

GLOBAL GAG RULE: PERSPECTIVES *from* SOUTH AFRICA



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AUGUST 2020



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When the Global Gag Rule is in effect, it creates and exploits inefficiencies in health care delivery and causes harm to beneficiaries, who may not be aware that their fate is being determined by what is essentially a political football [match] in Washington DC.

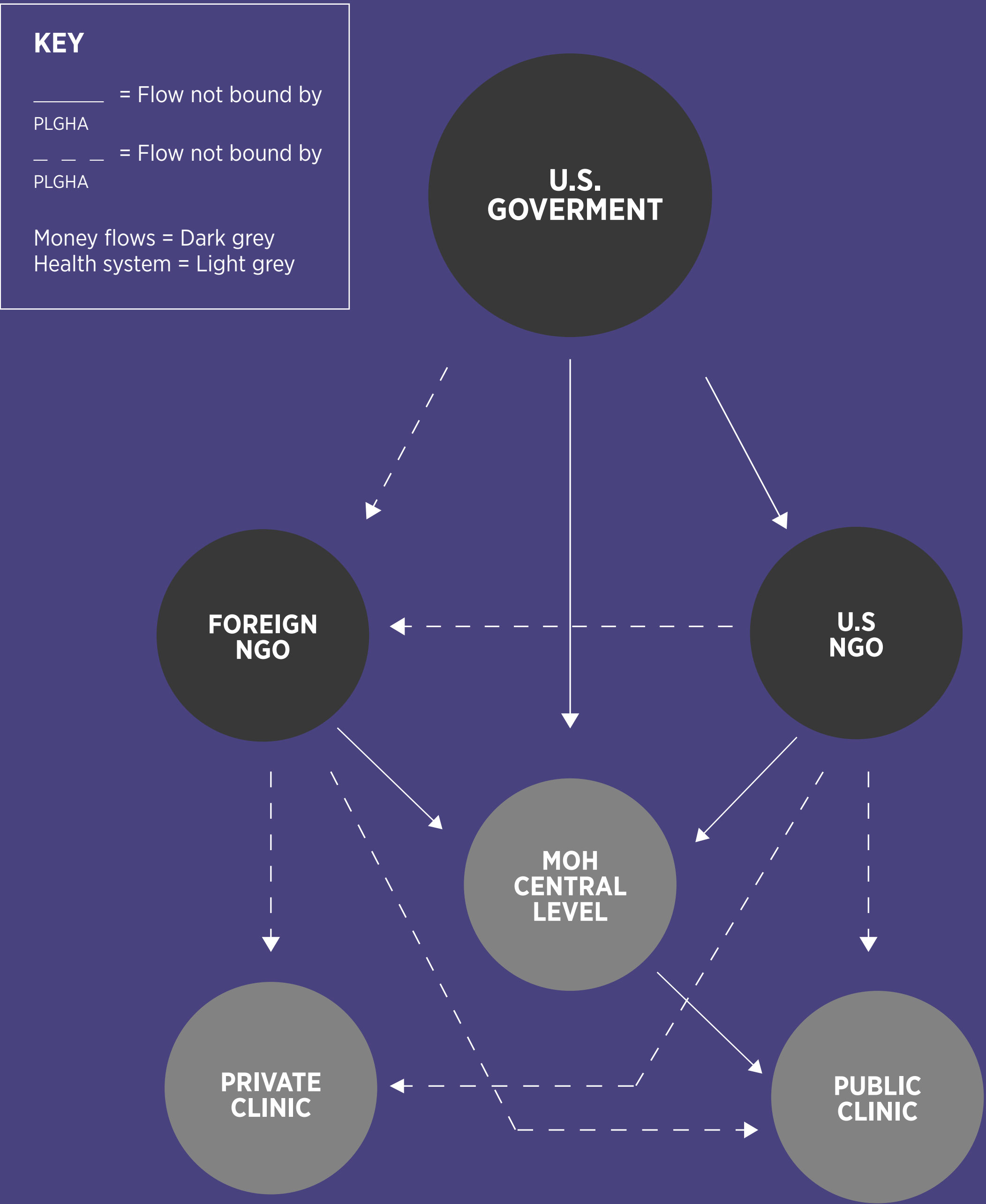
- Prescribing Chaos in in global health:
The Global Gag Rule from 1984 – 2018’ CHANGE report
(June, 2018)

A photograph of a protest with a blue tint. In the foreground, a woman on the left wears a white jacket with a large black cross on the chest and has a sign with '#TrumpGlobalGag' taped over her mouth. In the center, a person in a dark hooded jacket and glasses also has a '#TrumpGlobalGag' sign over their mouth and is holding up a sign that reads 'DIED OF AIDS'. To the right, another person holds a sign that reads 'DIED FROM UNSAFE ABORTION'. The background shows other protesters and city buildings.

APPLICATION *of* *the* GLOBAL GAG RULE

‘The recipient agrees that it will not, during the term of this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to any other foreign non-governmental organization that conducts such activities.’

- Foreign NGOs receiving US Government funding.
- Applies to funding granted by the USAID, Department of State, and Department of Defense.
- Implicates approximately \$8.8 billion in funds.
- Applies to global health assistance and not merely family planning funds.
- Applies to sub-grantees.



PROVISIONS

‘ABORTION’: a method of family planning when used for the purposes of spacing births (undefined).

Applies to abortions for fetal abnormalities or for the mental/physical wellbeing of the womxn.

It does **NOT** apply to abortions where the mother’s life is in danger, or for rape and incest. In these circumstances, foreign NGOs may refer the womxn for treatment. This, of course, depends on whether the country’s laws make provision for abortion in these circumstances, otherwise it becomes a referral for an unsafe and illegal abortion.

‘PERFORMING’: operating a facility where abortions are provided.

EXCLUDES treatment for post-abortion care. One may not perform abortions under any circumstances, but may assist in post-abortion care, to treat injuries or illness caused by legal or illegal abortions.

PROVISIONS

continued

‘ACTIVELY PROMOTE’: committing one’s resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning. This includes activities such as:

- Provisions of counseling services about the benefits or availability of abortion;
- Actively providing advice that abortion is an available option, or encouraging womxn to consider it.
- Lobbying foreign government to legalise it or make it available; or lobbying for continued legalization; and
- Conducting a public information campaign about its benefits.

General EXCEPTIONS

- 01 Referrals for life endangerment, or rape and incest to another service provider.
- 02 Post-abortion care.
- 03 Individual actions that are separate to the organization.
- 04 Passive referral. Passive referral requires FOUR conditions to be met before a healthcare provider or employee of USG funded organization may refer a womxn to an abortion service provider:
 - The womxn is already pregnant;
 - She has clearly stated that she has already decided to have an abortion;
 - She asks where a safe and legal abortion may be obtained; and
 - The healthcare provider has a reason to believe that the country's medical ethics require referral.
- 05 Finally, there is the 'AFFIRMATIVE DUTY DEFENSE' which goes beyond these limited exclusions. Where there is a local law to provide counselling and referral, then actively doing so will not trigger a violation of the GGR. But, this only refers to 'active promotion' and does not extend to performance of abortions.



GENERAL EFFECTS *of the* GLOBAL GAG RULE

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‘Denying access to abortion does not stop womxn and girls from seeking abortion services, it just makes the procedure less safe and contributes to maternal mortality’

‘Factsheet: The global gag rule and human rights’ - CRR (January, 2018)

‘... those hardest hit by the impact of this policy will be people who already face systemic barriers to accessing care, who are underrepresented in the halls of power in the national and international stage – womxn, young people, people living with HIV, LGBTQ people, and sex workers’

‘Assessing the Global Gag Rule: Harms to health, communities and advocacy’

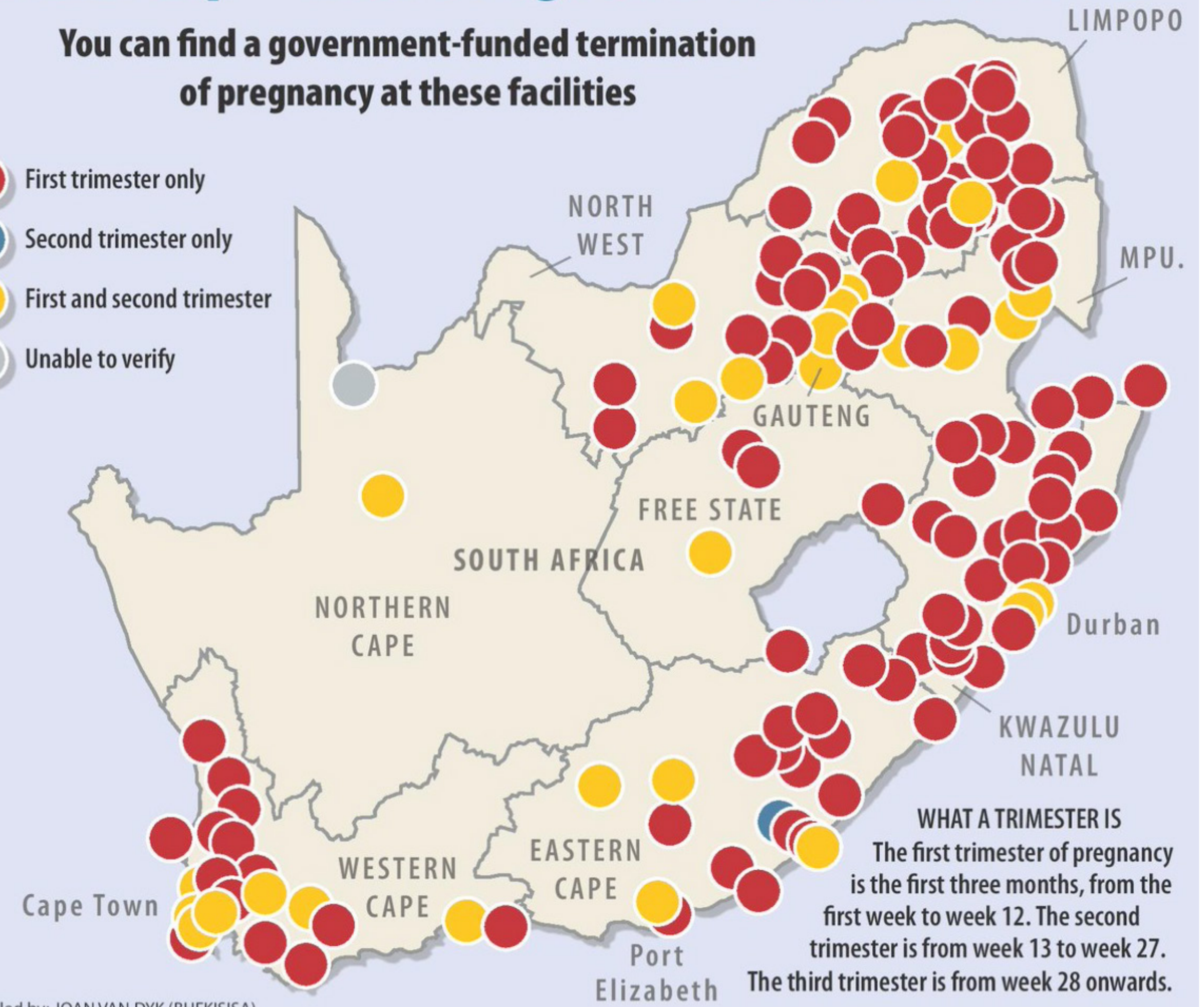
- Planned Parenthood report

SOUTH AFRICAN PERSPECTIVE

#SizaMap – where to get a free abortion in SA

You can find a government-funded termination of pregnancy at these facilities

- First trimester only
- Second trimester only
- First and second trimester
- Unable to verify



Compiled by: JOAN VAN DYK (BHEKISISA)

EFFECTS DOCUMENTED *in* SOUTH AFRICA

- Lack of information, which necessarily infringes on the right to access to information;
- Withdrawal of funding within existing funding networks;
- Withholding of information regarding who is funded;
- Undermining the obligations assumed by CSOs in terms of the CTOPA, and therefore undermining the provisions thereof;
- Violation or impediment to the rights to freedom of expression and association in terms of the Constitution;
- Violating the sections 12 and 27 rights of womxn, which are intimately connected to and affecting the rights to equality, dignity, privacy.

LEGAL STRATEGIES *to* COMBAT GGR

ACTIONS THAT CAN BE TAKEN IN THE US

- Repeal of executive order:
- Passage of the Global Health Empowerment and Rights Act

ACTIONS THAT CAN BE TAKEN IN SOUTH AFRICA

- Challenging the South African government to intervene and ensure that NGOs affected are funded, as a way to fulfil its duties in terms of the Constitution and CTOPA;
- Hold the provincial and national government accountable for the poor implementation of the CTOPA which has forced many NGOs to offer this service;
- Training of NGOs about the provisions and operation of the GGR so that they are aware and educated on its provisions and know how they work.
- Healthcare providers are capacitated to assert the affirmative defence and understand how it works within the frameworks of South Africa.

A large crowd of people, mostly women, are gathered for a protest. They are holding up various signs with messages related to abortion rights. The scene is outdoors, with a building visible in the background. The overall tone is one of active participation and advocacy.

OVERVIEW *of the* WORK WE DO AT WLC

Don't
Criminalize
tion

STOP
BANNING
ABORTION

STOP
BANNING
ABORTION

MY BODY
MY CHOICE

WOMEN'S
RIGHTS
ARE
HUMAN

Abortion is a
Human Right

IF IT
YO
BOD
IT'S NOT
YOUR
CHOICE

Abortion is a
Human Right

PEACEFUL
WARRIOR

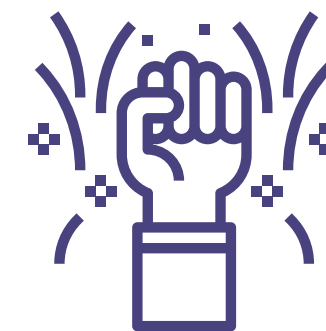
STAND
WITH
PLANNED
PARENTHOOD

A woman with curly hair is shown from the chest up, raising her right fist in a gesture of protest or solidarity. She is wearing a dark t-shirt with a graphic that includes the word 'ABORTION'. In the background, other people and protest signs are visible, though out of focus. One sign clearly says 'We Are Here'.

The Women's Legal Centre is an African feminist legal centre that advances womxn's rights and equality through strategic litigation, advocacy, education, training and partnerships.



We aim to defend and protect the rights of vulnerable and marginalized womxn -in particular, black womxn- and to promote their access to justice and equitable resources.



We seek to advance womxn's freedom from violence, improve substantive equality, and advocate for agency in all aspects of their lives - at home, at work, in the community, and within society at large.

A large crowd of people is gathered in front of the US Capitol building, holding various signs. The scene is a protest, with many people visible and a large sign that reads "RISE UP WOMAN. NO MUD, NO LOTUS" in the foreground. The Capitol building is visible in the background, and the overall atmosphere is one of a significant public demonstration.

ABOUT *the* LEGAL RESOURCES CENTRE

The Legal Resources Centre was established in 1979 with the primary aim of using the law as an instrument of justice for South Africa's marginalised and under-resourced populations.



The LRC aspires towards a fully democratic, equal society.

Our goals are to promote justice using the Constitution, build respect for the rule of law, and contribute to socio-economic transformation within South Africa and beyond.

01

Legal
Advice

02

Working with
Communities

03

Litigation

04

Training

05

Advocacy and
Communication

06

Law Reform
and Policy
development

07

Networking

08

Applied
Research

09

Global and
Regional
Engagements

THANK YOU

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