



The realisation of the right to mental health care of children and adolescents with clinical depression

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ABSTRACT

Due to its significant influence on socio-economic output, educational attainment, and human development, mental health has taken centre stage in discussions surrounding global health. The importance of the healthy development of children and adolescents for overall societal welfare and shaping a country's future as upcoming leaders, employees, and parents cannot be ignored. An international legal framework consisting of an all-inclusive set of yardsticks and systems for protecting the human rights of individuals globally recognises the right of access to health care as a fundamental right. The international legal framework for children's rights, concomitantly, recognises children as individuals having access to human rights.

In noticing the detrimental consequences of mental illnesses such as clinical depression on the youth, this study aims to explore the extent to which South Africa is complying with international standards regarding the realisation of the right to health care for children and adolescents diagnosed with clinical depression. Regarding the right to healthcare for children and adolescents, including those with mental health disorders, South Africa has a strong legal and regulatory framework that *de jure* complies with international norms such as section 27 and 28 of the Constitution. The *de facto* implementation of the access to healthcare for children and adolescents with clinical depression in South Africa faces substantial obstacles, such as a lack of child and adolescent psychologists and psychiatrists, despite the country's robust legislative and administrative framework. The objectives of the study are: to analyse the right of children and adolescents to mental health care services, discuss the current position in international law regarding the duty to realise children and adolescent's right to mental health care, explore the legal duty of the South African State to realise children and adolescent's rights to mental health care and, lastly recommend ways in which the State can effectively comply with its legal duty.

Data was generated through a thorough review of existing literature. This enabled the researcher to consolidate and analyse existing knowledge in the field of International Child Law with the aim of contributing to this field by offering guidance for enhancing current practices in South Africa to give effect to the right of access to health care in

future. International, regional and national law, as well as case law, were used as primary sources. As secondary sources, peer-reviewed journal articles and edited academic books were employed. Findings indicate that South African national legislation aligns with international law pertaining to the right of access to health care, which the State is obliged to ensure. However, South Africa continues to experience significant challenges to effectively realise children and adolescents' right of access to health care despite having a strong legal framework guaranteeing and protecting children and adolescents' rights. Barriers such as societal stigma, a lack of resources, inadequate funding, and poorly implemented policies continue to restrict access to mental health services. As such, it is recommended that South Africa needs to prioritise mental health through practical reforms, allocation of more funding to the health sector, and establishment of inclusive, community-based care to which equal access is ensured if it is to fully realise this right. The effective implementation of legislation requires a political will to invest in community-based mental health services, run awareness campaigns, and integrate mental health into primary health care.

Key words

Right to health care, mental health, mental health disorder, clinical depression, Constitution of South Africa, children and adolescents

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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
Anon	Anonymous
BMJ	British Medical Journal
CAMH	Child and Adolescent Mental Health
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
J Child Adolesc Ment Health	Journal of Child & Adolescent Mental Health
PULP	Pretoria University Law Press
SAJHR	South African Journal on Human Rights
SAMJ	South African Medical Journal
Rehabil Psychol	Rehabilitation Psychology
WHO	World Health Organisation

CHAPTER 1: INTRODUCTION AND PROBLEM STATEMENT

1.1 Introduction and background

The importance of mental wellbeing in enabling humans to reach their full potential,¹ build healthy relationships,² optimally learn and function,³ as well as significantly contribute to society and, thus, enhancing overall socio-economic development,⁴ is well documented. Due to substantial physical, social, cognitive, and emotional changes that occur throughout adolescence,⁵ mental illness is more likely to emerge during this period of transition between childhood and adulthood,⁶ resulting in adolescents being critically vulnerable to anxiety, fear, sleeplessness, self-doubt, depression, and substance abuse (stress-related psychological disorders).⁷

The World Health Organisation (WHO)⁸ cautions that adolescents with mental health disorders are especially susceptible to stigma, discrimination, social exclusion, risk-taking behaviours, physical illness, human rights abuses, and educational challenges. Since abandonment, loneliness and social exclusion can be exacerbated by social disengagement, the same Organisation expresses concern over mental illness among adolescents, often leading to suicide, the third most common cause of mortality among adolescents.⁹ In support, Paruk and Karim¹⁰ explain that adolescents who suffer from common psychiatric diseases such as mood changes, anxiety, depression, stress, trauma, or linked disorders are more likely to commit suicide.

¹ WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

² WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

³ Bruffaerts *et al* 2019 *International Journal of Methods in Psychiatric Research* 1.

⁴ World Health Organisation 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

⁵ WHO 2023 http://www.who.int/health-topics/adolescent-health#tab=tab_1 defines adolescence as the phase of life between childhood and adulthood, from ages 10 to 19. It is a unique stage of human development and an important time for laying the foundations of good health; Chapter 1 of the *Childrens Act* 38 of 2005 defines a child as any person that is under the age of 18 years, therefor including adolescents.

⁶ Paruk and Karim 2016 *South African Medical Journal* 548.

⁷ Romeo 2017 *Brain Research* 185; Grover *et al* 2020 *Asian Journal of Psychiatry* 1.

⁸ WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

⁹ WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

¹⁰ Paruk and Karim 2016 *South African Medical Journal* 548.

Since unresolved mental health issues during adolescence have a profound impact on adolescents' current and future development, performance and wellbeing, as well as on that of their dependents,¹¹ having access to health care services and intervention practices is vital.¹² Research has, however, found manifold impediments depriving adolescents from access to mental health care.¹³ The same is, unfortunately, true for children despite being in a critical developmental period of their lives.¹⁴ Children are particularly vulnerable due to their dependence on adults for protection and care,¹⁵ the absence of which often has a permanent detrimental influence on their future lives.¹⁶ It should be noticed that, although mental illnesses affect around 20% of children and adolescents, most of them go undiagnosed and untreated¹⁷ and between 50 to 80% of all adult mental health conditions manifest before the age of 18.¹⁸

Children and adolescents alike often exhibit multiple chronic conditions.¹⁹ These include risk-taking behaviour such as high-risk sexual conduct and substance abuse.²⁰ Although such behaviour is generally used as a coping mechanism when confronted with emotional challenges, it should be noted that it may have a negative impact on both their mental and physical wellbeing.²¹ Notwithstanding emphasis generally being placed on physical wellbeing, Spurrier *et al*²² caution that the importance of mental health for physical health must never be underestimated, while Hidaka²³ highlights the interrelatedness between mental and physical wellbeing.

For purposes of this study, clinical depression among the youth merits further exploration. A loss of interest in nearly all activities and persistent sadness for a minimum of two weeks are essential indications of clinical depression, viewed as a

¹¹ Michaud *et al* 2020 *European Journal of Public Health* 1128; Chukwuere *et al* 2022 *Curationis* 7; Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

¹² Filia *et al* 2024 *International Journal of Social Psychiatry* 1267.

¹³ Platell *et al* 2017 *Advances in Mental Health* 198; Meldahl *et al* 2022 *Health Expectations* 2925; Shidhaye 2023 *Current Opinion in Psychology* 1.

¹⁴ Ford *et al* Gunnell 2021 *British Medical Journal* 372; Reyneke 2023 *Child Abuse Research in South Africa* 44.

¹⁵ Omarjee *et al* 2023 *Child Abuse Research in South Africa* 57.

¹⁶ Naidoo *et al* 2024 *Criminologica: African Journal of Criminology & Victimology* 46.

¹⁷ Paruk and Karim 2016 *South African Medical Journal* 548.

¹⁸ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

¹⁹ Paruk and Karim 2016 *South African Medical Journal* 549.

²⁰ WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

²¹ WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

²² Spurrier *et al* 2023 *Frontiers in Psychiatry* 2.

²³ Hidaka 2012 *Journal of Affective Disorders* 207.

mental health condition, as it has a negative impact on a person's feelings, thoughts, behaviour, and performance.²⁴ In this regard, it is important to distinguish between mere sporadic crankiness generally associated with adolescents and children and prolonged episodes of irritability as a result of frustration and feelings of sadness (clinical depression).²⁵

Among adolescents, clinical depression is regarded as the primary cause of financial hardship, poor academic performance, suicidal thoughts, and suicide.²⁶ Despite these destructive effects, authors such as Chukwuere *et al*²⁷ raise concern over the fact that less than 25% of humans with clinical depression receive suitable mental health care treatment. According to Aratani and Cooper,²⁸ this may be ascribed to the symptoms not being recognised timeously, or due to the limited availability of resources and inadequate access to quality mental health and psycho-social support. In this regard, Wachira and Cassell²⁹ found that children and adolescents in Africa often do not receive the needed mental health care due to it not being prioritised when resources are allocated, thus leaving them marginalised and unfairly discriminated against.

In alliance, the WHO³⁰ recognises that children and adolescents in certain geographical areas are more susceptible to mental health problems negatively impacting their life choices due to their geographical setting as well as their unique living circumstances, stigma, exclusion and/or discrimination, or inability to obtain high quality support and treatment. To aggravate the problem, Mokitimi *et al*³¹ found that low- and middle-income countries maintain a very poor evidence base regarding the prevalence of mental illness³² among children and adolescents. Nevertheless, studies have found that the likelihood of mental health problems is significantly increased among humans living in vulnerable settings characterised by low social support and socio-economic

²⁴ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 163.

²⁵ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 163.

²⁶ Chukwuere *et al* 2022 *Curationis* 4.

²⁷ Chukwuere *et al* 2022 *Curationis* 5.

²⁸ Aratani and Cooper 2012 *The Journal of Behavioural Health Services & Research* 116.

²⁹ Wachira and Cassell 2022 *African Human Rights Yearbook* 223.

³⁰ WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>.

³¹ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³² Chapter 1 of the *Mental Health Care Act* 17 of 2002 defines mental illness as:
A positive diagnosis of mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorised to make such diagnosis.

disparities.³³ When access to mental health care is thus studied, cognisance of the different barriers children and adolescents may encounter must be taken, seeing that those living in low-income countries such as South Africa may experience different challenges hindering their optimal functioning within society (*cf.* 4.3).³⁴

Since States within an international and regional human rights framework, are compelled to endorse and safeguard human rights,³⁵ it is imperative to, refer to the most prominent legal provisions pertaining to the right to health care services. Whereafter, the South African constitutional and legislative framework, providing for the realisation of the right to health care, is outlined.

In terms of international human rights legislation, the *International Covenant on Economic, Social, and Cultural Rights*³⁶ is considered the most comprehensive document. Article 12.1 of the *Covenant* obliges State parties to recognise everyone's right to enjoy physical and mental wellbeing to the "highest attainable standard." This provision is, however, criticised by Dhai and Mahomed³⁷ for not providing an exact definition of what the concept of the "highest attainable standard" entails, thus hampering the effective realisation of the right to health care in practice.

Equal access to health care is considered to be of utmost importance in realising the right to health, which notably entails equal weight being assigned to physical and mental health.³⁸ Equal access necessitates access to medication and medical care to support humans to live healthy lives³⁹ and is regarded by the Committee of Economic, Social, and Cultural Rights⁴⁰ as the core driver of health.

Human rights are closely related, interdependent, and indivisible.⁴¹ This implies that all rights are equally important and that the attainment of these rights is dependent upon each other. For example, this entails that the right to health care is reliant on

³³ Paruk and Karim 2016 *South African Medical Journal* 548.

³⁴ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁵ United Nations date unknown <https://www.un.org/esa/socdev/enable/comp101.htm>; United Nations date unknown <https://www.un.org/en/global-issues/human-rights>.

³⁶ *International Covenant on Economic, Social and Cultural Rights* (1966).

³⁷ Dhai and Mahomed 2018 *South African Journal of Bioethics and Law* 9.

³⁸ WHO "The Right to Health, Geneva, Switzerland: WHO".

³⁹ *International Covenant on Economic, Social and Cultural Rights* (1966).

⁴⁰ WHO "The Right to Health, Geneva, Switzerland: WHO".

⁴¹ WHO "The Right to Health, Geneva, Switzerland: WHO".

the realisation of the rights to human dignity, freedom from torture, and non-discrimination.⁴² As such, if effect is not given to the right to health care, other rights such as the right to employment or education, are hampered.⁴³

The right to mental health guaranteed to children is embedded in various international instruments such as the *United Nations Convention on the Rights of the Child* (hereafter, the *CRC*).⁴⁴ In recognising that some children may live under extraordinarily harsh circumstances, the *CRC* notes that such children may require special attention.⁴⁵ The *CRC* compels State parties to uphold and respect the rights granted to children without engaging in any form of discrimination, even when it comes to a child's disability.⁴⁶ Article 23, specifically, obliges State parties to make sure that children with mental or physical disabilities have the right to a full and decent life in dignity, including access to sufficient information regarding health care and access to special care.

1.2 Problem statement

The problem identified for this study entails that, despite ratifying various regional and international human rights treaties, South Africa continues to experience difficulties in realising the right of children and adolescents specifically, with clinical depression to mental health care. This results in such children, among others, not receiving treatment and support, not being actively involved and effectively participating in society, and not being able to enjoy the necessary physical and mental health needed to live fulfilled lives, which often leads them to commit suicide.⁴⁷

In cases where mental illness, such as clinical depression, has a substantial, lifelong, and harmful effect on a human's capability to complete routine activities, it is regarded as a disability.⁴⁸ Therefore, mental illness is very important as it links to individuals who have a disability in the sense that they are usually stigmatised or suffer from a

⁴² United Nations date unknown <https://www.ohchr.org/en/what-are-human-rights>.

⁴³ WHO "The Right to Health, Geneva, Switzerland: WHO".

⁴⁴ *Convention on the Rights of the Child* (1989).

⁴⁵ Preamble to the *Convention on the Rights of the Child* (1989).

⁴⁶ Art 2 of the *Convention on the Rights of the Child* (1989).

⁴⁷ WHO 2024 <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>.

⁴⁸ Heyl 2024 <https://www.verywellmind.com/is-depression-a-disability-5271476#>.

lack of disability awareness, which limits their access to mental health services.⁴⁹ In this regard, the *Convention on the Rights of Persons with Disabilities* (hereafter, the *CRPD*)⁵⁰ merits attention. The *CRPD* mandates that the State guarantee the equitable enjoyment of rights by individuals with disabilities, including those who suffer from mental illness. Although the *CRPD* does not provide people living with a disability with additional human rights, it does echo the legal duties of State parties to ensure that all humans (those with disabilities included) equally enjoy their human rights and freedoms.⁵¹

An important regional document that maintains and advances children's rights across the African continent, of which South Africa is part, is the *African Charter on the Rights and Welfare of the Child* (hereafter, the *ACRWC*), ratified by South Africa in 2000.⁵² South Africa is thus required to protect children's mental and physical development under the *ACRWC*. In noting the adverse circumstances and socio-economic challenges of most children on this continent, the *ACRWC* acknowledges the mental and physical naivety of these children requiring special care pertaining to "health, physical, mental, moral and social development".⁵³

The *Republic of South Africa's Constitution* (hereafter, the *Constitution*), through section 27, guarantees everyone's right to have access to health care services as well as emergency medical care.⁵⁴ The State is required to ensure the gradual realisation of this right by adopting legislation and taking realistic action within reasonable limits, considering its existing resources.⁵⁵

As such, the State needs to allocate its resources at hand in ways that are most effective.⁵⁶ Thus, the right to health, as guaranteed in section 27,⁵⁷ relies on the financial capabilities and economic realities of the country. Restrictions on the direct

⁴⁹ Whittle *et al* 2018 *Journal of Mental Health Research in Intellectual Disabilities* 77.

⁵⁰ *Convention on the Rights of Persons with Disabilities and Optional Protocol* 2008.

⁵¹ Boezaart and Skelton "From pillar to post: Legal solutions for children with debilitating conduct disorder" 115.

⁵² Boezaart and Skelton "From pillar to post: Legal solutions for children with debilitating conduct disorder" 117.

⁵³ *African Charter on Human and People's Rights* (1999)

⁵⁴ S 27 of the *Constitution of the Republic of South Africa*, 1996.

⁵⁵ S 27(2) of the *Constitution of the Republic of South Africa*, 1996.

⁵⁶ Dhai and Mahomed 2018 *South African Journal of Bioethics and Law* 9.

⁵⁷ *Constitution of the Republic of South Africa*, 1996.

enforceability of these entitlements in section 27 are unavoidable due to the wide variations in the costs and efficacy of medical care, multiplicity of competing health-related needs in society, and lack of resources available to meet these needs.⁵⁸

The right of every child to basic health care services is upheld in section 28(c) of the *Constitution*. To give effect to the human rights guaranteed by the *Constitution*, the State is obliged to respect, defend, uphold and fulfil these rights.⁵⁹ The duty to respect entails that the State may not interfere with these rights by, for example, imposing retrogressive measures limiting access to health care, while the duty to protect entails prohibiting others from violating these rights.⁶⁰ The duty to promote, in turn, requires the State to create awareness and conditions under which these rights can thrive, while the duty to fulfil demands adopting measures to enhance the enjoyment of such rights.⁶¹ To fully realise these rights, the State must take the necessary steps to ensure that the right to health is accessible, reasonably priced, and high-quality health care facilities are guaranteed.⁶²

Through section 28, the *Constitution* reinforces and protects the rights of, specifically, children to basic health care and social services.⁶³ As there can be no talk of health without mental health, Wachira and Cassell⁶⁴ explain that the right to basic health care encompasses the right to basic mental health care. Regarding the State's obligations, section 28, in contrast to section 27,⁶⁵ does not impose any inherent restrictions based on the resources available to ensure its gradual realisation.⁶⁶ In the case of the *Government of the Republic of South Africa and Others vs Grootboom and Others*⁶⁷ it is clear that progressiveness remains applicable in Section 28, except if the state is directly in charge of children. Section 27 of the Constitution ensures the right to health

⁵⁸ Pieterse 2006 *South African Journal on Human Rights* 480.

⁵⁹ S 7(2) of the *Constitution of the Republic of South Africa*, 1996.

⁶⁰ Currie and De Waal 2013 *The Bill of Rights Handbook* 568.

⁶¹ De Vos and Friedman 2022 *South African Constitutional Law in Context* 671-672.

⁶² Art 25 of the *National Health Act* 61 of 2003.

⁶³ S 28 of the *Constitution of the Republic of South Africa*, 1996.

⁶⁴ Wachira and Cassell 2022 *African Human Rights Yearbook* 224.

⁶⁵ S 27 of the *Constitution of the Republic of South Africa*, 1996.

⁶⁶ Dhali and Mahomed 2018 *South African Journal of Bioethics and Law* 9.

⁶⁷ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] SA 46; 2000 (11).

care, subject to progressive implementation, while section 28 mandates the immediate provision of essential health care services to children.

The State, through the *Children's Act*,⁶⁸ pledges to raise the standard of living and unleash the potential of every individual to achieve the aim of the *Constitution*.⁶⁹ Section 6(d) of the *Children's Act* provides for the protection of children from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child.⁷⁰ It also emphasises the necessity of providing special attention to children, as mandated by a number of regional and international human rights treaties, such as the *African Charter on the Rights and Welfare of the Child*⁷¹ and the *Convention on the Rights of the Child*.⁷² The *Convention on the Rights of the Child* in article 24 states that children has the right to the highest attainable standard of health including mental healthcare.

People with long-term physical, mental, intellectual, or sensory impairments are included in the CRPD's comprehensive definition of disabled people thus specifically addressing mental illness.⁷³ By ratifying the *CRPD* and its Optional Protocol in 2007, South Africa also indicated its willingness to enhance the lives of individuals with disabilities and, thus, committed itself to aligning its national policies and laws with the *Convention's* principles aimed at promoting and protecting the rights of people with disabilities.⁷⁴ It was in view hereof that South Africa, even prior to its ratification, adopted the *Mental Health Care Act* of 2002 in 2004, widely regarded as one of the world's most progressive mental health legislation.⁷⁵ This *Act*⁷⁶ aims at providing for the care, treatment and rehabilitation of persons who are mentally ill.

Even with this strong legal framework, there are still many obstacles to overcome. Due to resource limitations, conflicting health priorities, and uneven service delivery,

⁶⁸ 38 of 2005.

⁶⁹ Chapter 2 of the *Constitution of the Republic of South Africa*, 1996.

⁷⁰ Chapter 2 of the *Children's Act* 38 of 2005.

⁷¹ *African Charter on the Rights and Welfare of the Child* (1999).

⁷² *Convention on the Rights of the Child* (1924).

⁷³ Article 1 of the *Convention on the Rights of Persons with Disabilities and Optional Protocol* 2008.

⁷⁴ Article 4(1) of the *Convention on the Rights of Persons with Disabilities and Optional Protocol* 2008.

⁷⁵ Burns 2011 *The Equal Rights Review* 100.

⁷⁶ *Mental Health Care Act*, 17 of 2000.

Section 27's reliance on progressive realization links the right to health care to the State's financial capacity, resulting in gaps in access. Although children's immediate access to health care is guaranteed under section 28, in reality, this requirement is hampered by socio-economic disparities, inadequate infrastructure, and a lack of awareness. Furthermore, the stigma associated with mental illness still limits access to care, undercutting the principles of the *ACRWC* and *CRPD*. Therefore, South Africa has clear and extensive legal requirements; the difficulty is in converting these commitments into efficient, fair, and long-lasting mental health care for everyone.

1.2.1 Research question

To what extent is South Africa complying with international standards regarding the realisation of the right to health care services guaranteed to children and adolescents diagnosed with clinical depression?

1.2.2 Aims and objectives

This study aims to explore the extent to which South Africa is complying with international standards regarding the realisation of the right to health care services for children and adolescents diagnosed with clinical depression.

The study objectives are: to analyse the right of children and adolescents to mental health care services, discuss the current position in international law regarding the duty to realise children and adolescent's right to mental health care, explore the legal duty of the South African State to realise children and adolescent's rights to mental health care and, lastly recommend ways in which the State can effectively dispose of its legal duty.

1.2.3 Research methodology

This study was conducted by means of a literature study. Snyder⁷⁷ explains that using a rigorous literature review as a research method is fundamental in developing new knowledge, thus, presenting direction for improving current policy and practice, and informing future research by identifying knowledge gaps. Both primary sources, such

⁷⁷ Snyder 2019 *Journal of Business Research* 339.

as legislation, case law, international treaties and government policy, and secondary sources, such as peer-reviewed journal articles and edited academic books, were used.

1.2.4 *Framework for this study*

Chapter one provides an introduction and background to the topic of realising the right to mental health care for to children and adolescents. The research problem is identified, and the rationale for the study is explained. The research question and objectives are, alongside, presented.

Chapter two presents an analysis of the existing international and regional legal framework relevant to the right of access to health care. Specific reference is made to the *International Covenant on Economic, Social, and Cultural Rights*,⁷⁸ the *Convention on the Rights of the Child*,⁷⁹ the *Convention on the Rights of Persons with Disabilities and Optional Protocol*,⁸⁰ as well as to the *African Charter on the Rights and Welfare of the Child*.⁸¹

In chapter three, the national legal framework of South Africa is demarcated. This includes a critical analysis of existing legislation with emphasis on sections 27 and 28 of the *Constitution*.

Chapter four discusses the State's responsibilities to optimally give effect to the right of children and adolescents to mental health care services and identify the challenges faced by the South African government in adequately adhering to legislative provisions as identified in chapters two and three.

Conclusions are drawn in chapter five and recommendations made to the State regarding the realisation of the right to mental health care guaranteed to children and adolescents with clinical depression.

1.2.5 *Relevance for the research unit*

In exploring the extent to which South Africa is complying with international standards regarding the realisation of the right to health care services for children and

⁷⁸ *International Covenant on Economic, Social and Cultural Rights* (1966).

⁷⁹ 1989.

⁸⁰ 2008.

⁸¹ 1999.

adolescents diagnosed with clinical depression, this study aims to contribute to the existing knowledge base in International Child Law. It endeavours to provide a critical analysis and understanding of current research in the field and add to scholarly debates relevant to realising the right of children and adolescents to health care, enabling them to live fulfilled lives despite individual circumstances as encapsulated in national, regional and international documents. In view hereof, focus is placed on equality toward mental health care and an equal share of available resources, thus linking the realisation of human rights with the attainment of social justice for all children.

1.2.6 Statement regarding ethics

The checklist on ethics was completed, signed and is attached.

CHAPTER 2 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS PERTINENT TO THE RIGHT OF ACCESS TO HEALTH CARE

2.1 Introduction

The *Universal Declaration of Human Rights*, a number of international agreements, and the World Health Organisation's (WHO) Constitution all uphold the right to health.⁸² Every person has the right to the best possible level of health that allows them to live a life with dignity.⁸³ According to the preamble of the WHO's Constitution, which first outlined this right in 1946, "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic, or social condition".⁸⁴ International human rights law recognises the right to the highest possible level of health as a human right.⁸⁵ One essential human right that is required in order to exercise other rights is the right to health.⁸⁶ Despite its importance, the practical realisation of the right to health is hampered by, among others, a lack of clarity and enforcement,⁸⁷ a lack of resources being invested in health care,⁸⁸ as well as a lack of political will, accountability, tolerance, and equal treatment of all.⁸⁹ It is in this regard that Toben⁹⁰ concludes that, although emphasis on the right to health has globally increased and holds promise, its practical realisation will continuously be confronted by many legal, economic, political and cultural challenges.

Mental illness, such as clinical depression, can amount to a disability when it substantially impairs daily functioning, making the definition of mental illness critical in shaping access to rights and services. International and regional instruments,

⁸² Dhai and Mahomed 2018 *South African Bioethetics Law* 9; Yamin 2005 *Am J Public Health* 1156.

⁸³ The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000).

⁸⁴ *Constitution of the World Health Organisation* 1946.

⁸⁵ WHO "The Right to Health, Geneva, Switzerland: WHO".

⁸⁶ The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000).

⁸⁷ Dhai and Mahomed 2018 *South African Bioethetics Law* 9; Morris *et al* 2019 *Disability and Rehabilitation* 877.

⁸⁸ Morris *et al* 2019 *Disability and Rehabilitation* 878.

⁸⁹ WHO 2024 <https://www.who.int/news/item/05-04-2024-who-calls-for-action-to-uphold-right-to-health-amidst-inaction--injustice-and-crises>.

⁹⁰ Toben "The right to health in international law" 1.

including the *Convention on the Rights of Persons with Disabilities (CRPD)* and the *African Charter on the Rights and Welfare of the Child (ACRWC)*, emphasize the equal enjoyment of human rights and the special protection owed to children's mental and physical development. Within South Africa, the Constitution guarantees the right to health care under section 27, subject to progressive realization, while section 28 ensures children's immediate right to basic health care services. These obligations are reinforced by the *Children's Act*, which prohibits discrimination based on disability and aligns with international treaties such as the *Convention on the Rights of the Child*. South Africa's ratification of the *CRPD* in 2007, alongside its earlier adoption of the *Mental Health Care Act* of 2002, reflects its commitment to advancing mental health rights and ensuring accessible, affordable, and quality care for all, particularly children and persons with disabilities.

It is the aim of this chapter to present an analysis of the existing international and regional legal framework pertinent to the right of access to health care. Specific reference is made to the *International Covenant on Economic, Social, and Cultural Rights*,⁹¹ the *Convention on the Rights of the Child*,⁹² the *Convention on the Rights of Persons with Disabilities and Optional Protocol*,⁹³ the *African Charter on the Rights and Welfare of the Child*,⁹⁴ as well as to the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*.⁹⁵

2.2 International Covenant on Economic, Social, and Cultural Rights

The *International Covenant on Economic, Social, and Cultural Rights*⁹⁶ (hereafter, the *ICESCR*) is regarded as the most comprehensive international human rights document providing for the right to health.⁹⁷ The *ICESCR* speaks to a variety of associated issues, including employment, living conditions, family, education, health care, and culture.⁹⁸ Together with the *International Covenant on Civil and Political Rights* (hereafter,

⁹¹ *International Covenant on Economic, Social and Cultural Rights* (1966).

⁹² 1989.

⁹³ 2008.

⁹⁴ 1999.

⁹⁵ 2018.

⁹⁶ *International Covenant on Economic, Social and Cultural Rights* (1966).

⁹⁷ Senyonjo 2017 *Netherlands International Law Review* 260.

⁹⁸ Hoag "International Covenant on Economic, Social, and Cultural Rights" 546-547.

ICCPR), the *ICESCR* was first drafted in 1947 by the Commission on Human Rights.⁹⁹ The Commission sent the proposals to the Economic and Social Council in 1954.¹⁰⁰ The Third Committee of the General Assembly, which oversees social, humanitarian, and cultural matters, including human rights, received them next.¹⁰¹ The *ICCPR* and the *ICESCR*, which were unanimously adopted by the UN General Assembly fifty years ago in 1966, gave legal force to the rights outlined in the *Universal Declaration of Human Rights*.¹⁰² Even so, the two Covenants did not come into effect until 1976, a decade later.¹⁰³

The *ICESCR* was the first of the two Covenants to come into effect.¹⁰⁴ Its preamble acknowledges that everyone's ability to exercise their civil and political rights, as well as their economic, social (which includes the right to health), and cultural rights, is a prerequisite for people to live free from fear and want.¹⁰⁵ Put differently, the preamble acknowledges that human rights are indivisible and they are all equally important.¹⁰⁶

Children are expressly mentioned in articles 10 and 12 of the *ICESCR*. Article 10(3) obliges States to take distinct measures to protect children from both economic and social exploitation, and to assist children, without any unfair discrimination. The same article declares that the employment of children poses a threat to their morals, health, life, and development and it is a punishable offence.

The *ICESCR*'s article 12 assures everyone's right to the "best possible level of bodily and mental health." State parties are, alongside, obliged to recognise this right¹⁰⁷ by taking several steps to ensure that this right is given effect to and, inter alia, the healthy development of children is guaranteed.¹⁰⁸ In this regard, it is important to

⁹⁹ Saul "Introduction: The Drafting of the International Covenant on Economic, Social and Cultural Rights, 1948-1966" 10; Levesque 1995 *Fordham International Law Journal* 833.

¹⁰⁰ Levesque 1995 *Fordham International Law Journal* 833.

¹⁰¹ United Nations Date unknown <https://www.un.org/en/ga/third/>; Levesque 1995 *Fordham International Law Journal* 833.

¹⁰² Senyonjo 2017 *Netherlands International Law Review* 259.

¹⁰³ Fornman 2016 *Ottawa Law Review* 563; Levesque 1995 *Fordham International Law Journal* 834.

¹⁰⁴ Levesque 1995 *Fordham International Law Journal* 836.

¹⁰⁵ *International Covenant on Economic, Social and Cultural Rights* (1966).

¹⁰⁶ *International Covenant on Economic, Social and Cultural Rights* (1966).

¹⁰⁷ Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (1966).

¹⁰⁸ The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000).

understand that this duty imposed on State parties entails an obligation to gradually realise the rights inscribed in the *ICESCR* to the fullest extent of their available resources as stated in article 2 of the *ICESCR*.¹⁰⁹ Although resources would dictate the scope and speed of realisation, the Constitutional Court acknowledged that, although the State cannot be forced to do more than what is possible, the government should, nevertheless, provide social rights with sufficient budgetary support as well as organise and oversee efforts to meet everyone's needs.¹¹⁰ This is in contrast with the *ICCPR*, which requires an immediate realisation, irrespective of financial capacity.¹¹¹ As health policies and intervention strategies cannot be implemented overnight, especially by developing countries due to resource restrictions, Hunt¹¹² explains that most international legal directives pertaining to the right to health require the progressive realisation of this right. The same author opines that it does not undermine the right to health but rather ensures that effective and long-term steps are taken to fulfil this right.¹¹³

The presumption that actions implementing economic, social, and cultural rights will have far larger resource consequences than actions implementing civil and political rights is one of the main causes for this disparity in implementation requirements.¹¹⁴ The priority placed on the right to health or the elements and circumstances that safeguard and advance the right to health outside of the purview of medical services, supplies, and infrastructure, as put forward by the World Health Organisation,¹¹⁵ demonstrates how interdependent and mutually supportive the right to health is to ensure the successful realisation of numerous other human rights. These rights include the freedom from discrimination, the right to privacy, the right to food, the right to water, the right to an appropriate quality of life, the right to suitable housing, the right

¹⁰⁹ Dhai and Mahomed 2018 *South African Bioethics Law* 9; Levesque 1995 *Fordham International Law Journal* 836.

¹¹⁰ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] SA 46; 2000 (11). Paras. 46.

¹¹¹ Levesque 1995 *Fordham International Law Journal* 836.

¹¹² Hunt 2016 *Health Human Rights* 121.

¹¹³ Hunt 2016 *Health Human Rights* 121.

¹¹⁴ Levesque 1995 *Fordham International Law Journal* 836.

¹¹⁵ WHO "The Right to Health, Geneva, Switzerland: WHO".

to access information, the right to participate, and the right to profit from scientific advancements and their applications.¹¹⁶

Regarding the implementation of the *ICESCR*'s directives on the African continent, Ssenyonjo¹¹⁷ found that the right to health is often acknowledged as a mere directive principle and not as a justiciable human right, and that its realisation is limited by, among other things, disrespect for the rule of law, corruption, poverty, and political influences.

The Committee on Economic, Social and Cultural Rights¹¹⁸ avows that a variety of complementary strategies, including the creation of health policies, the execution of the World Health Organisation's health programs, and the enactment of particular legislative measures, can be used by States to pursue the realisation of the right to health.¹¹⁹

2.3 Convention on the Rights of the Child

Over the last three decades, the most widely adopted treaty on human rights called the *Convention on the Rights of the Child* (hereafter, the *CRC*), has changed the lives of many children.¹²⁰ The right of every child to attain the maximum degree of health (complete physical, mental, and social wellbeing), involving access to health care facilities, is unequivocally guaranteed by the *CRC* in article 24 thereof. This article requires States to warrant children and their families' access to basic health care services, including prenatal and postpartum care for mothers.¹²¹ As such, States in developing nations bear responsibility for meeting their own health needs.¹²²

As the most ratified treaty on human rights in history,¹²³ the *CRC* has contributed enormously to changing the lives of children globally.¹²⁴ Regarding children's rights,

¹¹⁶ WHO "The Right to Health, Geneva, Switzerland: WHO".

¹¹⁷ Ssenyonjo 2017 *Netherland International Law Review* 282.

¹¹⁸ The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000).

¹¹⁹ The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000).

¹²⁰ United Nations Date unknown <https://www.ohchr.org/en/treaty-bodies/crc>.

¹²¹ *Convention on the Rights of the Child* (1989).

¹²² Article 24(2) of the *Convention on the Rights of the Child* (1989).

¹²³ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹²⁴ UNICEF Date unknown <https://www.unicef.org/child-rights-convention>.

the *CRC* has been regarded as the most comprehensive international legally enforceable instrument by a wide margin.¹²⁵ It has expanded on the investment in children as envisaged by the *Declaration on the Rights of the Child* (1959), beyond the mere concern over children's safety, to include providing them with the benefits of improved nutrition, health, and education.¹²⁶ Although the Declaration laid the foundation for the notion that humanity owes children its best efforts, the *CRC* reiterated this unpayable humanitarian debt.¹²⁷

The *CRC*, accordingly, through article 4, demands of States to, within the framework of international cooperation, take as much action as is humanly possible and use available resources to their maximum to give effect to economic, social, and cultural rights.¹²⁸ Africa is currently one of the continents in the world that is most in need of the proper realisation of economic, social, and cultural rights for its children, but sadly, the realisation of these rights is not always a possibility; thus, the legal protection of these rights — including the right to health — is very important.¹²⁹

2.4 The Convention on the Rights of Persons with Disabilities

Adopted in December 2006, the *Convention on the Rights of Persons with Disabilities* (hereafter, the *CRPD*) is regarded as an international response to the longstanding history of exclusion, discrimination, and dehumanisation against people with disabilities.¹³⁰ The *CRPD*, as the first human rights treaty of the 21st Century, is honoured as groundbreaking for its contribution to the protection and promotion of both the rights and human dignity of persons with disabilities.¹³¹ Its purpose is to change attitudes towards persons with disabilities, including those with long-term mental, physical, sensory, and/or intellectual impairments.¹³²

¹²⁵ Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights* 47.

¹²⁶ UNICEF Date unknown <https://www.unicef.org/child-rights-convention>; Adu-Gyamfi & Keating 2013 *Sacha Journal of Human Rights* 47.

¹²⁷ Levesque 1995 *Fordham International Law Journal* 837.

¹²⁸ Article 4 of the *Convention on the Rights of the Child* (1989).

¹²⁹ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹³⁰ Boezaart and Skelton "From pillar to post-legal solutions for children with debilitating conduct disorder" 107-131.

¹³¹ Swanepoel 2020 *Forensic Science International: Mind and Law* 1.

¹³² Loza and Omar 2017 *BJ Psych Int* 54.

Consequently, the *CRPD*, through article 2 thereof, prohibits all forms of unfair discrimination based on disability.¹³³ States are, accordingly, compelled to eradicate all practices, laws, and regulations discriminating against persons with disabilities.¹³⁴ This, according to Burns,¹³⁵ entails the adoption of policies and the taking of action that will eradicate discrimination negatively affecting the health and well-being of persons with mental disabilities, thus stretching beyond quality of care. The *CRPD*, moreover, obliges States to, timeously, offer proper treatment as well as community and social services to persons experiencing mental illness.¹³⁶ As such, the Constitutional Court in *Makana Peoples Centre v Minister of Health and Others* (2023)¹³⁷ regarded the *CRPD* as a signal of change from the previous medical and welfare models to a social model. While the medical models focused on the medical treatment of those with disabilities at facilities separate from the mainstream of society, the social model views disability as a barrier constructed by society, hindering those with disabilities' equal participation in society.¹³⁸ In this regard, the Constitutional Court (para. 1) highlighted the importance of society to change and emphasised that it is not those with disabilities who need to be cured.¹³⁹

What is also important to notice is that the *CRPD* does not provide for involuntary medical treatment, thus acknowledging the independence and self-determination of humans to make informed decisions about their health.¹⁴⁰ With specific reference to children, the *CRPD*, in its preamble, states that children with disabilities should enjoy all human rights and fundamental freedoms on an equal basis with other children, while article 3(h) includes respect for the rights of these children to maintain their identities as well as for their evolving capacities as substantive principles.¹⁴¹

¹³³ Boezaart and Skelton "From pillar to post legal solutions for children with debilitating conduct disorder" 107-131.

¹³⁴ Swanepoel 2020 *Forensic Science International: Mind and Law* 1.

¹³⁵ Burns 2011 *The Equal Rights Review* 107.

¹³⁶ Weller 2011 *Electronic Journal* 74.

¹³⁷ (CCT 125/22) 2023 (5) SA 1 (CC).

¹³⁸ Para 1 of *Makana Peoples Centre v Minister of Health and Others* (CCT 125/22) 2023 (5) SA 1 (CC).

¹³⁹ *Makana Peoples Centre v Minister of Health and Others* (CCT 125/22) 2023 (5) SA 1 (CC)

¹⁴⁰ Article 12 of the *Convention on the Rights of Persons with Disabilities and Optional Protocol* 2008; Weller 2011 *Electronic Journal* 74.

¹⁴¹ *Convention on the Rights of Persons with Disabilities and Optional Protocol* 2008.

2.5 African Charter on the Rights and Welfare of the Child

The *African Charter on Human and Peoples' Rights*, established in 1981, and the 1979 *Declaration on the Rights and Welfare of the African Child* served as this continent's legal frameworks prior to the *CRC*.¹⁴² Although the *CRC*, considered as being the golden treaty, served as a model for the 1990 development of the *African Charter on the Rights and Welfare of the Child* (hereafter, the *Banjul Charter*),¹⁴³ the latter was adopted to include provisions relevant to the unique circumstances prevalent on the African continent. Provision is made for both civil and political rights as well as economic, social, and cultural rights.¹⁴⁴

Focusing on the right to health on a regional level,¹⁴⁵ the *Banjul Charter* guarantees everyone the right to “enjoy the best attainable state of physical and mental health”, including sufficient nutrition, safe drinking water, and access to health care.¹⁴⁶ The *African Charter on the Rights and Welfare of the Child* concomitantly, places a positive duty on States to take all appropriate measures to safeguard people’s health and ensure that all receive fitting medical attention when in need thereof.¹⁴⁷ This entails accepting that children (below the age of 18 years – article 2), as vulnerable human beings, need distinct care to ensure their optimal physical, mental, moral and social development.¹⁴⁸ States are, moreover, obliged to adopt legislation and measures guaranteeing this right to children as well as to protect children from exploitation, abuse, and neglect.¹⁴⁹ Furthermore, it is the duty of States to ensure measures available to protect children from inhuman treatment or maltreatment, as well as from any physical or mental injury, thus ensuring their best interests.¹⁵⁰ Specific mention is

¹⁴² Adu-Gyamfi & Keating 2013 *Sacha Journal of Human Rights* 49.

¹⁴³ Sloth-Nielsen “The African Charter on the Rights and Welfare of the Child” 426.

¹⁴⁴ Levesque 1995 *Fordham International Law Journal* 837.

¹⁴⁵ Dhali and Mahomed 2018 *South African Bioethics Law* 9.

¹⁴⁶ Article 14 of the *African Charter on the Rights and Welfare of the Child* (1999).

¹⁴⁷ African Commission on Human’s and People’s Rights 2025 <https://achpr.au.int/index.php/en/documents/2023-03-28/right-health-and-its-financing-africa-end-epidemics-and-strengthen-system>.

¹⁴⁸ African Commission on Human’s and People’s Rights 2025 <https://achpr.au.int/index.php/en/documents/2023-03-28/right-health-and-its-financing-africa-end-epidemics-and-strengthen-system>.

¹⁴⁹ Article 2 of the *African Charter on the Rights and Welfare of the Child* (1999).

¹⁵⁰ Article 16 of the *African Charter on the Rights and Welfare of the Child* (1999).

also made of the States' duty to ensure special care and assistance to children with disabilities in article 26 thereof.

Although Africa is currently one of the continents in the world that is most in need of the proper realisation protection of economic, social, and cultural rights for its children, authors such as Ekundayo¹⁵¹ and Sloth-Nielsen¹⁵² found that the practical realisation of these rights is still not feasible. This is mainly due to States not identifying and allocating sufficient resources, the misuse of available resources,¹⁵³ or the unavailability of resources¹⁵⁴ to warrant the fulfilment of children's rights. It is, in this regard, important to notice that the realisation of the right to health is heavily dependent on sufficient funds being allocated to health care as well as on the distribution thereof between governmental and non-governmental sectors and the proper management of such funds.¹⁵⁵

Poor, vulnerable and disadvantaged children in Africa have been disproportionately affected by the denial of their right to health.¹⁵⁶ Since there is no budget dedicated to mental health at federal or provincial levels, mental health services are paid for out of general health budgets, which means they always wind up at the bottom of the list of urgent requirements.¹⁵⁷

This is a product of the continent's pervasive corruption, underdevelopment, and poverty.¹⁵⁸ South Africa, to the contrary, has, by passing laws and ratifying international agreements to protect and guarantee the human rights of those with mental disabilities, made a great effort towards providing its inhabitants with access to health care.¹⁵⁹

¹⁵¹ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹⁵² Sloth-Nielsen "The African Charter on the Rights and Welfare of the Child: A Commentary" 11.

¹⁵³ Sloth-Nielsen "The African Charter on the Rights and Welfare of the Child: A Commentary" 11.

¹⁵⁴ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹⁵⁵ De Wolf and Toebe 2016 *Health and Human Rights* 90.

¹⁵⁶ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹⁵⁷ Burns 2011 *The Equal Rights Review* 104.

¹⁵⁸ Ekundayo 2015 *International Journal of Humanities and Social Science* 151.

¹⁵⁹ Burns 2011 *The Equal Rights Review* 109.

2.6 Protocol to the African Charter on Human and Peoples' Rights of Persons with Disabilities in Africa (2018)

The African Union Heads of State adopted the *African Disability Protocol*, also known as the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*, on January 29, 2018, during the AU Assembly's thirtieth ordinary session in Addis Ababa, Ethiopia.¹⁶⁰ In accordance with article 66 of the *African Charter on Human and Peoples' Rights*,¹⁶¹ this substantial supplemental document was created. Its main goal is to uphold the intrinsic dignity of individuals with disabilities while promoting, defending, and guaranteeing their full and equal enjoyment of all human and peoples' rights.¹⁶²

By expanding and reformulating rights under the *CRPD* to better fit the African context, the *African Disability Protocol* has filled the contextual void in the *CRPD*.¹⁶³ Article 29 specifically deals with youth disabilities.

The contribution made to the advancement of the protection of the human rights of people with disabilities in Africa, deserves to praise the African Disability Protocol.¹⁶⁴ Africa is about to witness the approval and implementation of novel national laws, policies, and other institutional mechanisms aimed at promoting the human rights of people with disabilities.¹⁶⁵

2.7 Conclusion

Regarding the normative concept of the right to health, international law has rapidly evolved in recent years.¹⁶⁶ The State is tasked with guaranteeing equitable access to

¹⁶⁰ Chalklen 2024 <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/>

¹⁶¹ (1981).

¹⁶² Chalklen 2024 <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/>

¹⁶³ Juma 2024 *African Disability Rights Yearbook* 213.

¹⁶⁴ Juma 2024 *African Disability Rights Yearbook* 218.

¹⁶⁵ Juma 2024 *African Disability Rights Yearbook* 218.

¹⁶⁶ Yamin 2005 *American Journal of Public Health* 1156.

care and health conditions, and the national recognition of a right to health calls for the abolition of institutional discrimination.¹⁶⁷

Governments have been motivated by the *Convention on the Rights of the Child* to amend their laws and regulations in order to provide more children with the necessary nourishment and medical treatment.¹⁶⁸ The 1966 *ICESCR* reaffirmed the right to health as a fundamental right.¹⁶⁹ This is due to article 12 of the *ICESCR* stating the right to the highest attainable standard of physical and mental health. The *ICESCR*, by adopting a broad classification of people living with disabilities, reiterate the necessity of allowing all people with disabilities to have equal access to all human rights and basic freedoms.¹⁷⁰ Accordingly, the *Banjul Charter* imposes an affirmative obligation on States to take all necessary steps to promote the health of their citizens and ensure that everyone receives adequate medical care when necessary.¹⁷¹

It has, however, become evident from the discussion above that, even if there may be an obligation to uphold, defend, fulfil the right to health, such obligations will frequently have little practical significance unless the appropriate responsibility bearers and measures to be taken are clearly identified.¹⁷² It is, nevertheless, clear that the right to health is meticulously recognised by various international and regional instruments, thereby ensuring that children and adolescents should be afforded access to health care services to assist with, in relation to mental health issues on an equal and just basis. To assess the extent to which South Africa's legal framework adheres to international and regional instruments, the next chapter focuses on the legal framework of this state.

¹⁶⁷ Yamin 2005 *American Journal of Public Health* 1156.

¹⁶⁸ United Nations Date unknown <https://www.ohchr.org/en/treaty-bodies/crc>.

¹⁶⁹ WHO 2017 <https://www.who.int/newsroom/commentaries/detail/health-is-a-fundamental-human-right>.

¹⁷⁰ United Nations Date unknown <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>.

¹⁷¹ African Commission on Human's and People's Rights 2025 <https://achpr.au.int/index.php/en/documents/2023-03-28/right-health-and-its-financing-africa-end-epidemics-and-strengthen-system>.

¹⁷² Nampewo 2022 *International Journal for Equity in Health* 11.

CHAPTER 3 SOUTH AFRICAN CONSTITUTION AND NATIONAL LEGISLATIVE FRAMEWORK

3.1 Introduction

While the previous chapter presented a discussion on the international and regional legal framework pertinent to the right of access to health care, this chapter focuses on the national legal framework of South Africa with specific reference to the *Constitution* as being the supreme law in the country.

As one of the African continent's most resourced nations, Kaminer *et al*¹⁷³ acknowledge that South Africa can take the lead in creating an African body of evidence for mental health treatment. However, the current alarming state of mental health provision in South Africa requires urgent attention.¹⁷⁴ This is, among other things, due to a shortage of mental health professionals, resource constraints, and a political will to invest in mental health care that will improve general wellbeing and increase national productivity.¹⁷⁵ As the law is essential for safe and ethical health care provision in South Africa on an equal basis,¹⁷⁶ the key legislation providing a legal framework at national level is forthwith outlined.

Emphasis is firstly placed on the provisions embedded in the *Constitution*, providing an overall structure for the State and its concomitant powers, guaranteeing human rights, and acting as a social contract between the State and the citizens.¹⁷⁷ Focus is, secondly, placed on the *Mental Health Care Act*¹⁷⁸ aimed at making provision for mental health care services, the treatment and rehabilitation of those who are mentally ill, as well as for the protection of the rights of mental health care users. This discussion is guided by the objectives of this study, namely, to examine the right of children and adolescents to mental health care services, and depict the legal duty of the South African State to realise children and adolescents' rights to mental health as

¹⁷³ Kaminer and Eagle 2017 *South African Journal of Psychology* 13.

¹⁷⁴ Pillay 2019 *South African Journal of Psychology* 463.

¹⁷⁵ Shisana *et al* 2024 *Comprehensive Psychiatry* 1.

¹⁷⁶ Chowdhury 2025 <https://www.regenesys.net/reginsights/what-is-medical-law>.

¹⁷⁷ The International Institute for Democracy and Electoral Assistance Date unknown https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf.

¹⁷⁸ 17 of 2002.

set out in chapter one hereof. As the study focuses on children and adolescents struggling with clinical depression specifically, this condition is mentioned from time-to-time although it should be recognised throughout that clinical depression is included in all references made to mental health conditions/illness (*cf.* 1.1) and, thus, the right of access to (mental) health care.

3.2 The Constitution of the Republic of South Africa

Because of the supremacy of the *Constitution*¹⁷⁹ (section 2), all acts and inactions, whether legislative or otherwise are evaluated considering the *Constitution*.¹⁸⁰ Although mental health care remains neglected in South Africa, Pienaar finds that the adoption of the *Constitution* led to substantial development in this area.¹⁸¹ This is mainly due to the *Constitution* in its *Bill of Rights* guaranteeing human rights to everyone, thus, including mental health care users, and obliging the State, through section 7(2) thereof, not only to respect and protect such rights but also to take positive action to promote and fulfil them.

The *Constitution*, moreover, states that an individual's health or wellbeing may not be harmed by his/her surroundings,¹⁸² while section 152(1)(d) obliges local governments to ensure safe and healthy environments. The State is further required to report the measures taken towards realising the rights to, among others, health care to the South African Human Rights Commission on a yearly basis.¹⁸³ Section 27 of the *Constitution*, placing emphasis on access to health care as a basic human need, merits further discussion.

3.2.1 Section 27 of the Constitution and the right to health care services

The right to have access to health care services is guaranteed to everyone by section 27(1) of the *Constitution*.¹⁸⁴ The State is further obliged by section 27(2) to

¹⁷⁹ Section 2 of the *Constitution of the Republic of South Africa* 1996.

¹⁸⁰ Helen Suzman Foundation 2020 <https://hsf.org.za/publications/hsf-briefs/mental-health-legal-and-policy-framework>.

¹⁸¹ Pienaar 2025 *Laws* 2.

¹⁸² Section 24(a) of the *Constitution of the Republic of South Africa* 1996.

¹⁸³ Section 184(3) of the *Constitution of the Republic of South Africa* 1996.

¹⁸⁴ *Constitution of the Republic of South Africa* 1996.

progressively realise this right by taking all “reasonable legislative and other measures, within its available resources”. The Department of Health¹⁸⁵ interprets this obligation as entailing the provision of health care services of a high quality, which are not only effective but also affordable and fairly distributed to ensure equal access to all citizens. The Department continues by stating that health care services must be grounded on progressive universalism, social communality, fairness, and founded on the principle that health is an asset and shared value. To share the burden, Schedule 4 of the *Constitution* states that both Parliament and the different provincial legislative authorities are responsible for making laws related to health.

The *Constitution*, moreover, provides that no one may be denied access to emergency medical care,¹⁸⁶ and explicitly guarantees children’s right to health care.¹⁸⁷ Read together with section 9 of the *Constitution*, the right of access to health care belongs to all on an equal basis. This means that individuals should not be unfairly excluded from the provision of health care services.¹⁸⁸

It is well accepted that there are two aspects of health, namely mental and physical health.¹⁸⁹ When considering health care, it is of utmost importance to understand that, to efficiently organise and enhance national health systems and bring health and wellness services closer to communities, primary health care should entail a whole-of-society approach.¹⁹⁰ In the context of primary health care, a whole-of-society approach emphasizes that all facets of society—government, civil society, the business sector, communities, and individuals all participate in the development and maintenance of health systems. In order to improve health services' accessibility, equity, and responsiveness to people's needs, it places a strong emphasis on shared responsibility and teamwork.¹⁹¹ Operating in the local community and attempting to treat everyone's

¹⁸⁵ Department of Health 2020 <http://www.gov.za/documents/national-health-act-national-health-insurance-policy-towards-universal-health-coverage-30>.

¹⁸⁶ Sec 27(3) of the *Constitution of the Republic of South Africa* 1996; Dhai and Mahomed 2018 *South African Bioethics Law* 9.

¹⁸⁷ Sec 28 of the *Constitution of the Republic of South Africa* 1996.

¹⁸⁸ Dhai and Mahomed 2018 *South African Bioethics Law* 9.

¹⁸⁹ Funk *et al* 2008 *Mental Health in Family Medicine* 5.

¹⁹⁰ WHO Date unknown https://www.who.int/health-topics/primary-health-care#tab=tab_1.

¹⁹¹ WHO 2026 https://www.who.int/health-topics/primary-health-care?utm_source=copilot.com#tab=tab_1.

health issues is a fundamental component of conventional health care.¹⁹² Health systems may support a person's health requirements by ensuring easy and available access to a reliable physician, including palliative care, rehabilitation, illness prevention, treatment, and health promotion, all very essential for effective primary health care.¹⁹³

Mental health is defined by the WHO as a condition that makes it possible for people to manage life's stressors, see their potential, study and work effectively, and give back to their community.¹⁹⁴ Whereas mental health care can be described as a situation where the mental wellbeing of humans is treated to allow them to manage life's stressors, reach their full potential, study and work effectively, and give back to their community.¹⁹⁵ Mental health is, subsequently, very important as it is a fundamental human right and is essential to socio-economic (material wellbeing, including access to resources, opportunities, and services essential to live dignified lives), communal, and individual growth.¹⁹⁶ The concept, mental disorders is used to include all "disturbances of thought, emotion, behaviour, and/or relationships with others that lead to significant suffering and functional impairment in one or more major life activities".¹⁹⁷ Since clinical depression is regarded as a mood disorder causing persistent feelings of sadness and loss of interest and affecting the way humans behave and think, it qualifies as a mental disorder.¹⁹⁸

Although the *Constitution* does not provide for the right to mental health per se, the right to health care provided for in Section 27 should be read to include such a right as South Africa is a State party to the *ICESCR*, recognising the "right of everyone to

¹⁹² Kidd "The contribution of family medicine to improving health systems: A guidebook from the World Organization of family doctors" 16.

¹⁹³ Van Weel and Kidd 2018 *CMAJ* 463; WHO Date unknown https://www.who.int/health-topics/primary-health-care#tab=tab_1.

¹⁹⁴ WHO 2025 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

¹⁹⁵ WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

¹⁹⁶ WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

¹⁹⁷ WHO 2014 http://www.who.int/features/factfiles/mental_health/en/.

¹⁹⁸ Mayo Clinic Press 2024 <https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007>.

the enjoyment of the highest attainable standard of physical and mental health".¹⁹⁹ The *Constitution*, alongside, expressly addresses the application of international law. Section 233 declares that "when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." Section 39(1)(b) expressly states that a court, tribunal, or forum must take international law into account when interpreting the Bill of Rights. It is, thus, in line with the *ICESCR*, that the *National Mental Health Policy Framework and Strategic Plan (2013 - 2020)*²⁰⁰ provides that mental health care services should be provided equally to those of general health care services.

Despite legislative directives and the fact that all nations have a high prevalence of mental illnesses, which lead to tremendous pain, a low standard of living, a higher death rate, and enormous financial and social expenses,²⁰¹ providing mental health care services is still not a priority. In South Africa, specifically, the South African Human Rights Commission²⁰² reports that denying humans with mental disorders access to health care and abusing or neglecting them not only violates their right of access to health care services but also their right to human dignity. To this, Ramokgopa²⁰³ adds that access to mental health care services remains restricted. The national health care system is the responsibility of the Department of Health, which, in collaboration with the health departments of the provinces, must ensure the delivery of health care services.²⁰⁴ The duty for providing health care services to South Africans is shared between the national government, provincial governments, and local municipalities, with a policy framework set by the National Department of Health.²⁰⁵ A

¹⁹⁹ South African Human Rights Commission 2018 [https://www.sahrc.org.za/home/21/files/SAHRC 11.](https://www.sahrc.org.za/home/21/files/SAHRC%2011.pdf)

²⁰⁰ Department of Health 2024 <https://www.health.gov.za/wpcontent/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

²⁰¹ Funk *et al* 2008 *Mental Health in Family Medicine* 5.

²⁰² South African Human Rights Commission 2018 [https://www.sahrc.org.za/home/21/files/SAHRC 11.](https://www.sahrc.org.za/home/21/files/SAHRC%2011.pdf)

²⁰³ Ramokgopa 2012 *African Journal of Psychiatry* 379.

²⁰⁴ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 3.

²⁰⁵ South African government 2025 <https://www.gov.za/about-sa/health>.

startling 75% of those in need of mental health care²⁰⁶ in South Africa do not receive the care they require.²⁰⁷ In certain parts of the nation, this remains a problem.²⁰⁸ It is in this regard, important to note that access to health care services and the quality thereof at the local municipality level remains a challenge due to municipalities often being under-resourced.²⁰⁹ The government is working towards a National Health Insurance scheme to improve access and affordability for all South Africans by allowing visits to health care providers free of charge and, thus, providing for a centralised, national insurance fund, aimed at achieving universal health coverage.²¹⁰

Although implementing the national insurance fund will take many years to realise, it is important to consider the advantages of incorporating mental health into general health care.²¹¹ A proper integration of mental health services into public primary health care facilities (the responsibility of local municipalities) will significantly increase access to such services, given that the majority of South Africans receive their medical treatment at this level.²¹² This will ensure that everyone has uninterrupted access to the mental health treatment they require,²¹³ thus enhancing improved health outcomes, including full recovery and sustained social integration.²¹⁴ As the *Mental Health Care Act* 17 of 2002 has dominated South African mental health law in recent years,²¹⁵ attention is forthwith paid to this Act.

²⁰⁶ Chapter 1 of the *Mental Health Care Act* 17 of 2002 states that a mental health care user is 'a person receiving care, treatment and rehabilitation services or using a health service at a health establishment aimed at enhancing the mental health status of a user, State patient and mentally ill prisoner and where the person concerned is below the age of 18 years or is incapable of taking decisions, and in certain circumstances may include-

- (i) Prospective user;
- (ii) The person's next of kin;
- (iii) A person authorised by any other law or court order to act on that person's behalf;
- (iv) An administrator appointed in terms of this Act; and
- (v) An executor of that deceased person's estate and 'user' has a corresponding meaning.

²⁰⁷ Lund *et al* 2012 *African Journal of Psychiatry* 404; Schneider *et al* 2016 *South African Health Review* 159.

²⁰⁸ Sehularo *et al* 2022 *Gender and Behaviour* 18996.

²⁰⁹ South African government 2025 <https://www.gov.za/about-sa/health>.

²¹⁰ Department of Health 2024 <https://www.health.gov.za/nhi/>.

²¹¹ Funk *et al* 2008 *Mental Health in Family Medicine* 5.

²¹² Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

²¹³ Funk *et al* 2008 *Mental Health in Family Medicine* 5.

²¹⁴ Funk *et al* 2008 *Mental Health in Family Medicine* 5.

²¹⁵ Szabo and Kaliski 2017 *BJPsych Int* 69.

3.3 Mental Health Care Act and mental illness

The *Mental Health Care Act*,²¹⁶ which seeks to advance and defend the rights of people with mental health disorders as well as to raise the standard and accessibility of mental health care in the nation, serves as the framework for mental health policy in South Africa.²¹⁷ Alongside the *Constitution*, the *Mental Health Care Act*²¹⁸ regulates mental health care, rehabilitation and treatment in South Africa.²¹⁹ This Act consists of ten chapters establishing guidelines for the care, treatment, and rehabilitation of individuals with mental illnesses.²²⁰ Van Rensburg²²¹ asserts that the Act's principal goals are to uphold the human rights of mental health care users, enhance mental health services via a primary health care approach, prioritise community treatment, and safeguard public safety. This Act aims to provide the best possible mental health treatment available²²² through, among other things, access coordination and integration of mental health services into general health services.²²³

The *National Health Act*²²⁴ aims at giving effect to this country's constitutional mandates when it comes to the progressive realisation of the right to health care services.²²⁵ With specific reference to children and adolescents, the Act²²⁶ allows the Minister of Health to issue regulations pertaining to the foundation of facilities to promote children's mental health status by allowing for their care, admission, treatment and rehabilitation at such facilities. It is in this regard, however, important to take cognisance of the needs of disadvantaged groups of people, especially those living in poverty, and emphasise that knowledge of their needs be paired with local expertise about health and care systems, as well as of available resources.²²⁷ Ensuring equitable access to health care for people facing, among other things, geographical

²¹⁶ 17 of 2002.

²¹⁷ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

²¹⁸ Section 3 of the *Mental Health Care Act* 17 of 2002.

²¹⁹ Sehularo *et al* 2022 *Gender and Behaviour* 18996.

²²⁰ Dlamini 2020 *Mental Health Matters* 7.

²²¹ Van Rensburg 2007 *Afr J Psychiatry* 205.

²²² Section 3(a)(i) of the *Mental Health Care Act* 17 of 2002.

²²³ Section 3(a)(iii) of the *Mental Health Care Act* 17 of 2002.

²²⁴ *National Health Act* 61 of 2003.

²²⁵ Chirwa 2003 *SAJHR* 546; Dhai and Mahomed 2018 *South African Bioethetics Law* 9.

²²⁶ Section 90(1)(a) of the *National Health Act* 61 of 2003.

²²⁷ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

limitations and socio-economic barriers is essential, which could include initiatives such as providing for mobile health clinics to ensure access to quality health care services to all.²²⁸

To improve mental health care, South Africa has adopted a public health strategy over the past 20 years.²²⁹ This began with the revision of the *Mental Health Care Act*,²³⁰ which placed a strong emphasis on patients' human rights. A framework for providing mental health care services is established by the Act.²³¹ It lays out the rights of people with mental health illnesses, such as the freedom from abuse and unfair discrimination, the right to privacy and secrecy, and the right to receive the proper care and treatment.²³² In the Life Esidimeni tragedy, 144 people died from malnutrition and neglect in mental hospitals in the South African region of Gauteng. Life Esidimeni, a division of Life Healthcare, the private healthcare provider from which about 1,500 state patients were transferred in the first half of 2016, is where the tragedy gets its name.²³³ Many of the less expensive care facilities where the patients were sent were later discovered to be severely underfunded and unlicensed.²³⁴ The Gauteng Mental Health Marathon Project tragedy, during which 144 mental health patients died, attributed to the negligence of the Mental Health Directorate has, once again, according to Gray and Vawda²³⁵ as well as Mntambo,²³⁶ drawn attention to the necessity of carefully and accountably implementing health policy and legislation to ensure that measures are taken to improve the quality of health care in South Africa.

3.4 Section 28 of the Constitution

Through access coordination, integration of mental health services into general health services²³⁷ and other means, the *Mental Health Care Act*²³⁸ aims to provide the best

²²⁸ Romanova *et al* 2024 Patient Education and Counselling 2.

²²⁹ Meyer *et al* 2019 *South African Family Practice* 25.

²³⁰ 17 of 2002.

²³¹ *Mental Health Care Act* 17 of 2002.

²³² Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

²³³ Dhai 2026 *SAMJ* 4.

²³⁴ Dhai 2026 *SAMJ* 4.

²³⁵ Gray and Vawda 2018 *South African Health Review* 3.

²³⁶ Mntambo 2024 <https://www.ewn.co.za/2024/07/10/court-finds-deaths-of-9-life-esidimeni-patients-caused-by-negligence>.

²³⁷ Section 3(a)(iii) of the *Mental Health Care Act* 17 of 2002.

²³⁸ 17 of 2002.

possible mental health treatment available.²³⁹ Furthermore, every child has the right to receive basic medical care, a right that is strengthened by the unique safeguards for children's rights outlined in Section 28(1)(c) of the *Constitution*.²⁴⁰ In relation to children, Section 28 of the *Constitution* upholds each child's entitlement to health care services. In contrast to Section 27, it does not impose any restrictions based on the resources available to ensure its gradual realisation, it rather is a direct and unqualified right.²⁴¹ This obliges the State to adopt standard measures to realise children's right to health by, among other things, adopting policies and programmes, as well as making funds and resources available to prioritise the delivery of health care services to children.²⁴² In support, the *Constitution* explains that the term child includes persons under the age of eighteen and that the child's best interests always come first.²⁴³ As outlined in the *Constitution*, children are granted specific rights, which are implemented by the *Children's Act* 38 of 2005.²⁴⁴

One of the goals of municipal government is "to promote a safe and healthy environment," according to Section 152(1)(d) of the *Constitution*.²⁴⁵ Nonetheless, the nation also has a large number of private health care service providers in addition to public health care.²⁴⁶ The State determines who is eligible for free medical services by administering a means test.²⁴⁷ Furthermore, the Minister of Health may periodically decide who qualifies for essential medical services.²⁴⁸ Health services are a concurrent obligation of the federal and provincial governments, according to Schedule 4A of the

²³⁹ Section 3(a)(i) of the *Mental Health Care Act* 17 of 2002.

²⁴⁰ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 2.

²⁴¹ Dhai and Mahomed 2018 *South African Bioethetics Law* 9.

²⁴² Lake *et al* 2029 *South African child gauge* 34.

²⁴³ Section 9 of the *Childrens Act* 38 of 2005; Dhai and Mahomed 2018 *South African Bioethetics Law* 9.

²⁴⁴ Dhai and Mahomed 2018 *South African Bioethetics Law* 9.

²⁴⁵ *Constitution of the Republic of South Africa* 1996.

²⁴⁶ Ward *et al* 2017 *BMC Health Services Research* 3; South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 2.

²⁴⁷ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 2.

²⁴⁸ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 2.

Constitution. According to Schedule 4B, the national and provincial governments share concurrent authority for monitoring and controlling municipal health services.²⁴⁹

Regardless of the degree of care required, South Africa is still an unequal society where people's socio-economic situations and capacity to obtain services have a major impact on the kind and quality of services they receive.²⁵⁰ In order to exercise their entitlement to health care services, the vast majority of South Africans rely on public health facilities.²⁵¹ Few people can afford to receive private medical treatment.²⁵² According to Statistics South Africa's 2016 General Household Survey, only 17 out of every 100 South Africans have health insurance, and up to 45 million, or 82 out of every 100, are not covered by medical aids and are mostly dependent on public health care.²⁵³

The right to health care services is one of the rights guaranteed by the *Constitution*, which also states that the State shall respect, defend, uphold, and fulfil the other rights enumerated in the Bill of Rights. For international law to be applied by national courts, it must be incorporated into national law.²⁵⁴ As a result, rights or obligations on individuals (in this case, children) are not immediately conferred.²⁵⁵ Since South Africa essentially adheres to the dualistic system, incorporation is essential.²⁵⁶

²⁴⁹ *Constitution of the Republic of South Africa* 1996.

²⁵⁰ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 2.

²⁵¹ Ngobeni *et al* 2020 *Cost Effectiveness and Resource Allocation* 1.

²⁵² South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 3.

²⁵³ South African Human Rights Commission Date unknown <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> 3.

²⁵⁴ Hopkins 2001 *De Rubes* 26; Boezaart and Skelton "From pillar to post: Legal solutions for children with debilitating conduct disorder" 107-131.

²⁵⁵ Boezaart and Skelton "From pillar to post: Legal solutions for children with debilitating conduct disorder" 107-131.

²⁵⁶ Section 231(4) of the *Constitution* states that an '[i]nternational agreement becomes law in the Republic when it is enacted into law by national legislation; but self-executing provision of the agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament'. Chapter 14 of the Constitution, section 231-233.

3.5 The National Health Act

The *National Health Act* 61 of 2003, as amended in 2013, acts as a unified framework for South Africa's organised health system.²⁵⁷ This Act provides a framework for a structured health system, taking into account the obligations imposed by the *Constitution* and other laws on the national, provincial and local governments with regard to health services.²⁵⁸ Everyone has access to the same opportunities and resources, according to the idea of equality.²⁵⁹ However, the concept of equity acknowledges that every person's situation is unique and that each may require a certain set of resources in order to achieve the same result.²⁶⁰ The *National Health Act* implements and upholds the constitutional guarantee of everyone's right to receive health care services.²⁶¹ It reiterates the right of children, based on their vulnerability, to basic nutrition and basic health care services as set out in the *Constitution*.²⁶² The *National Health Act*²⁶³ provides that the National Health Research Committee (hereafter the NHRC) must pay specific attention to prioritising the health needs of children.²⁶⁴

The *National Health Act* created the National Health Research Committee as a governmental body in terms of section 69(1).²⁶⁵ According to the *National Health Act*, the NHRC's duties and authority include to identify the health research that public health authorities will do, to make sure that priority health issues are the focus of health research agendas and resources; create and counsel the Minister for the implementation of a comprehensive national health research strategy; organize public health authorities' research efforts; and priorities for health research must be determined by the NHRC and communicated to the Minister.²⁶⁶

²⁵⁷ Dhai and Mahomed 2018 *South African Bioethics Law* 9.

²⁵⁸ *National Health Act* No 61 of 2003.

²⁵⁹ Tukela and Hart 2024 <https://hsr.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/>.

²⁶⁰ Tukela and Hart 2024 <https://hsr.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/>.

²⁶¹ Section 2 of *National Health Act* No 61 of 2003.

²⁶² *Constitution of the Republic of South Africa* 1996.

²⁶³ No 61 of 2003.

²⁶⁴ Section 70(2)(d) *National Health Act* No 61 of 2003.

²⁶⁵ Section 69(1) *National Health Act* No 61 of 2003.

²⁶⁶ Section 70(2)(d) *National Health Act* No 61 of 2003.

This Act describes the laws that control the delivery of health care at the national, provincial, and local levels of government.²⁶⁷ In addition to governing the way the various branches of government should provide health care services, the Act acknowledges and establishes obligations for the delivery of medical care in the event of an emergency.²⁶⁸ A unified approach to the fair distribution of health services across the country through public and private providers is also provided for.²⁶⁹ It is the goal of this Act to uphold and advance the rights of marginalised populations, such as people with disabilities in particular.²⁷⁰ This duty falls under the purview of the Minister of Health²⁷¹ and encompasses both the provision of mental health services and the promotion and observance of norms and standards.²⁷² The World Bank reports that, generally speaking, those with impairments are more likely to have negative socio-economic consequences, including greater rates of poverty, lower employment, poorer health outcomes, and trouble getting an education than those without disabilities.²⁷³

According to the South African Human Rights Commission, adults with disabilities “continue to lack access to a basic education and adequate health, and are thus in a risk of economic isolation”.²⁷⁴ Without mentioning nationality or legal status, the *National Health Act*²⁷⁵ interprets the *Constitution*²⁷⁶ to contain provisions pertaining to everyone in South Africa having access to public health care services, including people with disabilities.²⁷⁷ Access to health care services includes free primary health care, free emergency treatment at the point of use, and free health care services for all children under six, as well as for pregnant and lactating mothers.²⁷⁸ Additionally, the Act specifies that these access rights are contingent upon any guidelines established

²⁶⁷ *National Health Act* 61 of 2003.

²⁶⁸ Chapter 2 of the *National Health Act* No 61 of 2003.

²⁶⁹ Section 2 of the *National Health Act* No 61 of 2003.

²⁷⁰ Section 2(c) of the *National Health Act* No 61 of 2003.

²⁷¹ Section 3(a) of the *National Health Act* No 61 of 2003.

²⁷² Section 21(2)(b)(v) of the *National Health Act* No 61 of 2003.

²⁷³ Human Rights Commission 2017 <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1020-how-the-south-african-government-is-failing-people-with-disabilities> 1.

²⁷⁴ Human Rights Commission 2017 <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1020-how-the-south-african-government-is-failing-people-with-disabilities> 1.

²⁷⁵ 61 of 2003.

²⁷⁶ *Constitution of the Republic of South Africa* 1996.

²⁷⁷ Walls *et al* 2015 *SAMJ* 14.

²⁷⁸ Section 4(3)(a) of the *National Health Act* No 61 of 2003; Walls *et al* 2015 *SAMJ* 14.

by the Minister.²⁷⁹ This Act also recognises children as being eligible to receive free health services at public health facilities.²⁸⁰ In addition, the Minister of Health is obliged to issue regulations that will ensure and promote access to health services as well as ensure the optimal usage of health care resources to the benefit of children and people with disabilities.²⁸¹

In its Preamble, the *National Health Act*²⁸² sets out to establish a common goal for the provision of health services by uniting the different elements constituting South Africa's national health system with the goal to actively promote and improve this system. This, according to Singh,²⁸³ echoes a spirit of cooperation between private and public professionals, allowing for the decentralisation of management and the taking of collective responsibility for health services.²⁸⁴ Since the *National Mental Health Policy Framework and Strategic Plan 2013-2020*²⁸⁵ has been praised as a key advancement in mental health care in South Africa,²⁸⁶ this framework is discussed next.

3.6 National Mental Health Policy Framework and Strategic Plans

South Africa adopted the *National Mental Health Policy Framework and Strategic Plan 2013-2020* (hereafter the 2013-2020 plan), after which the *National Mental Health Policy Framework and Strategic Plan 2023-2030*²⁸⁷ (hereafter the 2023-2030 plan) came into force. The 2013-2020²⁸⁸ plan was adopted to provide for a new mental health system, grounded on primary health care principles, that can ensure equitable, accessible, and comprehensive health care at community level, in particular. As such, a community-based model consisting of three service tiers ranging from primary to

²⁷⁹ Chapter 1 of the *National Health Act* 61 of 2003.

²⁸⁰ Section (2)(d) of the *National Health Act* No 61 of 2003.

²⁸¹ Section 39(2)(d) of the *National Health Act* No 61 of 2003.

²⁸² 61 of 2003.

²⁸³ Singh 2005 *South African Health Review* 16.

²⁸⁴ Singh 2005 *South African Health Review* 16.

²⁸⁵ Department of Health 2013 <https://www.safmh.org/wp-content/uploads/2020/09/National-Mental-Health-Policy-Framework-2013-2020.pdf>.

²⁸⁶ Docrat *et al* 2019 *Health Policy and Planning* 2.

²⁸⁷ National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

²⁸⁸ Department of Health 2013 <https://www.safmh.org/wp-content/uploads/2020/09/National-Mental-Health-Policy-Framework-2013-2020.pdf>.

super specialised levels of care is identified to change and increase access to health care services and to, specifically, accommodate children and adolescents.²⁸⁹ According to Marais *et al*,²⁹⁰ the 2013-2020 plan set the stage for reforming South Africa's mental health care and to Meyer *et al*,²⁹¹ lessen the burden of untreated mental health conditions by integrating mental health care into a comprehensive primary health care approach. Despite these positive goals, Dawes *et al*²⁹² point out that the successful implementation thereof, however, necessitates the political will at both national and provincial levels to accept general standards, make the essential funding available, and secure the needed human resources and infrastructure to provide at least a minimal level of care to children and adolescents in every province.

Building on and strengthening the 2013-2020 plan, the 2023-2030²⁹³ plan focuses on strengthening the mental health system, promoting integration into primary and community care, and addressing issues such as youth suicide and substance abuse. While the two plans are similar,²⁹⁴ the 2023-2030 plan²⁹⁵ highlights current disparities and imbalances in the delivery of mental health services acknowledging that different demographics and geographical areas have different access to mental health care and, accordingly, provides clear guidelines for enhancing integrated and community-based care while gradually reducing the number of psychiatric hospitals. It also provides a list of 18 priority mental health indicators to be used to monitor the implementation of this plan.²⁹⁶

What is important to note is that the 2023 to 2030 plan,²⁹⁷ which was released by the Department of Health in 2024, allocates funds for out-of-hospital care, encourages collaboration between public and private sector facilities, and moves away from

²⁸⁹ Dawes *et al* 2012 *Journal of Child and Adolescent Mental Health* 8.

²⁹⁰ Marais *et al* 2020 *PLOS ONE* 2.

²⁹¹ Meyer *et al* 2019 *South African Family Practice* 25.

²⁹² Dawes *et al* 2012 *Journal of Child and Adolescent Mental Health* 8.

²⁹³ National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

²⁹⁴ Morar *et al* 2024 *BJPSYCH International* 3.

²⁹⁵ National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

²⁹⁶ Morar *et al* 2024 *BJPSYCH International* 3.

²⁹⁷ National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

hospital-based care to primary and community-level care.²⁹⁸ It also includes individuals with lived experience in the planning process and recognises the necessity of addressing teenage substance addiction and suicide.²⁹⁹ With a dedication to incorporating mental health care into primary and community care settings, the 2023-2030 plan acknowledges the need to increase funding for mental health services by sharing tasks and producing more healthcare professionals.³⁰⁰ The focus is on tackling co-morbidity, lowering stigma, and improving accessibility.³⁰¹

In practice, feedback on this framework seems to be negative. Shisana *et al*,³⁰² for example, note that none of the provinces in South Africa has, thus far, implementation plans as expected. Mokitimi *et al*,³⁰³ in turn, note a shortage of human resource training for generalist employees in child and adolescent mental health, a lack of specialised human resources for child and adolescent mental health services, and an insufficient and unequal distribution of child and adolescent mental health resources, with the majority of services situated in the nation's metropolitan areas.³⁰⁴ It has been suggested that the impact of stigma, the low value placed on mental health, and disregard for the connection between mental illness and poverty have all contributed to the lack of advancements in child and adolescent mental health services.³⁰⁵

3.7 Conclusion

The *Constitution*, placing emphasis on fundamental human rights of which the right of access to mental health care is part, and the *Mental Health Care Act*, highlighting the importance of mental health care services, were discussed. The *National Health Act*³⁰⁶ provides a framework for a structured health system at national, provincial and

²⁹⁸ Molelekwa 2023 <https://www.spotlightnsp.co.za/2023/04/26/new-mental-health-policy-welcomed-but-experts-concerned-over-implementation/>; National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

²⁹⁹ Shisana *et al* 2024 *Comprehensive Psychiatry* 3; National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>.

³⁰⁰ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

³⁰¹ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

³⁰² Shisana *et al* 2024 *Comprehensive Psychiatry* 2; Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁰³ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁰⁴ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁰⁵ Kleintjies *et al* 2010 *African Journal of Psychiatry* 136.

³⁰⁶ No 61 of 2003.

local government levels regarding health services, as well as the *National Mental Health Policy Framework and Strategic Plans*, specifically adopted to steer the development of child and adolescent mental health services at provincial levels, were, alongside, demarcated in this chapter.

From the discussion, it became evident that national legislation supports international legal imperatives relating to the protection and promotion of the right of equal access to health care, and realising this right for children and adolescents, specifically, raise their standard of living and unleash the potential of every individual.³⁰⁷ It also became evident that the rights to life (section 11) and dignity (section 10) guaranteed by the *Constitution* are intimately related to the right to health care because delaying vital medical care can lead to serious illnesses that compromise one's dignity or even death.³⁰⁸

It has, however, also become clear that, even though South Africa has taken important steps to improve its mental health system, such as amending the *Mental Health Care Act*, creating the *National Mental Health Policy Framework and Strategic Plans*, and moving toward equitable health care services through the *National Health Insurance Policy*, there are still many obstacles to overcome in putting these policies into practice.³⁰⁹ It is, accordingly, the aim of the next chapter to delineate the practical implementation of mental care services in South Africa.

³⁰⁷ Dhai and Mahomed 2018 *South African Bioethetics Law* 9.

³⁰⁸ *Constitution of the Republic of South Africa* 1996.

³⁰⁹ Sorsdahl *et al* 2023 *SSM- Mental Health* 6.

CHAPTER 4 FULFILLMENT OF THE RIGHT OF ACCESS TO MENTAL HEALTH CARE

4.1 Introduction

The preceding chapter discussed the national legal framework of South Africa, with reference to the *Constitution* as the country's highest law, as well as the international and regional legal framework pertinent to the right of access to health care. The practical realisation of human rights is crucial to achieve legal goals and ensure just and equitable societies in which all humans can enjoy their human rights and freedoms.³¹⁰ This chapter discusses the challenges and barriers hampering the optimal realisation of everyone's right of access to health care in South Africa. Focus is placed on the realisation of the right of access to mental health care belonging to children and adolescents, since mental health has globally been portrayed as a difficult issue hampering society's overall wellbeing and productivity³¹¹ and even accounts for a significant portion of mortality among young people.³¹²

The World Health Organisation estimates that one billion people worldwide suffer from a mental disease.³¹³ The same Organisation³¹⁴ reports that around 280 million people, of which 23 million are children and adolescents, internationally suffer from major depression. Although the burden of childhood and adolescent mental disorders, including clinical depression, is comparatively underreported in African nations, it is assumed to be more prevalent in low- and middle-income countries.³¹⁵ It is estimated that as much as 50% of the population in low-and middle-income countries like South Africa, is made up of children and adolescents, yet there is a dearth of policy development and implementation focusing on children's and adolescents' mental health.³¹⁶ There is also a lack of statistics regarding mental disorders prevalent in

³¹⁰ Liebenberg 2020 <https://dullahomarinate.org.za/socio-economic-rights/research-and-publications/>.

³¹¹ Fobosi 2024 *Potchefstroom Electronic Law Journal* 2.

³¹² Woollet *et al* 2017 *Journal of Child & Adolescent Mental Health* 1.

³¹³ United Nations 2022 <https://news.un.org/en/story/2022/06/1120682>; Mindu *et al* 2023 *International Journal of Environmental Research and Public Health* 1.

³¹⁴ WHO 2023 <https://www.who.int/news-room/fact-sheets/detail/depression>.

³¹⁵ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

³¹⁶ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 1.

these countries due to a significant deficiency in mental health care for children and adolescents in terms of assessment and treatment.³¹⁷ Inadequate health care facilities and services in such countries, moreover, excessively harm these vulnerable members of the community, thus restricting their ability to live fulfilling lives.³¹⁸

Mokitimi *et al*³¹⁹ note that South Africa is acknowledged as having the highest level of income disparity globally, leading to some of the most severe health inequalities. As a result, Shisana *et al*³²⁰ caution that employers, health care providers, and others may continue to unfairly discriminate against and mistreat those with mental illness. Poorer mental health outcomes and greater susceptibility to abuse are caused by factors including poverty, discrimination, and a lack of resources.³²¹ Cycles of disadvantage that result in mental health problems and prejudice against marginalized groups are sustained by structural injustices, such as socio-economic position and access to healthcare. In support, Saade *et al*³²² found that many children and adolescents with mental health problems do not receive the support they desperately require. Statistics indicate that anxiety disorders, drug addiction disorders, and mood disorders (such as clinical depression) are the most common mental health conditions affecting one in six South Africans.³²³ Young people in this country also suffer from common mental health problems due to resource scarcity and strong correlations with social determinants of health, including violence, food insecurity, poverty, and limited access to health care and education.³²⁴

Whilst focusing on the realisation of the right of access to (mental) health care as embedded in international and national legislation, the discussion below focuses on the importance of mental health care in South Africa, the identification of the barriers

³¹⁷ Mokgaola 2022 *The Open Public Health Journal* 2; Dawson-Squibb *et al* 2022 *International Journal of Environmental Research and Public Health* 1; Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³¹⁸ Fobosi 2024 *Potchefstroom Electronic Law Journal* 2.

³¹⁹ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³²⁰ Shisana *et al* 2024 *Comprehensive Psychiatry* 3.

³²¹ Kirkbride 2024 *World Psychiatry* 60.

³²² Saade *et al* 2023 *BMC Health Services Research* 3.

³²³ Department of Health 2020 <https://www.health.gov.za/wp-content/uploads/2020/11/depthealthstrategicplanfinal2020-21to2024-25-1.pdf>; Mindu *et al* 2023 *International Journal of Environmental Research and Public Health* 2.

³²⁴ Mindu *et al* 2023 *International Journal of Environmental Research and Public Health* 1; Woollet *et al* 2017 *Journal of Child & Adolescent Mental Health* 1.

depriving children and adolescents from access to mental health care services, as well as the *South African Child and Adolescent Mental Health Policy*.

4.2 Importance of mental health care for children and adolescents

Having access to mental health care is essential for overall wellness as mental illness negatively influences a human's emotional, psychological, social and physical functioning and, thus, his/her quality of life.³²⁵ Adolescence, a period marked by numerous behavioural and physiological changes, frequently causes extreme stress, which too often leads to mental health problems.³²⁶ Adolescence is, moreover, recognised as the most formidable period during human life as it is a period marked by transitional changes which leave adolescents vulnerable and susceptible to social exclusion, unfair discrimination, peer pressure and, thus, risky behaviour which, in turn, increases their risk of mental illness.³²⁷

Curbing this cycle is important as mental illness among adolescents has a detrimental effect on their overall wellbeing, academic performance, and behaviour often leading to drug abuse, aggression, suicide, self-harm, eating disorders, feelings of hopelessness, and unwanted pregnancies, while exposing them to a higher chance of developing psychological disorders as an adult which affects the mind, mental and emotional state of humans and, thus, the ability to establish healthy relationships and fulfilling day-to-day tasks.³²⁸ The increased occurrence of childhood and adolescent depression (a common mental disorder) is an equally significant concern as it impedes one's ability to complete essential developmental tasks (such as succeeding academically, adjusting to changes in family relationships, and building peer networks), which are essential for living quality lives.³²⁹ As found by Schlack *et al*,³³⁰

³²⁵ Plumtree 2024 <https://www.verywellmind.com/the-importance-of-mental-health-for-wellbeing-5207938>; WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

³²⁶ Meyer *et al* 2019 *South African Family Practice* 26.

³²⁷ Mokgaola *et al* 2022 *The Open Public Health Journal* 75.

³²⁸ McLeod *et al* 2012 *Journal of Health and Social Behavior* 483; Meyer, Matlala and Chigome 2019 *South African Family Practice* 26.

³²⁹ Mindu *et al* 2023 *International Journal of Environmental Research and Public Health* 2.

³³⁰ Schlack *et al* 2021 *Journal of Health Monitoring* 4.

mental health complications during childhood or adolescence are associated with diminished mental health, less life satisfaction and a lower or inferior quality of life.

Regarding the effect of mental illness on the education of children and adolescents (poor academic performance, high school dropout rates, absenteeism), di Giacomo *et al*³³¹ accentuate the necessity of education for future employment consistency and, thus, financial stability. Receiving proper mental health care during this period is essential as it supports one's overall wellbeing, thus enabling them to develop socially, build healthy relationships, and learn the skills they will need as adults.³³² It will, moreover, prevent mental health conditions from escalating and thus negatively impacting their future life opportunities.³³³ To combat the detrimental consequences of mental illnesses, early detection, intervention and support by realising their right of access to health care services, is vital³³⁴ to ensure positive long-term outcomes and alleviate the weight of mental illness during adulthood.³³⁵

Since mental illness is characteristically the result of a combination of inherited and environmental factors,³³⁶ as well as of social features such as ethnic and racial minority status accompanied by racial bias, poor social relationships, and the presence of violence and crime, mental problems are more common in low-and-middle income countries.³³⁷ In support, Mokitimi *et al*,³³⁸ as well as Meyer *et al*,³³⁹ found that humans living in low-and-middle-income countries more often experience brain injury, neuropsychiatric morbidity, intellectual disability, and epilepsy leading to mental disability in comparison to high-income countries, thus, having a negative effect on their educational achievements.³⁴⁰ As a result, addressing mental health within the context of the social determinants of health is crucial to promote mental health equity in such countries. Seeing that social factors related to health affect the environment

³³¹ Di Giacomo *et al* 2024 *Italian Journal of Psychiatry* 1.

³³² WHO 2023 <https://www.who.int/news-room/factsheets/detail/adolescent-mental-health>

³³³ WHO 2023 <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>

³³⁴ Di Giacomo *et al* 2024 *Italian Journal of Psychiatry* 1.

³³⁵ Bassi *et al* 2024 *Digital Health*.

³³⁶ Di Giacomo *et al* 2024 *Italian Journal of Psychiatry* 1.

³³⁷ Bitsko *et al* 2022 Morbidity and Motility Weekly Report 22.

³³⁸ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

³³⁹ Meyer *et al* 2019 *South African Family Practice* 25.

³⁴⁰ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

in which humans develop and function, it is crucial that mental health services provided to society address such health disparities.³⁴¹

In South Africa, policies are established at the national level and implemented at the provincial level, recognising the country's extremely diversified socio-economic and socio-cultural makeup.³⁴² The legislative and policy framework required to treat people with mental illnesses and oversee mental health services has been established by the South African government.³⁴³ As substance abuse and mental health disorders are quite common in South Africa and have a major impact on the nation's illness burden,³⁴⁴ it is crucial that addressing mental disorders among children and adolescents and promoting the health of the entire society should be dealt with at a public level therefor sidelining private providers.³⁴⁵ What is noticeable in this regard is that priority is increasingly given to ensure that children and adolescents have access to public health care³⁴⁶ and awareness is progressively raised to ensure the practical realisation of their right of access to health care.³⁴⁷

In this instance, it is, however, important to also notice that the health care system in South Africa is extremely uneven and divided into two tiers, namely the public and the private sector.³⁴⁸ Seventy-one percent of the population is served by the state-funded public sector.³⁴⁹ Due to the large number of underprivileged communities in South Africa, those who normally cannot afford health care can benefit from free health care provided in the public sector.³⁵⁰ Public health care is, however, associated with long waiting times, subpar treatment, hurried appointments, outdated facilities, and inadequate disease management, as well as prevention procedures when compared with private health care.³⁵¹ It is estimated that only 17% of the population is served

³⁴¹ Bitsko *et al* 2022 *Morbidity and Motility Weekly Report* 22.

³⁴² Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁴³ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

³⁴⁴ Sorsdahl *et al* 2023 *SSM- Mental Health* 1.

³⁴⁵ Anon 2025 <https://www.cucumber-recruitment.co.uk/resources/blog/childrens-mental-health>

³⁴⁶ Mokitimi *et al* 2019 *Frontiers in Psychiatry* 2.

³⁴⁷ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

³⁴⁸ Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>.

³⁴⁹ Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>.

³⁵⁰ Young *Private vs. Public healthcare in South Africa* 4.

³⁵¹ Young *Private vs. Public healthcare in South Africa* 4.

by the private sector, which is mostly financed by private contributions to medical aid schemes, health insurance, or medical assistance programs,³⁵² as the government does not pay for private health care.³⁵³ Unfortunately, the majority of South Africans cannot afford the high expenses attached to private health care.³⁵⁴ Private health care also has several other drawbacks, including fewer facilities and the need for patients to pay for extra resources like wheelchairs or crutches in addition to medical appointments and prescription drugs.³⁵⁵ Although public health care services should assure free care for all people, including, among others, free prescription drugs, wheelchairs, crutches, as well as home care visits, this sector is usually underfunded.³⁵⁶

On the way forward, it is recommended that access to mental health care can be enhanced by including mental health within the primary health care domain.³⁵⁷ The concept, primary health care, is defined as a system that aims to bring health and wellness services closer to communities (community-based mental health services).³⁵⁸ It is, accordingly, described as a whole of society approach in order to enhance national health systems.³⁵⁹ Focus is placed on human needs at the initial phase - from health promotion and disease prevention to treatment, rehabilitation, and palliative care - and provided as close to their daily settings as feasible cost-effectively to ensure direct and equal access to the highest possible level of wellbeing and health.³⁶⁰ It is in this regard argued that serving children and adolescents with mental health-related problems demands a multilayered approach.³⁶¹ This entails that community members, especially parents, educators and caregivers, must take responsibility for creating

³⁵² Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>.

³⁵³ Young *Private vs Public healthcare in South Africa* 4.

³⁵⁴ Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>.

³⁵⁵ Young *Private vs. Public healthcare in South Africa* 4.

³⁵⁶ Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>.

³⁵⁷ Peterson *et al* 2016 *British journal of psychiatry* 34; Mokgaola 2022 *The Open Public Health Journal* 2.

³⁵⁸ WHO 2025 https://www.who.int/health-topics/primary-health-care#tab=tab_1.

³⁵⁹ WHO 2025 https://www.who.int/health-topics/primary-health-care#tab=tab_1.

³⁶⁰ WHO 2025 https://www.who.int/health-topics/primary-health-care#tab=tab_1; Meyer *et al* 2019 *South African Family Practice* 29.

³⁶¹ Anon 2025 <https://www.cucumber-recruitment.co.uk/resources/blog/childrens-mental-health>.

supportive, safe, and nurturing environments in which children and adolescents are encouraged to share their emotions and needs with others and seek treatment.³⁶²

As mental health illnesses are often disregarded by health care systems, Meyer *et al*,³⁶³ in turn, recommend that mental illnesses should be included in a chronic disease model aimed at providing care for those suffering from chronic illnesses such as cardiovascular diseases, cancer, chronic respiratory diseases and diabetes due to their shared characteristics with such chronic conditions.³⁶⁴ A chronic disease care model is proposed, as mental illnesses, just as chronic illnesses, require quality and proactive medical care over a long period aimed at assisting patients to manage their treatment, which is essential to strengthen their resilience and improve their health and life opportunities.³⁶⁵ In addition, researchers such as Mindu *et al*³⁶⁶ propose that, to be effective, health interventions intended for the youth should ideally be based on how they access digital health resources. This, according to the same researchers, entails the creation of suitable digital channels to connect with the youth.

Even with the proof of the severity of child and adolescent mental health issues, there is, nevertheless, still a significant percentage of unmet needs in child and adolescent mental health, particularly in low and middle-income countries.³⁶⁷ The prevention of mental disorders, the enhancement of children's and adolescents' mental health and wellbeing, the lowering of risk factors for mental illness, and the provision of evidence-based treatment for individuals in need of treatment are all significant responsibilities of child and adolescent mental health services.³⁶⁸ Sound policies and planned service delivery models should serve as the foundation for the development, implementation, and monitoring of child and adolescent mental health services globally.³⁶⁹ The existing

³⁶² Anon 2025 <https://www.cucumber-recruitment.co.uk/resources/blog/childrens-mental-health>.

³⁶³ Meyer *et al* 2019 *South African Family Practice* 26.

³⁶⁴ Grover and Joshi 2014 *Global Journal of Health Science* 212.

³⁶⁵ TIMEDOC Health 2025 <https://timedochealth.com/what-does-the-chronic-care-model-do/>; Schlack *et al* 2021 *Journal of Health Monitoring* 5.

³⁶⁶ Mindu *et al* 2023 *International Journal of Environmental Research and Public Health* 2.

³⁶⁷ Patel *et al* 2007 *Lancet* 1303.

³⁶⁸ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

³⁶⁹ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

barriers preventing the realisation of such policies and models, and most importantly, the optimal fulfilment of the right of access to health care, are forthwith outlined.

4.3 Barriers to mental health care

Impediments to mental health care are complex, including societal stigma, acceptability, lack of support, absence of awareness and understanding, financial constraints, religious influences, entrenched cultural beliefs and practices, as well as systemic issues within health care.³⁷⁰ These barriers lead to the treatment of many children and adolescents often being delayed³⁷¹ or even denied, which is a major problem, as treatment may take as long as nine to twenty-three years to be effective.³⁷²

4.3.1 Societal stigma

A very common barrier to mental health services is stigma.³⁷³ Stigma, which is defined as prejudice and discrimination in society, has a significant impact on mental health care and makes it more difficult to identify and treat mental health conditions in a timely manner.³⁷⁴ Kneiner distinguishes between three major levels of mental health stigma, namely structural stigma emanating from laws and policies in society, institutions and organisations; social stigma (negative attitudes and biases); as well as self-stigma (beliefs and feelings about oneself).³⁷⁵

It is crucial to eliminate stigma because it does not only affect people who seek treatment but also their families, medical personnel, and society at large.³⁷⁶ For example, fear of conflict arising in families and being rejected or misunderstood are some of the major reasons why children and adolescents choose not to tell anyone when they detect symptoms of depression in themselves.³⁷⁷ This, according to

³⁷⁰ Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 12; Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery* 46; Vivo 2022 <https://www.lyrahealth.com/blog/barriers-mental-health/>.

³⁷¹ Mokgaola 2022 *The Open Public Health Journal* 2.

³⁷² Mokgaola 2022 *The Open Public Health Journal* 2.

³⁷³ Saade *et al* 2023 *BMC Health Services Research* 12.

³⁷⁴ Sartorius 2007 *Lancet* 810.

³⁷⁵ Kreiner 2025 *Focus* 3.

³⁷⁶ Ahad *et al* 2023 *Cureus* 1.

³⁷⁷ Bartels *et al* 2021 *Revista Colombiana de Psiquiatría* 65.

Monnapula-Mazabane and Petersen³⁷⁸, is problematic as research has proven that early intervention leads to improved family relationships and a better understanding of mental illness, such as depression, among family members.

Even when children and adolescents urgently need assistance, stigma might derail them from seeking help or even from positively engaging in mental health care.³⁷⁹ Postponing care can worsen mental health issues.³⁸⁰ Even parents, being the main custodians of children, prefer to revert to traditional services for their children's mental health issues instead of seeking professional help due to being scared of being stigmatised.³⁸¹ Stigmatisation surrounding mental illness is mainly due to a lack of knowledge and acceptance of mental health illnesses.³⁸² As such, stigmatisation towards those with mental health illnesses is clouded by negative beliefs, behaviour, and attitudes which very easily lead to prejudgments, social exclusion and unfair discrimination, thus affecting children and adolescents' access to health care services and adequate treatment, future employment and social inclusion.³⁸³ To eradicate stigmatisation, society should be made aware of and be educated to fully comprehend mental illness and allow for the treatment of those suffering from mental illnesses.³⁸⁴

4.3.2 Lack of support

Despite the constitutional need to treat everyone with dignity, employers, health care providers, and others often continue to unfairly discriminate against and mistreat those with mental illness.³⁸⁵ As a result, people suffering from mental illness frequently put off or postpone getting therapy because they are afraid of receiving different care or of losing their employment and means of support.³⁸⁶

³⁷⁸ Monnapula-Mazabane and Petersen 2022 *South African Journal of Psychiatry* 1.

³⁷⁹ Ahad *et al* 2023 *Cureus* 1.

³⁸⁰ Brohan and Thornicroft 2010 *Occupational Medicine* 414.

³⁸¹ Saade *et al* 2023 *BMC Health Services Research* 12.

³⁸² Madwantsi 2022 <https://iol.co.za/lifestyle/family/parenting/2022-06-14-south-african-childrens-mental-health-is-in-crisis/>.

³⁸³ Dambrun *et al* 2024 *Frontiers Psychiatry* 14.

³⁸⁴ Dambrun *et al* 2024 *Frontiers Psychiatry* 14.

³⁸⁵ Shisana *et al* 2024 *Comprehensive Psychiatry* 4.

³⁸⁶ Singhal 2024 www.psychiatry.org/patients-families/stigma-and-discrimination.

Due to a general lack of understanding in the workplace, people experiencing mental illnesses leading to a variety of discomfort and difficulty³⁸⁷ are often reluctant to reveal or seek therapy because they fear unfavourable career implications.³⁸⁸ In the matter of *Pahlanga v The Petroleum Oil and Gas Corporation of South Africa (PetroSA)*,³⁸⁹ the Labour Court had to decide whether the dismissal of an employee for being absent from work for a prolonged period of time without authorisation was justified. The dismissed employee averred that his absence was due to a chronic mental illness and, thus, beyond his control. As the onus is on an employee to provide evidence to his mental illness, the Labour Court found that the dismissal in question was substantively fair but procedurally unfair. The reason being the Labour Court considered the dismissal to be due to misconduct (unauthorised absence) rather than operational constraints or incompetence, it was deemed substantively fair. The Court agreed with PetroSA's assertion that the absence was misconduct rather than infirmity because the employee did not present adequate medical proof of inability.

Despite the importance of those suffering from mental illness receiving support from family members,³⁹⁰ such support is often absent as family members internalise the shame attached to mental illness and are afraid of also being socially rejected by others.³⁹¹ Regardless of childhood depression being a common condition, its prevalence among children and adolescents remains difficult to recognise, therefore, misunderstood, and the available treatment options are often underestimated. Providing support is also hampered by insufficient knowledge about the causes thereof and the inability of children to express their feelings.³⁹²

Family members are also often discouraged by not experiencing the immediate improvement of their loved ones after receiving therapy, thus losing hope and

³⁸⁷ WHO 2022 <https://apps.who.int/iris/handle/10665/356119>.

³⁸⁸ Singhal 2024 www.psychiatry.org/patients-families/stigma-and-discrimination.

³⁸⁹ *Pahlanga v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Others* (C564/2019) [2021] 11 BLLR 1129 (LC).

³⁹⁰ Acobe 2025 *Frontiers in Psychology* 2.

³⁹¹ Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery* 50; Singhal 2024 www.psychiatry.org/patients-families/stigma-and-discrimination.

³⁹² Kline 2023 <https://www.embraceu.com/why-do-children-get-depressed/>.

confidence in ongoing treatment.³⁹³ In this regard, Chronister *et al*³⁹⁴ point to the equal importance of humans with mental illness receiving social support by establishing strong relationships with those close to them. Such support should be individualised to serve unique needs, capacitate individuals to believe in their ability to overcome setbacks and manage their lives, and should be aimed at involving them actively in society.³⁹⁵ In this regard, Kung³⁹⁶ put forward that children and adolescents with mental illness should step up and take responsibility for their lives by learning to accept their condition, actively seeking support and accepting that judgments by society may only be based on a lack of understanding. It is, in this regard, essential that children and adolescents have access to people who are empathetic towards them, people trained to listen to them and people whom they can share their feelings with without fear of judgment.³⁹⁷ While active support from friends and family may be sufficient for children with mild depression, Selph and McDonagh³⁹⁸ caution that children suffering from clinical depression may need psychotherapy and even antidepressants to ensure their long-term wellbeing.

UNICEF,³⁹⁹ nevertheless, acknowledges the importance of South African schools - aiming at creating supportive learning environments, encouraging the mental wellbeing of all learners, and ensuring the realisation of learners' right of access to mental health services - to support mentally ill learners through a variety of initiatives. Such initiatives include school-based social workers, psychosocial support programs, and mental health helplines. Jiang,⁴⁰⁰ however, noticed 40 incidents of learners committing suicide in the Gauteng Province alone since the beginning of the 2023 academic year. It is in view of these statistics that Jiang emphasises the importance

³⁹³ Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery* 50.

³⁹⁴ Chronister *et al* 2021 *Rehabil Psychol* 89.

³⁹⁵ Kung 2025 <https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477>.

³⁹⁶ Kung 2025 <https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477>.

³⁹⁷ Cherry 2022 <https://www.verywellmind.com/how-to-be-more-empathetic-6455878>

³⁹⁸ Selph and McDonagh 2019 *American family physician* 610.

³⁹⁹ UNICEF 2025 <https://www.unicef.org/southafrica/onmymind-better-mental-health-every-child-south-africa>.

⁴⁰⁰ Jiang 2023 <https://health-e.org.za/2023/09/13/south-african-children-lack-psychosocial-support-every-school-needs-a-social-worker>.

of initiatives identified to be realised in practice for it to make a difference in the lives of children.

4.3.3 Absence of awareness, understanding and knowledge

Individuals who suffer from mental illness frequently keep quiet about it out of fear of being judged or rejected by their friends, family, and employers.⁴⁰¹ For many persons with mental problems, the obstacle that prevents them from accessing and using mental health care treatments is a lack of knowledge about mental diseases.⁴⁰² Despite depression receiving increased attention, most people are still not knowledgeable about this mental illness's clinical symptoms and treatment. Awareness is only a small part of a solution as its prevention, and timeous treatment still has a long way to go in medical and scientific fields.⁴⁰³ Identifying the symptoms of clinical depression is, moreover, complicated by the fact that depression leads to internalising behaviour such as anxiety and social withdrawal, in contrast to showcasing externalising behaviours such as aggression, which are easier to identify.⁴⁰⁴ In addition to lacking awareness and understanding of their illness, people with mental illness may not realise that treatment is an option.⁴⁰⁵

It is essential that children and adolescents be empowered to initiate a search for support and medical assistance.⁴⁰⁶ Another misconception regarding mental illness is the general belief that medical institutions do not provide sufficient care, which may lower the severity of mental illnesses.⁴⁰⁷ This lessens the possibility of persons living with mental illnesses asking for assistance and, ultimately, managing their health successfully.⁴⁰⁸

⁴⁰¹ Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

⁴⁰² Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 12.

⁴⁰³ Ma *et al* 2023 *BMC Public Health* 3.

⁴⁰⁴ Wisdom *et al* 2006 *Adm Policy Mental Health* 134.

⁴⁰⁵ Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery* 50.

⁴⁰⁶ Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 12.

⁴⁰⁷ Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 12.

⁴⁰⁸ Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery* 50.

In South Africa, initiatives to dispel the stigma associated with mental health and make the public more aware of mental health problems are accelerating.⁴⁰⁹ Initiatives like the #NotAlone campaign and groups like the South African Depression and Anxiety Group are tirelessly educating the public about mental health.⁴¹⁰ These campaigns emphasise that asking for help is a sign of strength rather than a weakness through various platforms, allowing for mainstream discussions about mental illness.⁴¹¹ Campaigns for national awareness can help dispel myths and educate the public on the types of mental diseases, their causes, and available treatments.⁴¹² An inclusive, multifaceted strategy is needed to combat mental health stigma in South Africa.⁴¹³ Public education is unquestionably one of the most crucial mediums through which awareness, understanding and knowledge of mental illnesses can be initiated.⁴¹⁴ Incorporating mental health education into the existing school curriculum can assist the youth to develop empathy and gain a better understanding of mental health illnesses from an early age.⁴¹⁵

Education can, moreover, empower the youth to distinguish between scientific knowledge and African traditional belief systems linking mental illness to bewitchment or the punishment of ancestors, making traditional healers the experts on the topic. This is important as mental illness is still, in many societies, misinterpreted and frequently associated with spiritual possession, witchcraft, or ancestral punishment, necessitating the intervention of spiritual healers rather than mental health

⁴⁰⁹ Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>.

⁴¹⁰ Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>.

⁴¹¹ Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>.

⁴¹² Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

⁴¹³ Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

⁴¹⁴ Among 2025 <https://thebftonline.com/2025/02/28/dr-maxwell-among-depression-and-cultural-perception-of-mental-health-in-africa/>.

⁴¹⁵ Among 2025 <https://thebftonline.com/2025/02/28/dr-maxwell-among-depression-and-cultural-perception-of-mental-health-in-africa/>; Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

specialists.⁴¹⁶ As traditional healers were found to be reluctant to collaborate with conventional psychiatric services due to not believing in the efficacy thereof, Anjorin and Wada⁴¹⁷ caution that the continuous use of traditional healers may hamper the fulfilment of children and adolescents' right of access to mental health care. It is, accordingly, essential to raise awareness and increase the knowledge of all South Africans about mental illnesses to ensure the timely detection and treatment of such illnesses and foster a more supportive and inclusive society, thus leading to better mental health outcomes.⁴¹⁸

4.3.4 Financial constraints

As resources are essential for the provision of quality health services to society,⁴¹⁹ one of the enduring issues in low- and middle-income nations like South Africa is the dearth of resources allocated to mental health care.⁴²⁰ Although there are undoubtedly restrictions on the amount of money that may be allocated to health care by any administration,⁴²¹ the fulfilment of the right to access mental health care in South Africa continues to be insufficient due to restricted access to mental health services within an unreasonable underfunded system, which increases the strain on hospitals and emergency services.⁴²² To this, Mulaudzi *et al*⁴²³ add that health care centres are characterised by ineffective safety and security measures, poor infrastructure, lack of running water and medicine, and shortage of trained mental health care professional nurses and psychiatrists, leading to stress and burn-out.

The system for providing mental health care, thus, remains inadequate and under-resourced.⁴²⁴ Schoeman⁴²⁵ explains that a mere 5% of the South African health care

⁴¹⁶ Okafor *et al* 2022 *African Journal of Primary Health Care & Family Medicine* 2; Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

⁴¹⁷ Anjorin and Wada 2022 *Analysis of Medicine and Surgery* 2.

⁴¹⁸ Price 2023 <https://www.gov.za/blog/mental-health-awareness>.

⁴¹⁹ Szabo 2013 *African Journal of Psychiatry* 387.

⁴²⁰ Mokgaola 2022 *The Open Public Health Journal* 2.

⁴²¹ Szabo 2013 *African Journal of Psychiatry* 387.

⁴²² Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

⁴²³ Mulaudzi *et al* 2020 *South Africa's Curationis* 5.

⁴²⁴ Shisana *et al* 2024 *Comprehensive Psychiatry* 3.

⁴²⁵ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

budget is allocated to mental health services despite statistics reporting that one-third of South Africans experience mental health illnesses and more than 27% of South Africans are affected by depression. What is more concerning, however, is the fact that the system is being drained by inefficiencies, poor management, and corruption.⁴²⁶ In support, Rheeder⁴²⁷ vows that corruption within the health environment should be condemned as it constitutes immoral behaviour of robbing humans, and most importantly, vulnerable children and adolescents of their right of access to health care.

An example of financial constraints for mental illness can be seen in the *Life Esidimeni*⁴²⁸ case. After the Gauteng Health Department ended its agreement with Life Esidimeni Health Care Centre in 2016, the "Life Esidimeni tragedy" transpired.⁴²⁹ Patients were quickly sent to unregistered non-governmental organisations that lacked the necessary resources to care for those suffering from serious mental illness.⁴³⁰ Under the pretence of de-institutionalisation, the move was carried out; nonetheless, 144 individuals with mental illnesses lost their lives as a result of inadequate planning, financial mismanagement, and a lack of responsibility by the government.⁴³¹

People may find it challenging to get the treatment they require.⁴³² Despite the progressive mental health legislation in South Africa, there are a number of obstacles that prevent the development and financing of mental health services.⁴³³ A continuous treatment gap is caused by a dearth of mental health professionals, a shortage of skilled practitioners, and inadequate funding for treatment compliance monitoring.⁴³⁴ In contrast to private health services, the public health sector is "overburdened by patients with a limited choice of health care options, and crippled by severe mismanagement fault lines, deepening corruption, historic underdevelopment, and

⁴²⁶ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

⁴²⁷ Rheeder 2021 *South African Journal of Bioethics and Law* 86.

⁴²⁸ *Life Esidimeni Inquest* (I001/21) [2024] ZAGPPHC 676 (10 July 2024).

⁴²⁹ *Life Esidimeni Inquest* (I001/21) [2024] ZAGPPHC 676 (10 July 2024).

⁴³⁰ *Life Esidimeni Inquest* (I001/21) [2024] ZAGPPHC 676 (10 July 2024).

⁴³¹ *Life Esidimeni Inquest* (I001/21) [2024] ZAGPPHC 676 (10 July 2024).

⁴³² Shisana *et al* 2024 *Comprehensive Psychiatry* 3.

⁴³³ Burns 2011 *A equal rights review* 102.

⁴³⁴ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

instances of poor policy choices, including the poor implementation of sound policies."⁴³⁵

These obstacles lead to the following: (i) the continued use of antiquated, often unsafe, psychiatric hospitals; (ii) a severe shortage of mental health professionals; (iii) the inability to develop critically important tertiary level psychiatric services (e.g., child and adolescent services, psychogeriatric services, and neuropsychiatric services); and (iv) the failure of community mental health and psychosocial rehabilitation services to develop, leaving patients institutionalised and without hope of being rehabilitated back into their communities.⁴³⁶ Despite legally mandated reforms to mental health care in the mental health legislation, this situation has not changed.⁴³⁷

The country's and certain provinces' current health care crises serve as further proof that, despite South Africa having one of the best constitutions in the world, there are several obstacles to its implementation.⁴³⁸ Therefore, a major issue facing South Africa's mental health system is inadequate financing, which can hinder people's ability to get the care they require and lower the standard of care that is offered.⁴³⁹ Currently, 45% of the entire budget for mental health services is allocated to specialised psychiatric hospitals, which receive the majority of resources.⁴⁴⁰ Furthermore, mental health services given in other larger hospitals, referred to as regional, tertiary, and national hospitals, account for 39.9% of the overall cost of inpatient and outpatient mental health services, with district hospitals accounting for 11.7% of this total.⁴⁴¹ Merely 8% of the overall expenditure for mental health care is allocated to primary health care services.⁴⁴² This covers the price of prescription drugs for patients with serious mental illnesses who are released from hospitals and community health centres.⁴⁴³ South Africa ranks lowest among other nations in terms of public investment in mental health, allocating just 5% of its overall health budget to this

⁴³⁵ Stevenson "The National Health act guide" 23.

⁴³⁶ Burns 2011 *A equal rights review* 102.

⁴³⁷ Burns 2011 *A equal rights review* 102.

⁴³⁸ Dhali and Mahomed 2018 *South African Bioethics Law* 10.

⁴³⁹ Shisana *et al* 2024 *Comprehensive Psychiatry* 4.

⁴⁴⁰ Sorsdahl *et al* 2023 *SSM – Mental Health* 2.

⁴⁴¹ Brown *et al* 2023 *SSM- Mental Health* 8; Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁴² Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁴³ Docrat *et al* 2019 *Health Policy and Planning* 1; Sorsdahl *et al* 2023 *SSM- Mental Health* 2

area.⁴⁴⁴ The national health care budget for 2024–2025 only saw a 3.5% rise, falling short of inflation and even worse, despite growing health care demands, the 2025–2026 budget is expected to fall to R28.9 billion.⁴⁴⁵

In addition, the *Constitution* guarantees an immediate right under sections 27(3), which states that "no one may be denied emergency medical treatment," and 28(1)(c), which states that "every child has the right to basic health care services".⁴⁴⁶ Children's socio-economic rights were first believed to be granted precedence over everyone else in the distribution of essential services and goods because they were included in section 28(1)(c) of the *Constitution*⁴⁴⁷, and their rights were not qualified by resources or progressive realisation, such as everyone's socio-economic rights in sections 26 and 27.⁴⁴⁸ In *Grootboom*,⁴⁴⁹ the Constitutional Court raised valid objections to this line of thinking, particularly if it implied that children had an unrestricted claim to certain socio-economic rights.⁴⁵⁰ In rejecting the unqualified application of the right under section 28(1)(c), the Constitutional Court noted that this line of reasoning had absurd implications because it meant that parents with children would be accommodated with their children's needs while those without children, regardless of their age, disability, or other deservingness, would not receive any kind of respite.⁴⁵¹

According to Articles 24(1) and (2) of the *Convention on the Rights of a Child*, States are required to work toward the full realisation of children's rights to the best possible level of health and resources for both disease treatment and health rehabilitation.⁴⁵² A program for the achievement of socio-economic rights must be flexible and balanced, with sufficient provisions for addressing short, medium, and long-term requirements as well as crises, according to the Constitutional Court's ruling in *Minister*

⁴⁴⁴ Anon 2023 <https://www.eapasa.co.za/the-state-of-mental-health-in-south-africa/>.

⁴⁴⁵ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

⁴⁴⁶ The *Constitution of the Republic of South Africa* 1996.

⁴⁴⁷ Sec 28(1)(c) of the *Constitution of the Republic of South Africa*.

⁴⁴⁸ The *Constitution of the Republic of South Africa* 1996.

⁴⁴⁹ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] SA 46; 2000 (11).

⁴⁵⁰ Buchner-Eveleigh 2016 *De Jure* 310.

⁴⁵¹ Par 71 of *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] SA 46; 2000 (11).

⁴⁵² Article 24 of the *Convention on the Rights of the Child* (1998).

of Health v. Treatment Action Campaign.⁴⁵³ The majority of socio-economic rights, except a small number of them - fair labour standards and the ability to organise a trade union being two examples - cannot be implemented immediately.⁴⁵⁴

These positive rights are essentially ambitions that may be achieved via the application of laws and the distribution of suitable resources.⁴⁵⁵ Since the State controls most of the resources, it has a positive duty to make sure that these rights are gradually fulfilled, mostly at the State's expense.⁴⁵⁶ Programs are consequently necessary for implementation, and these programs rely on the availability of resources.

Socio-economic rights are often granted in South Africa with the specific stipulation that they must be granted available resources of the State, to achieve the progressive realisation of these rights."⁴⁵⁷ For everyone, "emergency medical treatment" is exempt from this restriction, as are "basic health care services" for anyone under the age of 18.⁴⁵⁸ The *Constitution* enshrines the right of children and adolescents to health and health services; however, the vast majority of mental health care needs are currently unmet, which is a clear violation of their constitutional rights.⁴⁵⁹ Therefore, strategies to strengthen individuals and families, reinforce communities and systems, and remove societal barriers to mental health are needed.⁴⁶⁰

4.3.5 Entrenched cultural beliefs and practices

In South Africa, societal norms, cultural beliefs, and customs all play a significant role in the stigma associated with mental health.⁴⁶¹ People with clinical depression frequently feel anxious about seeking primary care physicians because they fear unfavourable outcomes from disclosing their symptoms and are worried about how to

⁴⁵³ (No2) 2002 (5) SA 271 (CC).

⁴⁵⁴ Ifaisa 2015 <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/>.

⁴⁵⁵ Ifaisa 2015 <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/>.

⁴⁵⁶ Ifaisa 2015 <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/>.

⁴⁵⁷ Ifaisa 2015 <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/>.

⁴⁵⁸ Article 27(2),27(3) and section 28(1)(c) and (3) of the *Constitution of the Republic of South Africa* 1996.

⁴⁵⁹ Dawes *et al* 2012 *Journal of Child and Adolescent Mental Health* 8.

⁴⁶⁰ Patel *et al* 2007 *Lancet* 1303.

⁴⁶¹ Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>.

explain them.⁴⁶² Adolescents are apprehensive about primary care physicians and thus, feel more comfortable with traditional healers in their community. Many individuals choose alternative methods, like lifestyle modifications or traditional healers, and are suspicious of the way that medical care systems handle depression.⁴⁶³ Because they have the knowledge and experience to treat mental disorders, traditional healers frequently come from families that have a history of using traditional healing to treat a number of patients with different health issues in their respective societies.⁴⁶⁴ This type of medical practice is interpreted as a form of familial compliance that is passed down from one family to another.⁴⁶⁵

Traditional alternatives and complementary treatments include visiting religious healing centres through a priest or church, using holy water, killing a sheep, fumigating (using excessive amounts of smoke from burning incense), Rukiya (a religious treatment based on the Quran), beating, chaining, and praying at home or church.⁴⁶⁶ Misconceptions regarding the perceived causes and prognosis of mental health issues in Africa are probably the reason for a predilection for complementary, alternative, and traditional therapies.⁴⁶⁷ These false assumptions appear to be accompanied by a lack of knowledge about the biological and psychological underpinnings of mental health disorders.⁴⁶⁸ The choice or preference for a specific practitioner, systemic health service failings, and beliefs and explanatory frameworks of mental health can all influence whether someone seeks out a traditional healer or religious adviser for mental health issues.⁴⁶⁹ In order to encourage individuals to take charge of their health, health care providers must provide culturally sensitive care.⁴⁷⁰ Adults rarely seek medical attention for mental issues until all other options have been

⁴⁶² Wisdom *et al* 2006 *Adm Policy Mental Health* 134.

⁴⁶³ Wisdom *et al* 2006 *Adm Policy Mental Health* 136.

⁴⁶⁴ Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 7.

⁴⁶⁵ Muhorakeye and Biracyaza 2021 *Frontiers Psychology* 7.

⁴⁶⁶ Saade *et al* 2023 *BMC Health Services Research* 12.

⁴⁶⁷ Saade *et al* 2023 *BMC Health Services Research* 12.

⁴⁶⁸ Saade *et al* 2023 *BMC Health Services Research* 12.

⁴⁶⁹ Sorsdahl *et al* 2023 *SSM – Mental Health* 2.

⁴⁷⁰ Wollie *et al* 2024 *PLOS One* 1.

explored.⁴⁷¹ Adolescents choose non-medical interventions over seeking care from a medical professional, even when they are aware of both options.⁴⁷²

The diagnosis, prevention, and eradication of physical, mental, and social imbalances based on real-world experiences and observations passed down orally or in writing from generation to generation are known as traditional health care techniques.⁴⁷³ In many regions of the world, particularly in Africa, traditional health care providers play a significant role in treating mental illness.⁴⁷⁴ Every town has a conventional health care provider, and these providers have built trusting relationships with the populations they serve.⁴⁷⁵ Most individuals choose this therapy method because they believe it to be accessible, affordable, and successful in their communities.⁴⁷⁶

The majority of rural areas in South Africa are resource-poor and disadvantaged, which prevents them from receiving the quality medical treatment they are entitled to.⁴⁷⁷ The health care system may prevent this by permitting traditional medical professionals to treat the public.⁴⁷⁸ The bulk of traditional health care providers are members of the communities in which they work, and community members have faith in them.⁴⁷⁹

A more comprehensive and culturally aware approach can be produced by combining Western mental health with traditional healing techniques.⁴⁸⁰ Traditional healers and mental health specialists working together can increase mental health care's acceptability and accessibility.⁴⁸¹

⁴⁷¹ Wisdom *et al* 2006 *Adm Policy Mental Health* 136.

⁴⁷² Wisdom *et al* 2006 *Adm Policy Mental Health* 136.

⁴⁷³ Moagi *et al* "Indigenous health care practices in the treatment of mental illness in South Africa" 161.

⁴⁷⁴ Musyimi *et al* 2018 *BMC Complementary and Alternative Medicine* 5.

⁴⁷⁵ Nompumelelo *et al* 2019 *African Health Sciences* 3103.

⁴⁷⁶ Wollie *et al* 2024 *PLOS One* 2.

⁴⁷⁷ Moagi *et al* "Indigenous health care practices in the treatment of mental illness in South Africa" 162.

⁴⁷⁸ Moagi *et al* "Indigenous health care practices in the treatment of mental illness in South Africa" 162.

⁴⁷⁹ Ndeti 2013 *African Journal of Psychiatry* 136.

⁴⁸⁰ Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>.

⁴⁸¹ Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>.

4.3.6 Systemic issues: Personnel

Child and adolescent mental health services have a significant evaluation and treatment gap, which is particularly noticeable in low- and middle-income nations such as South Africa.⁴⁸² In South Africa, an example can be found in the fact that finding human resources for mental health care is a major problem, as there is already a scarcity of mental health specialists in the nation.⁴⁸³ There are 1.52 psychiatrists per 100,000 people in South Africa, according to the Global Health Observatory Data Repository.⁴⁸⁴ The fact that only 50% of public hospitals providing mental health care have a psychiatrist and roughly 30% lack clinical psychologists is not surprising.⁴⁸⁵ Since clinical depression, involving “biological processes within the brain, including neurotransmitter imbalances, altered brain structure and function, and disruptions in neuroendocrine systems” is considered a pathophysiology, psychiatrists are needed to effectively treat this mental illness.⁴⁸⁶ As a result, the shortage of psychologists and psychological services hampers the identification and treatment of depression in South Africa.⁴⁸⁷

The non-evaluation and treatment of children and adolescents, primarily due to the inadequate detection of mental disorders and a lack of qualified specialists,⁴⁸⁸ not only restrict access to early screening but also delay access to early treatments.⁴⁸⁹ There are around 30 child and adolescent psychiatrists in South Africa, most of whom are private practitioners with restricted access due to budgetary constraints.⁴⁹⁰ In South Africa, it leads to less than 1 in 10 South Africans suffering from a mental illness, indeed receiving the treatment they require.⁴⁹¹ This barrier makes it more difficult for

⁴⁸² Dawson-Squibb *et al* 2022 *International Journal of Environmental Research and Public Health* 1.

⁴⁸³ Shisana *et al* 2024 *Comprehensive Psychiatry* 3.

⁴⁸⁴ Janse van Rensburg *et al* 2022 *Health Policy Plan* 494.

⁴⁸⁵ Shisana *et al* 2024 *Comprehensive Psychiatry* 3.

⁴⁸⁶ Ma *et al* 2023 *BMC Public Health* 3.

⁴⁸⁷ Ma *et al* 2023 *BMC Public Health* 3.

⁴⁸⁸ Saade *et al* 2023 *BMC Health Services Research* 3.

⁴⁸⁹ Dawson-Squibb *et al* 2022 *International Journal of Environmental Research and Public Health* 1.

⁴⁹⁰ Madwantsi 2022 <https://iol.co.za/lifestyle/family/parenting/2022-06-14-south-african-childrens-mental-health-is-in-crisis/>.

⁴⁹¹ Sorsdahl *et al* 2023 *SSM- Mental Health* 2; Madwantsi 2022 <https://iol.co.za/lifestyle/family/parenting/2022-06-14-south-african-childrens-mental-health-is-in-crisis/>.

children and adolescents to access and obtain mental health care.⁴⁹² Due to a shortage of child and adolescent mental health professionals, there is little task-sharing, meaning that a mental health professional must perform several therapeutic duties only for the benefit of the mental health care user.⁴⁹³

Specialisations include child and adolescent mental health, psychogeriatric, and forensic psychiatry services are underutilised in the existing models of care delivery, and there is a large disparity in the distribution of these services.⁴⁹⁴ For instance, only three of the nine provinces' eight units offer specialised child and adolescent mental health care.⁴⁹⁵ There are allegations of adolescents being admitted to adult general wards due to the dearth of in-patient adolescent facilities.⁴⁹⁶ Furthermore, as of April 2019, the nation's practising psychiatrists comprised only 15 child and adolescent, 1 geriatric, and 7 forensic subspecialists.⁴⁹⁷ In South Africa, there is a serious scarcity of professionals with training in mental health care, with significant regional variations.⁴⁹⁸ Health care professionals in South Africa are among the most severely impacted by scarce resources, dealing with understaffed hospitals, excessive workloads, and stagnating pay.⁴⁹⁹ Numerous people are fleeing or quitting the public sector, which is further upsetting an already precarious system.⁵⁰⁰

In accordance with the World Health Organisation's recommendations and in response to the scarcity of specialised mental health care caregivers, South Africa has approved the use of task-sharing models.⁵⁰¹ In order to increase access to mental health services in nations like South Africa with limited human resources, task-sharing entails the formal redistribution of tasks typically provided by specialist mental health workers

⁴⁹² Mokgaola 2022 *The Open Public Health Journal* 2.

⁴⁹³ Babatunde *et al* 2020 *Journal of Child Adolescents Mental Health* 46.

⁴⁹⁴ Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁹⁵ Juta medical brief 2019 <https://www.medicalbrief.co.za/the-sums-on-mental-health-care-in-sa-are-not-pretty/>; Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁹⁶ Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁹⁷ University of Cape Town 2022 <https://ci.uct.ac.za/child-gauge/child-and-adolescent-mental-health/>; Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁹⁸ Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁴⁹⁹ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

⁵⁰⁰ Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>.

⁵⁰¹ Moodley *et al* 2022 *BMC Health Services Research* 2; Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

(such as psychiatrists, psychologists) to health workers without speciality training in mental health.⁵⁰² As an example, the first contact health care provider, such as doctors with general training but not specialist training, can share this burden in identifying probable health care issues.

Dhai,⁵⁰³ accordingly, condemns the very recent reaction of the Minister of Health to more than 1800 junior qualified doctors being unemployed in South Africa, stating that the State is not obliged to employ them. According to the same author, the Minister blatantly disregards the State's constitutional duty to ensure everyone access to health care services and ignores the fact that the current health care system is failing this duty.⁵⁰⁴ The latter is, ironically, attributed to a critical shortage of health practitioners leading to a regressive denial of the right to health care instead of a progressive realisation thereof.

4.3.7 Geographical barriers

In addition to the above mentioned, South Africa's mental health services exhibit glaring regional disparities.⁵⁰⁵ Hospital-based mental health treatments are typically inaccessible, particularly in rural regions where many individuals lack access to care.⁵⁰⁶ Thus, more easily accessible and culturally relevant community-based mental health interventions are required.⁵⁰⁷

The majority of the nation's mental health specialists and facilities are located in urban locations like Johannesburg and Cape Town, while rural areas continue to lack enough resources.⁵⁰⁸ In rural regions, where medical aid enrolment rates are greater than in

⁵⁰² Sorsdahl *et al* 2023 *SSM- Mental Health* 2.

⁵⁰³ Dhai 2025 *SAMJ* 3.

⁵⁰⁴ Dhai 2025 *SAMJ* 3.

⁵⁰⁵ Gsell and Prinsloo 2024 <https://www.humanitas.co.za/mental-health-care-in-south-africa-overcoming-barriers-to-build-an-accessible-future/>.

⁵⁰⁶ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

⁵⁰⁷ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

⁵⁰⁸ Gsell and Prinsloo 2024 <https://www.humanitas.co.za/mental-health-care-in-south-africa-overcoming-barriers-to-build-an-accessible-future/>.

metropolitan areas, inadequate payment rates for mental health treatments, particularly for medical aid users, make it difficult to attract and retain clinicians.⁵⁰⁹

Residents in rural areas sometimes have to travel long distances, which makes it difficult to schedule follow-up sessions and maintain treatment consistency.⁵¹⁰ Furthermore, compared to urban residents, the people of rural communities are more likely to depend on their motor vehicles for mobility, which means that those without motor vehicles are more likely to be deterred from treatment.⁵¹¹ Residents of remote locations must travel further to obtain mental health treatments because there are fewer mental health practitioners there, and care may not be available without transportation.⁵¹²

People with mental health disorders are still mostly unaware of the available treatment choices and how to get the care they need, even with South Africa's advancements in mental health care.⁵¹³ The public health care system in South Africa lacks a program that provides for those who are unable to utilise its services because of limited mobility, lack of funds, or lack of transportation.⁵¹⁴ In rural locations, the lack of access is particularly noticeable. All people, regardless of their impairment, should have equal access to health care, as it is a fundamental right.⁵¹⁵

4.4 South African policy for mental illness

Internationally, South Africa is recognised for having some of the most progressive laws and policies pertaining to mental health.⁵¹⁶ The South African government has made great strides in recent years to create a legislative and policy foundation for

⁵⁰⁹ Rural Health information hub 2025 <http://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers>.

⁵¹⁰ Gsell and Prinsloo 2024 <https://www.humanitas.co.za/mental-health-care-in-south-africa-overcoming-barriers-to-build-an-accessible-future>.

⁵¹¹ Rural Health information hub 2025 <http://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers>.

⁵¹² Rural Health information hub 2025 <http://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers>.

⁵¹³ Mboweni *et al* 2023 *Healthcare* 2.

⁵¹⁴ Tukela and Hart 2024 <https://hsr.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/>.

⁵¹⁵ Tukela and Hart 2024 <https://hsr.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/>.

⁵¹⁶ Sorsdahl *et al* 2023 *SSM- Mental Health* 3.

offering comprehensive, community-based services to adults, adolescents, and children.⁵¹⁷

Out of 191 nations, South Africa is one of just 14 nations that the United Nations has recognised as having a well-defined national Child and Adolescent Mental Health Services Policy.⁵¹⁸ In South Africa, the Minister of Health develops laws and policies at the national level after consulting with many stakeholders.⁵¹⁹ Then, it is the duty of the nine provincial departments of health to create implementation plans that include precise goals, metrics, spending caps, and schedules. Additionally, provincial ministries oversee and assess the implementation of national policy and laws.⁵²⁰ Provincial districts, which are divisions of provinces, oversee the carrying out of interventions locally in line with national and provincial priorities.⁵²¹

With the Potgieter Commission, South Africa's national Child and Adolescent Mental Health Services' strategy began to take shape in 1977.⁵²² This commission suggested enhancing the ability of health and education personnel to recognise Child and Adolescent Mental Health Services illnesses, fostering intersectoral collaboration, and identifying Child and Adolescent Mental Health Services issues early in primary health care settings and schools.⁵²³

Following the recommendations for creating child and adolescent policy in poor nations by Desjarlias and associates, the policy guidelines for youth health and Child and Adolescent Mental Health Services were developed between 2001 and 2003.⁵²⁴ Future expansion of South Africa's integrated mental health care services is encouraged by the recent adoption of a national mental health policy framework that supports task sharing and decentralised care, as well as the growing importance of mental health as

⁵¹⁷ Dawes *et al* 2012 *Journal of Child and Adolescent Mental Health* 9.

⁵¹⁸ Shatkin and Belfer 2004 *Child and Adolescent Mental Health* 104; Mokitimi, Schneider and de Vries 2018 *International Journal of Mental Health Systems* 2.

⁵¹⁹ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

⁵²⁰ Department of Health 2024 <https://www.health.gov.za/wpcontent/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>; Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

⁵²¹ Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

⁵²² Potgieter Commission (1977).

⁵²³ Potgieter Commission (1977).

⁵²⁴ Flisher *et al* 2012 *Journal of Child and Adolescent Mental Health* 149; Mokitimi *et al* 2018 *International Journal of Mental Health Systems* 2.

a public health priority.⁵²⁵ With a dedication to incorporating mental health care into primary and community care settings, this new Strategic Plan acknowledges the need to increase funding for mental health services.⁵²⁶ By sharing tasks and increasing the number of health care providers, the focus is on tackling co-morbidity, lowering stigma, and improving accessibility.⁵²⁷ Although there are national policies to address the mental health problem, different provinces execute them at differing degrees, which emphasises the need for more uniform enforcement and oversight procedures.⁵²⁸

4.5 Conclusion

The fulfilment of human rights is crucial to achieve international, regional, and national legal goals, and ensure just and equitable societies in which all humans can enjoy their human rights and freedoms, however, the challenges and barriers experienced in South Africa hampering the optimal realisation of everyone's right of access to health care, were discussed in this chapter.

From the discussion, it became evident that realising the right of access to (mental) health care for children and adolescents is extremely important. Focusing on South Africa, it was recognised that societal stigma, lack of support for and awareness, understanding and knowledge regarding mental illnesses create barriers to fulfilling this right. Budgeting constraints, entrenched cultural beliefs and practices, as well as systematic issues hampering the State in fulfilling its duty towards its inhabitants, were also outlined.

In casting light on the way forward, South African policy providing for care services for mental illnesses among its inhabitants was demarcated. It is in line herewith that concluding remarks and possible recommendations on how to overcome the identified

⁵²⁵ Peterson *et al* 2016 *British Journal of Psychiatry* 34.

⁵²⁶ Shisana *et al* 2024 *Comprehensive Psychiatry* 2

⁵²⁷ Shisana *et al* 2024 *Comprehensive Psychiatry* 2.

⁵²⁸ National Planning Commission 2024 https://www.nationalplanningcommission.org.za/assets/Documents/Mental%20Health%20Situational%20Analysis%20South%20Africa%20final%20Report_May%202024.pdf.

barriers hampering the optimal fulfilment of the right of access to health care in South Africa are drawn and made in the next chapter.

CHAPTER 5 CONCLUSION

5.1 Introduction

The main objective of this study was to explore the extent to which South Africa is complying with international standards regarding the realisation of the right to health care services for children and adolescents diagnosed with clinical depression. To achieve this objective, the right of children and adolescents to mental health care services was analysed, the current position in international and regional law regarding the duty to realise children and adolescent's right to mental health care, was discussed, and the legal duty of the South African State to realise children and adolescent's rights to mental health care was explored. This chapter aims to provide an overview of the different preceding chapters, summarise the core findings, and draw conclusions based on these findings.

5.2 Overview of the study

5.2.1 Chapter 1

In chapter one, the serious issue of mental health (with a focus on clinical depression) among children and adolescents was introduced (*cf.* 1). Despite the vitalness of mental wellbeing for young people to grow, learn, and optimally function in society, it became evident that many children and adolescents face significant mental challenges such as anxiety, depression leading to suicidal thoughts (*cf.* 12). From a review of literature, it became clear that most of these children and adolescents go undiagnosed and untreated, especially in low-income countries like South Africa, where mental health is not always prioritised due to limited resources (*cf.* 29).

Emphasis was placed on South Africa's duty to realise everyone's right of access to health care in accordance with ratifying international and regional human rights laws, such as the *International Covenant on Economic, Social, and Cultural Rights* (*cf.* 36) and the *Convention on the Rights of the Child* (*cf.* 45). The legal responsibilities of the South African government under its *Constitution* and other national laws to protect children's health rights, especially to mental health care, was alongside demarcated which emphasised the gap between what is legally promised and what is delivered in

practice (*cf.* 55). Article 12 of the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) guaranteed the "highest attainable standard of physical and mental health," reaffirming the right to health as a fundamental human right. The CESCR General Comment No. 14, which states that health care must meet the four pillars of availability, accessibility, acceptability, and quality, significantly increased the normative content of this right.

Governments have been compelled by Article 24 of the UN Convention on the Rights of the Child (CRC) to modify domestic legislative frameworks in order to guarantee that children receive the appropriate medical care. The UN Convention CRPD and the ICESCR both accept a broad definition of disability and reaffirm that everyone with a disability shall have equal access to healthcare.

It was in line with this awareness that the problem for this study was stated, and the research questions and objectives outlined in this chapter. The research methodology followed to reach these objectives was explained, and a framework for the study was provided.

5.2.2 Chapter 2

Chapter two reported on the international and regional legal frameworks that support the right of access to health care, especially for children and adolescents. It started by highlighting how major international human rights documents, such as the *Universal Declaration of Human Rights* and the World Health Organisation's Constitution, recognise access to health care as a basic human right (*cf.* 83). The chapter focused on four key legal instruments, namely, the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* which calls for the progressive realisation of health rights based on available resources (*cf.* 110); the *Convention on the Rights of the Child (CRC)* which guarantees every child's right to the highest attainable standard of health and requires governments to ensure access to health care (*cf.* 127); the *Convention on the Rights of Persons with Disabilities (CRPD)* which protects individuals, including children with mental disabilities, from discrimination and promotes inclusive health care (*cf.* 128); as well as the *African Charter on the Rights and Welfare of the Child (ACRWC)* which focuses on children's unique needs in the

African context and requires States to protect their physical and mental wellbeing (*cf.* 146). The Republic of South Africa's 1996 Constitution, which is the ultimate law and the cornerstone of the social compact between the state and its people, is first given structural prominence. This research specifically examines Section 27(1)(a), which ensures that everyone has access to healthcare services, in conjunction with the State's obligation under Section 27(2) to enact acceptable legislation within the limits of its resources. This constitutional inquiry centers on Section 28(1)(c), which specifically provides minors the right to "basic health care services." This is crucial given the breadth of the examination. Notably, Section 28(1)(c) is an instant, unqualified obligation that is not subject to the gradual realization or resource limits found in Section 27, according to South African jurisprudence. The *Mental Health Care Act*, a specific legislative framework intended to govern the provision, treatment, and rehabilitation of mental health services. The primary goal of the study, which is to assess children's and adolescents' statutory rights to mental health treatments and map the State's legal obligation to uphold these rights, methodically directs this conversation. This study's major lens is clinical depression because it focuses on children and adolescents who are experiencing it.

The chapter noted that, although these frameworks provide strong legal protection, many African countries, including South Africa, face challenges in fully implementing them due to, among others, lack of funding, political will, corruption, and poor resource management (*cf.* 150). It concluded by stating that while international law has made significant progress in defining the right to health care, its impact depends on clear national responsibilities and proper implementation (*cf.* 165).

5.2.3 Chapter 3

In chapter three, focus was placed on the national legal framework of South Africa concerning the right of access to health care, especially mental health care for children and adolescents. As the highest law in the country, the importance of the *Constitution* was reflected upon (*cf.* 173). It was noted that the *Constitution* guarantees everyone the right of access to health care services under Section 27, including mental health care as part of overall wellbeing (*cf.* 169). Emphasis was placed on Section 28,

specifically protecting children's rights and identifying access to health care as an immediate and unqualified right (*cf.* 232).

In this chapter, attention is also paid to the adoption of important legislation, such as the *Mental Health Care Act*, aimed at protecting the rights of mental health care users and promoting the integration of mental health into general health services, especially at community and primary care levels (*cf.* 214). The *National Health Act* was also highlighted for establishing the structure of the country's health care system and ensuring equal access, particularly for vulnerable groups such as children and people with disabilities (*cf.* 217). To realise these legal directives, the *National Mental Health Policy Framework and Strategic Plans* (2013–2020 and 2023–2030) aimed at improving mental health services in South Africa by shifting health care from hospitals to community-based services, were also discussed (*cf.* 272).

The analysis shows that international human rights provisions are textually supported by South Africa's domestic laws. Realizing children's and adolescents' right to equitable access to mental healthcare is a crucial way to improve their quality of life and unleash their potential, not just a legal box to be checked. This chapter further emphasizes how the right to obtain healthcare services (Section 27) is intrinsically linked to the rights to human dignity (Section 10) and life (Section 11). Socioeconomic rights must be viewed through the lens of the fundamental principles of life and dignity. Although South Africa has made excellent progress in establishing enforceable mental health protections, as demonstrated by the MHCA's rights-based protections, there is still a significant gap between *de jure* policy and *de facto* reality. There are still major operational and structural challenges to be addressed because a strong legal framework has not yet resulted in equitable, high-quality treatment on the ground.

From the discussion, it became clear that South Africa has made significant strides to strengthen its mental health care system (*cf.* 316). It, however, equally became apparent that, due to practical shortcomings and lack of readiness at the service level, this country still struggles to translate legislation regarding the treatment of mental health centre users into reality. Conclusions drawn in this chapter include that this country continues to wrestle with realising the right of access to health care as lack of

funds being allocated to health care, the shortage of trained professionals, poor access to health services in rural areas, and stigma surrounding mental illnesses continue to hamper the implementation of legislation in practice (*cf.* 304), thus necessitating more practical efforts to ensure that children and adolescents indeed benefit from accessible, quality mental health care (*cf.* 308).

5.2.4 Chapter 4

In chapter four, the difficulties and obstacles faced in South Africa that prevent the fullest possible realisation of everyone's right of access to health care, as well as the practical realisation of human rights as essential to achieving legal objectives and ensuring just and equitable societies in which all people can enjoy their freedoms and rights, were explained. Because mental health has been portrayed as a challenging issue that hinders society's overall wellbeing and productivity, and even contributes significantly to child and adolescent mortality, focus was placed on the realisation of children's and adolescents' right of access to mental health care.

This chapter has critically assessed the structural barriers and systemic fractures that actively obstruct the realization of the right to healthcare within the South African state, even though the progressive fulfillment of human rights continues to be the fundamental baseline for attaining international, regional, and national legal goals. The explanation above emphasizes that operationalizing children's and adolescents' right to obtain mental healthcare is a peremptory constitutional and international requirement rather than just an auxiliary policy goal.

However, there is a significant gap between *de facto* public health realities and *de jure* regulatory frameworks when these standards are applied domestically. It was recognised that societal stigma, lack of support for and awareness, understanding and knowledge regarding mental illnesses (of which clinical depression is an example), still create barriers to fulfilling the right of access to health care in South Africa. Budgeting constraints, entrenched cultural beliefs and practices, as well as systematic issues hindering the State from fulfilling its duty towards its inhabitants, were alongside outlined.

5.3 Findings

The study explored whether South Africa meets international standards in realising the right of children and adolescents with clinical depression to access mental health care. The following findings were made.

State parties are obliged by international law to guarantee equitable (no institutional unfair discrimination) access to health care in their respective countries. The *CRC* appeals to all States to adopt legislation to provide children and adolescents with the necessary nourishment and medical treatment to ensure a healthy youth. The *African Charter on the Rights and Welfare of the Child*, on a regional level, imposes a positive duty on States to take all necessary steps to promote the health of all their citizens and ensure that everyone receives adequate medical care when necessary. Focusing on South Africa, it was found that obligations placed on the State often have little practical significance if the measures identified to ensure its implementation are not clearly identified and if the relevant responsibility bearers do not ensure its realisation on the ground level.

It was found that South Africa's national legal framework supports international legal imperatives relating to protecting and promoting the right of equal access to health care and to realise this right for children and adolescents, specifically, raise their standard of living and unleash the potential of every individual. It was, moreover, found that the rights to life (section 11) and dignity (section 10) guaranteed by the *Constitution* are intimately related to the right to health care because delaying vital medical care can lead to serious illnesses that compromise one's dignity or even death. From a constitutional standpoint, these budgetary restrictions show that the State has failed to implement the "reasonable legislative and other measures" required by Section 27(2) of the Constitution. Importantly, these systemic backlogs violate Section 28(1)(c) when it comes to children and adolescents. Given that children's access to basic healthcare services is an immediate, non-derogable entitlement free from the internal modifiers of "progressive realization" or "available resources," the current implementation gap verges on a clear violation of the Constitution. It was, however, also found that, even though South Africa has taken significant steps to improve its

mental health system, such as amending the *Mental Health Care Act*, identifying *National Mental Health Policy Framework and Strategic Plans*, and moving toward equitable health care services through its *National Health Insurance Policy*, there are still many barriers to overcome in putting these policies into practice.

Barriers such as societal stigma, a lack of support for and awareness, understanding and knowledge regarding mental illnesses together with budgeting constraints, entrenched cultural beliefs and practices, as well as systematic issues continue to hinder the State in optimally realising everyone's right of access to health care in South Africa, thus, creating a major gap between legal imperatives and practice. Access to mental health services remains under-prioritised, receiving only a small amount of the health budget, leaving many children and adolescents untreated and vulnerable to social exclusion, poor education and even suicide.

5.4 Recommendations

Based on the findings of this study, the following recommendations are made:

- Clear measures must be identified to ensure the effective implementation of legislation adopted to guarantee and ensure the fulfilment of the right of access to health care.
- Suitable individuals must be identified to act as responsibility bearers, and their duties must be clearly identified, allowing for a thorough monitoring process to ensure compliance and accountability as well as to prevent corruption.
- Strategic plans to ensure the fulfilment of the right of access to health care must be compiled in collaboration with health care users to ensure that their needs are met.
- The social stigma attached to mental illnesses should be addressed by launching national campaigns to educate the public about mental illnesses, such as clinical depression. Nationwide education campaigns should be implemented to raise awareness. Mental illness should also be part of the school curriculum, ensuring that stigmatisation is addressed and illnesses are identified earlier.
- The prevailing lack of support for and awareness, understanding and knowledge regarding mental illnesses should be alleviated by campaigns such

as the #Not Alone campaign and therefore, more emphasis should be placed on these campaigns to educate individuals. Health care workers, parents and family members should all receive training in mental health first aid, therefore, ensuring early support.

- A transparent budgeting and monitoring system is essential to ensure that the Life Esidimeni tragedy is not relived. A larger share of the budget can be shifted towards primary health care as well as community-based care. Ensuring that funds are equitably distributed between urban and rural areas is equally important. Investment at the district and regional general hospital level, especially for emergency admissions linked to psychosis and self-harm, should be prioritised.
- Entrenched cultural beliefs and practices in the community are addressable by engaging with community leaders as well as traditional healers to eliminate stigmatisation.
- Systemic barriers should be addressed through the provision of more qualified personnel. Primary health care workers can receive training to identify child and adolescent mental health issues early on. All community health workers, like clinical associates as well as certified counsellors, should get the necessary training in fundamental mental health competencies. To alleviate the shortage of mental health professionals, bursaries could be made available, thus encouraging potential specialisation in child and adolescent psychiatry.
- The capacity to offer mental health treatments may be further increased by training and upskilling more medical staff members, such as clinical associates and certified counsellors, at primary health care facilities.
- The effective implementation of legislation requires a stronger mental health governance framework in South Africa. For example, the *Mental Health Care Act* can be amended to include children and adolescents. Sections 27 and 28 of the *Constitution* can also be enforced by setting targets and reporting to the South African Human Rights Commission.

Although the South African mental health care system faces many difficulties, these issues are not insurmountable. Through raising public awareness, making

improvements, and funding cooperative projects, South Africa can create a mental health care system that is more effective and inclusive.

5.5 Contribution of this study

The study aimed at contributing to the field of International Child Law, constituting a network of international, regional, and national law. As such, international and regional documents, together with the South African legal framework, were analysed. Emphasis was placed on the duty of State parties to ensure the realisation of children and adolescents' right of access to health care. In noting a gap between the law and practice, this study identified existing challenges hampering the effective realisation of this right in South Africa and made recommendations to alleviate these challenges. Due to the importance of human wellbeing, this study contributed to the larger discussion on social justice, human dignity, and health equality.

BIBLIOGRAPHY

Literature

Acobe 2024 *Frontiers in Psychology*

Acobe EF "Social Support and Mental Health: The Mediating Role of Perceived Stress 2024 *Frontiers in Psychology* 1-12"

Adu-Gyamfi and Keating 2013 *Sacha Journal of Human Rights*

Adu-Gyamfi J and Keating F "Convergence and Divergence Between the UN Convention on the Rights of the Children and the African Charter on the Rights and Welfare of the Child" 2013 *Sacha Journal of Human Rights* 47-58

Ahad *et al* 2023 *Cureus*

Ahad AA *et al* "Understanding and Addressing Mental Health Stigma Across Cultures for Improving Psychiatric Care: A Narrative Review" 2023 *Cureus* 1-8

American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders*

American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* 5th ed (American Psychiatric Association Arlington, VA 2013)

Anjorin and Wada 2022 *Analysis of Medicine and Surgery*

Anjorin O and Wada YH 2022 "Impact of Traditional Healers in the Provision of Mental Health Services in Nigeria" 2022 *Analysis of Medicine and Surgery* 1-3

Aratani and Cooper 2012 *The Journal of Behavioural Health Services & Research*

Aratani Y and Cooper J "Racial and Ethnic Disparities in the Continuation of Community Based Children's Mental Health Services" 2012 *The Journal of Behavioural Health Services & Research* 116-129

Babatunde *et al* 2020 *J Child Adolesc Ment Health*

Babatunde GB *et al* "Planning for Child and Adolescent Mental Health Interventions in a Rural District of South Africa: A situational analysis" 2020 *Journal of Child & Adolescent Mental Health* 45-65

Bartels *et al* 2021 *Revista Colombiana de Psiquiatría*

Bartels SM *et al* "Barriers and Facilitators to the Diagnosis and Treatment of Depression in Primary Care in Colombia: Perspectives of Providers, Healthcare Administrators, Patients and Community Representatives" 2021 *Revista Colombiana de Psiquiatría* 64-72

Bassi *et al* 2024 *Digital Health*

Bassi EM *et al* "Perceptions of Mental Health Providers of the Barriers and Facilitators of Using and Engaging Youth in Digital Mental-Health-Enabled Measurement Based Care" 2024 *Digital Health*

Bitsko *et al* 2022 *Morbidity and Motility Weekly Report*

Bitsko RH *et al* "Mental Health Surveillance Among Children — United States, 2013–2019" 2022 *Morbidity and Motility Weekly Report* 1–42

Boezaart and Skelton "From Pillar to Post: Legal Solutions for Children with Debilitating Conduct Disorder""

Boezaart and Skelton "From Pillar to Post: Legal Solutions for Children with Debilitating Conduct Disorder" in Grobbelaar-du Plessis I and van Reenen T (eds) *Aspects of Disability Law in Africa* (PULP Pretoria 2011) 107-131

Buchner-Eveleigh 2016 *De Jure* 310.

Buchner-Eveleigh M "Children's Rights of Access to Health Care Services and to Basic Health Care Services: A Critical Analysis of Case Law, Legislation and Policy" 2016 *De Jure* 307-325.

Burns 2011 *The Equal Rights Review*

Burns JK "The Mental Health Gap in South Africa: A Human Rights Issue" 2011
The Equal Rights Review 99-113

Bruffaerts *et al* 2019 *International Journal of Methods in Psychiatric Research*

Bruffaerts R *et al* "Lifetime and 12-month Treatment for Mental Disorders and Suicidal Thoughts and Behaviors Among First Year College Students" 2019
International Journal of Methods in Psychiatric Research 1-15

Brohan and Thornicroft 2010 *Occupational Medicine*

Brohan E and Thornicroft G "Stigma and Discrimination of Mental Health Problems: Workplace Implications" 2010 *Occupational Medicine* 414-415

Brown *et al* 2023 *SSM- Mental Health*

Brown LJ *et al* "A Latent Class Analysis of Young Women's Co-occurring Health Risks in Urban Informal Settlements in Durban, South Africa" 2023
SSM- Mental Health 1-13

Caulfield *et al* 2019 *BMJ Open*

Caulfield A *et al* "WHO Guidance on Mental Health Training: A Systematic Review of the Progress for Non-specialist Health Workers" 2019 *BMJ Open* 1-16

Chirwa 2003 *SAJHR*

Chirwa DM "The Right to Health in International Law: Its Implications for the Obligations of State and Non-state Actors in Ensuring Access to Essential Medicine" 2003 *SAJHR* 541-566

Chronister *et al* 2021 *Rehabil Psychol*

Chronister J *et al* "The Meaning of Social Support for Persons with Serious Mental Illness: A Family Member Perspective" 2021 *Rehabil Psychol* 87-101

Chukwuere *et al* 2022 *Curationis*

Chukwuere PC *et al* "Experiences of Adolescents and Parents on the Mental Health Management of Depression in Adolescents, Northwest Province, South Africa" 2022 *Curationis* 1-9

Currie and De Waal *The Bill of Rights Handbook*

Currie I and De Waal J *The Bill of Rights Handbook* 6th ed (Juta Cape Town 2017)

Dambrun *et al* 2024 *Frontiers Psychiatry*

Dambrun M *et al* 'Social Perceptions and the Stigmatization Towards Fifteen Mental Illnesses in France: A Preliminary Study on the Role of Vital Force and Burden" 2024 *Frontiers Psychiatry* 1-9

Dawes *et al* 2012 *Journal of Child and Adolescent Mental Health*

Dawes A *et al* "Child and Adolescent Mental Health in South Africa" 2012 *Journal of Child and Adolescent Mental Health* 149-161

Dawson-Squibb *et al* 2022 *International Journal of Environmental Research and Public Health*

Dawson-Squibb JJ *et al* "Bringing Parent-Child Interaction Therapy to South Africa: Barriers and Facilitators and Overall Feasibility-First Steps to Implementation" 2022 *International Journal of Environmental Research and Public Health* 1-20

De Vos and Friedman *South African Constitutional Law in Context*

De Vos P and Friedman W (eds) *South African Constitutional Law in Context* 2nd ed (Oxford University Press South Africa 2022)

De Wolf and Toebe 2016 *Health and Human Rights*

De Wolf AH and Toebe B "Assessing Private Sector Involvement in Health Care and Universal Health Coverage in Light of the Right to Health" 2016 *Health and Human Rights* 79-92

Dhai and Mahomed 2018 *South African Journal of Bioethics and Law*

Dhai A and Mahomed S "Healthcare in Crises: A Shameful Disrespect of our Constitution" *South African Journal of Bioethics and Law* 8-10

Dhai 2025 *SAMJ*

Dhai A "Our Healthcare Workers Need Protection" 2025 *SAMJ* 3

Dhai 2026 *SAMJ*

Dhai A "The Life Esidimeni tragedy: A decade later" 2025 *SAMJ* 4

Di Giacomo *et al* 2024 *Italian Journal of Psychiatry*

Di Giacomo E *et al* 2024. "Adolescence and the Intergenerational Transmission of Mental Illness and Self-harming" 2024 *Italian Journal of Psychiatry* 73-75

Dlamini 2020 *Mental Health Matters*

Dlamini NN "Unbundling the Mental Health act" 2020 *Mental Health Matters* 7-9

Docrat *et al* 2019 *Health Policy and Planning*

Docrat S *et al* "Mental Health System Costs, Resources and Constraints in South Africa: A National Survey" 2019 *Health Policy and Planning* 706-71

Ekundayo 2015 *International Journal of Humanities and Social Science*

Ekundayo OS "Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the

Child (CRC)'s Provisions?: Examining the Similarities and the Differences between the ACRWC and the CRC" 2015 *International Journal of Humanities and Social Science* 143-158.

Filia *et al* 2024 *International Journal of Social Psychiatry*

Filia K *et al* "Inequitable Access to Mental Healthcare for Socially Excluded Adolescents" 2024 *International Journal of Social Psychiatry* 1267-1278

Flisher *et al* 2012 *Journal of Child and Adolescent Mental Health*

Flisher AJ *et al* "Child and Adolescent Mental Health in South Africa" 2012 *Journal of Child and Adolescent Mental Health* 149-61

Fobosi 2024 *Potchefstroom Electronic Law Journal*

Fobosi SC "The Protection of Human Rights in South Africa: Unpacking the Duty of the State to Realise the Right to Development" 2024 *Potchefstroom Electronic Law Journal* 1-20

Ford *et al* 2021 *British Medical Journal*

Ford T *et al* "Mental Health of Children and Young People During Pandemic" 2021 *British Medical Journal* 945-959

Fonman 2016 *Ottawa Law Review*

Fonman L "Can Minimum Core Obligations Survive a Reasonableness Standard of Review Under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?" 2016 *Ottawa Law Review* 557-573

Funk *et al* 2008 *Mental Health in Family Medicine*

Funk M *et al* "Faydi Integrating Mental Health into Primary Healthcare" 2008 *Mental Health in Family Medicine* 5–8

Gray and Vawda 2018 *South African Health Review*

Gray A and Vawda Y "Health Legislation and Policy" 2018 *South African Health Review* 1-11

Grover and Joshi 2014 *Global Journal of Health Science*

Grover A and Joshi A "An Overview of Chronic Disease Models: A Systematic Literature Review" 2014 *Global Journal of Health Science* 210–227

Grover *et al* 2020 *Asian Journal of Psychiatry*

Grover S *et al* "Why all COVID-19 Hospitals Should Have Mental Health Professionals: The Importance of Mental Health in a Worldwide Crisis!" 2020 *Asian Journal of Psychiatry* 1-8

Hidaka 2012 *Journal of Affective Disorders*

Hidaka BH "Depression as a Disease of Modernity: Explanations for Increasing Prevalence" 2012 *Journal of Affective Disorders* 205-214

Hoag "International Covenant on Economic, Social, and Cultural Rights"

Hoag RW "International Covenant on Economic, Social, and Cultural Rights" in Chatterjee DK (eds) *Encyclopedia of Global Justice* (Springer Dordrecht 2011) 546-547

Hopkins 2001 *De Rebus* 26

Hopkins K "International Law in South African Courts" 2001 *De Rebus* 25-27

Hunt 2016 *Health Hum Rights*

Hunt P "Interpreting the International Right to Health in a Human Rights-Based Approach to Health" 2016 *Health Hum Rights* 109-130

Janse van Rensburg *et al* 2022 *Health Policy Plan*

Janse van Rensburg B *et al* "Profile of the Current Psychiatrist Workforce in South Africa: Establishing a Baseline for Human Resource Planning and Strategy" 2022 *Health Policy Plan* 492-504

Juma 2024 *African Disability Rights Yearbook*

Juma PO "Regional developments: Ratification of the protocol to the african charter on human and peoples' rights on the rights of persons with disabilities in africa: an overview of the implications" 2024 *African Disability Rights Yearbook* 2011-2018

Kaminer and Eagle 2017 *South African Journal of Psychology*

Kaminer D and Eagle GT "Interventions for Posttraumatic Stress Disorder: A Review of the Evidence Base" 2017 *South African Journal of Psychology* 7-22

Kreiner 2025 *Focus*

Kreiner GE "Stopping Mental Illness Stigma: Changing Attitudes, Language, and Policies" 2025 *Focus* 2-8

Kidd *The Contribution of Family Medicine to Improving Health Systems: A Guidebook from the World Organization of Family Doctors*

Kidd M *The Contribution of Family Medicine to Improving Health Systems: A Guidebook from the World Organization of Family Doctors* 2nd ed (CRC Press New Zealand 2013)

Kirkbride 2024 *World Psychiatry*

Kirkbride JB *et al* "The social determinants of mental health and disorder: evidence, prevention and recommendations" 2024 *World Psychiatry* 58-90

Kleintjies *et al* 2010 *African Journal of Psychiatry*

Kleintjies S *et al* "A Situational Analysis of Child and Adolescent Mental Health Services in Ghana, Uganda, South Africa and Zambia" 2010 *African Journal of Psychiatry* 132-139

Kleintjies and Sneider 2023 *SSM-Mental Health*

Kleintjies S and Sneider M "History and Politics of Mental Health Policy and Care in South Africa" 2023 *SSM-Mental Health* 1-8

Lake *et al* 2029 *South African Child Gauge*

Lake L *et al* "Prioritising Child and Adolescent Health: A Human Rights Imperative" 2019 *South African Child Gauge* 32-36

Levesque 1995 *Fordham International Law Journal*

Levesque RJR "Geraldine Van Bueren, The International Law on the Rights of the Child" 1995 *Fordham International Law Journal* 832-839

Li *et al* 2023 *BMJ Mental Health*

Li G *et al* "Understanding the Protective Effect of Social Support on Depression Symptomatology from a Longitudinal Network Perspective" 2023 *BMJ Mental Health* 1-7

Loza and Omar 2017 *BJ Psych Int*

Loza N and Omar MH "The Rights of Persons with Mental Disabilities: Is the UN Convention the Answer? An Arab Perspective" 2017 *BJPsych Int* 53-55

Lund *et al* 2012 *African Journal of Psychiatry*

Lund C *et al* "Mental Health Services in South Africa: Taking Stock" 2012 *African Journal of Psychiatry* 402-405

Ma *et al* 2023 *BMC Public Health*

Ma J *et al* "Facilitators and Barriers in the Development and Implementation of Depression Prevention and Treatment Policies in China: A Qualitative Study" 2023 *BMC Public Health* 1-15

Mulaudzi *et al* 2020 *South Africa's Curationis*

Mulaudzi NP *et al* "Working Conditions in a Mental Health Institution: An Exploratory Study of Professional Nurses in Limpopo Province" 2020 *South Africa's Curationis* 1-8

Marais *et al* 2020 *PLOS ONE*

Marais DL *et al* "Making Consultation Meaningful: Insights from a Case Study of the South African Mental Health Policy Consultation Process" 2020 *PLOS ONE* 1-28

Mboweni *et al* 2023 *Healthcare*

Mboweni EN *et al* "Exploring Mental Health Awareness: A Study on Knowledge and Perceptions of Mental Health Disorders Among Residents of Matsafeni Village, Mbombela, Mpumalanga Province" 2023 *Healthcare* 1-13

McLeod *et al* 2012 *Journal of Health and Social Behavior*

McLeod JD *et al* "Adolescent Mental Health, Behavior Problems, and Academic Achievement" 2012 *Journal of Health and Social Behavior* 482–497

Meldahl *et al* 2022 *Health Expectations*

Meldahl LG *et al* "Characteristics of the Ideal Healthcare Services to Meet Adolescents' Mental Health Needs: A Qualitative Study of Adolescents' Perspectives" 2022 *Health Expectations* 2924-2936

Meyer *et al* 2019 *South African Family Practice*

Meyer JC *et al* "Mental Health Care - A Public Health Priority in South Africa" 2019 *South African Family Practice* 25-30

Michaud *et al* 2020 *European Journal of Public Health*

Michaud PA *et al* "Availability and Accessibility of Primary Mental Health Services for Adolescents: An Overview of National Recommendations and Services in EU" 2020 *European Journal of Public Health* 1127-1133

Mindu *et al* 2023 *International Journal of Environmental Research and Public Health*

Mindu T *et al* "Digital Mental Health Interventions for Young People in Rural South Africa: Prospects and Challenges for Implementation" 2023 *International Journal of Environmental Research and Public Health* 1-15

Moagi *et al* "Indigenous Health Care Practices in the Treatment of Mental Illness in South Africa"

Moagi M *et al* 2022, "Indigenous Health Care Practices in the Treatment of Mental Illness in South Africa" In: Mulaudzi FM and Lebesse RT (eds) *Working with Indigenous Knowledge: Strategies for Health Professionals* (AOSIS Books Cape Town) 161–172

Mokitimi *et al* 2018 *International Journal of Mental Health Systems*

Mokitimi S *et al* "Child and Adolescent Mental Health Policy in South Africa: History, Current Policy Development and Implementation, and Policy Analysis" 2018 *International Journal of Mental Health Systems* 1-15

Mokitimi *et al* 2019 *Frontiers in Psychiatry*

Mokitimi S *et al* "Child and Adolescent Mental Health Services in South Africa- Senior Stakeholders Perceptions of Strengths, Weaknesses, Opportunities, and Threats in the Western Cape Province" 2019 *Front Psychiatry* 1-13

Mokgaola *et al* 2022 *The Open Public Health Journal*

Mokgaola IO *et al* "The Status of Integrating Children and Adolescents' Mental Health Care Services into Primary Health Care in South Africa: Scoping Review "2022 *The Open Public Health Journal* 1-8

Monnapula-Mazabane and Petersen 2022 *South African Journal of Psychiatry*

Monnapula-Mazabane P and Petersen I "Feasibility and Acceptability of a Mental Health Stigma Intervention for Low-income South African Caregivers: A Qualitative Investigation" 2022 *South African Journal of Psychiatry* 1-9

Moodley *et al* 2022 *BMC Health Services Research*

Moodley SV *et al* "Mental Health Task-sharing in South Africa – A Role for Clinical Associates? " 2022 *BMC Health Serv Res* 1-9

Morar *et al* 2024 BJPSYCH International

Morar T *et al* "Is Mental Health in South Africa Moving Forward? " 2024 BJPSYCH International 1-3

Morris *et al* 2019 *Disability and Rehabilitation*

Morris LD *et al* "Health System Challenges Affecting Rehabilitation Services in South Africa" 2019 *Disability and Rehabilitation* 877–883

Muhorakeye and Biracyaza 2021 *Frontiers Psychology*

Muhorakeye O and Biracyaza E 2021. "Exploring Barriers to Mental Health Services Utilization at Kabutare District Hospital of Rwanda: Perspectives from Patients" 2021 *Frontiers Psychology* 1-13

Musyimi *et al* 2018 *BMC Complementary and Alternative Medicine*

Musyimi CW *et al* "Exploring Mental Health Practice Among Traditional Health Practitioners: A qualitative Study in Rural Kenya" 2018 *BMC Complementary and Alternative Medicine* 1–10

Naidoo *et al* 2024 *Acta Criminologica: African Journal of Criminology & Victimology*

Naidoo S *et al* "Beaten, Broken and Behind Bars: A Story of Female Inmates with a Lifetime History of Trauma and Mental Illness in Durban, South Africa" 2024 *Acta Criminologica: African Journal of Criminology & Victimology* 46-67

Nampewo *et al* 2022 *International Journal for Equity in Health*

Nampewo Z *et al* "Respecting, Protecting and Fulfilling the Human Right to Health" 2022 *Int J Equity Health* 1-13

Ndeti 2013 *African Journal of Psychiatry*

Ndeti DM "Traditional Healers and Provision of Mental Health Services in Cosmopolitan Informal Settlements in Nairobi, Kenya" 2013 *African Journal of Psychiatry* 134–140

Nompumelelo *et al* 2019 *African Health Sciences*

Nompumelelo M *et al* "Core Competencies Acquired in Indigenous Training of Traditional Health Practitioners in KwaZulu-Natal" 2019 *African Health Sciences* 3100–3106

Ngobeni *et al* 2020 *Cost Effectiveness and Resource Allocation*

Ngobeni V *et al* "Technical Efficiency of Provincial Public Healthcare in South Africa" 2020 *Cost Eff Resour Alloc* 1-19

Okafor *et al* *African Journal of Primary Health Care & Family Medicine*

Okafor IP *et al* "Role of Traditional Beliefs in the Knowledge and Perceptions of Mental Health and Illness Amongst Rural-dwelling Women in Western Nigeria" 2022 *African Journal of Primary Health Care & Family Medicine* 1-8

Omarjee *et al* 2023 *Child Abuse Research in South Africa*

Omarjee N *et al* "Children's Rights: The Need for Care, Safety and Protection" 2023 *Child Abuse Research in South Africa* 56-71

Papachristopoulos *et al* 2023 *BMC Prim Care*

Papachristopoulos I *et al* "General Practitioners' Views Towards Management of Common Mental Health Disorders: The Critical Role of Continuing Medical Education" 2023 *BMC Prim. Care* 1-10

Paruk and Karim 2016 *South African Medical Journal*

Paruk S and Karim E "Update on Adolescent Mental Health" 2016 *South African Medical Journal* 548-550

Patel *et al* 2007 *Lancet*

Patel V *et al* "Mental Health of Young People: A Global Public-health Challenge" 2007 *Lancet* 1302-1313

Peterson *et al* 2016 *British Journal of Psychiatry*

Petersen I *et al* "Integrating Mental Health into Chronic Care in South Africa: The Development of a District Mental Healthcare Plan" 2016 *British Journal of Psychiatry* 29-39

Pienaar 2025 *Laws*

Pienaar L 2025 "The Evolution of Mental Health Legislation in South Africa: Towards a Rights-based Approach" 2025 *Laws* 1-26

Pieterse 2006 *South African Journal on Human Rights*

Pieterse M "Resuscitating Socio-Economic Rights: Constitutional Entitlements to Health Care Services" 2006 *South African Journal on Human Rights* 473-502

Pillay 2019 *South African Journal of Psychology*

Pillay Y "State of Mental Health and Illness in South Africa" 2019 *South African Journal of Psychology* 463-466

Platell *et al* 2017 *Advances in Mental Health*

Platell M *et al* "Barriers to Mental Health Care for Disadvantaged Adolescents: Perspectives of Service Providers" 2017 *Advances in Mental Health* 198-210

Prizeman *et al* 2023 *BMC Psychiatry*

Prizeman K *et al* "Effects of Mental Health Stigma on Loneliness, Social Isolation and Relationships in Young People with Depression Symptoms" 2023 *BMC Psychiatry* 1-15

Ramokgopa 2012 *African Journal of Psychiatry*

Ramokgopa G "A Milestone for Mental Health in South Africa" 2012 *African Journal of Psychiatry* 379

Reyneke 2023 *Child Abuse Research in South Africa*

Reyneke R "Understanding Learners' Adverse Childhood Experiences in Township Schools: Towards Implementing Trauma-informed approaches" 2023 *Child Abuse Research in South Africa* 44-60

Rheeder 2021 *South African Journal of Bioethics and Law*

Rheeder R "Corruption in the Public Health Sector in South Africa: A Global Bioethical Perspective" 2021 *South African Journal of Bioethics and Law* 84-88

Romanova *et al* 2024 *Patient Education and Counselling*

Romanova A *et al* "Improving Health and Scientific Literacy in Disadvantaged Groups: A Scoping Review of Interventions" 2024 *Patient Education and Counseling*. 1-11

Romeo 2017 *Brain Research*

Romeo RD "The Impact of Stress on the Structure of the Adolescent Brain: Implications for Adolescent Mental Health" 2017 *Brain Research* 185-191

Saade *et al* 2023 *BMC Health Services Research*

Saade S *et al* "What Barriers Could Impede Access to Mental Health Services for Children and Adolescents in Africa? A Scoping Review" 2023 *BMC Health Serv Res* 1-16

Saul "Introduction: The Drafting of the International Covenant on Economic, Social and Cultural Rights 1948-1966"

Saul B *Introduction: The Drafting of the International Covenant on Economic, Social and Cultural Rights, 1948-1966* (Sydney Law School Research Paper No. 15/79)

Sartorius 2007 *Lancet*

Sartorius N "Stigma and Mental Health" 2007 *Lancet* 810-811

Schlack *et al* 2021 *Journal of Health Monitoring*

Schlack R *et al* "The Effects of Mental Health Problems in Childhood and Adolescence in Young Adults: Results of the KiGGS Cohort" 2021 *Journal of Health Monitoring* 3-19

Schneider *et al* 2016 *South African Health Review*

Schneider M *et al* "Integrating Mental Health into South Africa's Health System: Current Status and Way Forward" 2016 *South African Health Review* 153-163

Selph and McDonagh 2019 *American Family Physician*

Selph SS and McDonagh MS "Depression in Children and Adolescents: Evaluation and Treatment" 2019 *American Family Physician* 609-617

Sehularo *et al* 2022 *Gender and Behaviour*

Sehularo LA *et al* (2022) "Mental Health in an Unequal World: The South African Experience" 2022 *Gender and Behaviour* 18995–19006

Senyonjo 2017 *Netherlands International Law Review* 260.

Ssenyonjo M "The Influence of the International Covenant on Economic, Social and Cultural Rights in Africa" 2017 *Netherlands International Law Review* 259–289 (2017)

Shatkin and Belfer 2004 *Child and Adolescent Mental Health*

Shatkin JP and Belfer ML "The Global Absence of Child and Adolescent Mental Health Policy" 2004 *Child and Adolescent Mental Health* 104-108

Shidhaye 2023 *Current Opinion in Psychology*

Shidhaye R "Global Priorities for Improving Access to Mental Health Services for Adolescents in the Post-pandemic World" 2023 *Current Opinion in Psychology* 1-17

Shisana *et al* 2024 *Comprehensive Psychiatry*

Shisana O *et al* "The Rationale for South Africa to Prioritise Mental Health Care as a Critical Aspect of Overall Health Care" 2024 *Comprehensive Psychiatry* 1-6

Singh 2005 *South African Health Review*

Singh J "Health Legislation: Cross-cutting Health Systems Issues" 2005 *South African Health Review* 16-30

Sloth-Nielsen "The African Charter on the Rights and Welfare of the Child"

Sloth-Nielsen JJ "The African Charter on the Rights and Welfare of the Child" in Boezaart T (ed) *Child Law in South Africa* (Cape Town Juta 2024) 424-445

Sloth-Nielsen "The African Charter on the Rights and Welfare of the Child: A Commentary"

Sloth-Nielsen JJ "Obligation of State Parties" in Sloth-Nielsen J, Fokala E and Odongo G (eds.) *The African Charter on the Rights and Welfare of the Child: A Commentary* (Pretoria PULP 2024) 10-23

Snyder 2019 *Journal of Business Research*

Snyder H "Literature Review as a Research Methodology: An Overview and Guidelines" 2019 *Journal of Business Research* 333-339

Sorsdahl *et al* 2023 *SSM- Mental Health*

Sorsdahl K "A reflection of the Current Status of the Mental Healthcare System in South Africa 2023 *SSM- Mental Health* 1-9

Spurrier *et al* 2023 *Frontiers in Psychiatry*

Spurrier GF *et al* "Physical Symptoms as Psychiatric Manifestations in Medical Spaces: A Qualitative Study" 2023 *Frontiers in Psychiatry* 1-11

Stadnick *et al* 2020 *BMC Proceedings*

Stadnick NA *et al* "Leveraging Implementation Science to Reduce Inequities in Children's Mental Health Care: Highlights from a Multidisciplinary International Colloquium" *BMC Proceedings* 1-12

Stevenson "The National Health Act Guide"

Stevenson S "The National Health Act Guide" 3rd ed (Siber Ink Cape Town 2019)

Strumpher *et al* 2016 *Africa Journal of Nursing and Midwifery*

Strumpher J *et al* "Barriers to Accessing Mental Health in Eastern Cape Province of South Africa" 2016 *Africa Journal of Nursing and Midwifery* 45-59

Swanepoel 2020 *Forensic Science International: Mind and Law*

Swanepoel M "Aspects of the Impact of the United Nations Convention on the Rights of Persons with Disabilities on South African Health Law: Section 1" 2020 *Forensic Science International: Mind and Law* 1-31

Szabo 2013 *African Journal of Psychiatry* 387-391

Szabo CP "Improving Mental Health Systems in Africa" 2013 *African Journal of Psychiatry* 387-391

Szabo and Kaliski 2017 *BJPsych Int*

Szabo CP and Kaliski SZ "Mental Health and the Law: A South African Perspective" 2017 *BJPsych International* 69-71

Toben *The Right to Health in International Law*

Toben J *The Right to Health in International Law* (UK: Oxford University Press 2011)

Van Rensburg 2007 *Afr J Psychiatry*

Van Rensburg ABR "A Framework for Current Public Mental Health Care Practice in South Africa" 2007 *Afr J Psychiatry* 205-209

Van Weel and Kidd 2018 *CMAJ*

Van Weel C and Kidd MR "Analysis Why Strengthening Primary Health Care is Essential to Achieving Universal Health Coverage" 2018 *CMAJ* 463-466

Wachira and Cassel 2022 *African Human Rights Yearbook*

Wachira M and Cassell D "Interpretation of the Right to Mental Health in the Africa and American Systems" 2022 *African Human Rights Yearbook* 223-242

Walls *et al* 2015 *South African Medical Journal*

Walls HL *et al* "Understanding Healthcare and Population Mobility in Southern Africa: The Case of South Africa" 2015 *South African Medical Journal* 14-15

Ward *et al* 2017 *BMC Health Services Research*

Ward PR *et al* "Waiting for' and 'Waiting in' Public and Private Hospitals: A Qualitative Study of Patient Trust in South Australia" 2017 *BMC Health Services Research* 1-11

Weller 2011 *Electronic Journal*

Weller P "The Convention on the Rights of Persons with Disabilities and the Social Model of Health: New Perspectives" 2011 *Electronic Journal* 74-83

Whittle *et al* 2018 *Journal of Mental Health Research in Intellectual Disabilities*

Whittle EL *et al* "Barriers and Enablers to Accessing Mental Health Services for People with Intellectual Disability: A Scoping Review" 2018 *Journal of Mental Health Research in Intellectual Disabilities* 69–102

Wisdom JP *et al* 2006 *Adm Policy Ment Health*

Wisdom JP *et al* "What Teens Want: Barriers to Seeking Care for Depression" 2006 *Adm Policy Ment Health* 133-145

Wollie *et al* 2024 PLOS One

Wollie AM *et al* "Health Professionals' Attitudes Towards Traditional Healing for Mental Illness: A Systematic Review Protocol" 2024 *PLOS ONE* 1-8

Woollet *et al* 2017 *Journal of Child & Adolescent Mental Health*

Woollett N *et al* "Identifying Risks for Mental Health Problems in HIV Positive Adolescents Accessing HIV Treatment in Johannesburg" 2017 *Journal of Child & Adolescent Mental Health* 11-26

WHO The Right to Health, Geneva, Switzerland: WHO Organisation.

World Health Organisation *Making Health Services Adolescent Friendly. Developing National Quality Standards for Adolescent Friendly Health Services* (Geneva, Switzerland: World Health Organisation 2012)

Yamin 2005 *American Journal of Public Health*

Yamin AE "The Right to Health under International Law and its Relevance to the United States" 2005 *American Journal of Public Health* 1156-1161

Young *Private vs. Public Healthcare in South Africa*

Young M *Private vs. Public Healthcare in South Africa* (Honors Thesis Western Michigan University 2016)

Case Law

Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] SA 46; 2000 (11).

Life Esidimeni Inquest (I001/21) [2024] ZAGPPHC 676 (10 July 2024)

Makana Peoples Centre v Minister of Health and Others (CCT 125/22) 2023 (5) SA 1 (CC)

Pahlanga v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Others (C564/2019) [2021] ZALCCT 48; [2021] 11 BLLR 1129 (LC); (2022) 43 ILJ 212 (LC) (9 July 2021)

Legislation

Constitution of the Republic of South Africa 1996

Children's Act 38 of 2005

Mental Health Care Act 17 of 2002

National Health Act 61 of 2003

International instruments

African Charter on the Rights and Welfare of the Child (1999)

African Charter on Human and People's Rights (1981)

Constitution of the World Health Organisation 1946.

Convention on the Rights of the Child (1989)

International Covenant on Economic, Social and Cultural Rights (1966)

The Committee on Economic, Social and Cultural Rights, General Comment No.14, The highest attainable standard of health. UN Doc E/C.12/2000/4 (2000)

International Protocols

Convention on the Rights of Persons with Disabilities and Optional Protocol (2008)
Optional Protocol to the Convention on the Rights of Persons with Disabilities
G.A. Res. 61/106, U.N. Doc. A/Res/61 (2007)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018)

Government publications

GN 625 in GG 40955 of 30 June 2017

Potgieter Commission (1977).

Internet sources

African Commission on Human's and People's Rights 2025
<https://achpr.au.int/index.php/en/documents/2023-03-28/right-health-and-its-financing-africa-end-epidemics-and-strengthen-system>.

African Commission on Human's and People's Rights 2025 *Right to Health and its Financing in Africa: End Epidemics and Strengthen Systems that Uphold the Right to Health for all* <https://achpr.au.int/index.php/en/documents/2023-03->

28/right-health-and-its-financing-africa-end-epidemics-and-strengthen-system
accessed 5 January 2025

Ampong 2025 <https://thebftonline.com/2025/02/28/dr-maxwell-ampong-depression-and-cultural-perception-of-mental-health-in-africa/>

Ampong 2025 *Depression and Cultural Perception of Mental Health in Africa*
<https://thebftonline.com/2025/02/28/dr-maxwell-ampong-depression-and-cultural-perception-of-mental-health-in-africa/> accessed 12 January 2025

Anon 2023 <https://www.eapasa.co.za/the-state-of-mental-health-in-south-africa/>

Anon 2023 *The State of Mental Health in South Africa*
<https://www.eapasa.co.za/the-state-of-mental-health-in-south-africa/>
accessed 2 December 2024

Anon 2025 <https://www.cucumber-recruitment.co.uk/resources/blog/childrens-mental-health>

Anon 2025 *The Importance of Children's Mental Health* <https://www.cucumber-recruitment.co.uk/resources/blog/childrens-mental-health> accessed 22 April 2025

Chalklen 2024 <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/>

Chalklen S 2024 *Press release: Ratifications of the protocol to the African charter on human and peoples rights on the rights of persons with disabilities in Africa* <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/> accessed 9 June 2026

Cherry 2022 <https://www.verywellmind.com/how-to-be-more-empathetic-6455878>

Cherry K 2022 *How to Be More Empathetic*
<https://www.verywellmind.com/how-to-be-more-empathetic-6455878>
accessed 22 December 2024

Chowdhury 2025 <https://www.regenesys.net/reginsights/what-is-medical-law>

Chowdhury J 2025 *What is Medical Law? Understanding the Legal Framework of Healthcare in South Africa*. <https://www.regenesys.net/reginsights/what-is-medical-law> accessed 3 June 2025

Cupido 2025 <https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>

Cupido G 2025 *Mental Health Awareness Month: Understanding Digital Overload and How it Affects Your Mental Health*
<https://iol.co.za/lifestyle/health/2025-05-03-mental-health-awareness-month-understanding-digital-overload-and-how-it-affects-your-mental-health/>
accessed 2 February 2025

Department of Health 2013 <https://www.safmh.org/wp-content/uploads/2020/09/National-Mental-Health-Policy-Framework-2013-2020.pdf>

Department of Health 2013 *National Mental Health Policy Framework 2013-2020* <https://www.safmh.org/wp-content/uploads/2020/09/National-Mental-Health-Policy-Framework-2013-2020.pdf> accessed 15 January 2025

Department of Health 2020 <https://www.health.gov.za/wp-content/uploads/2020/11/depthealthstrategicplanfinal2020-21to2024-25-1.pdf>

Department of Health 2020 *Strategic Plan 2020/21-2024/25*
<https://www.health.gov.za/wp-content/uploads/2020/11/depthealthstrategicplanfinal2020-21to2024-25-1.pdf> accessed 22 December 2024

Department of Health 2020 <http://www.gov.za/documents/national-health-act-national-health-insurance-policy-towards-universal-health-coverage-30>.

Department of Health 2020 *National Health Act: National Health Insurance Policy: Towards Universal Health Coverage*
<http://www.gov.za/documents/national-health-act-national-health-insurance-policy-towards-universal-health-coverage-30> accessed 12 December 2024

Department of Health 2024 <https://www.health.gov.za/nhi/>

Department of Health 2024 *National Health Insurance*
<https://www.health.gov.za/nhi/> accessed 22 April 2025

Gsell and Prinsloo 2024 <https://www.humanitas.co.za/mental-health-care-in-south-africa-overcoming-barriers-to-build-an-accessible-future>

Gsell G and Prinsloo A 2024 *Mental Health Care in South Africa: Overcoming Barriers to Build an Accessible Future* <https://www.humanitas.co.za/mental-health-care-in-south-africa-overcoming-barriers-to-build-an-accessible-future/> accessed 19 May 2025

Helen Suzman Foundation 2020 <https://hsf.org.za/publications/hsf-briefs/mental-health-i-legal-and-policy-framework>

Helen Suzman Foundation 2020 *Mental Health I - Legal and Policy Framework*
<https://hsf.org.za/publications/hsf-briefs/mental-health-i-legal-and-policy-framework> accessed 2 December 2024

Heyl 2024 <https://www.verywellmind.com/is-depression-a-disability-5271476#>

Heyl JC 2024 *Is Depression a Disability? Help, I Can't Function at Work*
<https://www.verywellmind.com/is-depression-a-disability-5271476#> accessed 16 April 2025

Human Rights Commission 2017 <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1020-how-the-south-african-government-is-failing-people-with-disabilities>

Human Rights Commission 2017 *How the South Africa Government is Failing People with Disabilities* <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1020-how-the-south-african-government-is-failing-people-with-disabilities> accessed 2 December 2024

Ifaisa 2015 <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/>

Ifaisa 2015 *Inadequate Health Care Services for Children* <https://accountabilitynow.org.za/inadequate-health-care-services-for-children/> accessed 11 June 2025

Jiang 2023 <https://health-e.org.za/2023/09/13/south-african-children-lack-psychosocial-support-every-school-needs-a-social-worker>

Jiang HZ 2023 *South African Children Lack Psychosocial Support. 'Every School Needs a Social Worker'* <https://health-e.org.za/2023/09/13/south-african-children-lack-psychosocial-support-every-school-needs-a-social-worker> accessed 2 July 2025

Juta Medical Brief 2019 <https://www.medicalbrief.co.za/the-sums-on-mental-health-care-in-sa-are-not-pretty/>

Juta medical brief 2019 *The Sums on Mental Health Care in SA are not Pretty* <https://www.medicalbrief.co.za/the-sums-on-mental-health-care-in-sa-are-not-pretty/> accessed 2 December 2024

Kline 2023 <https://www.embraceu.com/why-do-children-get-depressed/>

Kline M 2023 *Why Do Children Get Depressed?* <https://www.embraceu.com/why-do-children-get-depressed/> accessed 2 December 2024

Kung 2025 <https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477>

Kung S 2025 *Mental Health: Overcoming the Stigma of Mental Illness*
<https://www.mayoclinic.org/diseases-conditions/mental-illness/in-depth/mental-health/art-20046477> accessed 18 July 2025

Liebenberg 2020 <https://dullahomarinstitute.org.za/socio-economic-rights/research-and-publications/>

Liebenberg S 2020 *Human Development Report*
<https://dullahomarinstitute.org.za/socio-economic-rights/research-and-publications/> accessed 2 December 2024

Madwantsi 2022 <https://iol.co.za/lifestyle/family/parenting/2022-06-14-south-african-childrens-mental-health-is-in-crisis/>

Madwantsi V 2022 *South African Childrens Mental Health is in Crisis*
<https://iol.co.za/lifestyle/family/parenting/2022-06-14-south-african-childrens-mental-health-is-in-crisis/> accessed 17 July 2025

Mayo Clinic Press 2024 <https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007>

Mayo Clinic Press 2024 *Depression (Major Depressive Disorder)*
<https://www.mayoclinic.org/diseases-conditions/depression/symptoms-causes/syc-20356007> accessed 17 July 2025

Mncube 2024 <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/>

Mncube K 2024 *Mental Health Awareness in South Africa: Breaking the Stigma and Seeking Support* <https://www.liyanamagazine.co.za/2024/08/05/mental-health-awareness-in-south-africa-breaking-the-stigma-and-seeking-support/> accessed 2 June 2025

Mntambo 2024 <https://www.ewn.co.za/2024/07/10/court-finds-deaths-of-9-life-esidimeni-patients-caused-by-negligence>

Mntambo N 2024 *Court Finds Deaths of 9 Life Esidimeni Patients Caused by Negligence of Mahlangu & Manamela*
<https://www.ewn.co.za/2024/07/10/court-finds-deaths-of-9-life-esidimeni-patients-caused-by-negligence> accessed 14 April 2025

National Department of Health 2024 <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf>

National Department of Health 2024 *National Mental Health Policy: Framework and Strategic Plan* <https://www.health.gov.za/wp-content/uploads/2024/02/National-Mental-Health-Policy-framework-and-strategic-Plan-2023-2030.pdf> accessed 12 April 2025

National Planning Commission 2024 https://www.nationalplanningcommission.org.za/assets/Documents/Mental%20Health%20Situational%20Analysis%20South%20Africa%20final%20Report_May%202024.pdf

National Planning Commission 2024 *Mental Health Situational Analysis: South Africa*
https://www.nationalplanningcommission.org.za/assets/Documents/Mental%20Health%20Situational%20Analysis%20South%20Africa%20final%20Report_May%202024.pdf accessed 27 May 2024

Plumtre 2024 <https://www.verywellmind.com/the-importance-of-mental-health-for-wellbeing-5207938>

Plumtre E 2024 *The Importance of Mental Health*
<https://www.verywellmind.com/the-importance-of-mental-health-for-wellbeing-520793> accessed 2 February 2025

Price 2023 <https://www.gov.za/blog/mental-health-awareness>

Price G 2023 *Mental Health Awareness*. <https://www.gov.za/blog/mental-health-awareness> accessed 2 December 2024

Rensburg 2021 <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753>

Rensburg R 2021 *Healthcare in South Africa: How Inequity is Contributing to Inefficiency* <https://theconversation.com/healthcare-in-south-africa-how-inequity-is-contributing-to-inefficiency-163753> accessed 2 December 2024

Rural Health Information Hub 2025 <http://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers>

Rural Health Information Hub 2025 *Challenges and Opportunities for Mental Health Services in Rural Areas* <http://www.ruralhealthinfo.org/toolkits/mental-health/1/barriers> accessed 2 May 2025

Schoeman 2025 <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support>

Schoeman R 2025 *SA's Mental Healthcare – A System on Life Support* <https://www.stellenboschbusiness.ac.za/news/2025-04-08-sas-mental-healthcare-system-life-support> accessed 2 July 2025

Singhal 2024 www.psychiatry.org/patients-families/stigma-and-discrimination

Singhal N 2024 "Stigma, Prejudice and Discrimination Against People with Mental Illness" 2024 *American Psychiatric Association* www.psychiatry.org/patients-families/stigma-and-discrimination accessed 2 January 2025

South African Human Rights Commission Date unknown
<https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf>

South African Human Rights Commission Date unknown Access to Health Care
<https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> accessed 12 June 2025

South African Human Rights Commission 2018
<https://www.sahrc.org.za/home/21/files/SAHRC>

South African Human Rights Commission 2018. *Report of the National Investigative Hearing into the Status of Mental Health Care in South Africa*
<https://www.sahrc.org.za/home/21/files/SAHRC> accessed 2 December 2024

South African Government 2025 <https://www.gov.za/about-sa/health>

South African Government 2025 *Health* <https://www.gov.za/about-sa/health>
accessed 21 April 2025

The International Institute for Democracy and Electoral Assistance Date unknown
https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf

The International Institute for Democracy and Electoral Assistance Date unknown
What Is a Constitution? Principles and Concepts.
https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf
accessed 25 May 2025

TIMEDOC Health 2025 <https://timedochealth.com/what-does-the-chronic-care-model-do/>

TIMEDOC Health 2005 *What Does the Chronic Care Model do*
<https://timedochealth.com/what-does-the-chronic-care-model-do/> accessed
26 April 2025

Tukela A and Hart T 2024 <https://hsrc.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/>

Tukela A and Hart TGB 2024 *Disability: Fairness and Dignity in Accessing Healthcare* <https://hsrc.ac.za/news/latest-news/disability-fairness-and-dignity-in-accessing-healthcare/> accessed 28 December 2024

UNICEF 2025 <https://www.unicef.org/southafrica/onmymind-better-mental-health-every-child-south-africa>

UNICEF 2025 *#OnMyMind: Better Mental Health for Every Child in South Africa Every Child Deserves to Grow up in Loving, Nurturing and Safe Environments* <https://www.unicef.org/southafrica/onmymind-better-mental-health-every-child-south-africa> accessed 25 June 2025

UNICEF Date unknown <https://www.unicef.org/child-rights-convention>

UNICEF Date unknown *Convention on the Rights of the Child, For every child, Every Right* <https://www.unicef.org/child-rights-convention> accessed 3 March 2025

United Nations 2022 <https://news.un.org/en/story/2022/06/1120682>

United Nations Date unknown *Convention on the Rights of Persons with Disabilities (CRPD)* <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> accessed 2 July 2025

United Nations date unknown <https://www.un.org/esa/socdev/enable/comp101.htm>

United Nations date unknown *International Law and National Frameworks* <https://www.un.org/esa/socdev/enable/comp101.htm> accessed 24 April 2025

United Nations Date unknown
<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

United Nations Date unknown *Convention on the Rights of Persons with Disabilities (CRPD)*
<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> accessed 22 February 2025

United Nations Date unknown <https://www.un.org/en/ga/third/>

United Nations Date unknown *Social, Humanitarian and Cultural Issues (Third Committee)* <https://www.un.org/en/ga/third/> accessed 16 February 2025

United Nations date unknown <https://www.un.org/en/global-issues/human-rights>

United Nations date unknown *Peace, Dignity and Equality on a Healthy Planet*
<https://www.un.org/en/global-issues/human-rights> accessed 2 March 2025

United Nations date unknown <https://www.ohchr.org/en/what-are-human-rights>

United Nations date unknown *What are Human Rights?* <https://www.ohchr.org/en/what-are-human-rights> accessed 28 April 2025

United Nations Date unknown <https://www.ohchr.org/en/treaty-bodies/crc>.

United Nations Date unknown *Committee on the Rights of the Child*
<https://www.ohchr.org/en/treaty-bodies/crc> accessed 20 June 2025

University of Cape Town 2022 <https://ci.uct.ac.za/child-gauge/child-and-adolescent-mental-health>

University of Cape Town 2022 *Redress Mental Health Care for Children and Adolescents in South Africa South African Child Gauge 21/22*
<https://ci.uct.ac.za/child-gauge/child-and-adolescent-mental-health> accessed 8 October 2024

Vivo 2022 <https://www.lyrahealth.com/blog/barriers-mental-health/>

Vivo M 2022 *Overcoming Barriers to Mental Health Treatment* <https://www.lyrahealth.com/blog/barriers-mental-health/> accessed 12 May 2025

WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

World Health Organisation 2022 *Mental Health* <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> accessed 14 July 2024

WHO 2023 http://www.who.int/health-topics/adolescent-health#tab=tab_1

World Health Organisation 2023 *Adolescents* http://www.who.int/health-topics/adolescent-health#tab=tab_1 accessed 16 November 2024

WHO 2024 <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health>

World Health Organisation 2024 *About Mental Health* <https://www.mentalhealth.org.uk/explore-mental-health/about-mental-health> accessed 3 January 2025

WHO 2024 <https://www.who.int/news/item/05-04-2024-who-calls-for-action-to-uphold-right-to-health-amidst-inaction--injustice-and-crises>

World Health Organisation 2024 *Who Calls for Action to Uphold Right to Health Amidst Inaction Injustice and Crises* <https://www.who.int/news/item/05-04-2024-who-calls-for-action-to-uphold-right-to-health-amidst-inaction--injustice-and-crises> accessed 19 March 2025

WHO 2023 <https://www.who.int/news-room/fact-sheets/detail/depression>

WHO 2023 *Depressive Disorder (Depression)* <https://www.who.int/news-room/fact-sheets/detail/depression> accessed 2 November 2024

WHO 2025 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>.

World Health Organisation 2025 *Mental Health* <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> accessed 9 June 2025

WHO 2025 https://www.who.int/health-topics/primary-health-care#tab=tab_1

World Health Organisation 2025 *Primary Health Care* https://www.who.int/health-topics/primary-health-care#tab=tab_1 accessed 6 July 2025

WHO 2014 http://www.who.int/features/factfiles/mental_health/en/

World Health Organisation 2014 *Mental Health: A State of Well-being* http://www.who.int/features/factfiles/mental_health/en/ accessed 11 December 2024

WHO 2017 <https://www.who.int/news-room/commentaries/detail/health-is-a-fundamental-human-right>

World Health Organisation 2017 *Health is a Fundamental Human Right* <https://www.who.int/news-room/commentaries/detail/health-is-a-fundamental-human-right> accessed 13 December 2024

WHO 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>

World Health Organisation 2022 *Mental Health* <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> accessed 28 December 2024

WHO 2026 https://www.who.int/health-topics/primary-health-care?utm_source=copilot.com#tab=tab_1

WHO 2026 *Primary Health care* https://www.who.int/health-topics/primary-health-care?utm_source=copilot.com#tab=tab_1 accessed 9 June 2026

WHO Date unknown <https://www.ohchr.org> 5.

World Health Organisation Date unknown *From Stigma to Strength in the Gambia* <https://www.ohchr.org> accessed 17 June 2025

WHO 2024 <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health>

World Health Organisation 2024 *Mental Health of Adolescents* <https://www.who.int/news-room/fact-sheets/detail/adolescent-mental-health> accessed 16 May 2025

WHO 2022 <https://apps.who.int/iris/handle/10665/356119>

World Health Organisation 2022 *World Mental Health Report: Transforming Mental Health for All: Geneva* <https://apps.who.int/iris/handle/10665/356119>, accessed 26 August 2022