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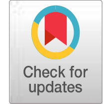
Addressing Healthcare Access Inequalities in South Africa: Evaluating Legislative and Human Rights Obligations and Proposing Strategies for Improvement



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ABSTRACT

The study employed a mixed-methods approach, combining qualitative and quantitative research methodologies. A comprehensive review of legislative documents, including the National Health Act, the Promotion of Access to Information Act, and the Protection of Personal Information Act, was conducted to assess their impact on healthcare access. The findings revealed significant gaps in healthcare access, particularly among low-income and rural populations. Despite comprehensive legislation, implementation challenges and resource constraints hinder effective access to care. The study highlights discrepancies between policy intentions and real-world outcomes, with particular emphasis on systemic issues such as inadequate healthcare infrastructure and limited financial resources. The study recommends several strategies for improvement, including enhancing the implementation of existing healthcare laws, increasing investment in healthcare infrastructure, and developing targeted programs to address the specific needs of marginalized communities. Additionally, it suggests strengthening oversight mechanisms to ensure compliance with human rights obligations and improving data collection to understand better and address access disparities. Finally learning from Cuba's healthcare model to improve the South African Healthcare System. This study adds to the existing body of knowledge by conducting a thorough assessment of healthcare accessibility in South African legislation and its alignment with human rights standards. It offers practical recommendations for policymakers and stakeholders, aiming to close the space between legal frameworks and healthcare delivery. By highlighting the challenges and proposing actionable strategies, the study provides valuable insights for improving healthcare access and addressing inequalities in South Africa.

Keywords: Inequalities, Health systems, Inaccessibility, International documents, Constitutional obligations

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INTRODUCTION

Healthcare access inequalities in South Africa are deeply rooted in historical, socio-economic, and political factors, exacerbated by systemic disparities. Addressing these issues requires a comprehensive evaluation of existing legislative frameworks and human rights obligations, alongside innovative strategies to enhance access and equity in healthcare services. The inequalities South Africans have faced in the past have resulted in several healthcare challenges. The state, however, continues to make its effort

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to afford people with a single equal health system. South Africans are still struggling to access health care services post-apartheid. The inequalities of health systems of the past led to the inaccessibility of this right in South Africa. Section 27(1)(a) of the Constitution of the Republic of South Africa 108 of 1996 (Hereinafter Constitution) provides that "everyone has the right to have access to health care services, including reproductive health care".[1] Section 27(3) states that "no one may be refused emergency medical treatment".[2] The government has made an effort to ensure that this right is afforded to everyone who deserves it. The country has a constitutional obligation to ensure that this right has a practical effect through its measures.[3]

Legislative measures and policies have been undertaken to make this right accessible to every human being in South Africa, regardless of his or her financial or social status or background. Two sectors were therefore established to provide health care services. These sectors are both public and private. The state put in effect the National Health Act 61 of 2003 (hereinafter NHA)[4] to achieve its constitutional obligations of affording people the right to have access to health care. This Act contains a provision that requires the state to afford people access to healthcare without paying any fee.[5]

There are, however, several challenges that still hinder access to healthcare services in South Africa. These challenges are greatly felt in the rural areas. These challenges include the lack of road infrastructure, lack of health care facilities, financial difficulties, and poor services to existing clinics or hospitals. The Eastern Cape Department of Health(hereinafter ECDOH) acknowledged these challenges during the National State of Disaster.[6] It was on social media platforms, the measures that the Department of Health applied during the state Disaster in 2020 to rescue those who struggled to access health services in remote areas. The ECDOH made scooters available.[7] However, the scooters were found to be ineffective in carrying out their purposes.[8] This shows that there is still a continuous failure to address these issues in South Africa.

Many private hospitals are found in urban areas.[9] There are few big hospitals in remote areas. In these remote areas, all age groups are found who need healthcare services. Majority of these people are also poor. The contravention of the right to have access to healthcare services is the direct deprivation of the right to human dignity.[10] The limitation of the right in terms of section 10 of the Constitution[11] that the right to human dignity will never be justified under any law.[12] However, the right to human dignity is the fundamental value of the Bill of Rights.[13] The Bill of Rights is the cornerstone of the Constitution. However, this socio-economic right to have access to healthcare services should be prioritized and given effect to all people in South Africa.

The study seeks to evaluate the legislative and human rights obligations in South Africa concerning healthcare access, highlighting significant gaps and systemic issues despite comprehensive laws. This article utilizes a mixed-methods approach, integrating both qualitative and quantitative research techniques. This includes an in-depth review of legislative documents, such as the National Health Act, the Promotion of Access to Information Act, and the Protection of Personal Information Act, to evaluate their influence on healthcare access. It proposes strategies for improvement, including better implementation of existing laws, investment in infrastructure, and learning from Cuba's healthcare model to address the specific needs of marginalized communities and ensure compliance with human rights standards.

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[1] Section 27(1)(a) of the Constitution of the Republic of South Africa Act 108 of 1996.
[2] Section 27(3) of the Constitution.
[3] Section 27(2) of the Constitution.
[4] National Health Act 61 of 2003.
[5] Section 4 of NHA 61 of 2003.
[6] Department of Health, "Health Gives Clarity on Eastern Cape Scooters Programme," South African Government Information Services, July 10, 2020, https://www.gov.za/news/media-statements/health-gives-clarity-eastern-cape-scooters-programme-10-jul-2020.
[7] Department of Health, "Health Gives Clarity on Eastern Cape Scooters Programme."
[8] IOL, "R10m Eastern Cape Medical Scooter Project Is a 'Fail', Reveals Health Minister," IOL, 2020, https://www.iol.co.za/news/r10m-eastern-cape-medical-scooter-project-is-a-fail-reveals-health-minister-50707971.
[9] Percy Mahlathi and Jabu Dlamini, "Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa's Health System: A Rapid Analysis of Stock and Migration," *African Institute of Health and Leadership Development* 2015 (2015): 1–16, 3.
[10] Section 27 of the Constitution.
[11] Section 10 of the Constitution.
[12] Section 36 of the Constitution.
[13] Section 7 of the Constitution.

METHODOLOGY

This research employed an empirical approach to examine the implementation of the right-affected healthcare services in South Africa. It examined the effectiveness of this constitutional right in the South African Republic. This study was conducted through the usage of internet sources and academic journal articles. This research employed legislative measures and conventions to highlight the right to have access to healthcare services. The relevant precedents were also used in this study. The researchers also conducted a comparative analysis with Cuba on the protection of the right to have access to healthcare services. A comparative analysis with Cuba was conducted to establish the best measures employed to protect the right to have access to healthcare services. The Comparative Study was further conducted to establish how Cuba complied with the international human rights conventions to advance the implementation of the right to have access to healthcare services. This was done to establish the best measures that South Africa may learn from Cuba and to provide strategies for stakeholders to make informed decisions about the situation.

DISCUSSION

The Current State of Health Care in South Africa

Burger and Christian in their article considered the success of the right to have access to health care in post-apartheid in the Republic of SA.[14] They stipulated that: “the information provided demonstrates that health services are widely accepted, although they are limited and costly, particularly disadvantaged populations like the underprivileged, the population in remote areas, and formerly referred to as blacks.”[15] Burger and Christian further stipulated that improvement of equity is required in the post-apartheid era. They viewed pro-poor health reforms as the best way to achieve the realisation of this right.[16] They noted that the degree of acceptance is high, but availability and affordability are still major issues. Gaede and Versteeg considered the successes and constraints on access to health care in South Africa’s constitutional democracy.[17] They stipulated that: "The particular circumstances and realities of rural regions need to be taken into account in order to realize the right to access to healthcare. Therefore, to create viable regulations that may equally benefit all populations, policymakers must have a sufficient understanding of rural health systems. It is necessary to expand the focus on racial and socioeconomic injustices to include the clear connection to place.”[18] Harris et.al., held that to attain equal universal health coverage, everyone's right to health care should be fulfilled throughout society, so that people who need it may get it regardless of who they are, where they live, or their financial situation.[19] They argued that “their findings are consistent with prior South African studies, demonstrating that poor, uninsured, black Africans and rural communities have unequal access to healthcare.”[20] They further argued that by enhancing public sector service excellence and perspectives, as well as promoting reasonable access to various levels of public care, they might limit the usage of private providers, and so avoid financially unsustainable expenses.[21]

The Challenges to The Progressive Realisation of Access To Healthcare Services In South Africa

The progressive realisation of the right to have access to healthcare services refers to the measures that the state put in place to achieve its constitutional obligation. The state has put in place legislative measures to overcome the challenges of access to healthcare services and established programs that intend to assist in achieving the progressive realisation of the right to access healthcare services. Several challenges hinder access to health care services in South Africa(herein SA). SA has a high number of

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[14] Ronelle Burger and Carmen Christian, “Access to Health Care in Post-Apartheid South Africa: Availability, Affordability, Acceptability,” *Health Economics, Policy and Law* 15, no. 1 (2020): 43–55.
[15] Burger and Christian, “Access to Health Care in Post-Apartheid South Africa: Availability, Affordability, Acceptability,”43-45.
[16] Burger and Christian, “Access to Health Care in Post-Apartheid South Africa: Availability, Affordability, Acceptability,” 43-45.
[17] Bernhard Gaede and Marije Versteeg, “The State of the Right to Health in Rural South Africa,” *South African Health Review* 2011, no. 1 (2011): 99–106, 105.
[18] Gaede and Versteeg, “The State of the Right to Health in Rural South Africa.”
[19] Bronwyn Harris et al., “Inequities in Access to Health Care in South Africa,” *Journal of Public Health Policy* 32 (2011): S102–23.
[20] Harris et al., “Inequities in Access to Health Care in South Africa.”
[21] Harris et al., “Inequities in Access to Health Care in South Africa.”

individuals who do not have medical aid and rely on public health care. The challenges to access to healthcare services in SA are discussed subsequently.

Insufficient Medical Practitioners

In South Africa, people walk long distances to reach healthcare facilities.[22] This requires the medical practitioners to work overtime so that they can give service to everyone who requires medical attention in a day. Some medical practitioners decide to leave rural areas because of the great workload. The practitioners complain of getting exposed to diseases while serving in public health care facilities. The medical practitioners are subjected to work under conditions that are not conducive for them.[23] The lack of practitioners results in poor health care services. The available healthcare facilities cannot afford many people effective and proper access to healthcare services.[24] The lack of medical practitioners in South Africa is the challenge that hinders access to health care services. The DOH acknowledged that there was a lack of medical practitioners in SA during the National State of Disaster.[25] The government thus hired Cuban doctors to work in SA.[26] The Minister of Health held that South Africa does not have enough doctors who focus on primary healthcare, and they are needed.[27] There is also a lack of staff in South Africa to deal with the cases of mental health.[28] The shortage of physicians and psychiatrists has been highlighted as a major problem in the study that was conducted on barriers to accessing and receiving mental health care in Eastern Cape, South Africa.[29] Frequently, nurses manage day-to-day operations at health clinics without the assistance of doctors.[30] According to a study that was conducted on Primary healthcare services in the rural Eastern Cape, South Africa "rural populations tend to have higher rates of certain diseases, primarily due to socioeconomic conditions exacerbated by a lack of access to healthcare resources or a lack of resources overall, resulting in significantly poorer health outcomes."[31]

Inaccessibility of Reproductive Health Care Services

The state enacted the Choice on Termination of Pregnancy Act 92 of 1996 (hereinafter CTPA).[32] It was enacted to afford people "the right to have access to reproductive health care services, including family planning and contraception, termination of pregnancy, as well as sexuality education and counselling programmes and services."[33] Even though CTPA is in effect, there are limited health facilities that provide services relating to the termination of pregnancy. In a survey conducted by Marius Pieterse, medical professionals limit the provision of reproductive healthcare services.[34] People claim that health professional personnel stigmatise, humiliate, and treat them with hostility.[35] It is usually the case when their sexual or health-seeking behaviour contradicts hegemonic social values in any way.[36] According to the study, "especially in townships, nursing staff or administrative personnel frequently treat women who

[22] Tamara Kredo et al., "'Building on Shaky Ground'—Challenges to and Solutions for Primary Care Guideline Implementation in Four Provinces in South Africa: A Qualitative Study," *BMJ Open* 10, no. 5 (2020): 7.

[23] Estelle Ellis, Luvuyo Mehlwana, and Hoseya Jubase, "More than 300 Covid-Related Deaths and Health Staff Shortages Push Eastern Cape Hospitals to the Edge," Daily Maverick, March 23, 2021, https://www.dailymaverick.co.za/article/2021-03-23-more-than-300-covid-related-deaths-and-health-staff-shortages-push-eastern-cape-hospitals-to-the-edge/.

[24] Ellis, Mehlwana, and Jubase, "More than 300 Covid-Related Deaths and Health Staff Shortages Push Eastern Cape Hospitals to the Edge."

[25] Ellis, Mehlwana, and Jubase, "More than 300 Covid-Related Deaths and Health Staff Shortages Push Eastern Cape Hospitals to the Edge."

[26] Ellis, Mehlwana, and Jubase, "More than 300 Covid-Related Deaths and Health Staff Shortages Push Eastern Cape Hospitals to the Edge."

[27] Riaan Grobler, "What Benefits Do Cuban Doctors Bring to SA? Zweli Mkhize Explains," news24, August 14, 2020, https://www.news24.com/News24/what-benefits-do-cuban-doctors-bring-to-sa-zweli-mkhize-explains-20200814.

[28] Isabell Schierenbeck et al., "Barriers to Accessing and Receiving Mental Health Care in Eastern Cape, South Africa," *Health & Hum. Rts.* 15 (2013): 110.

[29] Schierenbeck et al., "Barriers to Accessing and Receiving Mental Health Care in Eastern Cape, South Africa."

[30] Schierenbeck et al., "Barriers to Accessing and Receiving Mental Health Care in Eastern Cape, South Africa."

[31] Rose-Marie G Ewing, Stephen Reid, and Angela A Morris-Paxton, "Primary Healthcare Services in the Rural Eastern Cape, South Africa: Evaluating a Service-Support Project," *African Journal of Primary Health Care and Family Medicine* 12, no. 1 (2020): 1–7, 2.

[32] Choice on Termination of Pregnancy Act 92 of 1996.

[33] Preamble of the Choice on Termination of Pregnancy Act 92 of 1996.

[34] Marius Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," *Law, Democracy & Development* 20 (2016): 1–19, 12.

[35] Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," 12.

[36] Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," 12.

attempt to access termination of pregnancy services with contempt."[37] Most females claimed fear of being judged and being mistreated by clinic staff, as well as concerns about privacy and confidentiality, as key factors in their choice to have an illegal termination of pregnancy.[38] People use illegal methods to terminate a pregnancy due to the stigmatisation, humiliation, and hostility from medical practitioners and the inaccessibility of healthcare facilities that perform this service. There is a continuous failure to afford people the right to have access to healthcare reproductive services. Public health care services are significantly under-resourced in terms of staff, access to appropriate medication, and infrastructure, according to the SAHRC, which negatively affects their capacity to provide proper care to the underprivileged.[39]

Inaccessibility of Healthcare Facilities in South Africa

People still walk a long distance to access healthcare facilities.[40] In South Africa, some people still travel five kilometres or more to reach healthcare facilities.[41] Amongst those people, there are old people, children, and disabled people. In the Mbashe District allocated in the Eastern Cape, it can be quite challenging for individuals to travel the considerable distance required to reach the established government health clinics. On average, they need to cover nine kilometers in order to access any type of health service."[42] The state provides people who have no access to nearby health facilities with mobile clinics. Those mobile clinics have working hours and work on specific days.[43] Mobile clinics are not well-equipped to address health needs even in those days when they could be found in communities. There are health issues that are beyond their capacity.[44] Mobile clinics cannot be regarded as the proper strategy to overcome this challenge.

There are unprivileged people in South Africa who need to walk to access healthcare services.[45] The money and time are both limited resources, transport costs and time wasted in attempting to physically access care often constitute substantial hurdles to accessing care.[46] For example, people walk to public transport points, wait for transport, walk again to points of health care service delivery, and then queue, often for several hours, for consultations and dispensaries.

A study was conducted in the Eastern Cape on women's access to healthcare services. It was found that approximately 40% of poor women are not accessing services.[47] The study noted that some of the reasons that resulted in inaccessibility are as follows: Firstly, the poor status of women in society and communities. Secondly, scarcity of trust in the public healthcare system. Thirdly, a lack of funds and transport. Fourthly, a lack of availability of ambulances. Fifthly, referral systems and emergency transport not functioning optimally. Lastly, the gatekeeping role of clerks and health care workers.[48]

Shortage of Resources and Medication in Healthcare Facilities

Healthcare facilities generally lack the resources to work efficiently. Healthcare services are delayed as a result of shortages of medical facilities' equipment. In medical facilities, people must wait a considerable amount of time before being attended to. Maphumulo and Bhengu conducted a study which focused on the difficulties in achieving quality improvement in South Africa's post-apartheid healthcare

[37] Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," 12.
[38] Jane Harries et al., "Understanding Abortion Seeking Care Outside of Formal Health Care Settings in Cape Town, South Africa: A Qualitative Study," *Reproductive Health* 18 (2021): 1–8, 6.
[39] SAHRC, *Access to Health Care* (South African Human Rights Commission, 2020), https://www.sahrc.org.za/home/21/files/FINAL Access to Health Care Educational Booklet.pdf.
[40] Kredo et al., "'Building on Shaky Ground'—Challenges to and Solutions for Primary Care Guideline Implementation in Four Provinces in South Africa: A Qualitative Study," 7.
[41] Kredo et al., "'Building on Shaky Ground'—Challenges to and Solutions for Primary Care Guideline Implementation in Four Provinces in South Africa: A Qualitative Study," 7.
[42] Ewing, Reid, and Morris-Paxton, "Primary Healthcare Services in the Rural Eastern Cape, South Africa: Evaluating a Service-Support Project,"2-3.
[43] Luvuyo Mehlwana, "Fed-up Community in Rural Eastern Cape Starts Their Own Health Facility," Daily Maverick, December 3, 2020, https://www.spotlightnsp.co.za/2020/12/03/fed-up-community-in-rural-eastern-cape-starts-their-own-health-facility/.
[44] Mehlwana, "Fed-up Community in Rural Eastern Cape Starts Their Own Health Facility."
[45] Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," 10.
[46] Pieterse, "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg," 10.
[47] SA Government, *Public Inquiry : Access to Health Care Services*, 1993, https://www.gov.za/sites/default/files/gcis_document/201409/health-report-final-2009.pdf.
[48] SA Government, *Public Inquiry : Access to Health Care Services*.

system.[49] According to the study, "Work backlog causes an extended delay for certain patients awaiting treatment, such as cancer patients who are impacted by the shortage of oncology physicians and equipment, and lengthy waiting lists for diagnosis or surgery, also due to the equipment shortage."[50] They stated, "We have seen people who lost their lives in front of healthcare workers because of a lack of resources and medication to save the lives of the people."

The lack of resources results in people staying for a long time in healthcare facilities. This exposes patients to further complications due to poor service. The machines are also not in proper condition in healthcare facilities. People have to wait for machines to be fixed most of the time. This affects adequate access to healthcare services.[51]

The referral centres and clinics do referral of patients to other healthcare facilities that are supposed to have the necessary capacity to provide adequate healthcare services. In those healthcare facilities where people are referred to, there is no appropriate medication that medical practitioners prescribe for patients.

An Overview of the Cuban Healthcare System

Cuba's healthcare system, developed after the 1959 revolution, emphasizes preventive care and community involvement. The government prioritizes health as a human right, aiming for equitable access across the population. By 1999, every Cuban had access to a family physician and nurse team, a structure designed to enhance primary care and public health outcomes despite these efforts, the country faces critical challenges.

Challenges of Access to Healthcare Services

Resource Shortages: The healthcare system is currently strained due to severe shortages of medical supplies, including essential medications and equipment. Reports indicate that hospitals often lack basic necessities such as sterilization materials, antibiotics, and even potable water. This deterioration has led to practices like reusing syringes, which pose serious health risks.

Impact of Medical Diplomacy: While Cuba sends thousands of doctors abroad under medical diplomacy agreements, this practice has exacerbated domestic shortages. The focus on generating income through international programs diverts attention and resources from local needs as a result, many citizens experience inadequate care, especially during crises like the COVID-19 pandemic when healthcare workers were deployed overseas.

Economic Constraints: The U.S. embargo significantly limits Cuba's ability to import pharmaceuticals and medical technology, further complicating the situation the reliance on outdated equipment and locally produced drugs often results in substandard care compared to international standards.

Infrastructural Issues: Many healthcare facilities are in poor condition, lacking basic amenities that are essential for patient care. Patients are sometimes required to bring their own bedding and food when admitted to the clinic this situation reflects broader infrastructural challenges within the country.

The South African Human Rights Commission (hereinafter SAHRC) established to conform with chapter 9 of the constitution made its findings on this issue.[52] This independent commission found that in terms of staff, availability of appropriate medicine, and infrastructure, public health care services are severely under-resourced; these factors are negatively impacting the capacity to provide proper treatment

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[49] Winnie T Maphumulo and Busisiwe R Bhengu, "Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review," *Curationis* 42, no. 1 (2019): 1–9.
[50] Maphumulo and Bhengu, "Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review."
[51] Maphumulo and Bhengu, "Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review," 2.
[52] SAHRC, *Access to Health Care*.

to the poor, particularly in rural regions.[53] Hassim et.al, analyzed implemented health law and policy.[54] They argued that: "the right to have access to health care can only be implemented in practice if those who are obligated in some manner to regard this right can comprehend and carry out their constitutional duties."[55] Collaborating under such a set of rules facilitates the resolution of conflicts and disagreements among diverse parties.[56]

In the *Grootboom* Case,[57] the court held that: "such measures must consider the nature and scope of the right they are seeking to be deprived to realize to be reasonable. Those whose needs are the most essential, and whose potential to enjoy all rights, as a result, is in jeopardy, must not be disregarded by measures intended to accomplish that right." Also in the *Soombramoney* Case,[58] the Court confirmed the constitutional obligation of the republic as per section 27 of the Constitution. It further made it clear that everyone in a comparable situation must have access to healthcare services. The court stipulated that: "the right not to be denied urgent medical treatment, means that a person who suffers a sudden catastrophe that necessitates urgent medical care ought not to be denied access to an ambulance or other readily accessible emergency services, nor should they be turned away from a hospital that would provide the necessary medical care. The court further emphasized that this right should be construed considering existing resources and that it should be considered apart from the right to life".[59] In the *TAC case,*[60] the court articulated that this right cannot be afforded to everyone who deserves it immediately. It stated that the state must do what is reasonable. The court noted that the government's policy failed to comply with constitutionally required standards since it excluded people that may reasonably be regarded if such treatment was medically required to prevent the transmission of HIV from the mother to the foetus. That certainly does not mean everyone would have been able to receive such medication right instantly, though it was the objective.

The Structure of the National Health System of Cuba

The national health system of Cuba is Called '*Sistema Nacio-nal de Salud'* (hereinafter SNS).[61] The health system of Cuba focuses on prevention.[62] The national health system of Cuba affords people free health care services.[63] Every human being in Cuba has access to a family physician and nurse.[64] It promotes health education.[65] Through these measures employed in Cuba, it has succeeded in providing adequate access to health care services.[66]

To provide access to health care services, Cuba established three structures for providing primary, secondary, and tertiary care.[67] The first level consists of municipal authorities.[68] At this level, community-based healthcare services are provided. There are consultations with medical practitioners and regional polyclinics.[69] The people are assigned a family doctor and nurse. The assigned medical

[53] SAHRC, *Access to Health Care*.
[54] Adila Hassim, Mark Heywood, and Jonathan Berger, "Health and Democracy: A Guide to Human Rights, Health Law and Policy in Post-Apartheid South Africa," 2014, 30.
[55] Hassim, Heywood, and Berger, "Health and Democracy: A Guide to Human Rights, Health Law and Policy in Post-Apartheid South Africa."
[56] Hassim, Heywood, and Berger, "Health and Democracy: A Guide to Human Rights, Health Law and Policy in Post-Apartheid South Africa," 69.
[57] *Government of the Republic of South Africa and Others v Irene Grootboom and Others* 2001 (1) SA 46 (CC).
[58] *Soombramoney v Minister of Health (Kwazulu-Natal*) 1998 (1) SA 765 (CC).
[59] *Soombramoney v Minister of Health (Kwazulu-Natal*) 1998 (1) SA 765 (CC).
[60] *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) 2002 (5) SA 721 (CC).
[61] Malgorzata Cyrych, "Legal Aspects of National Healthcare Service in Cuba," *Borgis* 2020, 49.
[62] Cyrych, "Legal Aspects of National Healthcare Service in Cuba."
[63] Cyrych, "Legal Aspects of National Healthcare Service in Cuba."
[64] Cyrych, "Legal Aspects of National Healthcare Service in Cuba."
[65] Cyrych, "Legal Aspects of National Healthcare Service in Cuba."
[66] Cyrych, "Legal Aspects of National Healthcare Service in Cuba."
[67]Cuba Platform, *The Cuban Healthcare System* (Cuba 101, 2018), https://static1.squarespace.com/static/5a137d8aedaed807de3a77b3/t/5bb53cb07817f73b3f303684/1538604209150/Healthcare-Cuba101.pdf.
[68]Cuba Platform, *The Cuban Healthcare System* .
[69]Cuba Platform, *The Cuban Healthcare System* .

practitioners are responsible for providing health care services to everyone in society.[70] They are tasked to cure, vaccinate, and provide emergency medical attention to everyone.[71]

Challenges of Access to Health Care Services in Cuba

There are still challenges to access to health care services in Cuba.[72] The key challenge, as is the case in South Africa, has been the shortage of resources necessary for healthcare services in the healthcare facilities of Cuba.[73] This includes limited access to bedding, bandages, and other basic resources, as well as dealing with chronic diseases and those that affect the elderly.[74]There is also a shortage of medication in healthcare facilities in Cuba. During the Coronavirus outbreak, Cuban Doctors complained about a shortage of medicine, oxygen, and other materials necessary to protect healthcare workers and afford people access to healthcare services in Cuba. Some healthcare facilities in Cuba are not in a good state.[75] "Due to ongoing economic insecurity and the challenges of importing medical supplies as well as raw materials for the domestic fabrication of medicines, certain common medicines remain in short supply, and healthcare facilities are not as comfortable or updated as many patients would prefer."[76]Cuba has a limited birth rate. It resulted in an aging population in Cuba. The birth rate in Cuba is low. The issues related to the low birth rate affect Cuba. There is a rise in the elderly population.[77] As a result, the medical issues of the elderly are beginning to dominate those of other groups of the population, and Cuba is confronted with the challenge of providing care.[78] The aging of the population, along with lifestyle changes, has resulted in an epidemiological transition and an increase in chronic and degenerative illness cases.[79]

Inadequate Infrastructure in Health Care Facilities

Inadequate infrastructure in health care facilities exists in South Africa.[80] In order to give individuals efficient and high-quality access to healthcare services, healthcare institutions must have a secure and well-equipped work environment.[81] In this study, infrastructure concerning healthcare facilities refers to the maintenance of the buildings, the availability of basic services, the availability and accessibility of necessary technology, and the availability of functional medical and non-medical equipment.[82] There is a lack of capacity spaces in healthcare facilities.[83] The waiting rooms are always overcrowded by different people who need different health care services. The health care workers serve different people in the same room. This infringes on the right to privacy. The lack of space exposes people to contagious diseases.[84] During the National State of Disaster, the healthcare facilities were closed when the staff or healthcare workers tested positive for COVID-19.[85] This resulted in the inaccessibility of health care services to people who lived in that area. In Port Elizabeth, the clinics were closed after staff members tested positive for Covid-19.[86] Multiple clinics and at least two hospitals experienced a disruption in healthcare services due to the shutdown of their buildings. Because they seldom have the resources to

[70] Cuba Platform, *The Cuban Healthcare System* .
[71] Cuba Platform, *The Cuban Healthcare System* .
[72] Cuba Platform, *The Cuban Healthcare System* .
[73] Cuba Platform, *The Cuban Healthcare System* .
[74]Cuba Platform, *The Cuban Healthcare System* .
[75]Cuba Platform, *The Cuban Healthcare System* .
[76]Cuba Platform, *The Cuban Healthcare System* .
[77]Cuba Platform, *The Cuban Healthcare System* .
[78]Cuba Platform, *The Cuban Healthcare System* .
[79] Pol De Vos et al., "Cuba's Health System: Challenges Ahead," *Health Policy and Planning* 23, no. 4 (2008): 288–90, 289.
[80] Y A Vawda and F Variawa, "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30," 493-495.
[81] Vawda and Variawa, "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30, "493.
[82] Vawda and Variawa, "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30, "493.
[83] Vawda and Variawa, "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30, "494.
[84] Vawda and Variawa, "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30, "494.
[85] Luvuyo Mehlwana, "How Clinic Closures Disrupt Health Services in Port Elizabeth," Daily Maverick, July 27, 2020, https://www.dailymaverick.co.za/article/2020-07-27-how-clinic-closures-disrupt-health-services-in-port-elizabeth/.
[86] Mehlwana, "How Clinic Closures Disrupt Health Services in Port Elizabeth."

travel to a different clinic farther afield, patients—who are primarily women, children, and the elderly are frequently left stranded as a result.[87]

A COMPARATIVE ANALYSIS OF SOUTH AFRICA WITH CUBA

The right to have access to health care services is afforded in Cuba. Some laws regulate the right to have access to health care services. The challenges that hinder access to healthcare services are addressed in Cuba, This study will be doing a comparative study on access to healthcare services in another jurisdiction, which is Cuba, as well as lessons that South Africa may learn from Cuba. Cuba has the best measures to overcome the challenges that hinder access to health care services. The author believes that Cuba has the best measures that can be used in South Africa to protect the right to have access to health care services. While Cuba's healthcare system is lauded for its focus on preventive care and community-based services, the reality is marred by significant access challenges stemming from resource shortages, economic constraints, and systemic inefficiencies. Addressing these issues is crucial for ensuring that all citizens can benefit from the health services that the government aims to provide universally.

Adoption of Best Measures and Strategies from Cuba

The comparative analysis with Cuba was done to establish the measures and strategies employed in Cuba to address the challenges of access to health care services and afford people access to health care services. It has been highlighted above that there are challenges of access to healthcare services in Cuba, but a great improvement has been made to overcome these challenges and afford people access to healthcare services. It has been submitted above that South Africa should adopt the best measures and strategies found in the Constitutions and Public Health Law of Cuba. A comparative study identified how these measures are implemented and their effect on the health system of Cuba. If the best measures and strategies can be adopted as submitted in this research, people can acquire effective and quality access to healthcare services in South Africa. Without any doubt, these measures can make a great improvement in access to health care services.

Discussion Summary

The challenges that hinder access to healthcare services still exist in post-apartheid South Africa. Despite the strategic plans and programs that the state put in place for the progressive realization of the right to have access to healthcare services, healthcare services remain inaccessible in South Africa. Understandably, the resources are limited, but the state could do better than it has done with its available resources. The programs that the state established have their challenges, they are unable to fulfil the constitutional obligation in South Africa.

The article observed and suggests that South Africa could benefit from adopting effective measures and strategies present in Cuba's Constitution and Public Health Law. By examining Cuba's approach to healthcare, which emphasizes preventive care and equitable access. These above-mentioned Cuban strategies have been successful in addressing healthcare access challenges and could provide valuable insights for South Africa to improve the quality and accessibility of its healthcare services, particularly for marginalized communities.

RECOMMENDATIONS

Medical practitioners should be trained and educated about recent measures that can be used to overcome the challenges of access to health care services. Medical practitioners should be exposed and educated about newly enacted legislative measures that regulate access to healthcare services. This research highlighted that the infrastructure of healthcare facilities is inadequate.[88] To overcome this challenge, the state should employ qualifying people to work permanently in all existing healthcare facilities to fix and maintain the infrastructure. It has been highlighted above that there are challenges of access to healthcare services in Cuba, but great strides have been made to overcome these challenges and afford people access

[87] Mehlwana, "How Clinic Closures Disrupt Health Services in Port Elizabeth."
[88] Maphumulo and Bhengu, "Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review," 2.

to healthcare services. It has been submitted above that South Africa should adopt the best measures and strategies found in the Constitutions and Public Health Law of Cuba. A comparative study identified how these measures are implemented and their effect on the health system of Cuba. If the best measures and strategies can be adopted as submitted in this research, people can acquire effective and quality access to healthcare services in South Africa. Without any doubt, these measures can make a great improvement in access to health care services.

South Africa faces the challenges of a shortage of resources and medication in healthcare facilities.[89] To overcome this challenge, each year healthcare facilities should be provided with modern medical equipment. The existing healthcare facilities should be equipped to ensure that they have the necessary capacity to serve people. The state in fulfilment of its constitutional obligation should provide healthcare facilities with the necessary equipment and medication. Now that the resources and medication are limited in healthcare facilities, the state must prioritise prevention so that the number of people who go to healthcare facilities can be limited.

CONCLUSION

In conclusion, addressing healthcare access inequalities in South Africa requires a multifaceted approach that synthesizes legislative evaluation, human rights obligations, and strategic improvements. Despite comprehensive legal frameworks, significant gaps persist, particularly affecting marginalized communities. By learning from Cuba's healthcare model, which prioritizes preventive care and equitable access, South Africa can adopt innovative strategies to enhance its healthcare system. This study underscores the importance of bridging the gap between policy and practice, emphasizing the need for improved implementation, infrastructure investment, and targeted programs. By doing so, South Africa can move towards a more inclusive and effective healthcare system, ensuring that all citizens have the opportunity to access the care they need. This transformation not only aligns with constitutional and human rights standards but also sets a precedent for global best practices in healthcare accessibility. Ending on a positive note, the potential for significant improvement is within reach, offering a hopeful outlook for the future of healthcare in South Africa.

BIBLIOGRAPHY

Legislations

South Africa

1. Choice of Termination of Pregnancy Act 92 of 1996.
2. Constitution of the Republic of South Africa Act 108 of 1996
3. National Health Act 61 of 2003

Cuba

1. Cuba’s Constitution of 1976.
2. Cuba’s Constitution of 2019.
3. Public Health Law No 41 of 1983.

International Conventions

1. Convention on the Rights of the Child, 1989.
2. Convention on the Elimination of All Forms of Discrimination against Women, 1979.
3. Universal Declaration of Human Rights, 1948.
4. International Covenant on Economic, Social and Cultural Rights, 1966.

Cases Laws

1. *Government of the Republic of South Africa and Others v Irene Grootboom and Others* 2001 (1) SA 46 (CC).

[89] Maphumulo and Bhengu, “Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review,” 2.

2. *Soombramoney v Minister of Health (Kwazulu-Natal*) 1998 (1) SA 765 (CC).
3. *Minister of Health and Others v Treatment Action Campaign and Others* (No 2) 2002 (5) SA 721 (CC).
4. *Mazibuko v City of Johannesburg* CCT/39/09 (8 October 2009).

Books, Journal Articles and Internet Sources

Burger, Ronelle, and Carmen Christian. “Access to Health Care in Post-Apartheid South Africa: Availability, Affordability, Acceptability.” *Health Economics, Policy and Law* 15, no. 1 (2020): 43–55.

Cuba Platform. *The Cuban Healthcare System* . Cuba 101, 2018. https://static1.squarespace.com/static/5a137d8aedaed807de3a77b3/t/5bb53cb07817f73b3f303684/1538604209150/Healthcare-Cuba101.pdf.

Cyrych, Malgorzata. “Legal Aspects of National Healthcare Service in Cuba.,” 2020.

Department of Health. “Health Gives Clarity on Eastern Cape Scooters Programme.” South African Government Information Services, July 10, 2020. https://www.gov.za/news/media-statements/health-gives-clarity-eastern-cape-scooters-programme-10-jul-2020.

Ellis, Estelle, Luvuyo Mehlwana, and Hoseya Jubase. “More than 300 Covid-Related Deaths and Health Staff Shortages Push Eastern Cape Hospitals to the Edge.” Daily Maverick, March 23, 2021. https://www.dailymaverick.co.za/article/2021-03-23-more-than-300-covid-related-deaths-and-health-staff-shortages-push-eastern-cape-hospitals-to-the-edge/.

Ewing, Rose-Marie G, Stephen Reid, and Angela A Morris-Paxton. “Primary Healthcare Services in the Rural Eastern Cape, South Africa: Evaluating a Service-Support Project.” *African Journal of Primary Health Care and Family Medicine* 12, no. 1 (2020): 1–7.

Gaede, Bernhard, and Marije Versteeg. “The State of the Right to Health in Rural South Africa.” *South African Health Review* 2011, no. 1 (2011): 99–106.

Grobler, Riaan. “What Benefits Do Cuban Doctors Bring to SA? Zweli Mkhize Explains.” news24, August 14, 2020. https://www.news24.com/News24/what-benefits-do-cuban-doctors-bring-to-sa-zweli-mkhize-explains-20200814.

Harries, Jane, Kristen Daskilewicz, Tshegofatso Bessenaar, and Caitlin Gerdts. “Understanding Abortion Seeking Care Outside of Formal Health Care Settings in Cape Town, South Africa: A Qualitative Study.” *Reproductive Health* 18 (2021): 1–8.

Harris, Bronwyn, Jane Goudge, John E Ataguba, Diane McIntyre, Nonhlanhla Nxumalo, Siyabonga Jikwana, and Matthew Chersich. “Inequities in Access to Health Care in South Africa.” *Journal of Public Health Policy* 32 (2011): S102–23.

Hassim, Adila, Mark Heywood, and Jonathan Berger. “Health and Democracy: A Guide to Human Rights, Health Law and Policy in Post-Apartheid South Africa,” 2014.

IOL. “R10m Eastern Cape Medical Scooter Project Is a ‘Fail’, Reveals Health Minister.” IOL, 2020. https://www.iol.co.za/news/r10m-eastern-cape-medical-scooter-project-is-a-fail-reveals-health-minister-50707971.

Kredo, Tamara, Sara Cooper, Amber Louise Abrams, Jocelyn Muller, Bey-Marrié Schmidt, Jimmy Volmink, and Salla Atkins. “‘Building on Shaky Ground’—Challenges to and Solutions for Primary Care Guideline Implementation in Four Provinces in South Africa: A Qualitative Study.” *BMJ Open* 10, no. 5 (2020): e031468.

Mahlathi, P, and J Dlamini. “Minimum Data Sets for Human Resources for Health and the Surgical Workforce in South Africa’s Health System: A Rapid Analysis of Stock and Migration.” *African Institute of Health and Leadership Development* 2015 (2015): 1–16.

Maphumulo, Winnie T, and Busisiwe R Bhengu. “Challenges of Quality Improvement in the Healthcare of South Africa Post-Apartheid: A Critical Review.” *Curationis* 42, no. 1 (2019): 1–9.

Mehlwana, Luvuyo. “Fed-up Community in Rural Eastern Cape Starts Their Own Health Facility.” Daily Maverick, December 3, 2020. https://www.spotlightnsp.co.za/2020/12/03/fed-up-community-in-rural-eastern-cape-starts-their-own-health-facility/.

———. “How Clinic Closures Disrupt Health Services in Port Elizabeth.” Daily Maverick, July 27,

2020. https://www.dailymaverick.co.za/article/2020-07-27-how-clinic-closures-disrupt-health-services-in-port-elizabeth/.

Pieterse, Marius. "Geography, Marginalisation and the Performance of the Right to Have Access to Health Care Services in Johannesburg." *Law, Democracy & Development* 20 (2016): 1–19.

SA Government. *Public Inquiry : Access to Health Care Services*, 1993. https://www.gov.za/sites/default/files/gcis_document/201409/health-report-final-2009.pdf.

SAHRC. *Access to Health Care*. South African Human Rights Commission, 2020. https://www.sahrc.org.za/home/21/files/FINAL Access to Health Care Educational Booklet.pdf.

Schierenbeck, Isabell, Peter Johansson, Lena Andersson, and Dalena van Rooyen. "Barriers to Accessing and Receiving Mental Health Care in Eastern Cape, South Africa." *Health & Hum. Rts.* 15 (2013): 110.

Vawda, Y A, and F Variawa. "Challenges Confronting Health Care Workers in Government's ARV Rollout: Rights and Responsibilities [2012] PER 30," n.d.

Vos, Pol De, Wim De Ceukelaire, Mariano Bonet, and Patrick Van der Stuyft. "Cuba's Health System: Challenges Ahead." *Health Policy and Planning* 23, no. 4 (2008): 288–90.

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