

The right to access healthcare: Progressive realisation or regressive denial?

The President of South Africa (SA), as the head of state and head of the national executive, must uphold, defend and respect the Constitution^[1] as the supreme law of the Republic (section 83). When sworn into office, the President takes an oath or solemn affirmation that he will be faithful to the country, and will obey, observe, uphold and maintain the Constitution and all other laws of the Republic. He solemnly and sincerely promises that he will always promote all that will advance the Republic, and oppose all that may harm it; he will protect and promote the rights of all South Africans; he will discharge his duties with all his strength and talents to the best of his knowledge and ability and true to the dictates of his conscience; he will do justice to all; and he will devote himself to the wellbeing of the Republic and all of its people (schedule 2). Similarly, ministers and deputy ministers swear or solemnly affirm that they will be faithful to the Republic of South Africa (SA) and will obey, respect and uphold the Constitution and all other laws of the Republic.

Upholding the Constitution means, *inter alia*, providing safe and affordable healthcare to the population. Section 27 of the Constitution affirms that everyone has the right to have access to healthcare services, including reproductive healthcare, and that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right. Section 27 also stipulates that no one may be refused emergency medical treatment. The latter is not limited by the qualification of progressive realisation.

Early in January, we woke up to the news that ~1 800 junior doctors remained unemployed despite having completed their community service,^[2] and despite our doctor:patient ratio being 0.3:1 000 – well below the recommended World Health Organization ratio of 1 per 1 000. Citing lack of funds and budget cuts as the reason for this dire situation, the Minister of Health responded that the state was not obliged to employ these doctors, and that they were welcome to go into private practice or elsewhere. He went on to say that the state has no obligation to employ every unemployed doctor who has completed the statutory requirements of internship and community service. What the minister seemed to turn a blind eye to was the constitutional obligation of the government to provide access to healthcare services to everyone in the country, and the current reality of the failing healthcare system, including the already existing shortage of doctors to provide highly needed essential services to our communities. The domino effect of

this shortage is critical, with the strain on the already overburdened healthcare system severe, including overworked, burnt-out healthcare professionals, compromised quality of care and escalating medical negligence claims.

Using money as an excuse is moot – especially considering a bloated cabinet, inefficiencies, mismanagement and continuing reports of losses due to corruption. Rather than a progressive realisation of the right to access healthcare, we see a regressive denial of this right. Furthermore, as the custodian of promoting and protecting the rights of all South Africans, true to the dictates of his conscience, the deafening silence from the President on this issue clearly establishes that access to quality healthcare for the majority of the country's patients does not form part of his lexicon. It would seem as if he and his ministers have also forgotten the founding provisions and values of the Constitution, and in particular the values of human dignity, achievement of equality and the advancement of human rights and freedoms (section 1a). Denial of access to quality healthcare directly impacts the right to human dignity and other related rights.

The President and his ministers have betrayed the oaths/solemn affirmations taken when sworn into these positions. They cannot continue paying lip-service to the supreme law of the land. It is not too late for them to read through the Constitution again, brush up on its values, reflect on their commitments and deliver accordingly, especially if a society based on social justice and fundamental human rights is to be established, and the quality of life of all citizens is to be improved. This would, moreover, contribute to true ethical leadership and governance. The distressing lack of these qualities in several spheres has no doubt played a major role in furthering the unpardonable situation in the country.

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1. Constitution of the Republic of South Africa, 1996. <https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997> (accessed 27 January 2025).
2. JUTA Medical Brief. Minister under fire as number of jobless doctors grows. <https://www.medicalbrief.co.za/minister-under-fire-as-number-of-jobless-doctors-grows/> (accessed 25 January 2025).