 –

I started to get fast pains at home and went to the clinic where I was already booked to give birth naturally. I saw there were two other women having labour pains on the bench in the hall. They told me to go into a room where a Sister was, to tell her I was here. I knocked, explained I was booked and had been having pains all day and now they were very fast and I think I am in labour. She said, “You know so much. You haven’t even been examined, and where is your record? Why haven’t you gone to reception! Come back to me with your record”. I was startled and having trouble to walk. Still, I just turned around and walked to reception, got in line at the counter. When I walked back one of the women was gone. I thought maybe she was in labour. I went to the Sister but the room was empty. I waited on the bench. Two hours later finally a different Sister came and brought myself and the other lady to beds in the ward. She instructed me, “Open your legs so I can check how far dilated you are”. I was in huge pain, and did as she asked. I said, “Can I get medication for the pain?” Ignoring my question, she said nothing more, not even her name, not what dilation is, and not how close to labour I was. She just put four fingers inside me, took them out, and left. Then I had three different people come over to shove their hands inside my vagina one right after the other. Not fingers, hands. Besides the first nurse no one explained why, asked first if they could examine me, or even told me what they were about to do. They would walk in, go to my legs put their hands inside me and walk out. Not one informed me how far dilated I was and what this meant. I think some of them were student doctors or nurses, but I do not know. It was my first time giving birth, and I didn’t know this wasn’t normal. Though the lady next to me only had it once. At this point I was in so much pain, felt violated and gross, the contractions were coming very fast and I was so scared they had hurt me because I was in more pain. I didn’t understand why they were touching me. It was terrible. Still I felt all I could do was walk around in the room, lean on the bed and wait.

An hour later it was worse, and I was still alone. I couldn’t help but call out hoping they could hear. I said “help me, Sister please, the baby is coming”. About thirty minutes later a nurse came to scold me saying, “Don’t cry. this is not a reality TV show, there is no drama here”. I apologised and asked her to help me. She checked the baby’s heart and scolded me for pushing. She said, “If the baby dies it will be my fault, not hers”. I gently

apologised again and told her “I am scared and in so much pain”, I asked her, “Is the baby fine?” She said “Yes”. She instructed me to wait not to push, that she would be back. For me this was all so emotional. This is my first child and I was already 30. I was scared something had gone wrong, and this is why so many people had looked inside me. I really wanted to stand up. Lying on my back the pain was worse, and my stomach cramped. When I sat on my hands and knees it was better. Two hours later I was still alone. I called out again and maybe thirty minutes later she came back. I, sitting up on the bed on my hands and knees, begged her to help me deliver. She did. She said it was time now, “don’t be dramatic, lie on your back.” I told her it hurt more, she refused and said she would leave me if I didn’t listen. I turned over, and luckily the baby came quick. I was relieved. She cut the cord right away without asking me. As the baby was being cleaned by another nurse she gave me two injections, and after one the placenta came out. I still don’t know what they were for. She didn’t ask or say, and I am worried. My sister said one of them could be the 3-month contraception. But I don’t know. I left the hospital in the morning.

Mother testimony example 2 –

When I got to the hospital the admitting nurse received me with anger and delays. I was even scolded for getting pregnant being so poor and young. She said I was still in early labour and would admit me to the labour ward. Three hours after arriving the pains were faster and I had called out asking for help over and over. The admitting midwife finally came in, checked me, and the baby’s heart again. She said, “It is time now, why didn’t you tell me before you need to push! You are ready, the baby’s heart is dropping!” I explained I had been calling out, and said never mind, please help us know. She said, “Just don’t push yet, wait for us, I will be right back. I was panicked, helpless and scared. This nurse that had now taken over for her came in and started talking to me in a language I didn’t understand, (Tsonga). I politely informed her that I didn’t understand the language. She replied to me in Sesotho, the same language that I was speaking and said, “If you don’t understand me that’s your problem because you are in an area where we speak Tsonga and I will not change to accommodate you,” and then immediately went back to giving me instructions in Tsonga that I couldn’t understand, which was confusing because she was speaking Sesotho to the other midwife helping me just before.

From there on everything turned into a worse traumatic experience. As I was pushing the baby out the midwife roughly used her nail to tear my vagina open. I was in so much pain, still the baby was successfully birthed. Then came the part of birthing the placenta. She

instructed me to cough to help her, then tugged at the cord so it broke off from the placenta inside me. She then roughly placed her whole arm in my vagina to remove the placenta. I was given no pain medication, and no warning at all. After removing the placenta, she said to me (now in Sesotho) “you’re torn very badly but I will not stitch you up”. I hadn’t thought the damage was so bad, but after being at home when I looked I could see I was cut to my clitoris. I began to have strong reoccurring pains in my vaginal area and when urinating for a week and went to the clinic asking for help. The nurse I saw refused to help me and said, “I can’t look at that! Go somewhere else.” Eventually it healed. I still have so much discomfort though up till today.

CHAPTER 4

What does our law say and how does it assist?

- Sexual and Reproductive Health *Rights:*

  Sexual Reproductive Health Rights can be summarised by the right to have a satisfying and safe sex life; the freedom and safety to decide if, when, and how often to have children; and to access adequate and safe healthcare, including abortion care. There are certain provisions and legislation that governs sexual reproductive health rights in South Africa.

- The Constitution of the Republic of South Africa

  The Constitution is the highest law of our land. The aim of the Constitution is to ensure that people's human rights are protected. It exists in order to protect people from an unjust system. Chapter 2 of the Constitution consists of the Bill of Rights that need to be protected at all costs.

  Section 9 of the Constitution speaks about the right to equality. This is important when it comes to dealing with issues concerning obstetric violence because impoverished women and birthing people in public hospitals and impoverished economic backgrounds do not receive the same quality healthcare as individuals in private hospitals. It becomes a class issue where more well off individuals get better healthcare treatment , which lessens their chances of experiencing obstetric violence. All lives of women and birthing persons need to be respected and treated with equal respect despite their personal circumstances.

  Section 10 of the Constitution speaks to the right to dignity. Undignified medical procedures or lack thereof are at the core of obstetric violence. Women and birthing persons face humiliation at the hands of doctors and nurses. One's health should be treated with sensitivity and empathy, yet women and birthing persons receive a different form of treatment that undermines their right to dignity. The right to dignity has been undermined to

extremes where certain behaviours are been normalised, especially if one comes from an impoverished economic class. Therefore, it is important to claim back sexual reproductive rights as it is one of the ways to reclaim back power and dignity for women and birthing persons. When one speaks about dignity, one should also think about the autonomy and agency that women and birthing persons are entitled to. When doctors take your rights and autonomy away, they take away ones dignity. Therefore, it is imperative to not only respect women and birthing persons choices, but create a safe and dignified community for them.

Section 12 of the Constitution speaks about the right to freedom and security of a person. This includes the right to be protected from all forms of violence from the private and public spheres. Furthermore, this ties into the right to bodily and psychological integrity. Obstetric violence infringes on these rights because of the violence and disregard that is experienced by women and birthing persons. Furthermore, the psychological trauma that women and birthing persons experience due to obstetric violence is one that sticks with the victims for long periods of time. At times, it changes their life forever in a way that it has a dire impact on their mental health and how they navigate the world. This is indicative by the testimonies that women have shared with us in the booklet in chapter 2.

Section 27 of the Constitution speaks about the right to health care services (including reproductive rights) and the right to emergency medical treatment. This is important to note that this right should be read in line with s 9, 10 , 12 of the Constitution.

It is important to debunk the idea that receiving health care is enough, the quality of the healthcare is very important. When women and birthing persons receive medical treatment it should not infringe on their equality, dignity and freedom.

- The Choice of Termination of Pregnancy Act of 1996 (as amended act 38 of 2004)

This legislation regulates individuals right to go for an abortion until the 12th week of pregnancy. Abortion is a healthcare right and given expression by this legislation. Although, there is legislation that supports and visualises the right to abortion, there is still a lot of stigma and shame around abortions. Abortion is a sexual reproductive right and it is important to remember that requesting abortion services is not something to be ashamed of, yet a right.

- The Sterilisation Act 44 of 1998

This legislation provides the right to sterilisation and regulates the right. What the act aims to do is to indicate that people, regardless of gender have the right to sterilisation. This right is subject to the individuals being fully informed about the procedure. Furthermore, ensuring that individuals have a safe, effective, affordable and dignified fertility procedures. However, as stated in the above chapters, it is important that the person undergoing the procedure gave the healthcare professionals informed consent to do so. It should not be used as a tool to police and violate the rights of affected parties, this is where it becomes obstetric violence. A person has the right to be given a clear description about the procedure, the consequences and risks.

- The National Health Act 61 of 2003

This legislation mandates the provision of free healthcare services to all pregnant and breast-feeding women, and the Choice of Termination of Pregnancy Act, which legalises abortion services and mandates this service be provided free of charge. These rights are extended to all women and birthing persons, without bias on the basis of legal status in the country.

Chapter 2 of the National Health Act and The National Patients Rights' Charter, see annexure below, set out the factors that need to be in place in order for a person to decide for themselves what they want in regards to, their healthcare and for them to realise that decision otherwise known as 'informed consent'.

Section 4 mandates the provision of free healthcare services to all pregnant and breast-feeding women. The Act reaffirms the constitutional rights of

users to access health services as well as just administrative action. Section 18)enables any user of health services to lodge a complaint about the manner in which they were treated. The Act further requires Members of the Executive Councils of Provinces to establish procedures for complaints.

- Guidelines for Maternal Care in South Africa (2015)

  The guidelines provide, among other things, a practical approach for primary healthcare to manage pregnancy, labour and childbirth with the ultimate aim of reducing deaths of mothers. The guidelines are for health professionals providing obstetric, surgical and anaesthetic services for pregnant women. The guidelines are aimed at supporting the localised development of protocols for identifying, diagnosing and managing common and serious pregnancy and delivery problems. The guidelines respond to recommendations by National Committee On Confidential Enquiries Into Maternal Deaths the overall aim to improve clinical management and referral to reduce pregnancy-related deaths and ill health.

- Department of Health Complaints Procedure (2017)

  The purpose of the procedure is to provide direction to the health sector in managing complaints, compliments and suggestions by ensuring that standards and measures as set out by the National Department of Health, the Department of Planning, Monitoring and Evaluation in the Presidency and the Department of Public Service and Administration are adhered to. The Guideline also gives guidance to ensure that the right of patients and/or their families/support persons to complain is upheld. This is achieved by setting out processes to ensure that patients/families and support persons are informed on how to lodge a complaint or record a compliment or suggestion and on what to subsequently expect.

- The legislation explains all healthcare providers (including students) must inform every patient of full and accurate information in a language and manner they can understand in order to make informed consented to decisions. This includes full and accurate information about the nature of one’s health, every test, medical procedure, the proposed treatment,

including the benefits, consequences and risks and the costs involved, if any. And including that patients have the right to refuse tests, procedures and treatments, and that their consent to a test, procedure or treatment can be withdrawn at any time. A patient's consent is only valid if all of the above has been fulfilled.

- There are various forms of progressive legislation that aims to protect the reproductive rights of women and birthing persons. However, it is important for these rights to exist beyond legislation and to be brought into action. This transformation can be led by the people that encounter these services on a daily by demanding better quality healthcare that does not undermine their dignity. That is why it is essential to ensure that people are aware and are informed about their rights. Race, class and gender plays a huge role on how one experiences the healthcare system, therefore it is understandable that it can be a daunting process. However, one of the most important things about raising awareness is to highlight how one's constitutional rights are imperative and should not be undermined by anyone regardless of their profession and knowledge within the filed.

- South Africa's healthcare services are central to creating a new experience for black women in South Africa and our relationship to our health and healthcare services. The responsibility of the service is to deliver care that asserts Black women are valuable, entitled to education, dignity, adequate quality services, and respect. The embrace of a progressive reproductive health system is one aspect of changing patient/provider relations and removing practices of violence and control. Despite these extensive legislative and policy efforts widespread violations persist.

- Additionally, several authorities with governing oversight both binding and unbinding are relevant for the particular problem of obstetric violence:

  - Health Ombudsman (established 2016):

    Has been created as an independent office in the terms of the National Health Amendment Act 12 of 2013. The office is accountable to the

Minister of Health, and is assisted by the Office of Health Standards and Compliance. The office is mandated to investigate and make recommendations on complaints and ensure redress for malpractice in the health systems.

- Office of Health Standards and Compliance (established 2013):

  Has been created as an independent body by (Section 78) of the National Health Amendment Act 12 of 2013. The Office's objective is to protect and promote the health and safety of users of health services. With this view the Office is mandated to enforce compliance with norms and standards proscribed by the Minister of Health, and monitor, inspect, certify and investigate health services in accordance with legislation setting the quality and standard of healthcare. The office is additionally able to make recommendations for improvement.

- South African Nursing Council, (SANC) Nursing Act 33 of 2005 & the Health Professions Council of South Africa (HSPCA) Health Professions Act 56 of 1974:

  Both of these professional associations are independent statutory bodies established by law and reinforce South Africa's constitutional commitments by binding healthcare workers to its ethical principles and code of conduct. Further, they guide and regulate their associated health professionals pertaining to registration, education and training and conduct, ethical behaviour and ensuring compliance with healthcare standards. Additionally, both associations are mandated to investigate complaints, and are empowered to provide binding discipline, including punitively to registered health professionals.

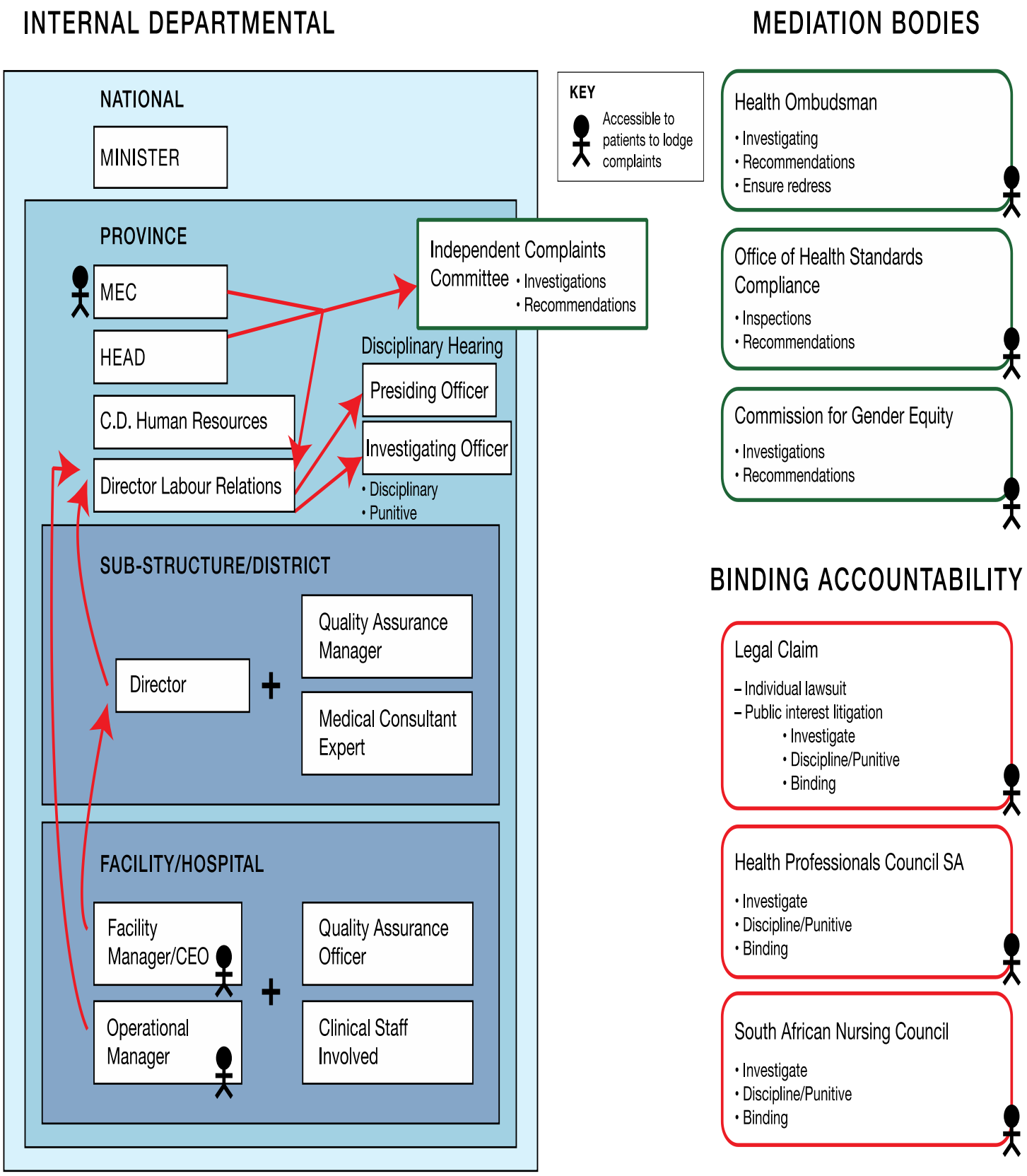
CHAPTER 5

What recourse do you have?
Protections and Accountability

When women and birthing persons have complaints about the services they are receiving, including when they feel their rights have been violated there are several places to go for help and redress. Each road they pursue offers different potential outcomes and requires different actions. All options provide for the investigation of a complaint, to establish if wrongdoing occurred. But each institution and mechanism provide different options of how to address wrongs. Some offer mediation and apologies, while others offer material compensation, punishment and routes to establishing patterns of harm and ensuring prevention of future harm.

- What recourse do you have?

5.1 Ombudsman
5.2 HPCSA
5.3 Damages
5.4 Criminal – in certain cases of obstetric violence


INTERNAL DEPARTMENTAL
MEDIATION BODIES
NATIONAL
MINISTER
PROVINCE
MEC
HEAD
C.D. Human Resources
Director Labour Relations
Independent Complaints Committee
• Investigations
• Recommendations
Disciplinary Hearing
Presiding Officer
Investigating Officer
• Disciplinary
• Punitive
SUB-STRUCTURE/DISTRICT
Director
+
Quality Assurance Manager
Medical Consultant Expert
FACILITY/HOSPITAL
Facility Manager/CEO
Operational Manager
+
Quality Assurance Officer
Clinical Staff Involved
KEY
Accessible to patients to lodge complaints
Health Ombudsman
• Investigating
• Recommendations
• Ensure redress
Office of Health Standards Compliance
• Inspections
• Recommendations
Commission for Gender Equity
• Investigations
• Recommendations
BINDING ACCOUNTABILITY
Legal Claim
– Individual lawsuit
– Public interest litigation
• Investigate
• Discipline/Punitive
• Binding
Health Professionals Council SA
• Investigate
• Discipline/Punitive
• Binding
South African Nursing Council
• Investigate
• Discipline/Punitive
• Binding

Each institutional place mapped above shows their mechanism of accountability, their accessibility to the public, and the distribution of power and oversight of each. These are hierarchical and non-community participatory structures.

- Health Ombudsman

  The independent office of the Health Ombudsman was established in terms of section 81 of the National Amendment Act and implemented in 2016. The Ombudsman is mandated to "*protect and promote the health and safety of users of health services by considering, investigating and disposing of complaints in the national health system (private and public health establishments) and 'contribute towards a development of public service culture characterized by fairness, dedication, commitment, openness, accountability and the promotion of the right to good public administration'"*.

  The Health Ombudsman has jurisdiction to deal with complaints against health establishments including persons employed by health establishments, which may include health practitioners registered with the HPCSA.

- The Health Ombudsman would have recourse or jurisdiction to deal with:

  - Neglect whilst at a health facility.
  - Verbal assaults by a health professional.
  - Unnecessary and routine medical procedures.
  - Assault (as it was explained above, this could include slapping, dragging, isolating or abandoning of women in active labour).
  - Denial of Medical medication.

- These institutions:

  - Can advise on lodging a complaint at facility level
  - *Can take complaints*
  - Ensure referrals of complaints to relevant authorities
  - Ensure complaints are followed-up to patients
  - Conduct investigations (for example *Life Esidimeni*)

- Conducts annual health system inspections and makes recommendations

To gain assistance from these institutions the public can call a free hotline Mobile: **080 911 6472** which is available M-F 8:00-17:00 and Saturday 8:00-13:00.

Typically, the Ombudsman has not investigated minor cases or investigated problems with reproductive health services. Usually the office's actions aim to support the functioning of the healthcare system's internal complaints procedure.

- Internal complaints submitted to the public health system

Section 18 of the National Health Act states that, (i) any person may lay a complaint about the treatment they or their family member received at a health facility and have the complaint *investigated*, (ii) each Member of the Executive Council [MEC] of Health along with and each Municipal Council should establish a procedure for managing complaints, iii) every complaint received must be acknowledged, and referred for investigation to the relevant facility and authority.

Making a written complaint to the specific hospital registers a question or complaint directly with those who provided services. This can be done directly to the clinic or hospital manager, and by leaving a letter in a complaints/compliments box in the hospital. Typically, these complaints are considered by Clinic and Facility managers, and are mandated to be reported and reviewed by senior (District) managers and other stakeholders.

The procedure to be followed is determined by the MEC of each province. Typically, a manager will follow-up by calling to respond within four weeks. The aim of the conversation is to understand the problem, what remedy the patient would like, and typically to set up a meeting with hospital management, the staff involved and the patient and or their family to achieve mediation.

The aim of the health system's accountability process according to the National Guideline to Manage Complaints, Compliments and Suggestions (2017) is to ensure:

- "Patients receive safe, accountable and effective care that will culminate

in the best possible patient experience".

- That patients and their families' feedback is valued, that they feel heard, and are informed throughout investigative processes.
- Though patient's consent is not needed to conduct investigations using their personal information, investigations are to be carried out in a confidential manner without prejudice and in a fair manner for both staff and patients, including offering processes to appeal.
- Health facilities are to provide remedies when an investigation report concludes this is required. (We are aware of remedies including verbal apologies by staff to patients and their families.)
- *"Avoid the complaint from developing into a case of litigation".*

- Health Professional Council of South Africa (HPCSA)

The Health Professions Council of South Africa is a statutory body, established in terms section 2(1) of the Health Professions Act and it is established to provide for control over the education, training and registration for practicing of health professions registered under the Health Professions Act.

The vision of the HPCSA is striving towards being a progressive regulator of health professions aspiring to quality, equitable and accessible healthcare. In order to protect the public and guide the professions, council ensures that practitioners uphold and maintain professional and ethical standards within the health professions and ensure the investigation of complaints concerning practitioners and to ensure that disciplinary action is taken against persons who fail to act accordingly.

- Complaints to the HPCSA

The HPCSA is empowered by the Health Professions Act to investigate complaints and take appropriate disciplinary action is taken against such persons in accordance with the Act in order to protect the interest of the public.

The HPCSA is empowered by the Act to institute an inquiry into any complaint, charge or allegation of unprofessional conduct against any person registered under the Act, and, on finding such a person guilty of such a conduct, to impose any of the penalties prescribed in section 42(1) of the Act.

- Instances of Obstetric Violence that can be reported to the HPSCA

    - Neglect
    - Assault
    - Forced Sterilisation
    - Performing a procedure on someone without consent
    - Gross negligence

Unprofessional conduct which does not warrant the holding of a formal professional conduct inquiry (minor transgression) is referred for an alternative dispute resolution process by the Ombudsman who mediates on such minor transgressions.

- Reporting to the HPCSA

  Reporting to the HPCSA can take form of either completing the form and/or filing an affidavit (the affidavit must be commissioned).

- The form or affidavit must have the following information:

    - Background of the complaint,
    - The individual/doctor/nurse name and work address,
    - Hospital name,
    - An explanation of the concerns – with dates when the incidents happened,
    - Copies of any supporting documents, the names and addresses of anyone else who witnessed or was involved in the incidents.

  Once the form is completed it must be emailed to legalmed@hpcsa.co.za or courier/hand deliver to 553 Madiba Street, Arcadia, PRETORIA, 0001 OR Post to: P O Box 205, Pretoria, 001.

- The HPCSA also has two other internal bodies that deals with complaints against health practitioners:

    1. Inspectorate Office:

- The mandate of the office is to enforce compliance through conducting inspections of registered practitioners and investigation of illegal practices by unregistered persons. The inspectors appointed at the office conduct inspections at the practices of the registered practitioners, including those who are suspended or removed from the registers to ensure compliance with sanctions imposed by professional misconduct committees and that they do not practice while under suspension or erased.

- How to report under the Inspectorate office:

    - The office receives complaints regarding illegal practices by unregistered persons from other registered health practitioners, members of the public, (including those who want to remain anonymous) as long as the details of the persons practising, and address are provided.

- The complaint must have the following information:

    - The individual's name and work address,
    - An explanation of the concerns – with dates when the incidents happened,
    - Copies of any supporting documents, the names and addresses of anyone else who witnessed or was involved in the incidents.

- Once the form is completed it must be emailed to legalmed@hpcsa.co.za or courier/hand deliver to 553 Madiba Street, Arcadia, PRETORIA, 0001 OR Post to: P O Box 205, Pretoria, 001.

2. The HPCSA Ombudsman:

    - The HPCSA ombudsman is a person appointed by the council to mediate in the case of minor transgressions referred to him or her. A minor transgression is an unprofessional conduct but of a minor nature and does not warrant the holding a formal professional conduct inquiry.

- Instances of Obstetric violence that falls under minor transgression

- A minor transgression that can be reported to the ombudsman in the context of obstetric violence is:

- Verbal abuse or use of words towards the victim that are hurtful; and

- Denial of pain medication.

- HPSCA Ombudsman is a mediator

- The Ombudsman is a mediation body. After receiving the complaint, the ombudsman considers the matter and mediate between the parties with a view of making a determination to resolve the matter between the parties.

- Reporting and the complaints

- The reporting procedure for the Ombudsman is similar to the inspectorate procedure and HPCSA mentioned above.

- Difference between HPCSA and Health Ombud:

What is the difference between the "HPCSA Ombudsman" and the "Health Ombud"		
DESCRIPTION	**HPCSA' OMBUDSMAN'**	**HEALTH 'OMBUD'**
Definition	"ombudsman" means a person appointed by the Council to mediate in the case of minor transgressions referred to him or her by the registrar for mediation.	Ombud means a person appointed by the Minister in consultation with the Board of the Office of Health Standard Compliance.
Establishment of the Office	Established in terms of Regulation 3 of the Regulations relating to the Conduct of Inquiries into alleged unprofessional conduct under the Health Professions Act	Established in terms of Section of section 81 of the National Health Amendment Act
Function	Mediate in the case of minor transgressions referred to him by the registrar	Investigate and dispose of written or verbal complaints relating to norms and standards

Jurisdiction	Complaints against health practitioners registered with the HPCSA	Complaints against health establishments including persons employed by health establishments, which may include health practitioners registered with the HPCSA
Powers	To consider the complaint and make a determination which is only binding if agreed by both parties	To investigate the complaint and make findings & recommendations which are binding
Referral powers	To refer matters falling outside the jurisdiction of HPCSA to relevant bodies and matters that matters that could not be mediated to the Professional Boards for preliminary investigation through the Registrar. The Professional Boards have no duty to report progress to the Ombudsman	To refer matters to other bodies and such bodies have a duty to report progress to the Ombud
Independence	Independent from the Professional Boards and reports to the Council through the Registrar	Independent from the Department of Health and CEO of OHSC AND reports to and accountable to the Minister of Health

- Legal claims and public interest lawsuits (Damages):

    - Patients and their families are empowered to seek legal support to determine if a violation has been so rigorous criminal, damages or strategic litigation can be pursued. Each of these legal roads have different opportunities for redress and expectations from legal support and clients.

- Delictual lawsuits offer individual patients or their families:
    - The ability to pursue justice for grievances relating to negligence and obstetric malpractice.
    - In lawsuits concerning the public health system, ministers are held liable.
    - The public servants who deliver care are not held legally responsible for their actions.
    - The ability to punish healthcare workers and administrators if there is evidence of criminal action.

- Professional medical associations (SA Nursing Council, Health Professionals Council SA) can also be approached to hold individual health workers accountable.
- Both types of legal cases may result in material awards for physical, psychological suffering and damages.

- Strategic cases offer individuals and whole groups:
    - The opportunity to pursue justice for violations of human rights.
    - May result in material financial and other compensation for physical and psychological suffering and damages.
    - The ability to pursue court mandated changes to policy, practice and achieve sustainable prevention of future violations of rights.

- Who to approach

    - If medical negligence or malpractice has been committed. The women can approach:
    - A Legal Practitioner (Attorney for advise); or
    - Legal Aid South Africa offices in your nearest town.

- When does one bring a claim for damages?

    - A claim is brought within three (3) of the debt or the cause of action arose.

- Criminal – In certain cases of obstetric violence

    - A doctor is hardly held criminally liable for medical malpractice in South Africa, normally, recourse is takes the form of compensation and civil trial. A doctor may be held criminally liable only when the evidence establishes beyond a reasonable doubt that the doctor's treatment created a substantial and unjustifiable risk that the patient died as would die, that the doctor should have but failed to perceive this risk, and that the risk is of such a nature.
    - A medical practitioner is expected to exercise the degree of skill and care of a reasonably skilled practitioner in their field. For a doctor to be convicted of culpable

homicide, they must have committed negligence of a serious nature that resulted in the death of the patient[9]

- Instances of Obstetric violence that can be criminally pursued

    - Forced Sterilisation[10];
    - Medical Malpractice that resulted in the death of the patient.

- Reporting
    - Nearest police station.

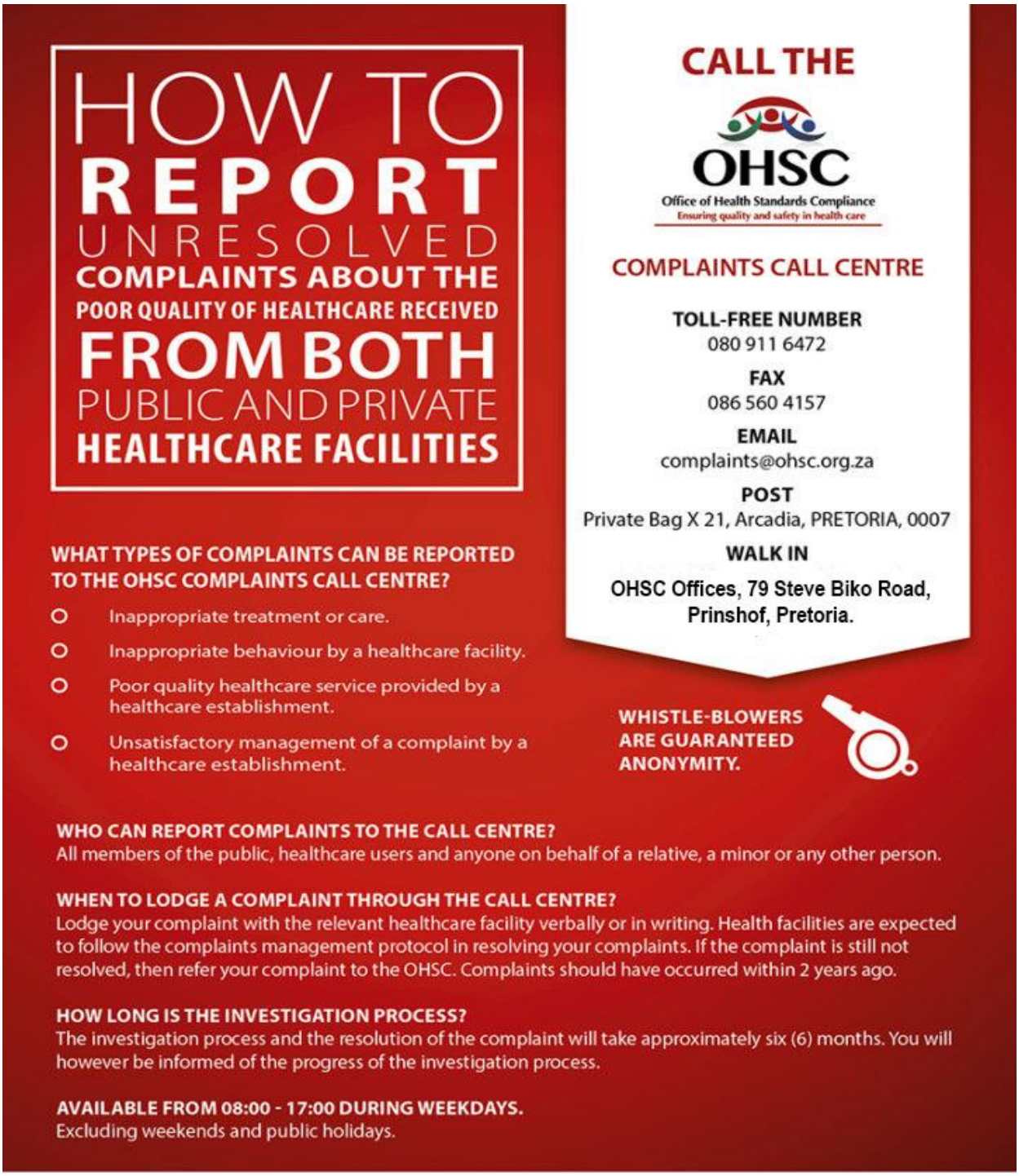
[9] See Van der Walt v S (CCT180/19) 2020 (CC).
[10] S9 of the Sterilisation Act of 1998.

CHAPTER 6

Contact details:

- Contact CALS for more information, you can contact the Gender Justice team at the Centre for Applied Legal Studies through twitter account @CALS_ZA or email Basetsana.Koitsioe@wits.ac.za or Sheena.Swemmer@wits.ac.za or WhatsApp us 064 694 0023.

- Contact the Health Ombudsman, to gain assistance from these institutions the public can call a free hotline Mobile: 080 911 6472 which is available M-F 8:00-17:00 and Saturday 8:00-13:00.



- Contact the Health Professional Council of South Africa (HPCSA): Once the form is completed it must be emailed to legalmed@hpcsa.co.za or courier/hand deliver to 553 Madiba Street, Arcadia, PRETORIA, 0001 OR Post to: P O Box 205, Pretoria, 001.

TO: THE REGISTRAR, P O BOX 205, Pretoria, 0001

553 Madiba Street, Arcadia 0083; Legalmed@hpcsa.co.za; Tel: 012 338 9300; Fax: 012 328 4895

COMPLAINT FORM	
1. DETAILS OF COMPLAINANT / REPRESENTATIVE	
Title & Full names of complainant	
Identity / Passport number	
Postal Address	
Physical Address	
Cellphone number	
Landline number	
Fax number	
E-mail address	
Power of Attorney must be attached if complainant is arepresentative.	
2. DETAILS OF THE PATIENT IF THE PATIENT IS NOT THE COMPLAINANT	
Title & Full names of the patient	

Identity number / birth date / Passport number	
Postal Address	
Physical Address	
Cellphone number	
Landline number	
Fax number	
E-mail address	

3.	**DETAILS OF PRACTITIONER**
Name of Practitioner	
Physical Address (not PO Box)	
HPCSA Registration Number	
Practice Number	
Cellphone number	
Telephone Number	
Fax Number	
E-mail address	

4.	**DETAILS OF COMPLAINT (or attach to this form)**

5. List of documents relevant to complaint attached to this form (if any)	

E.g. Medical reports, x-rays, hospitalrecords, statement of account, affidavit/ confirmatory statement of patient above 12 years of age, etc.	
6. What outcome do you expect forthis complaint? (Acknowledgment letter will be sent within 7 days. **Financial compensation** is through Courts, not HPCSA)	
7. Date	

8. Place	
9. Signature of complainant	
10. CONSENT BY PATIENT (compulsory if above 12 years old on date of Complaint)	
I hereby grant consent to my treating practitioner to disclose my confidential medical information to the HPCSA and/or to my treating practitioner's legal representative in the course of addressing my complaint lodged with the HPCSA if necessary. Signature…… Date ……	
11. CONSENT BY NEXT OF KIN (if patient is deceased or cannot consent)	
I hereby grant consent to the practitioner who treated the patient to disclose the patient's confidential medical information to the HPCSA and/or to the treating practitioner's legal representative in the course of addressing my complaint lodged with the HPCSA if necessary. Signature…… Date…….	

LETTER OF CONSENT FOR HOSPITAL RECORDS (IF APPLICABLE)

I, the undersigned,

…..……..……

do hereby grant the Health Professions Council of South Africa and/or their authorised agent(s), the treating practitioners and their legal representatives **consent** to inspect and/or request and/or obtain copies of the medical records, bed-letters and/or x-rays, clinical reportsfrom the doctors, relating to the treatment received by (**patient's name, not doctor's name**):

…..……..……..……

at .....**HOSPITAL** during the period

……..……..

Hospital file number: …..…….....

Address of Hospital: ……..

Tel Number of Hospital: …… Fax Number …….…….

Identity / Passport Number of the person who was admitted at the hospital:

……..

(PLEASE ATTACH PATIENT'S COPY OF ID / PASSPORT / BIRTH CERTIFICATE)

ID No of person responsible for payment of the hospital account:

……..Medical Aid

No: ……..

SIGNATURE

Date:……

ANNEXURES

- National Patients' Rights Charter:

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

GUIDELINES FOR GOOD PRACTICE IN THE HEALTH CARE PROFESSIONS

NATIONAL PATIENTS' RIGHTS CHARTER

BOOKLET 3

Health Professions Council of South AfricaPost
Office Box 205

Pretoria 0001

Telephone: (012) 338 9300
Fax: (012) 328 4863

E-mail: hpcsa@hpcsa.co.za

Website: http://www.hpcsa.co.za

ETHICAL AND PROFESSIONAL RULES

Practice as a health care professional is based on a relationship of mutual trust between patients and health care practitioners. The term "profession" means "a dedication, promise or commitment publicly made".[1] To be a good health care practitioner, requires a life-long commitment to sound professional and ethical practices and an overriding dedication to the interests of one's fellow human beings and society.

In the course of their professional work health care practitioners are required to subscribe to certain rules of conduct. To this end the Health Professional Council of South Africa has formulated a set of rules regarding professional conduct against which complaints of professional misconduct will be evaluated. These rules are reproduced in this booklet.

[1] Pellegrino, ED. Medical professionalism: Can it, should it survive? *J Am Board Fam Pract* 2000; 13(2):147-149 (quotation on p. 148).

TABLE OF CONTENTS

NATIONAL PATIENTS' RIGHTS CHARTER

PREAMBLE

The Department of Health, in consultation with various other bodies, developed a NationalPatients' Rights Charter.

The document contained herein was launched by the Minister of Health and agreed to by the HPCSA. It has since been included in the Board's *Handbook for Interns, Accredited facilities and Health Authorities*.

NATIONAL PATIENTS' RIGHTS CHARTER

1 INTRODUCTION

1.1 For many decades the vast majority of the South African population has experienced either a denial or violation of fundamental human rights, including rights to health care services.

1.2 To ensure the realisation of the right of access to health care services as guaranteed in the *Constitution of the Republic of South Africa*, 1996 (Act No. 109 of 1996), the Department of Health is committed to upholding, promoting and protecting this right and, therefore, proclaims this PATIENTS' RIGHTS CHARTER as a common standard for achieving the realisation of this right.

1.3 Equally, Practitioners should adhere to the stipulations of this charter as it relates to them.

2 PATIENTS' RIGHTS

2.1 HEALTHY AND SAFE ENVIRONMENT

Everyone has a right to a healthy and safe environment that will ensure their physical andmental health or well-being, including adequate water supply, sanitation and wastedisposal, as well as protection from all forms of environmental danger, such as pollution, ecological degradation or infection.

2.2 PARTICIPATION IN DECISION-MAKING

Every citizen has the right to participate in the development of health policies, whereas everyone has the right to participate in decision-making on matters affecting one's own health.

2.3 ACCESS TO HEALTH CARE

Everyone has the right to access to health care services that include -

a. **receiving timely emergency care** at any health care facility that is open, regardless of one's ability to pay;

b. **treatment and rehabilitation** that must be made known to the patient to enable the patient to understand such treatment or rehabilitation and the consequences thereof;

c. **provision for special needs** in the case of newborn infants, children, pregnant women, the aged, disabled persons, patients in pain, persons living with HIV or AIDS patients;

d. **counselling** without discrimination, coercion or violence on matters such as reproductive health, cancer or HIV/AIDS;

e. **palliative care** that is affordable and effective in cases of incurable or terminal illness;

f. a **positive disposition** displayed by health care providers that demonstrates courtesy, human dignity, patience, empathy and tolerance;

g. **health information** that includes information on the availability of health services and how best to use such services, and such information shall be in the language understood by the patient.

2.4 KNOWLEDGE OF ONE'S HEALTH INSURANCE/MEDICAL AID SCHEME

A member of a health insurance or medical aid scheme is entitled to information about that health insurance or medical aid scheme and to challenge, where necessary, the decision of such health insurance or medical aid scheme relating to the member.

2.5 CHOICE OF HEALTH SERVICES

Everyone has a right to choose a particular health care provider for services or a particularhealth facility for treatment, provided that such choice shall not be contrary to the ethical standards applicable to such health care provider or facility.

2.6 TREATED BY A NAMED HEALTH CARE PROVIDER

Everyone has a right to know the person that is providing health care and, therefore, mustbe attended to by only clearly identified health care providers.

2.7 CONFIDENTIALITY AND PRIVACY

Information concerning one's health, including information concerning treatment may onlybe disclosed with informed consent, except when required in terms of any law or any order of court.

2.8 INFORMED CONSENT

Everyone has a right to be given full and accurate information about the nature of one's illnesses, diagnostic procedures, the proposed treatment and risks associated therewith and the costs involved.

2.9 REFUSAL OF TREATMENT

A person may refuse treatment and such refusal shall be verbal or in writing, provided thatsuch refusal does not endanger the health of others.

2.10 A SECOND OPINION

Everyone has the right on request to be referred for a second opinion to a health providerof one's choice.

2.11 CONTINUITY OF CARE

No one shall be abandoned by a health care professional who or a health facility whichinitially took responsibility for one's health without appropriate referral or hand-over.

2.12 COMPLAINTS ABOUT HEALTH SERVICES

Everyone has the right to complain about health care services, to have such complaintsinvestigated and to receive a full response on such investigation.

3 RESPONSIBILITIES OF THE PATIENT

Every patient or client has the following responsibilities:

3.1 To take care of his or her own health.

3.2 To care for and protect the environment.

3.3 To respect the rights of other patients and health care providers.

3.4 To utilise the health care system properly and not to abuse it.

3.5 To know his or her local health services and what they offer.

3.6 To provide health care providers with relevant and accurate information for diagnostic, treatment, rehabilitation or counselling purposes.

3.7 To advise health care providers of his or her wishes with regard to his or her death.

3.8 To comply with the prescribed treatment or rehabilitation procedures.

3.9 To enquire about the related costs of treatment and/or rehabilitation and to arrange for payment.

3.10 To take care of the health records in his or her possession.

Ethical guidelines for good practice in the health care professions

The following Booklets are separately available:

Booklet 1: *General ethical guidelines for health care professions*

Booklet 2: *Ethical and professional rules of the health professions council ofSouth Africa as promulgated in government gazette R717/2006*

Booklet 3: *National Patients' Rights Charter*

Booklet 4: *Professional self-development*

Booklet 5: *Guidelines on over servicing, perverse incentives and related matters*

Booklet 6: *General ethical guidelines for health researchers*

Booklet 7: *Ethical Guidelines for Biotechnology Research in South Africa*

Booklet 8: *Research, development and the use of the chemical, biological and nuclear capabilities of the State*

Booklet 9: *Seeking patients' informed consent: The ethical considerations*

Booklet 10: *Confidentiality: Protecting and providing information*

Booklet 11*: Guidelines for the management of patients with HIV infection or AIDS*

Booklet 12: *Guidelines withholding and withdrawing treatment****Booklet 13:*** *Guidelines on Reproductive Health management****Booklet 14:*** *Guideline on Patient Records*

Booklet 15: *Canvassing of patients abroad*

Booklet 16: *Guidelines for the management of health care waste*

LEGISLATION AND POLICY

Legislation:

- The Constitution of the Republic of South Africa, 1996
- The Choice of Termination of Pregnancy Act of 1996 (as amended act 38 of 2004)
- The National Health Act 61 of 2003
- South African Nursing Council, (SANC) Nursing Act 33 of 2005 & the Health Professions Council of South Africa (HSPCA) Health Professions Act 56 of 1974
- The Sterilisation Act 44 of 1998

Policy:

- Department of Health Complaints Procedure (2017)
- Guidelines for Maternal Care in South Africa (2015)
- National Patients' Rights Charter
- National Policy for Victims of Sexual Offences, Department of Correctional Services