

After Life Esidimeni: True human rights protections or lip service to the Constitution?

A Dhai, PhD, MB ChB, FCOG, LLM, PGDip

Steve Biko Centre for Bioethics, Faculty of Health Sciences, University of the Witwatersrand, Johannesburg, South Africa



Ames Dhai

Editor
amaboo.dhai@wits.ac.za

South Africa (SA)'s Constitution,^[1] in its preamble, affirms that it was adopted to, *inter alia*, 'lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law', and 'improve the quality of life of all citizens and free the potential of each person'. The latter principle is reiterated in the preamble of the National Health Act.^[2] Other constitutional protections in the healthcare context include those of respecting the rights to equality (s (section) 9), human dignity (s 10), life (s 11), freedom and security of the person (s 12), privacy (s 14) and healthcare (s 27). In the Bill of Rights, the right to freedom and security of persons is established. This includes the right 'not to be tortured in any way' (s 12(d)) and the right 'not to be treated or punished in a cruel, inhuman or degrading way'.

The Mental Health Care Act No. 17 of 2002,^[3] in its preamble, gives realisation to the prohibition of unfair discrimination against those with mental and other disabilities, in line with section 9 of the Constitution. It also gives recognition to the fact that people with mental disabilities may require protection, and to the need to promote mental healthcare services 'in a manner which promotes the maximum wellbeing of users of mental healthcare services and communities in which they reside'. Several sections of the Act emphasise the importance of respecting the rights of patients with mental disabilities. In particular, chapter 3 of the Act is specific as to the rights and duties owed to these patients, and the promotion at all times of their best interests is underscored. Respect for the person, human dignity and privacy of these patients is stressed (s 8), and it is highlighted that the patients must be 'provided with care, treatment and rehabilitation services that improve the mental capacity of the user to develop to full potential and to facilitate his or her integration into community life'. Protection against unfair discrimination is again brought up in the Act (s 10), and standards for provision of quality care are affirmed. Steps must be taken to

ensure that these patients are protected from exploitation, abuse and degrading treatment (s 11), and determinations concerning them must be based on factors specific to their mental health status rather than on socioeconomic or sociopolitical grounds (s 12). Furthermore, section 4 places the obligation for promoting the rights and interests of patients with mental disabilities squarely on the shoulders of those organs of the state responsible for health services.

Despite all the constitutional and statutory protections in place, and the several international protective instruments that the country has signed, the three highest-ranking officials at the Gauteng Department of Health rushed into executing the Gauteng Mental Health Marathon Project (GMMP) when a contract with Life Esidimeni was 'precipitously' terminated in 2016. The patients were hurriedly relocated, some from sick bays and others with comorbid medical conditions requiring highly specialised care, into NGOs that could not provide such services. These patients, even the frail, disabled and incapacitated, were 'transported in inappropriate and inhumane modes of transport, some without wheelchairs, but tied with bedsheets to support them'. Some NGOs transported these patients in open bakkies, like cattle being herded to the slaughter^[4] – and carnage ensued because as many as 100 unlawfully lost their lives due to this ruthless and cruel process.

Life Esidimeni (place of dignity), an established facility, delivered healthcare services to SA's indigent, vulnerable and mentally ill patients for 5 decades under contract to national and provincial departments of health. Pleas from families, healthcare professional and civil society organisations fell on deaf ears. Qedani Dorothy Mahlangu (provincial minister of health, Gauteng), Tiego Ephraim Selebano (head of department) and Makgabo Manamela (director, mental health) ruthlessly hounded the patients, who were transferred to 27 newly contracted, ill-prepared, unlicensed NGOs strewn over different parts of Gauteng, with some in distant, faraway locations. To make matters worse, subsidies to these NGOs were not paid, or where paid, this was up to 3 months late, resulting in starvation for many patients. While the Gauteng department of health claimed that the transfers were effected to integrate these patients into the community, and that there were plans afoot to upscale community health services, the investigation by the health ombudsman commissioned by the national minister of health showed unequivocally that this was not the case. The motive behind this evil action was to cut costs and save money. Disgracefully, when the fiasco was exposed, 'some relatives were unexpectedly offered food parcels' by Manamela to 'quieten them down'. Clearly, the hands of this terrible trio are drenched with the blood of the 100 killed in this way and of any more that may follow.^[4] Moreover, Selebano and Manamela are medically qualified doctors who have publically declared in the oaths they have taken that their actions will always be for the benefit of patients, and that they will steer away from deleterious activities that could harm patients. Caring

and compassion are core values in the practice of healthcare. Did they forget this, or did they choose not to remember?

Negative attitudes towards people with mental disability, as a result of prejudice and misinformation, are major obstacles to providing care for them. At times, because of this stigma, health decision-makers are reluctant to invest resources for mental healthcare, and this results in discriminatory practices.¹⁵ Could the atrocities executed by the three be a result of their being ensnared in this stigma, or was it that they just did not care? Were the patients punished because of this stigma? Their acts of violence can be equated with torture, because they inflicted severe pain and great suffering on these patients, possibly as punishment for being mentally ill. Whatever their reasons, all three unashamedly disregarded international, constitutional and statutory protections,

all of which had been enacted to protect the weak and vulnerable. It remains to be seen whether they will be appropriately punished, or whether they will be given a 'backdoor' handshake, in keeping with the track record of our country where lip service to human rights laws has become the norm by so many state actors, thereby making a mockery of the constitutional requirement that every citizen is to be equally protected by our laws.

1. South Africa. The Constitution of the Republic of South Africa Act No. 108 of 1996.
2. South Africa. National Health Act No. 61 of 2003.
3. South Africa. Mental Health Care Act No. 17 of 2002.
4. The Life Esidimeni disaster: The Makgoba report. <http://www.politicsweb.co.za/documents/the-life-esidimeni-disaster-the-makgoba-report> (accessed 4 April 2017).
5. Sartorius N. Stigma and mental health. *Lancet* 2007;370(9590):810-811. [https://doi.org/10.1016/s0140-6736\(07\)61245-8](https://doi.org/10.1016/s0140-6736(07)61245-8)