

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 16402/2017**

In the application of:

**NASREEN RAJAB-BUDLENDER**

**NOZIZIWE SILINDILE VUNDLA**

**MICHELLE ANN CRYSTAL HUBER**

**CAROL KHOLEKA ZAMA**

**PENELOPE JOY PARENZEE**

**TEBOHO BASETSANA MOLEBATSII**

**NICOLE LOUISE FRITZ**

*Acting in their capacity as*

**WOMEN'S LEGAL CENTRE TRUST**

First Applicant

**WOMEN IN SEXUAL AND REPRODUCTIVE  
RIGHTS AND HEALTH**

Second Applicant

to be admitted as *amici curiae* in the matter between:

**VOICE OF THE UNBORN BABY NPC**

First Applicant

**CATHOLIC ARCHDIOCESE OF DURBAN**

Second Applicant

and

**MINISTER OF HOME AFFAIRS**

First Respondent

**MINISTER OF HEALTH**

Second Respondent

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**APPLICATION TO BE ADMITTED AS *AMICUS CURIAE* IN TERMS OF RULE 16A**

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**TAKE NOTICE THAT THE WOMEN'S LEGAL CENTRE and WOMEN IN SEXUAL AND REPRODUCTIVE RIGHTS AND HEALTH** hereby make a joint application in terms of Rule 16A of this Honorable Court for an order in the following terms:

1. Condoning the applicant's late filling of their application to intervene as *amicus curiae*.
2. Granting leave to THE WOMEN'S LEGAL CENTRE and WOMEN IN SEXUAL AND REPRODUCTIVE RIGHTS AND HEALTH to be admitted as *amici curiae* in the abovementioned matter.
3. That the *amici curiae* be granted:
  - 3.1 leave to lodge written submissions in this matter; and
  - 3.2 leave to present oral submissions at the hearing of this matter.
4. Further and / or alternative relief.

**TAKE FURTHER NOTICE** that the affidavit of **SEEHAAM SAMAAI** and **MARIONA STEVENS** will be used in support of this application.

**TAKE FURTHER NOTICE** that the applicant have appointed the address of their attorneys below as the address at which they will accept services of all process in these proceedings.

SIGNED AND DATED AT CAPE TOWN ON THIS 22 day of May 2018.

**WOMEN'S LEGAL CENTRE**  
1st Applicant's Attorneys  
7th Floor, Constitution House  
Cape Town  
**REF: MS S-SAMAAI**  
[seehaam@wlce.co.za](mailto:seehaam@wlce.co.za)

**AND**

**LEGAL RESOURCES CENTRE**  
2nd Applicant's Attorneys  
3rd Floor, Greenmarket Place  
54 Short Market Street  
Cape Town  
Tel: 021 481 3000  
Fax: 021 423 0935  
**REF: Ms Mudarikwa**  
[Mandy@lrc.org.za](mailto:Mandy@lrc.org.za)

c/o  
**LAWYERS FOR HUMAN RIGHTS**  
Applicant's Attorneys  
Kutlwanong Democracy Centre,  
357 Visagie Street,  
Pretoria. 0002  
Telephone number: (012) 320 2943  
Fax number: (012) 320 2949 / 320 7681  
**REF: Faith Munyati**

**TO: THE REGISTRAR OF THE ABOVE**  
High Court of South Africa  
Gauteng Division, Pretoria

**AND TO: VOICE OF THE UNBORN BABY NPC**  
First Applicant  
Ingram Attorneys  
c/o Paul du Plessis Attorneys  
568 Norval Street  
Moreleta Park

**AND TO: CATHOLIC ARCHDIOCESE OF DURBAN**  
Second Applicant  
Bruce Burt Attorneys  
c/o Moduka Attorneys  
Suite 709, 28 Chrich Square  
Pretoria, 002

**AND TO: THE MINISTER OF HOME AFFAIRS**  
C/O State Attorney  
8<sup>th</sup> Floor Bothongo Heights  
167 Andries Street  
Pretoria

**AND TO: THE MINISTER OF HEALTH**  
C/O The State Attorney  
8<sup>th</sup> Floor Bothongo Heights  
167 Andries Street  
Pretoria

**IN THE HIGH COURT OF SOUTH AFRICA  
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**WOMEN'S LEGAL CENTRE TRUST**

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Second Applicant

and

**MINISTER OF HOME AFFAIRS**

First Respondent

**MINISTER OF HEALTH**

Second Respondent

---

**FOUNDING AFFIDAVIT**

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I, the undersigned,

**SEEHAAM SEMAAI**

do hereby take oath and state:-



1. I am an adult female employed as the Director at the Women's Legal Centre situated at 124 Adderley Street, 7th floor Constitution House, Cape Town.
2. I am duly authorised to institute these proceedings and to depose to this affidavit on behalf of the first applicant. I attach a resolution adopted by the Women's Legal Centre Trust Board of Trustees on 04 April 2018 marked as annexure "SS1".
3. The facts deposed to herein are within my personal knowledge unless stated to the contrary or otherwise appears from the context, and are to the best of my belief true and correct.
4. I have read the affidavits filed in the main application.

## INTRODUCTION

5. This is a composite application to admit the Women Legal Centre Trust ('WLC') and the Women in Sexual and Reproductive Rights and Health ('WISH Associates') as the first and second *amici curiae* in this matter.
6. WLC and WISH Associates each rely on their own interest to be admitted as *amici curiae* but, if admitted, the parties will advance joint submissions at the hearing of the matter. The parties bring their applications together as a composite application for the convenience of this Court. I accordingly request that this affidavit and the affidavit of Marion Stevens, the Chairperson of WISH Associates, be read together in support of the application for admission.

## THE WLC AND WISH ASSOCIATES' PROPOSED SUBMISSIONS

7. The Voice of the Unborn Baby, the applicant in the main application, seeks a declarator to the effect that in the event of pregnancy loss other than stillbirth the bereaved parents have the right to bury the dead foetus if they elect to do so ("the right to bury"). The notice of motion includes further prayers that section 20(1) of the Births and Deaths Registration Act, 51 of 2005 ('**BADRA**') be declared unconstitutional insofar as it fails to provide for the bereaved parents' right to bury.
8. The applicant's relief, as currently formulated, makes no distinction between the scope and application of the rights to bury that accrue upon a spontaneous termination of pregnancy, and the rights that accrue where a woman voluntarily chooses to terminate a pregnancy. The WLC and WISH Associates submit that this distinction is fundamental and seek to provide this Court with new and relevant submissions on the implications of a declarator conferring the "right to bury" on women's right to access to reproductive healthcare.
9. The WLC and WISH Associates' interest in this matter is limited to the portion of the case as it relates to voluntary terminations of pregnancy performed in terms of the Choice on Termination of Pregnancy Act ('**CTOPA**'). WLC and WISH Associates make no submission in respect of the merits of the case as it relates to spontaneous terminations of pregnancy.
10. If admitted as amici, the WLC and WISH Associates will contend that any declaration made by this Court conferring upon 'bereaved parents' the right to bury a dead embryo or foetus should expressly exclude the accrual of those rights to any person in the case of a voluntary termination of pregnancy in

terms of the CTOPA. To the extent that any such rights may accrue in cases of voluntary termination of pregnancy, the WLC and WISH Associates submit that appropriate mechanisms should be put in place to ensure the practical fulfilment of those rights does not disproportionately interfere with women's right to access to reproductive healthcare.

11. The WLC and WISH Associates intend to provide the Court with new and relevant submissions on the repercussions of the applicant's proposed declarators on the fulfilment of women's right to access to reproductive healthcare.

11.1. The WLC's submissions will focus on the legal and constitutional framework within which the determination of the necessity for a declarator, and the just and equitable relief should be made. The WLC will examine the impact of the relief on the rights of women seeking to terminate their pregnancies, particularly those who attend State healthcare facilities. The WLC will submit that the relief, as presently formulated, poses a risk of violating constitutionally protected rights through the limitation of access to safe and legal abortions in terms of the CTOPA and section 12(2) of the Constitution. In doing so, the WLC will provide insight into the manner in which foreign jurisdictions have legislated the burial of foetal remains and foreign courts have interpreted them.

11.2. WISH Associates will advance arguments arising from their experience of the current status of the implementation of the CTOPA and the challenges faced by women seeking to access health services as



envisaged by the CTOPA. WISH Associates will make submissions on the potential of the proposed relief to impact women's ability to seek and access termination of pregnancy services from state facilities without fear, prejudice, discrimination, stigma and marginalisation.

## THE WOMEN'S LEGAL CENTRE TRUST'S INTEREST

12. The Women's Legal Centre Trust ('the Trust') is a juristic person created in terms of a Trust Deed dated 03 August 1998. The Trust Deed as amended attached herein marked as annexure "SS2", authorises the Trust to conduct litigation in its own name.
13. The detailed objectives of the Trust are set out in clause 4 of the Trust Deed. A core objective of the Trust is to advance and protect the human rights of women and girls in South Africa, particularly women who suffer multiple and intersecting forms of disadvantage, and in so doing to contribute to redressing systematic discrimination and disadvantage.
14. The Trust fulfils its main object by providing free legal assistance to women and through *amici curiae* submissions to assist courts in constitutional and public interest matters that concern women's rights and gender equality. To this end, the Trust established the Women's Legal Centre ('WLC' or 'Centre') in order to conduct public interest litigation including constitutional litigation to advance women's rights. Since its inception, the WLC has participated in numerous cases concerning the rights of women.
15. The Trust acts in the interest of women in South Africa who rely on state healthcare facilities for sexual and reproductive healthcare services.

16. One of WLC's focus areas is that of Sexual and Reproductive Health and Rights ('SRHR'). This came into being as an effort to advance women's access to the constitutional right to health care, more specifically, the right to make decisions regarding sexual and reproductive health care.
17. The SRHR programme has four core objectives:
  - 17.1. To ensure women have access to information and services to make informed decisions in relation to their sexual and reproductive health and rights;
  - 17.2. To hold the state and private entities accountable for the implementation of sexual and reproductive health rights;
  - 17.3. To challenge all discriminatory laws, policies, and practices, which interfere with women's rights to autonomous decision-making around issues of sexuality and reproduction; and
  - 17.4. To engage with strategic partners to promote and create awareness of women's right to make autonomous decisions in relations to SRHR.
18. Through the SRHR programme, the WLC has observed that a majority of its clients rely on State healthcare facilities for sexual and reproductive healthcare services. Although the State does provide free sexual and reproductive healthcare services, women's ability to exercise and give effect to their right to healthcare is dependent on the ability to access such services.



19. One of the Centre's key concerns is around the limited access to safe and legal abortions in South Africa, and the negative impact that has on women's constitutional and statutory rights.
20. Over the years, the WLC, through its clients, has come to realise that there are significant obstacles that impede access to State reproductive healthcare services, most of which are experienced in the manner in which healthcare policies are implemented. This results in violations of the range of rights listed above.
21. At present, there are few mechanisms available to women who wish to hold the State and its health care system accountable, thus making access to healthcare a complex, confusing, and harrowing experience for women.
  - 21.1. This ultimately affects a woman's abilities to make informed and autonomous decisions about their health care and violates their constitutional rights listed above.
  - 21.2. It is within this context that women experience stigma and discrimination that continues to be a hindrance to their ability to access sexual and reproductive healthcare.

## **THE CONSTITUTIONAL AND STATUTORY FRAMEWORK**

22. The WLC and WISH Associates submit that a declaration conferring upon 'bereaved parents' the right to bury will undermine the provisions of the CTOPA

and permit an unjustified infringement on the constitutional rights of women who choose to terminate their pregnancy.

23. For this reason, the determination of the merits of this matter, and the relief, must include careful consideration of the constitutional and statutory framework governing voluntary termination of pregnancies.

### **Just and equitable relief**

24. In any matter involving the infringement or threat of an infringement of a constitutional right, section 38 of the Constitution imposes a duty on the court to provide the applicant with appropriate relief. The obligation to provide appropriate relief must be read together with the requirement in section 172 that when deciding a constitutional matter, the court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency, and may make any order that is just and equitable.
25. Appropriate relief must be fair and just in the circumstances of the particular case. This is determined by considering the precise circumstances of each case with a view to determining how best the values of the Constitution can be promoted by an order that is just and equitable.
26. Two of the key factors a court must consider when determining a just and equitable remedy, are:
- 26.1. The ability of the relief to ensure fairness to all those who might be affected by the relief.
- 26.2. The terms an order with which the parties can comply.



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27. The WLC and WISH Associates will submit that in the present case, "fairness" includes the consideration of the manner in which any relief will implicate the rights and choices of women electing to terminate their pregnancy.

**The right to bodily and psychological integrity**

28. The following rights are implicated when a woman chooses to terminate a pregnancy:
- 28.1. rights to reproductive health care (section 27(1)(a)),
  - 28.2. equality (section 9);
  - 28.3. dignity (section 10);
  - 28.4. privacy (section 14);
  - 28.5. freedom and security of the person specifically the right to bodily integrity which includes the right to make decisions concerning reproduction; and
  - 28.6. security in and control over their body (section 12(2)). Section 12(2)(a) and (b) expressly recognise and protect the right for one to make decisions in relation to reproduction, including the right to termination of pregnancy.
29. Freedom of choice and the ability to make decisions based on one's own circumstances is the golden thread running through these constitutional rights.

## The Choice of Termination of Pregnancy Act

30. The CTOPA promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual beliefs.
31. The preamble of CTOPA recognises the State's duty to provide reproductive health to all, and also to provide safe conditions under which the right of choice can be exercised without fear or harm.
32. The WLC and WISH Associates will submit that this Court should take cognisance of the implications of the proposed declarators on the fulfilment and promotion of the right to reproductive healthcare as envisaged through the provisions of the CTOPA. A declarator or order that directly or indirectly undermines the provisions of the CTOPA will infringe the constitutional rights of women choosing to terminate their pregnancy.
33. In particular, the WLC and WISH Associates will contend that the proposed declarator will impact, at least, the following provisions of the CTOPA:
- 33.1. Section 5(2) which provides: *"no consent other than that of the pregnant woman shall be required for the termination of a pregnancy."*
- 33.2. Section 7(5) which provides *"The identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she herself chooses to disclose that information."*

33.3. Section 3 which prescribes that only certain facilities may perform terminations and imposes specific requirements on such facilities, and section 7 which sets out the recording requirements for terminations of pregnancy performed at a facility.

### **International obligations**

34. Such express recognition is consistent with South Africa's international obligations including the following covenants and Protocols: International Covenant on Economic, Social and Cultural Rights ('**ICESCR**'), the Convention on the Elimination of All Forms of Discrimination Against Women ('**CEDAW**'), and the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('**Maputo Protocol**').

### **Guidance from foreign law**

35. Section 39(1) of the Constitution provides that when interpreting the Bill of Rights, a court must consider international law; and may consider foreign law.

36. In the United States of America, the state of Texas sought to introduce Chapter 697 of the Health and Safety Code ('**the Chapter**'). According to section 697.001 of the Code, the primary purpose of the Chapter is to express the state's profound respect for the life of the unborn by providing for a dignified disposition of embryonic and foetal tissue remains. The Chapter placed an obligation on health facilities to dispose of the remains by way of interment, cremation, incineration followed by interment; or steam disinfection followed by interment. Failure to comply with the terms of the Chapter resulted in the



license of the healthcare facility being suspended or revoked. Furthermore, section 697.008 provided that any person that violated the Chapter or a rule adopted under the Chapter would be liable for a civil penalty in an amount of \$1,000 for each violation.

37. In the matter between **Whole Woman's Health v. Hellerstedt**, the plaintiffs challenged the constitutionality of rules and legislation on the grounds that the legislation imposed an undue burden on women's constitutionally protected liberty. Finding in favour of the plaintiffs, the majority of the court found that the provisions did not confer medical benefits that are sufficient to justify the burdens they impose on women seeking to exercise their constitutional right to an abortion. The court further found that the provisions did not advance the state's interest in protecting women's health but it placed a substantial burden in the path of a woman seeking an abortion by forcing about half of the state's abortion clinics to close for failure to comply with the regulations.
38. In a similar vein, the state of Arkansas enacted provisions in the HB1566 of the Tissue Disposal Mandate (**'the Mandate'**) which required a doctor or facility performing an abortion to dispose of remains in accordance with the Arkansas Final Disposition Rights Act of 2009, which required disposition by way of interment, burial, cremation or removal from Arkansas. The Mandate further made it illegal for a woman to have an abortion without communicating with the man who impregnated her — whether that be her husband, boyfriend, a casual partner or a perpetrator of sexual assault.
39. A federal lawsuit was brought on behalf of a physician dedicated to serving women, including many low-income women, at one of the last two abortion



providers in Arkansas. In **Hopkins v Jegley**, the plaintiff argued that enforcement of each of the challenged laws would impose severe and unwarranted burdens on women's constitutionally protected right to seek abortion care. Finding in favour of the plaintiff, a Federal Court found that the proposed laws restricted women from accessing abortion in the state therefore unconstitutional.

### COMPLIANCE WITH RULE 16A

40. On 11 April 2018, the Applicants' attorneys sent a letter to the attorneys representing the Voice of the Unborn Baby, the Second Applicants (The Catholic Archdiocese of Durban), and the Respondents in the matter seeking their consent to be joined as *amici*. Attached herein marked annexure "SS3" is a copy of the letter sent to all parties.
41. The First Applicant's attorneys, as well as the attorneys for the Respondents, consented to the *amici* joining the matter on 25 April 2018. Copies of the email correspondence on behalf of the First Applicant and the Respondents are attached at **SS4** and **SS5** respectively.
42. The second applicant in the main application, The Catholic Archdiocese of Durban, consented to the *amici* joining on 10 May 2018. A copy of the correspondence is attached at **SS6**.
43. In accordance with Rule 16A(3), the Applicants for *amici curiae* have sent, via email, correspondence attaching the abovementioned letters of consent to the Registrar of this Court notifying the Registrar that the parties granted consent to the *amici* applicants to intervene in the matter. Our correspondent attorneys

undertook to file a physical copy with the Registrar on Tuesday, 22 May 2018. I attach a copy of the email and letter marked "SS7".

## CONDONATION

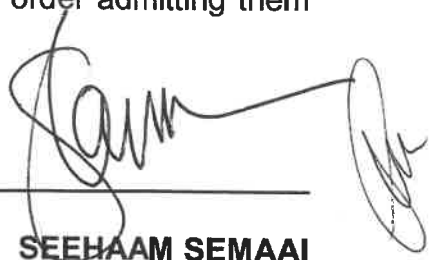
44. The First Applicant filed its Rule 16A notice on 08 March 2017. The *amici* applicants received consent from all the parties to join the proceedings on 25 April 2018 and 10 May 2018. This application will be filed in the third week of May 2018.
45. The consent to join the proceedings and this application for admission as *amicus* was filed outside of the time periods envisaged by Rule 16A. The WLC and WISH Associates therefore request condonation to the extent necessary.
46. The WLC and WISH Associates have sought at all times to comply with the relevant time periods, but the particular circumstances of this litigation have given rise to an unavoidable delay:
  - 46.1. The WLC and WISH Associates first became aware of the application in October 2017.
  - 46.2. WLC and WISH Associates were informed via informal processes that the matter was removed from the roll on 11 September 2017, and understood that the matter was no longer proceeding. At that stage, the Catholic Archdiocese of Durban, the Second Applicant, had applied to join the proceedings. No answering papers had been filed by the State.

- 46.3. In February 2018, the WLC and WISH Associates became aware that the parties intended to approach the Deputy Judge President for directions regarding a timeline for filing of papers in the matter.
- 46.4. On 26 February 2018, WLC wrote to the First Applicant's attorneys and requested an electronic copy of the full set of pleadings in the matter. The WLC required the full set of papers in order to properly consider the case made out by the applicants, and whether it would be appropriate and necessary for the WLC to intervene in the matter as *amici curiae*. WLC received the documents on 28 February 2018, but the papers provided consisted of unsigned draft versions of the First Applicants' application. Copies of the correspondence are attached as Annexure **SS8**.
- 46.5. WLC made further attempts to obtain copies of the filed application and other affidavits on 08 and 12 March 2018. The first applicant's attorneys were unwilling or unable to assist. The WLC also attended Court in order to make copies from the court file, but the court file was empty. Email correspondence dated 08 March 2018 and 12 March 2018 requesting scanned copies of the full set of pleadings filed with the court are attached at **SS9** and **SS10**, respectively.
- 46.6. The WLC and WISH Associates therefore relied on the unsigned, draft application papers in order to consider their position, and in early April decided that it was necessary and appropriate for both the WLC and WISH Associates to apply to be admitted as *amici*.

- 46.7. The WLC and WISH Associates wrote to the parties on 11 April 2018 to request consent to be admitted as *amici* in the proceedings. After a follow up email on 24 April 2018, the First Applicant and the Respondents consented to the WLC and WISH Associates' application for admission as *amici* on 25 April 2018.
- 46.8. After further follow up with the Second Applicants on 04 May 2018, and again on 10 May 2018, the Second Applicant provided WLC and WISH Associates consent to join the proceedings as *amici curiae*.
47. To date, the WLC and WISH Associates have not received a full set of the pleadings.
48. The WLC and WISH Associates have provided a full and reasonable explanation for any failure to comply with the strict requirements of Rule 16A.
49. No prejudice to any party arises from the non-compliance as the matter is yet to be set down for hearing and, as far as I understand, no party has filed heads of argument. The WLC and WISH Associates are able and willing to file their written legal submissions in accordance with any timelines provided by the Deputy Judge President or agreed between the parties.


## CONCLUSION

50. The WLC and WISH Associates accordingly pray for an order admitting them as the first and second *amici curiae*.

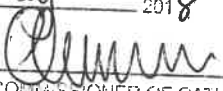
  
\_\_\_\_\_  
SEEHAAM SEMAI

I certify that on this        day of **May 2018**, in my presence at **CAPE TOWN** the deponent signed this declaration and declared that she:

- a)    knew and understood the contents hereof;
- b)    has no objection to taking this oath;
- c)    considered this oath to be binding on his/her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".



**COMMISSIONER OF OATHS**

I certify that: <u>Seehgam Samraj</u>	
1. The Deponent acknowledged to me that:	
1.1.	§ He knows and understands the content of this Declaration;
1.2.	§ He has no objection to taking the prescribed oaths;
1.3.	§ He considers the prescribed oath to be binding on his conscience.
2. The Deponent thereafter uttered the words "I swear that the contents of this Declaration are true, so help me God".	
3. The Deponent signed this Declaration in my presence at the address set out hereunder on this <u>22</u> day of <u>May</u> 201 <u>8</u>	
	
COMMISSIONER OF OATHS Advocate Owen Kleinhans Advocate of the High Court of South Africa	

**RESOLUTION OF THE WOMEN'S LEGAL CENTRE TRUST**

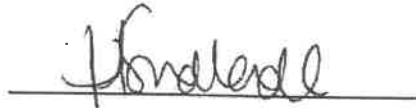
The Trustees of the Women's Legal Centre ("Trust") resolve that:

1. The Trustees on behalf of the Trust will bring an application to intervene as amicus curiae in the matter of **VOICE OF THE UNBORN BABY NPC v MINISTER OF HOME AFFAIRS & ANOTHER**, in the **High Court of South Africa, Gauteng Division, Pretoria**, under case number **16402/17**, in order to make submissions on the impact on a woman's right to access safe and legal abortions should the court declare that 'bereaved parents' who have suffered pregnancy loss before the age of viability (26 weeks in utero) have a right to bury the fetus; and in particular:
  - 1.1. The constitutional rights of women to bodily and psychological integrity, the right to make decisions on reproduction, and to security in and control over their body (section 12(2)(a) and 12(2)(b)); equality (section 9); human dignity (section 10); privacy (section 14); and the right to have access to health care services, including reproductive health care (section 27(1)(a)).
  - 1.2. The applicable international and regional instruments on sexual health and reproductive rights of women, and the impact of the right to bury on access to safe and legal abortions in the sphere of sexual health and reproductive rights.
  - 1.3. The current framework and implementation of the Choice on Termination of Pregnancy Act 92 of 1996; the current experiences of women accessing safe and legal abortion in South Africa; and the impact the relief sought will have on the implementation of Act 92 of 1996.
  - 1.4. The appropriate remedy on a finding that the right to bury should not be extended to include pregnancy loss as a result of terminations of pregnancy.



2. The Trustees hereby delegate authority to **Seehaam Samaal** who is an admitted attorney employed as such at the Women's Legal Centre, Cape Town:
- a. To take all necessary steps to sign all papers in order to bring the application on behalf of the Trust;
  - b. Brief Counsel to argue the matter; and
  - c. To take all necessary steps on behalf of the Trust to advance arguments in the application.

Dated at **CAPE TOWN** on this 04<sup>th</sup> day of **APRIL 2018**.



**Nasreen Rajab-Budlender**

**(Chairperson of the Women's Legal Centre Trust)**



**AMENDED DEED OF TRUST**

in respect of

**THE WOMEN'S LEGAL CENTRE TRUST**

entered into by

**MARY SUSAN CAESAR**

**YASMIN TAYOB CARRIM**

**LEBOGANG TEMPERANCE MALEPE**

**HAPPY MASONDO**

**ALISON RACHELLE TILLEY**

("the Trustees")

I certify this to be a true copy of the original  
**Commissioner of oaths**

*[Signature]*  
Name: *JENNIFER WILLIAMS*  
Practising Attorney  
WOMEN'S LEGAL CENTRE  
7th Floor, Constitution House  
124 Adderly Street  
Cape Town 8001

**SERTIFIKAAT/CERTIFICATE**  
GESERTIFISEER AS 'N FOTOKOPI/TAAFDRUK VAN 'N DOKUMENT  
WAT IN DIE KANTOOR BEWAAR WORD.  
CERTIFIED AS A PHOTOCOPY OF A DOCUMENT FILED IN  
THIS OFFICE  
*[Signature]*  
MEESTER VAN DIE HOË HOF/MASTER OF THE HIGH COURT  
MEESTER SE KANTOOR KAAPSTAD/MASTERS OFFICE CAPE TOWN

MASTER OF THE HIGH COURT  
CAPE TOWN  
2009-04-03  
KAAPSTAD  
MEESTER VAN DIE HOË HOF



**MALLINICKS**  
ATTORNEYS

Telephone +27 21 410 2200  
Fax +27 21 410 9000

3<sup>rd</sup> Floor Granger Bay Court  
Beach Road, V&A Waterfront  
Cape Town 8001  
PO Box 3667 Cape Town 8000

*[Handwritten initials and signatures: "K", "HM", "M", "A"]*

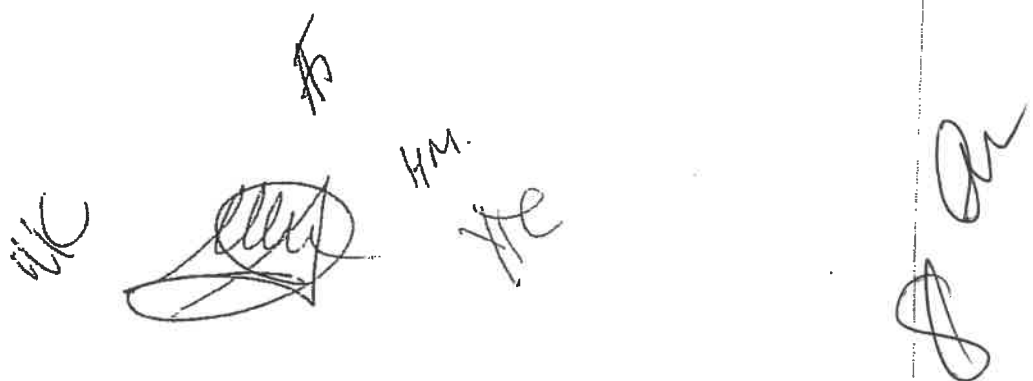


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I certify this to be a true copy of the original  
**Commissioner of oaths**

Name: Jennifer Williams  
 Practising Attorney  
 WOMEN'S LEGAL CENTRE  
 7th Floor, Constitution House  
 124 Adderly Street  
 Cape Town 8001



## 1. INTERPRETATION

In this trust deed:-

- 1.1 clause headings are for convenience only and may not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention:-
- 1.2.1 words indicating the singular includes the plural and vice versa;
- 1.2.2 words indicating any one gender includes the other genders;
- 1.2.3 any reference to a natural person includes a juristic person and vice versa;
- 1.2.4 the words "capital" and "amount" are given their widest meanings and shall include assets or rights of any kind;
- 1.2.5 the word "pay" and its derivatives means and includes the words "pay", "deliver", "give possession", "cede" or "transfer" and their respective derivatives.
- 1.3 the following words and expressions shall bear the meanings assigned to them and cognate words and expressions shall bear corresponding meanings, namely:-
- 1.3.1 "Act" means the Income Tax Act No. 58 of 1962, as amended from time to time, or any statute replacing it;
- 1.3.2 "auditors" means the auditors of the company for the time being;
- 1.3.3 "beneficiaries" means those who benefit in terms of the purpose and objects of the trust;
- 1.3.4 "Commissioner" means the Commissioner for the South African Revenue Services;
- 1.3.5 "the Founder" means Coriaan De Villiers;
- 1.3.6 "initial trustees" means:

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- 1.3.6.1 Victoria Jane Mayer;
- 1.3.6.2 Coriaan De Villiers;
- 1.3.6.3 Karrisha Pillay;
- 1.3.6.4 Alison Rachelle Tilley;
- 1.3.6.5 Michelle Anne O'Sullivan;
- 1.3.6.6 Happy Masondo; and
- 1.3.6.7 Sandra Liebenberg;
  
- 1.3.7 "net income" means the gross income of the trust less the costs of its administration;
  
- 1.3.8 "Trustees" means the Trustees for the time being of the trust;
  
- 1.3.9 "trust" means the Women's Legal Centre Trust, constituted in terms of this trust deed;
  
- 1.3.10 "trust assets" means all income and capital of the trust and shall include:-
  - 1.3.10.1 all receipts, accruals, assets and rights of whatsoever nature which the Trustees may acquire in their capacities as such or which may accrue to or in favour of the Trustees in their capacities as such, including without restricting the generality of the foregoing, any right of whatsoever nature in or to immovable property; and
  
  - 1.3.10.2 all additions, accruals, income, profit or interest arising out of the receipts and accruals referred to in 1.3.10.1 and/or the exercise by the Trustees of their powers in terms hereof;
  
- 1.3.11 "WLC" means the Women's Legal Centre.

WLC [Signature] K HAM WLC SA

- 1.4 reference to any statutory provision includes a reference to that provision as modified, amended, extended or re-enacted from time to time and to any statutory replacement thereof from time to time.
- 1.5 when a company is referred to it includes a close corporation or any other type of legal entity whether registered or not and any reference to shares in a company shall include interests in a close corporation or other legal entity.
- 1.6 reference to a month means a calendar month reckoned from the first of the month to the end of that month.
- 1.7 reference to days means calendar days, which shall be counted by excluding the first day and including the last day, unless the latter falls on a Saturday, Sunday or public holiday, in which event the last day shall be the first business day thereafter.
- 1.8 if any provision in the definitions is a substantive provision conferring rights or imposing obligations on either party, then notwithstanding that such provision is contained only in the definitions, effect shall be given thereto as if such provision were a substantive provision in the body of this agreement.

2. RECORDAL

- 2.1 The Founder and the initial trustees established a trust called the WLC Trust for the sole purpose of establishing, managing and controlling a Women's Legal Centre or Centres:
  - 2.1.1 where legal assistance will be given free of charge to the public, particularly to women, in cases which involve public interest or constitutional litigation;
  - 2.1.2 where legal research, education and training may also be undertaken; and
  - 2.1.3 for the purpose and objects as set out in clause 4 below.
- 2.2 The trust was registered by the Master of the Cape High Court on 18 September 1998 under trust registration number IT 3486/98.
- 2.3 Since the establishment of this trust, the Founder has resigned and various of the initial trustees have been substituted. The current trustees have decided

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to make various amendments to the WLC Trust and accordingly have executed this amended WLC Trust without altering the philosophy, purpose and objects of the WLC Trust as established by the initial trustees.

3. CREATION OF TRUST

- 3.1 A trust is hereby constituted and shall be known as the "Women's Legal Centre Trust".
- 3.2 The initial capital of the trust consisted of R100.00 (one hundred Rand) which the Founder donated. The Trustees hereby accept such donation, subject to the terms and conditions of this trust deed.
- 3.3 The initial subject matter of the trust shall be capable of being added to and increased from time to time and the trust capital shall consist of all assets, corporeal or incorporeal, which the trust may from time to time acquire pursuant to this trust deed and shall include any part of the net income of the trust which is not distributed.
- 3.4 The payment, delivery, cession or transfer of any asset to the Trustees shall be sufficient to vest the same in trust on the terms and conditions and for the purposes set forth in this trust deed.
- 3.5 The Trustees have agreed to accept office and to administer the trust for the objects set forth in this trust deed, and to enter into this written Deed of Trust to give effect to the said objects, as they hereby do.

4. PURPOSE AND OBJECTS OF THE TRUST

- 4.1 The trustees recognize the systemic discrimination and disadvantage suffered by women in South Africa.
- 4.2 The trustees therefore wish to manage, control and provide legal assistance to the WLC.
- 4.3 The main objects of the Trust and the WLC are to advance and protect the human rights of all women in South Africa, particularly black women, who suffer many different and intersecting forms of disadvantage and in so doing to contribute to redressing systemic discrimination and disadvantage and for that purpose:

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- 4.3.1 the main activity of the WLC is conducting public interest litigation, including constitutional litigation to advance the human rights of women;
- 4.3.2 the WLC Trust may conduct such litigation in its own name, including intervening in court proceedings as *amicus curiae* ("friend of the court");
- 4.3.3 the WLC provides legal services and representation free of charge, particularly to women, who would not otherwise be able to afford such services in conducting such litigation;
- 4.3.4 the WLC may employ and/or instruct counsel, attorneys, and other persons for the purposes of implementing the objects of the WLC;
- 4.3.5 other activities of the WLC, in furtherance of its objectives; may include:
- 4.3.5.1 advocacy, policy and legal interventions, other than litigation;
  - 4.3.5.2 engaging in legal research;
  - 4.3.5.3 conducting training, workshops and seminars;
  - 4.3.5.4 publication of legal research and information dissemination;
  - 4.3.5.5 promotion of the development of women lawyers; including but not limited to establishing a scholarship;
  - 4.3.5.6 developing links and networks with groups who promote the objects of the trust;
  - 4.3.5.7 where possible, assisting groups to formulate their policy and legal interventions;
  - 4.3.5.8 developing a database of national and international organisations committed to human rights;

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4.3.5.9 referral of cases which can more appropriately be dealt with by persons other than the WLC; and

4.3.5.10 providing assistance and training to legal clinics, para-legals and advice offices at which services are rendered to the public free of charge.

5. **GUIDING PRINCIPLES AND NATURE OF THE TRUST**

5.1 The Trustees in making their decisions in terms of this trust deed shall do so in a manner which is non-racial, non-sexist, impartial, democratic, accountable and financially responsible.

5.2 The Trust shall be:

5.2.1 an independent organisation and shall not engage in any activities of a party-political nature;

5.2.2 a non-governmental organisation; and

5.2.3 a not-for-profit organisation.

6. **TRUSTEES**

6.1 The current Trustees are:

6.1.1 ALISON RACHELLE TILLEY;

6.1.2 MARY SUSAN CAESAR;

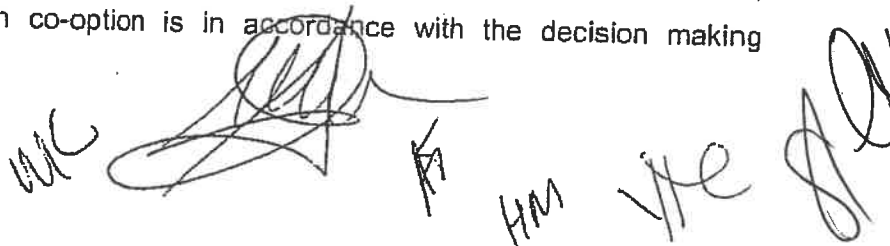
6.1.3 HAPPY MASONDO;

6.1.4 YASMIN TAYOB CARRIM;

6.1.5 LEBOGANG TEMPERANCE MALEPE;

and such Trustees by their signature hereto accept and confirm their appointment as such.

6.2 The Trustees shall at all times have the right to co-opt further Trustees, provided that such co-option is in accordance with the decision making



procedures set out herein, and such further Trustees are authorised to act as such by the Master of the High Court, in terms of the relevant statute.

6.3 There shall at all times be not fewer than 3 Trustees in office for the valid exercise of the powers and discharge of the duties of the Trustees in terms of this trust deed. In the event of the above requirement not being fulfilled at any time, then the Trustees remaining in office shall be empowered to act only to appoint such further Trustees as are required to make up the minimum number of Trustees whereafter they shall again be charged with the duty of administering the trust.

6.4 The following persons shall be disqualified from serving or being appointed as Trustees:-

6.4.1 any person who is disqualified in terms of the company laws for the time being of South Africa from occupying office as a director of a company;

6.4.2 a person whose estate has been sequestrated (provisionally or finally) and has not been rehabilitated;

6.4.3 a person who has been found, by a competent authority, to be of unsound mind or a lunatic or declared incapable of managing his own affairs;

6.4.4 an employee of the WLC;

6.4.5 a person, other than an employee of the WLC, who provides (paid) legal services to the WLC.

6.5 A trustee shall cease to hold office if:-

6.5.1 he or she is disqualified from holding office as such in terms of clause 6.4 above;

6.5.2 if he or she dies;

6.5.3 he or she resigns his office as trustee by notice in writing to the Trustees;

6.5.4 he or she becomes disqualified in law to hold the office of trustee;

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- 6.5.5 he or she is replaced as a trustee in accordance with the provisions of this trust deed
- 6.5.6 he or she is removed as a trustee by a resolution of two-thirds of the Trustees duly passed.
- 6.6 If a trustee wishes to apply for a position of employment at the Centre, she must resign prior to applying for such position.
- 6.7 Notwithstanding 6.4 and 6.6 a trustee may be appointed by a majority of the trustees in an acting capacity in the Centre for a period of 6 months in the event of an emergency.
- 6.8 No portion of the trust assets shall form part of the personal estates of the Trustees nor shall it be paid or transferred directly or indirectly to the Trustees or any member of their families, and all trust assets shall be registered in the name of the trust.
- 6.9 Any of the Trustees may, with the unanimous written consent of all the Trustees, be paid a reasonable remuneration which is not excessive, having regard to what is generally considered reasonable in terms of trustee's remuneration, and is commensurate with and in return for any actual services rendered to the trust.
- 6.10 The Trustees shall be entitled to the reimbursement of actual costs, expenses and commitments reasonably incurred in good faith on behalf of the trust and with its authority.

**7. APPLICATION OF TRUST FUNDS**

7.1 The costs of administration of the trust shall be a first charge on the gross trust income which costs shall include, but not be limited to, all trust expenses, and any levy, duty or tax whatsoever levied on the Trustees in their respective capacities and all costs, charges and disbursements whatsoever incurred by the Trustees in or arising out of the performance of their actual duties under this deed.

7.2 The Trustees shall:

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- 7.2.1 apply so much of the available funds of the trust, whether capital or income, as they deem necessary solely for the attainment of the trust's objects as set out above;
- 7.2.2 not distribute any of its net income or gains to any person other than in terms of this trust deed.
- 7.3 Subject to 7.2 above, the Trustees shall have the power, in their sole discretion:-
  - 7.3.1 to determine the manner in which the trust capital and the net income shall be applied or dealt with from time to time;
  - 7.3.2 to determine the terms and conditions, if any, to be attached to the payment, application or expenditure of the net income or trust capital or any portion thereof;
  - 7.3.3 to determine when the trust capital or net income or any portion thereof shall be applied, expended, paid or used in any manner whatsoever towards the furtherance of the purposes and object of the trust;
  - 7.3.4 to accumulate, at any time and from time to time, any portion of the trust capital or net income for any capital project or projects or for any other purpose or reason whatsoever which they, in their discretion, deem to be in the interests of the trust and the beneficiaries in the furtherance of the purposes and object of the trust in terms hereof, provided that, in the event that the trust has been tax exempt, the prior consent of the Commissioner is first obtained;
  - 7.3.5 to invest responsibly any portion of the trust capital or net income:-
    - 7.3.5.1 with a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act No. 39 of 1984;
    - 7.3.5.2 in securities listed on a licensed stock exchange as defined in Section 1 of the Stock Exchanges Control Act No. 1 of 1985;

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7.3.5.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations, provided that the provisions of this sub-clause shall not prohibit the Trust from retaining any investment in the form that it was acquired by way of donation, bequest or inheritance.

7.4 Subject to clause 6.9 and 6.10 , the trust is to be administered in such a manner as to preclude any donor, trustee and/or their families from deriving any monetary advantage from moneys paid to, by or for the benefit of the trust.

8. SECURITY DISPENSED WITH

No trustee, whether appointed or co-opted in terms of this trust deed, or appointed as a successor to a trustee, shall be required by the Master of the High Court, or any other competent authority, to furnish any security of any nature, nor shall any security be required for the due performance of any duty under the Trust Property Control Act No. 57 of 1988, as amended, or under any other statutory provision which may now be or may hereafter become of force or effect, the intent and purpose being that no trustee shall be required to give any security in respect of or in connection with or arising out of such appointment.

9. DECISIONS OF THE TRUSTEES AND PERFORMANCE OF THEIR DUTIES

9.1 The business of the trust shall be managed by the Trustees. Subject to the Trustees giving effect to the terms and conditions of this deed, they shall, in administering the trust and its affairs, generally adopt such procedures and take such administrative steps as they may from time to time deem necessary and advisable. They shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that the Trustees shall meet at least once a year, within 90 days of the end of the financial year.

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- 9.2 The director of the WLC shall be entitled to be present at all meetings of the trustees, save where a conflict of interest may arise.
- 9.3 Any trustee shall at any time be entitled to summon a meeting of the Trustees provided that any trustee calling a meeting shall endeavour to give at least 15 (fifteen) days written notice to the Trustees thereof, save in respect of urgent matters requiring a meeting at less than 15 (fifteen) days notice.
- 9.4 The majority of the Trustees in office shall be required to form a quorum of Trustees for the purposes of meetings of the Trustees.
- 9.5 The Trustees shall appoint a chairperson and such other officers of the trust as they may decide.
- 9.6 Decisions and questions arising at any quorate meeting of Trustees shall be decided by a simple majority, save where otherwise provided herein.
- 9.7 A resolution in writing signed in favour thereof by a majority of Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted. Any trustee may indicate his or her agreement, in the context of this clause, by way of a signed letter or facsimile transmission or by electronic mail transmission. A resolution as contemplated in this clause may consist of several documents each signed by one or more of the Trustees (provided that in all, the requisite number of Trustees have signed) and shall be deemed to have been passed on the date on which it was signed by the last trustee who signed it (unless provided to the contrary in such resolution).
- 9.8 Subject to any provision to the contrary contained herein, all contracts, deeds, cheques or documents required to be signed on behalf of the Trust shall be signed in such manner as the Trustees from time to time determine.
- 9.9 All resolutions taken by the Trustees will be recorded and copies thereof kept by the Director.
- 9.10 A trustee may, if unable to attend any meeting of the Trustees, appoint another trustee in writing to act and vote on his behalf at any specified meeting of Trustees.
- 9.11 The Trustees may appoint any committee from among the Trustees, and may grant or delegate any of their powers to such committees. Any such

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delegation or grant of powers shall not preclude the Trustees from themselves exercising such powers. The Trustees may withdraw any such delegation or grant of powers at any time. The Trustees may authorise such committees to seek the advice of further persons, who are not Trustees.

9.12 The Trustees may co-opt people, whether Trustees or not, to attend meetings of the Trustees or their committees and to undertake any of the duties that the Trustees may from time to time delegate to them. Such persons who are not Trustees shall act in an advisory capacity only and shall not have a vote at any meeting of the Trustees.

10. **POWERS OF TRUSTEES**

10.1 Subject to the express limitations on Trustees' powers set out in this trust deed, the Trustees shall have all such powers and capacity in relation to the trust and the trust assets as:-

10.1.1 are legally required and/or permitted;

10.1.2 any natural person with full legal capacity may have in relation to his own affairs,

and the discretionary powers vested in the Trustees in terms of this trust deed shall be complete and absolute, and any decision made by them pursuant to any such discretionary powers shall be unchallengeable by any person affected thereby.

10.2 The Trustees shall, subject to the provisions of clause 10.4, deal with the trust assets in order to achieve the objects of the trust and shall, subject to the provisions of this trust deed, possess and enjoy all ancillary and/or incidental rights and powers necessary for and incidental to such objects.

10.3 Without limitation of the general powers and discretion conferred on the Trustees, but subject to the limitations contained in clause 7 above they shall have, inter alia, the following rights and powers which they may exercise for the purposes of the trust in their discretion:-

10.3.1 to open and operate any banking account and/or building society account in the name of the trust and to draw and issue cheques

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and to receive cheques, promissory notes and/or bills of exchange, and to endorse any of the same for collection by the bank and/or building society at which the said account was opened. Withdrawals shall be made on the signature of at least two persons, one of whom must be a Trustee. The other signatories may be such persons as the Trustees may determine from time to time by written resolution, provided that withdrawals of a stipulated amount or less shall be made on the signature of such two persons as the Trustees may determine from time to time by written resolution;

- 10.3.2 to enter into any contracts and execute any documents by or on behalf of the trust, for the purpose of giving effect to the objectives of the trust;
- 10.3.3 to buy or sell (by public auction, private treaty or otherwise) movable, immovable or incorporeal property of whatever nature, and to sign and execute any agreement or deed of sale in relation thereto, and to sign and execute all requisite documents and do all such things necessary for the purpose of effecting and registering, if needs be, transfers according to law of any such property, whether movable, immovable or incorporeal, bought or sold by the Trustees, provided the powers in this sub-clause are exercised for the sole benefit of the beneficiaries;
- 10.3.4 to receive, accept or acquire, or donate, cede, assign or otherwise dispose of, any other right to or over immovable property not constituting full ownership, whether registerable or not;
- 10.3.5 to buy, sell and/or exchange shares, interest, debenture, stocks, units, promissory notes, bills of exchange and any other negotiable instruments and documents of any kind, and to do all things requisite and sign all documents requisite to acquire or, as the case may be, to give transfer and title thereto;
- 10.3.6 make loans for the benefit of beneficiaries (but not to a trustee, donor and/or any of their relatives or to any private company) on such terms and conditions and at such interest rate, if any, as the

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Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any such security;

- 10.3.7 to vary any investment made in terms hereof by realising the same and/or by substituting therefor any other investment which the Trustees are empowered in terms hereof to make;
- 10.3.8 to borrow money on such terms and conditions and at such interest and from such persons as the Trustees may determine, and either without security or upon such security over movable or immovable property as the Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any requisite instrument of debt and of any such security;
- 10.3.9 to mortgage, pledge and/or hypothecate any movable, immovable or incorporeal property forming part of the assets of the trust, and enter into suretyships and, for the purpose of any such mortgage, pledge, hypothecation or suretyship, to sign and execute all requisite documents and do all things necessary for effecting and registering the same, provided that such power shall only be exercised for the benefit of the beneficiaries;
- 10.3.10 subject to clauses 6.4.1 and 10.4.5, to let, either by written agreement of lease or otherwise, improve, alter or maintain any immovable property belonging to the trust or any improvements thereon;
- 10.3.11 any asset acquired by way of donation, inheritance or bequest, may be retained or continued, in the form so acquired;
- 10.3.12 to sue for, recover and receive all debts or sums of money, goods, effects and things whatever, which may become due, owing, payable or belonging to the trust, and to take action in a court of law on behalf of the trust and/or defend any proceedings which may be instituted against the trust;

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- 10.3.13 to defend, oppose, adjust, settle, compromise and/or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the trust and any person, company, corporation or body whatever, and for the purposes aforesaid, to do and execute all necessary acts and documents;
- 10.3.14 to attend all meetings of creditors of any person, company, corporation or body whatever indebted to the trust, whether in insolvency, liquidation, judicial management or otherwise, and to vote for the election of a trustee or Trustees and/or liquidator/s and/or judicial manager/s and also to vote on all questions submitted to any such meeting of creditors and generally to exercise all rights accruing to a creditor;
- 10.3.15 subject to clause 10.4.5 to exercise and take up or to sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debentures or units forming part of the assets of the trust;
- 10.3.16 to cause, in the case of any company or unit trust scheme which is precluded by its articles of association or trust deed or which refuses to transfer any shares, debentures or units forming part of the assets of the trust into the name of the Trustees as such, the transfer of the said shares, debentures or units into their own names or into the name of a bank, trust company or other suitable nominee;
- 10.3.17 to give receipts, releases or other effectual discharges for any sum of money or things recovered;
- 10.3.18 to pay out of the funds of the trust all debts incurred on behalf of the trust by the Trustees in the exercise of their powers in terms hereof;
- 10.3.19 subject to clause 10.4.2, to accept on behalf of the trust all or any donations of whatsoever nature, whether in the form of funds or movable or immovable property or any right therein, or otherwise, from the donor or from any other person whatever;

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- 10.3.20 to determine whether any surplus on the sale of any assets of whatever description of the trust, and whether movable or immovable property, and the receipt of any bonus, shares or units by the trust be regarded as income or capital of the trust and to revise any such decision taken by them;
  - 10.3.21 to employ professional practitioners, agents and employees, including a Director, to administer the trust assets, to carry out the objectives of the trust and to pay their fees, commissions, remuneration and any other charges out of the funds of the trust, and to confer, if necessary, upon such agents or employees so appointed the right to exercise any discretion which may be vested in the Trustees;
  - 10.3.22 to terminate the employment of any such professional practitioners, agents or employees;
  - 10.3.23 to improve and develop immovable property acquired by the trust and to expend the capital and/or net income of the trust upon the preservation, maintenance and upkeep of any such property.
- 10.4 Notwithstanding anything to the contrary herein contained:-
- 10.4.1 no benefits may be allocated by the trust during its existence for any purpose other than those envisaged in clause 7 above;
  - 10.4.2 all donations made by or to the trust must be irrevocable and unconditional and must be subject to the terms and conditions of the trust deed;
  - 10.4.3 no trustee shall have a direct or indirect interest in or benefit from any contract which the Trustees may conclude with any company (unless previously disclosed and agreed to unanimously by all the remaining Trustees);
  - 10.4.4 paid officials of the trust, other than Trustees, may only serve on the management committee or board of Trustees in an advisory capacity, and will have no voting rights;

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- 10.4.5 the Trustees may not cause the trust to acquire immovable property solely for letting purposes nor may the Trustees engage in any trading operations or speculative transactions, including inter alia, ordinary trading operations in the commercial sense, speculative transactions, dividend stripping activities as well as letting property on a systematic or regular basis. Notwithstanding the foregoing it is expressly provided that if immovable property is donated or bequeathed to the trust and such property is rent producing then the Trustees shall be permitted to continue letting the property without jeopardising the tax status of the trust, in the event that the trust has obtained a tax exemption;
- 10.4.6 the Trustees may not allow immovable property owned by the trust to be occupied free of charge by any person except beneficiaries, or officers or employees of the trust.
- 10.4.7 no competition, contest, game, scheme, arrangement or system in connection with which any prize may be won shall be conducted or caused to be conducted by the trust unless an authority in terms of the relevant Act has been obtained beforehand;
- 10.4.8 should the services of a fund raiser be made use of for collection contributions, the expenses (remuneration and/or commission included) may not exceed 40% (forty percent) of the total turnover of such collection.

11. PATRONS

The trustees shall be further empowered to institute and award an honorific title of "Patrons", which may be accorded at their discretion from time to time to such one or more persons as they may deem appropriate, with a view to giving recognition to special relationships of value and significance to the Trust. Patrons shall have neither legal rights nor responsibilities, but may be consulted by the trustees and shall be entitled to give advice as they may consider relevant and appropriate.

12. DISPUTE RESOLUTION

12.1 In the event of a dispute arising between the Trustees relating to:-

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- 12.1.1 the interpretation or application of this agreement;
- 12.1.2 the proper attainment of the purpose and objects of the trust;
- 12.1.3 any other matter whatsoever pertaining to the carrying out of their duties as Trustees,

and the Trustees being unable to reach resolution of the dispute amongst themselves, the Trustees commit themselves to mediation, or, failing that, arbitration on the terms set out more fully below.

- 12.2 Within 15 (fifteen) days of the dispute arising, the dispute shall be referred to a mediator agreed upon between the Trustees.
- 12.3 In the event that the Trustees are unable to agree on a mediator within the said 15-day period, the mediator will be appointed by the Alternative Dispute Resolution Association of South Africa, or in the event that they are no longer in existence at the time, by the Arbitration Foundation of South Africa, which shall nominate a person or persons with expertise appropriate to the nature of the matter in dispute.
- 12.4 In the event of the mediator failing to resolve the dispute within a further period of 15 (fifteen) days from his or her appointment, the dispute shall be referred to an arbitrator agreed upon between the Trustees whose decision in regard to the dispute shall be final and binding. In the event that the Trustees are unable to agree upon an arbitrator, he or she or they shall be appointed by the Arbitration Foundation of South Africa, and either party may approach the said Foundation for such appointment.
- 12.5 The procedure for such arbitration shall be governed by the rules of the Arbitration Foundation of South Africa, provided that the arbitrator shall have due regard to the need for the dispute to be resolved expeditiously and shall endeavour to ensure that his or her decision thereon is made available to the Trustees within 21 (twenty-one) days of his or her appointment as arbitrator.
- 12.6 The mediator and the arbitrator in making their decisions shall have due regard to and shall be guided by the principles set out in clause 5 above.

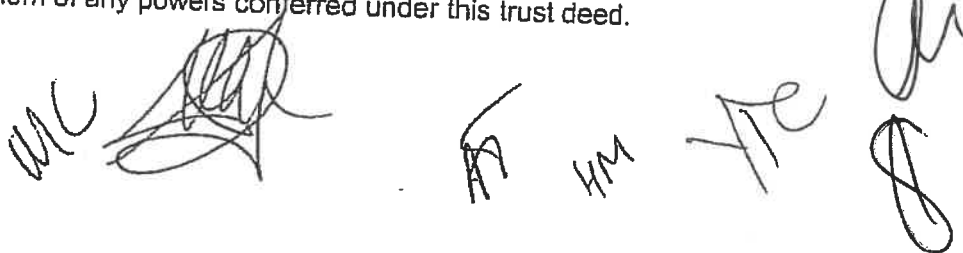
13. BOOKS OF ACCOUNT

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- 13.1 The Trustees shall keep true and correct records and books of account of their administration of the trust, in such manner and form as is necessary to reflect fairly the position of the trust at all times. There shall be recorded in such books and records, *inter alia*, any change of the trust assets from time to time, the income and all outgoings applicable to the administration of the trust.
- 13.2 The Trustees shall cause the trust's books of account to be audited by the auditors and an annual income statement and balance sheet drawn within 6 (six) months after the year end reflecting the affairs of the trust for the year end and its assets and liabilities at the last day of the month of December of each year. The income statements and balance sheets shall be certified by the Trustees and the auditors and a copy thereof sent to the official designated for this purpose in terms of the Non-Profit Organisations Act, No 71 of 1997 in the event of the trust being a registered non-profit-organisation in terms of the said Act, and to the Commissioner, in the event that the trust has been granted tax exempt status.
- 13.3 The audit of the trust's books of account shall be carried out by auditors to be appointed from time to time by the Trustees, who shall have the right to terminate any such appointment and to appoint any other auditors. The Trustees shall take all necessary steps to procure the appointment of auditors of the trust as soon as is reasonably possible after the date of execution hereof and there shall at all times thereafter be auditors of the trust.
- 13.4 The Trustees shall not be bound to file any liquidation, distribution or administration accounts with any officer, official or person except insofar as they may be obliged to do so in terms hereof or under the provisions of any law.

14. LOSSES

None of the Trustees shall be answerable for or liable to make good any loss occasioned to or sustained by the trust from any cause whatever, save for any loss as shall arise from a wilful act of dishonesty of the trustee involved. No trustee shall be liable for any act of dishonesty committed by any trustee unless he or she was a party thereto. The Trustees shall at all times be deemed to have been indemnified out of the assets of the trust against all claims and demands of whatever nature arising out of the exercise or purported exercise by them of any powers conferred under this trust deed.

The bottom of the page features several handwritten signatures and initials. From left to right, there is a signature that appears to be 'MC', a large, complex scribble, the initials 'AT', the initials 'HM', a signature that looks like 'The', and a large, stylized signature on the far right.

15. **LEGAL PROCEEDINGS**

All legal proceedings by or against the trust, including proceedings in the interest of the public, shall be instituted in the name of the trust. However, when the trust acts on behalf of a client, it shall institute legal proceedings in the name of such client.

16. **TERMINATION OF TRUST**

16.1 The trust may be terminated by a resolution passed by at least a 75% (seventy five percent) majority of all Trustees in office at a special meeting convened for a purpose of considering such matter. Not less than 21 (twenty one) days notice shall be given of such meeting and the notice convening the meeting shall clearly state that the dissolution of the trust and disposal of its assets will be considered.

16.2 Any resolution to terminate the trust shall provide for the payment of all costs involved in the dissolution of the trust and the application of the trust assets.

16.3 On dissolution of the trust, the remaining trust assets, if any, will be transferred to a similar public benefit organisation which has been approved in terms of section 30 of the Act.

17. **NOTICES AND GENERAL**

17.1 Any notice required to be given in terms of this trust shall be given in writing and may be given by telex, cablegram, telegraph, email or facsimile, provided that, in the case of a telex, facsimile or email it is acknowledged as having been received.

17.2 Each trustee for the time being shall, upon assuming office, nominate in writing a street address and a facsimile number, if any, at which any notice required to be given in terms hereof may be given to him or her and may, from time to time by notice in writing, vary the address to another such address.

A series of handwritten signatures and initials are located at the bottom of the page. From left to right, there is a signature that appears to be 'MC', a large, stylized signature, the initials 'HM', another signature, and a final signature on the far right.

17.3 Any notice to a trustee at the address for the time being nominated by him or her in terms of 17.2 or at any other address at which the trustee shall have acknowledged receipt shall be regarded as sufficient notice to that trustee.

18. AMENDMENT OF TRUST DEED

The provisions of this trust deed may from time to time be amended, altered, varied, added to and/or deleted at a meeting of the Trustees, by resolution signed in favour thereof by 75% (seventy five percent) of the Trustees then in office, and provided that 21 (twenty one) days notice of such meeting is given in writing to the Trustees, which notice contains substantially the terms of the amendments so contemplated. In the event of such an amendment, variation, alteration, addition and/or deletion being effected, a copy of all such amendments, alterations, variations, additions and/or deletions shall be submitted to the Commissioner if the trust has been approved by the Commissioner as tax exempt before the date of such resolution, and to the official designated for this purpose in terms of the Non-Profit Organisation Act in the event the trust is registered as a Nonprofit Organisation in terms of the Non-Profit Organisation Act 71 of 1997. The provisions of this trust deed have been formulated on the basis that the commissioner will grant the trust tax exempt status, and the Trustees' powers have accordingly been limited. The Trustees may amend the trust at any time to comply with any requirements of the commissioner or other relevant authority.

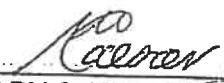
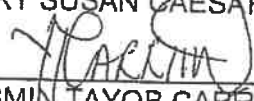
19. ACCEPTANCE

The first Trustees, by their signature hereto, undertake to discharge their duties in terms of this trust deed and to carry out the terms and conditions herein contained.

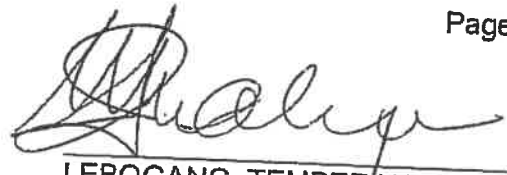
SIGNED BY THE PARTIES ON THE DATE AND AT THE PLACE AS INDICATED ALONGSIDE THEIR RESPECTIVE SIGNATURES, THE SIGNATORY WARRANTING HIS/HER AUTHORITY TO DO SO.

Date 1 MARCH 2003 Place CAPE TOWN

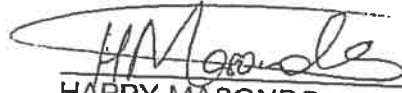
Signature

  
\_\_\_\_\_  
MARY SUSAN CAESAR  
  
\_\_\_\_\_  
YASMIN TAYOB CARRIM

  
  
L.M.   

LEBOGANG TEMPERANCE  
MALEPE



HAPPY MASONDO



ALISON RACHELLE TILLEY

inc



**Nasreen Solomons**

---

**From:** Nasreen Solomons  
**Sent:** 11 April 2018 03:44 PM  
**To:** 'ingramlaw@securitas.co.za'; 'mmatubatuba@justice.gov.za';  
'law@modukalaw.co.za'  
**Cc:** Seehaam Samaai; 'Mandy Mudarikwa'  
**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) -  
Consent to amicus intervention  
**Attachments:** Scan\_Itec18041115400.pdf  
**Importance:** High

Good day,

The above matter refers. Kindly find attached correspondence for your immediate attention.

Kind regards,  
Nasreen Solomons | **Researcher**



**WOMEN'S LEGAL CENTRE**

7<sup>th</sup> Floor Constitution House  
124 Adderley Street  
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JOHANNESBURG: 9th Floor, OPH, 112 Main Street, Johannesburg, 2000

WWW.WLCE.CO.ZA

11 April 2018

**TO:** **Ms Renaldi Ingram**  
c/o Paul Du Plessis Attorneys  
568 Norval Street  
Moreleta Park  
Pretoria  
By email: [ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)

**AND TO:** **State Attorney, Pretoria**  
Ground Floor, Salu Building  
316 Thabo Sehume Street  
Private Bag X91  
Pretoria  
By email: [mmatubatuba@justice.gov.za](mailto:mmatubatuba@justice.gov.za)

**AND TO:** **Bruce Burt Attorneys**  
Attorney for the Intervenor  
c/o Moduka Attorneys  
Suite 709, 28 Church Square  
Pretoria  
002  
Tel: 012 753 3282  
By email: [law@modukalaw.co.za](mailto:law@modukalaw.co.za)

**RE: THE VOICE OF THE UNBORN BABY NPC / MINISTER OF HOME AFFAIRS AND ANOTHER (CASE NO.: 16402/2017)**

1. We refer to the above matter, and the Notice in terms of Rule 16A filed on 08 March 2017.
2. We act for and on behalf of the Women's Legal Centre Trust ("the Trust") represented by the Women's Legal Centre, and the Women in Sexual and Reproductive Rights and Health ("WISH Associates") represented by the Legal Resources Centre.
3. The Trust is a non-profit Law Centre that conducts public interest gender litigation and advocacy on matters concerning the promotion and protection of gender equality in South Africa. One of the core objectives of the Trust, as set out in its Trust Deed, is to advance and protect the human rights of all women and girls in South Africa, particularly women who suffer many intersecting forms of disadvantage. In so doing the Trust seeks to contribute to redressing the systematic discrimination and disadvantage that women face.



4. WISH Associates was formed in 2011, and is a group of women working in the area of sexual and reproductive health either as consultants or in organisations who among other things, aim to ensure that there is effective and necessary support for advocacy actions and support in relation to the realisation of women's sexual and reproductive health and rights in South Africa.
5. The Trust and WISH Associates wish to jointly intervene in the above matter as *amici curiae*. In doing so, the Trust and WISH Associates will not repeat any matter set forth in the arguments of the other parties. Rather, they will raise new contentions that may be useful to the Court in the determination of the issues before it. The Trust and WISH Associates have been involved in a number of matters relating to sexual and reproductive health rights, and are well placed, through their work and exposure to litigation to be of assistance to this Honourable Court in the matter above.
6. The Trust and WISH Associates will make joint submissions that are limited to the right to access safe and legal abortions within the remedy sought by the Applicants. The submissions will specifically on the following issues:
  - 6.1. The constitutional rights of women to bodily and psychological integrity, the right to make decisions on reproduction, and to security in and control over their body (section 12(2)(a) and 12(2)(b)); equality (section 9); human dignity (section 10); privacy (section 14); and the right to have access to health care services, including reproductive health care (section 27(1)(a).
  - 6.2. The applicable international and regional instruments on sexual health and reproductive rights of women, and the impact of the foetal burial on access to safe and legal abortions in the sphere of sexual health and reproductive rights.
  - 6.3. The current framework and implementation of the Choice on Termination of Pregnancy Act 92 of 1996; the current experiences of women accessing safe and legal abortion in South Africa; and the impact the relief sought will have on the implementation of Act 92 of 1996.
  - 6.4. The appropriate remedy on a finding that the right to bury should not be extended to include pregnancy loss as a result of terminations of pregnancy.
7. We understand that the Applicant wishes to expedite the matter and have it heard as soon as possible. Accordingly, we request that your client furnish us with written consent to intervene as *amici curiae* in the matter so that we may put our submissions before the Court. The terms and conditions that we propose are as follows:



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JOHANNESBURG: 9th Floor, OPH, 112 Main Street, Johannesburg, 2000

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- 7.1. That the Trust and WISH Associates be given consent to enter as *amici curiae* in the matter;
  - 7.2. That the *amici curiae* be given consent to lodge written submissions in this matter; and
  - 7.3. That the *amicus curiae* be given consent to present oral submissions at the hearing of this matter.
8. In the interests of avoiding any further delays in the matter, we request that written consent be provided by **Friday, 20 April 2018**.

We look forward to your response. Should you have any queries, kindly contact Seehaam Samaai at 021 424 5660, or Mandy Mudarikwa at 021 481 3000.

Yours faithfully,

**WOMEN'S LEGAL CENTRE**

Per:  S. SAMAAI

cc: **LEGAL RESOURCES CENTRE**

Per: M MUDARIKWA

**Nasreen Solomons**

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 25 April 2018 10:48 AM  
**To:** Nasreen Solomons; mmatubatuba@justice.gov.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa; Donrich Jordaan  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17)  
 - Consent to amicus intervention



INGRAM ATTORNEYS

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Good morning Madam

**RE: VOICE OF THE UNBORN BABY // MINISTER OF HOME AFFAIRS AND ANOTHER (CASE NUMBER 16402/2017)**

We refer to your letter dated 11 April 2018 as well as the telephonic conversation yesterday

Our client has the following condition for the proposed entrance as amici curiae by the Trust and WISH Associates:

1. Trust and WISH Associates will file their written argument within 15 days after the respondents filed their written argument.

If this condition is acceptable to your clients, Trust and WISH Associates, our client consents to their proposed entrance as amici curiae.

Regards

Renaldi Ingram  
 Toegelate Prokureur/Admitted Attorney  
**INGRAM PROKUREURS/ATTORNEYS**  
 Tel: 012 990 5144  
 Faks/Fax:086 693 2848  
 Epos/E-mail: Ingramlaw@securitas.co.za

**From:** Nasreen Solomons [mailto:research@wlce.co.za]  
**Sent:** 24 April 2018 14:18  
**To:** Renaldi Ingram <ingramlaw@securitas.co.za>; mmatubatuba@justice.gov.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai <Seehaam@wlce.co.za>; Mandy Mudarikwa <mandy@lrc.org.za>

**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention

**Importance:** High

Good day,

We refer to our correspondence dated 11 April 2018 (which was attached to our email below) in which we requested consent to join in the above matter as *amici curiae*. We also note that we requested that written consent be provided by Friday, 20 April 2018, which has since passed.

As yet, we have not received any response to our written request.

Our clients remain quite eager to join as *amici* in the matter, and do not wish to present any delays therein. Could you kindly provide us with a written response to our correspondence of 11 April 2018, and as a matter of urgency?

We look forward to your response.

Kind regards,  
Nasreen Solomons



**WOMEN'S LEGAL CENTRE**

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8001  
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Fax: 021 424 5206  
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**From:** Nasreen Solomons

**Sent:** 11 April 2018 03:44 PM

**To:** 'ingramlaw@securitas.co.za'; 'mmatubatuba@justice.gov.za'; 'law@modukalaw.co.za'

**Cc:** Seehaam Samaai; 'Mandy Mudarikwa'

**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention

**Importance:** High

Good day,

The above matter refers. Kindly find attached correspondence for your immediate attention.

Kind regards,  
Nasreen Solomons | **Researcher**



**WOMEN'S LEGAL CENTRE**

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**Nasreen Solomons**

**From:** Matubatuba Maxwell <MMatubatuba@justice.gov.za>  
**Sent:** 25 April 2018 10:38 AM  
**To:** Nasreen Solomons; ingramlaw@securitas.co.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17)  
 - Consent to amicus intervention

Morning

We hereby consent to your clients being joined as *amici*

Regards

***M T MATUBATUBA***

**ACTING DEPUTY STATE ATTORNEY  
 STATE ATTORNEYS OFFICE – PRETORIA  
 20<sup>TH</sup> FLOOR, ROOM 2018  
 SALU BUILDING  
 CNR THABO SEHUME & FRANCIS BAARD  
 PRETORIA  
 TEL: 012 309 1635**

---

**From:** Nasreen Solomons [mailto:research@wlce.co.za]  
**Sent:** 24 April 2018 02:18 PM  
**To:** ingramlaw@securitas.co.za; Matubatuba Maxwell; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention  
**Importance:** High

Good day,

We refer to our correspondence dated 11 April 2018 (which was attached to our email below) in which we requested consent to join in the above matter as *amici curiae*. We also note that we requested that written consent be provided by Friday, 20 April 2018, which has since passed.

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Our clients remain quite eager to join as *amici* in the matter, and do not wish to present any delays therein. Could you kindly provide us with a written response to our correspondence of 11 April 2018, and as a matter of urgency?

We look forward to your response.

Kind regards,  
 Nasreen Solomons



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**From:** Nasreen Solomons  
**Sent:** 11 April 2018 03:44 PM  
**To:** 'ingramlaw@securitas.co.za'; 'mmatubatuba@justice.gov.za'; 'law@modukalaw.co.za'  
**Cc:** Seehaam Samaai; 'Mandy Mudarikwa'  
**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention  
**Importance:** High

Good day,

The above matter refers. Kindly find attached correspondence for your immediate attention.

Kind regards,  
Nasreen Solomons | **Researcher**



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A handwritten signature or set of initials in the bottom right corner of the page, consisting of several loops and a vertical stroke.

556



Attorneys & Administrators of Estates

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FIRST FLOOR, BONDEV OFFICE PARK  
CORNER WILLEM BOTHA & WIERDA ROAD  
ELDORAIGNE, CENTURION  
Vat Reg No: 4510262183  
Website: [www.modukalaw.co.za](http://www.modukalaw.co.za)

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PRETORIA 0001  
Tel: (012) 753-3282  
323-1137  
Fax: 086 5525426  
Email: [law@modukalaw.co.za](mailto:law@modukalaw.co.za)

Date: 2018/10/05

WOMEN'S LEGAL CENTRE  
7<sup>TH</sup> FLOOR CONSTITUTION HOUSE  
124 ADDERLEY STREET  
CAPE TOWN  
8001

PER EMAIL: [research@wlce.co.za](mailto:research@wlce.co.za)  
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[Seehaam@wlce.co.za](mailto:Seehaam@wlce.co.za)

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[sifiso@bjrburt.co.za](mailto:sifiso@bjrburt.co.za)

ATTENTION: Nasreen Solomons

Dear Sir/Madam

**VOICE OF THE UNBORN BABY // MIN OF HOME AFFAIRS & OTHER  
CONSENT TO JOIN AS AMICUS CURIAE**

1. We refer to the above matter and your previous emails to our office concerning the aspect.
2. We have communicated your request with BJ Burt Attorneys; we confirm on their behalf that they give consent for you to join as Amicus Curiae.

Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)  
Consultant: Nomsa Ursula Sefanyetso B.Proc ( Conveyancer) , Marlise Botha B Com , LLB  
Candidate Attorney: Jacob Tshwarelo Tlhoale

3. We defer the matter to the Ingram Attorneys and State Attorney (Attorneys for the 1<sup>st</sup> Applicant and 1<sup>st</sup> & 2<sup>nd</sup> Respondents) for you to get their consent, pursuant to Rule 16A (2).

Yours Faithfully



---

Moduka Attorneys

---

Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)  
Consultant: Nomsa Ursula Sefanyetso B.Proc ( Conveyancer) , Marlise Botha B Com , LLB  
Candidate Attorney: Jacob Tshwarelo Tlhoaele



SS7

**Nasreen Solomons**

---

**From:** Nasreen Solomons  
**Sent:** 16 May 2018 01:36 PM  
**To:** 'SMniki@justice.gov.za'  
**Cc:** Seehaam Samaai; Mandy Mudarikwa; 'Renaldi Ingram';  
'mmatubatuba@justice.gov.za'; 'Law Attorneys'; Faith Munyati; 'Sanja Bornman'  
**Subject:** Voice of the Unborn Baby NPC & Another v Minister of Home Affairs & Another  
(16402/17) - Letter in terms of Rule 16A(3)  
**Attachments:** 2018 05 16 Letter to Registrar - Voice of the Unborn Baby.pdf

Dear Mr Mniki,

The above matter refers.

Kindly find attached correspondence in terms of Rule 16A(3). Our correspondent attorneys will also file a physical copy of the correspondence.

I trust this is in order.

Best,  
Nasreen Solomons



**WOMEN'S LEGAL CENTRE**

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PBO No. 930003292  
NPO No. 023-004



Your Ref:  
Our Ref: MM/ns

16 May 2018

**The Registrar**

Gauteng High Court  
Pretoria

Dear Sir/Madam,

**THE VOICE OF THE UNBORN BABY NPC & ANOTHER v MINISTER OF HOME  
AFFAIRS & ANOTHER – CASE NO.: 16402/17**

1. We refer to the above matter and write to you pursuant to Rule 16A(3) of the High Court Uniform Rules of Court. We write on behalf of the Women's Legal Centre Trust and WISH Associates.
2. Following the filing of the application above, we wrote to the parties on behalf of the Trust and WISH Associates in terms of Rule 16A(2) seeking consent for the admission of our clients as *amici curiae* in this matter.
3. Following this request we received correspondence from the First Applicant, and Respondents granting our clients consent to be admitted to intervene as *amici curiae* on 25 April 2018. The Second Applicant granted their consent to our clients' application on 10 May 2018. We hereby write to you to lodge the written consent of the admission of our clients with your office as required by Rule 16A(3). For your convenience we have attached the correspondence from parties as mentioned above.
4. We submit that our clients will comply with the condition stipulated by the First Applicant in its correspondence of 24 April 2018 to submit written argument to the Court 15 days after the Respondents have filed their written argument.

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), EJ Broster  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
FB Mahomed (Acting Director), T Mbhense, A Turpin  
S Sephton (Director), C McConnechie  
N Fakir (Director), SP Mkhize, C van der Linde, MJ Power  
J Brickhill (Head of CLU), M Bishop, G Bizos SC, T Ngcukaitobi, S Nindi, A Singh, M Wheelton, W Wicomb

5. Please do not hesitate to contact the writer should you have any queries.

Yours faithfully,

**LEGAL REOURSCES CENTRE**

**PER**



**M MUDARIKWA**

**COPY TO: WOMEN'S LEGAL CENTRE TRUST**

**MS S SAMAAI**

**By email: seehaam@wlce.co.za**

**AND TO: Ms Renaldi Ingram**

c/o Paul Du Plessis Attorneys

568 Norval Street

Moreleta Park

Pretoria

**By email: ingramlaw@securitas.co.za**

**AND TO: State Attorney, Pretoria**

Ground Floor, Salu Building

316 Thabo Sehume Street

Private Bag X91

Pretoria

**By email: mmatubatuba@justice.gov.za**

**AND TO: Bruce Burt Attorneys**

Attorney for the Intervenor

c/o Moduka Attorneys

Suite 709, 28 Church Square,

Pretoria

**By email: law@modukalaw.co.za**



## Nasreen Solomons

---

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 25 April 2018 10:48 AM  
**To:** Nasreen Solomons; mmatubatuba@justice.gov.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa; Donrich Jordaan  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17)  
- Consent to amicus intervention



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Good morning Madam

**RE: VOICE OF THE UNBORN BABY // MINISTER OF HOME AFFAIRS AND ANOTHER (CASE NUMBER 16402/2017)**

We refer to your letter dated 11 April 2018 as well as the telephonic conversation yesterday

Our client has the following condition for the proposed entrance as amici curiae by the Trust and WISH Associates:

1. Trust and WISH Associates will file their written argument within 15 days after the respondents filed their written argument.

If this condition is acceptable to your clients, Trust and WISH Associates, our client consents to their proposed entrance as amici curiae.

Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
**INGRAM PROKUREURS/ATTORNEYS**  
Tel: 012 990 5144  
Faks/Fax:086 693 2848  
Epos/E-mail: Inqramlaw@securitas.co.za

**From:** Nasreen Solomons [mailto:research@wlce.co.za]  
**Sent:** 24 April 2018 14:18  
**To:** Renaldi Ingram <ingramlaw@securitas.co.za>; mmatubatuba@justice.gov.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai <Seehaam@wlce.co.za>; Mandy Mudarikwa <mandy@lrc.org.za>

**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention

**Importance:** High

Good day,

We refer to our correspondence dated 11 April 2018 (which was attached to our email below) in which we requested consent to join in the above matter as *amici curiae*. We also note that we requested that written consent be provided by Friday, 20 April 2018, which has since passed.

As yet, we have not received any response to our written request.

Our clients remain quite eager to join as *amici* in the matter, and do not wish to present any delays therein. Could you kindly provide us with a written response to our correspondence of 11 April 2018, and as a matter of urgency?

We look forward to your response.

Kind regards,  
Nasreen Solomons



**WOMEN'S LEGAL CENTRE**

7<sup>th</sup> Floor Constitution House  
124 Adderley Street  
Cape Town  
8001  
Tel: 021 424 5660  
Fax: 021 424 5206  
[www.wlce.co.za](http://www.wlce.co.za)

facebook

twitter

---

**From:** Nasreen Solomons

**Sent:** 11 April 2018 03:44 PM

**To:** 'ingramlaw@securitas.co.za'; 'mmatubatuba@justice.gov.za'; 'law@modukalaw.co.za'

**Cc:** Seehaam Samaai; 'Mandy Mudarikwa'

**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention

**Importance:** High

Good day,

The above matter refers. Kindly find attached correspondence for your immediate attention.

Kind regards,  
Nasreen Solomons | **Researcher**



**WOMEN'S LEGAL CENTRE**



## Nasreen Solomons

---

**From:** Matubatuba Maxwell <MMatubatuba@justice.gov.za>  
**Sent:** 25 April 2018 10:38 AM  
**To:** Nasreen Solomons; ingramlaw@securitas.co.za; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17)  
- Consent to amicus intervention

Morning

We hereby consent to your clients being joined as *amici*

Regards

**M T MATUBATUBA**

**ACTING DEPUTY STATE ATTORNEY  
STATE ATTORNEYS OFFICE – PRETORIA  
20<sup>TH</sup> FLOOR, ROOM 2018  
SALU BUILDING  
CNR THABO SEHUME & FRANCIS BAARD  
PRETORIA  
TEL: 012 309 1635**

---

**From:** Nasreen Solomons [mailto:research@wlce.co.za]  
**Sent:** 24 April 2018 02:18 PM  
**To:** ingramlaw@securitas.co.za; Matubatuba Maxwell; law@modukalaw.co.za  
**Cc:** Seehaam Samaai; Mandy Mudarikwa  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Consent to amicus intervention  
**Importance:** High

Good day,

We refer to our correspondence dated 11 April 2018 (which was attached to our email below) in which we requested consent to join in the above matter as *amici curiae*. We also note that we requested that written consent be provided by Friday, 20 April 2018, which has since passed.

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We look forward to your response.

Kind regards,  
Nasreen Solomons



**WOMEN'S LEGAL CENTRE**

7<sup>th</sup> Floor Constitution House  
124 Adderley Street



Attorneys & Administrators of Estates

BLOCK A4, DEUS EXORNO  
FIRST FLOOR, BONDEV OFFICE PARK  
CORNER WILLEM BOTHA & WIERDA ROAD  
ELDORAIGNE, CENTURION  
Vat Reg No: 4510262183  
Website: [www.modukalaw.co.za](http://www.modukalaw.co.za)

P.O. BOX 3352  
PRETORIA 0001  
Tel: (012) 753-3282  
323-1137  
Fax: 086 5525426  
Email: [law@modukalaw.co.za](mailto:law@modukalaw.co.za)

Date: 2018/10/05

WOMEN'S LEGAL CENTRE  
7<sup>TH</sup> FLOOR CONSTITUTION HOUSE  
124 ADDERLEY STREET  
CAPE TOWN  
8001

PER EMAIL: [research@wlce.co.za](mailto:research@wlce.co.za)  
[mandy@lrc.org.za](mailto:mandy@lrc.org.za)  
[Seehaam@wlce.co.za](mailto:Seehaam@wlce.co.za)

COPIED: [ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)  
[mamatubatuba@justice.gov.za](mailto:mamatubatuba@justice.gov.za)  
[sifiso@bjrburt.co.za](mailto:sifiso@bjrburt.co.za)

ATTENTION: Nasreen Solomons

Dear Sir/Madam

**VOICE OF THE UNBORN BABY // MIN OF HOME AFFAIRS & OTHER  
CONSENT TO JOIN AS AMICUS CURIAE**

1. We refer to the above matter and your previous emails to our office concerning the aspect.
2. We have communicated your request with BJ Burt Attorneys; we confirm on their behalf that they give consent for you to join as Amicus Curiae.

Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)  
Consultant: Nomsa Ursula Sefanyetso B.Proc ( Conveyancer) , Marlise Botha B Com , LLB  
Candidate Attorney: Jacob Tshwarelo Tlhoale

3. We defer the matter to the Ingram Attorneys and State Attorney (Attorneys for the 1<sup>st</sup> Applicant and 1<sup>st</sup> & 2<sup>nd</sup> Respondents) for you to get their consent, pursuant to Rule 16A (2).

Yours Faithfully



---

Moduka Attorneys

---

Partners : Nkagiseng Millicent Moduka B Proc, LLB. (Unisa)  
Consultant: Nomsa Ursula Sefanyetso B.Proc ( Conveyancer) , Marlise Botha B Com , LLB  
Candidate Attorney: Jacob Tshwarelo Tlhoale



**Ruth Davis**

---

**From:** Ruth Davis  
**Sent:** 26 February 2018 02:47 PM  
**To:** 'Ingramlaw@securitas.co.za'  
**Cc:** Aretha Louw; Harsha Gihwala; Seehaam Samaai  
**Subject:** The voice of the unborn baby

Dear Renaldi

The above matter refers.

I refer to our telephonic conversation of earlier and hereby confirm that you will scan and email the contents of the 2 lever arch files to us by Wednesday for the latest at no cost.

We thank you for your assistance in this regard.

Kind regards

Ruth Davis  
Office Administrator



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Cape Town  
8001  
Tel: 021 424 5660  
Fax: 021 424 5206

Website: [www.wlce.co.za](http://www.wlce.co.za)

## Ruth Davis

---

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 28 February 2018 06:29 PM  
**To:** Ruth Davis  
**Subject:** VOICE OF THE UNBORN BABY (PART 2)  
**Attachments:** S041000664\_1711241619000.pdf; S041000664\_1711241417000.pdf

Attached the Answering (opposing) affidavit from the Respondent

The Catholic Church still need to bring their application to be added as Second Applicant and we are awaiting the papers from a amicus curia

Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
**INGRAM PROKUREURS/ATTORNEYS**  
Tel: 012 990 5144  
Faks/Fax:086 693 2848  
Epos/E-mail: [ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)



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## Ruth Davis

---

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 01 March 2018 11:12 AM  
**To:** Ruth Davis  
**Subject:** FW: The voice of the unborn baby  
**Attachments:** doc00056820170302161432.pdf; doc00176020170310122946.pdf

FYI

---

**From:** Renaldi Ingram  
**Sent:** 28 February 2018 18:28  
**To:** 'Ruth Davis' <Ruth@wlce.co.za>  
**Subject:** RE: The voice of the unborn baby

Good evening Ruth

Attached hereto the following:

1. Rule 16A Notice
2. Notice of motion and Founding affidavit
3. Annexures to the founding affidavit

Opposing affidavit of the Respondent will follow

Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
**INGRAM PROKUREURS/ATTORNEYS**  
Tel: 012 990 5144  
Faks/Fax:086 693 2848  
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---

**From:** Ruth Davis [<mailto:Ruth@wlce.co.za>]  
**Sent:** 26 February 2018 14:47  
**To:** Renaldi Ingram <[ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)>

Cc: Aretha Louw <Aretha@wlce.co.za>; Harsha Gihwala <harsha@wlce.co.za>; Seehaam Samaai <Seehaam@wlce.co.za>

Subject: The voice of the unborn baby

Dear Renaldi

The above matter refers.

I refer to our telephonic conversation of earlier and hereby confirm that you will scan and email the contents of the 2 lever arch files to us by Wednesday for the latest at no cost.

We thank you for your assistance in this regard.

Kind regards

Ruth Davis  
Office Administrator



**WOMEN'S LEGAL CENTRE**

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124 Adderley Street  
Cape Town  
8001  
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Website: [www.wlce.co.za](http://www.wlce.co.za)

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## Ruth Davis

---

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 01 March 2018 11:14 AM  
**To:** Ruth Davis  
**Subject:** FW: The voice of the unborn baby  
**Attachments:** BOTHA.PDF

---

**From:** Renaldi Ingram  
**Sent:** 28 February 2018 18:28  
**To:** 'Ruth Davis' <Ruth@wlce.co.za>  
**Subject:** RE: The voice of the unborn baby

Good evening Ruth

Attached hereto the following:

1. Rule 16A Notice
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3. Annexures to the founding affidavit

Opposing affidavit of the Respondent will follow

Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
**INGRAM PROKUREURS/ATTORNEYS**  
Tel: 012 990 5144  
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**From:** Ruth Davis [<mailto:Ruth@wlce.co.za>]  
**Sent:** 26 February 2018 14:47  
**To:** Renaldi Ingram <[ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)>



Cc: Aretha Louw <Aretha@wlce.co.za>; Harsha Gihwala <harsha@wlce.co.za>; Seehaam Samaai <Seehaam@wlce.co.za>

Subject: The voice of the unborn baby

Dear Renaldi

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Kind regards

Ruth Davis  
Office Administrator



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## Ruth Davis

---

**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 01 March 2018 11:16 AM  
**To:** Ruth Davis  
**Subject:** FW: The voice of the unborn baby  
**Attachments:** OLIVIER.PDF

FYI

---

**From:** Renaldi Ingram  
**Sent:** 28 February 2018 18:28  
**To:** 'Ruth Davis' <Ruth@wlce.co.za>  
**Subject:** RE: The voice of the unborn baby

Good evening Ruth

Attached hereto the following:

1. Rule 16A Notice
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Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
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---

**From:** Ruth Davis [<mailto:Ruth@wlce.co.za>]  
**Sent:** 26 February 2018 14:47  
**To:** Renaldi Ingram <[ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)>

Cc: Aretha Louw <Aretha@wlce.co.za>; Harsha Gihwala <harsha@wlce.co.za>; Seehaam Samaai <Seehaam@wlce.co.za>

Subject: The voice of the unborn baby

Dear Renaldi

The above matter refers.

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Kind regards

Ruth Davis  
Office Administrator



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## Ruth Davis

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**From:** Renaldi Ingram <ingramlaw@securitas.co.za>  
**Sent:** 01 March 2018 11:17 AM  
**To:** Ruth Davis  
**Subject:** FW: The voice of the unborn baby  
**Attachments:** KLOPPER.PDF

FYI

---

**From:** Renaldi Ingram  
**Sent:** 28 February 2018 18:28  
**To:** 'Ruth Davis' <Ruth@wlce.co.za>  
**Subject:** RE: The voice of the unborn baby

Good evening Ruth

Attached hereto the following:

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3. Annexures to the founding affidavit

Opposing affidavit of the Respondent will follow

Regards

Renaldi Ingram  
Toegelate Prokureur/Admitted Attorney  
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Faks/Fax:086 693 2848  
Epos/E-mail: [ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)



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---

**From:** Ruth Davis [<mailto:Ruth@wlce.co.za>]  
**Sent:** 26 February 2018 14:47  
**To:** Renaldi Ingram <[ingramlaw@securitas.co.za](mailto:ingramlaw@securitas.co.za)>

A handwritten signature in black ink, appearing to be the name "Ruth Davis", is located in the bottom right corner of the page.

Cc: Aretha Louw <Aretha@wlce.co.za>; Harsha Gihwala <harsha@wlce.co.za>; Seehaam Samaai <Seehaam@wlce.co.za>

Subject: The voice of the unborn baby

Dear Renaldi

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Kind regards

Ruth Davis  
Office Administrator



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**Nasreen Solomons**

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**From:** Nasreen Solomons  
**Sent:** 08 March 2018 03:33 PM  
**To:** 'ingramlaw@securitas.co.za'  
**Cc:** Seehaam Samaai  
**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Request for Pleadings

Dear Ms Ingram,

Thank you for taking the time to talk to me yesterday. Following from our conversation, in which I expressed the Women's Legal Centre's interest in joining the matter as *amicus*, I notified you that we have the filed papers of the First and Second Respondents, as well as the papers for the Catholic Archdiocese. We do not, however, have a copy of the signed and filed application brought by the Applicant.

We now just require a copy of your filed application in order to assess the issues we would speak to should we join as *amicus*. Could you please send us a copy of the filed application?

Thank you for your time and assistance with this.

Kind regards,  
Nasreen Solomons | **Researcher**



**WOMEN'S LEGAL CENTRE**

7<sup>th</sup> Floor Constitution House  
124 Adderley Street  
Cape Town  
8001  
Tel: 021 424 5660  
Fax: 021 424 5206  
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**Nasreen Solomons**

---

**From:** Nasreen Solomons  
**Sent:** 12 March 2018 12:31 PM  
**To:** 'ingramlaw@securitas.co.za'  
**Cc:** Seehaam Samaai  
**Subject:** RE: Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17)  
- Request for Pleadings

Dear Ms Ingram,

The above matter has reference, as well as my email below. I am just following up as to whether you received my email.

Kindly advise whether you will provide us with a full set of your filed application, and when we may expect to receive it. Furthermore, could you also send us the answering papers of the First and Second Respondents please? We only have their response to the Catholic Archdiocese's application to intervene.

Thank you for your assistance.

Kind regards,  
Nasreen Solomons | **Researcher**



**WOMEN'S LEGAL CENTRE**

7<sup>th</sup> Floor Constitution House  
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**From:** Nasreen Solomons  
**Sent:** 08 March 2018 03:33 PM  
**To:** 'ingramlaw@securitas.co.za'  
**Cc:** Seehaam Samaai  
**Subject:** Voice of the Unborn Baby NPC v Minister of Home Affairs & another (16402/17) - Request for Pleadings

Dear Ms Ingram,

Thank you for taking the time to talk to me yesterday. Following from our conversation, in which I expressed the Women's Legal Centre's interest in joining the matter as *amicus*, I notified you that we have the filed papers of the First and Second Respondents, as well as the papers for the Catholic Archdiocese. We do not, however, have a copy of the signed and filed application brought by the Applicant.

We now just require a copy of your filed application in order to assess the issues we would speak to should we join as amicus. Could you please send us a copy of the filed application?

Thank you for your time and assistance with this.

Kind regards,  
Nasreen Solomons | **Researcher**



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IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO: 16402/2017

In the application of:

**WOMEN'S LEGAL CENTRE TRUST**

First Applicant

**WOMEN IN SEXUAL AND REPRODUCTIVE  
RIGHTS AND HEALTH**

Second Applicant

to be admitted as *amici curiae* in the matter between:

**VOICE OF THE UNBORN BABY NPC**

First Applicant

**CATHOLIC ARCHDIOCESE OF DURBAN**

Second Applicant

and

**MINISTER OF HOME AFFAIRS**

First Respondent

**MINISTER OF HEALTH**

Second Respondent

---


**FOUNDING AFFIDAVIT**

---

I, the undersigned,

**MARION STEVENS**

do hereby take oath and state:-

ms<sup>1</sup> 

1. I am the Chairperson and Co-ordinator of the Women in Sexual and Reproductive Rights and Health ('**WISH Associates**') situated at 6 Wherry Road, Muizenberg. I am also a trained mid-wife.
2. I am duly authorised to institute these proceedings and to depose to this affidavit on behalf of the second applicant. I attach a resolution adopted by the Executive Committee of WISH Associates on 04 April 2018 marked as annexure "**MS1**".
3. The facts deposed to herein are within my personal knowledge unless stated to the contrary or otherwise appears from the context, and are to the best of my belief true and correct.
4. I have read the affidavits filed in the main application.

## **INTRODUCTION**

5. This is a composite application to admit the Women Legal Centre Trust ('**WLC**') and the Women in Sexual and Reproductive Rights and Health ('**WISH Associates**') as the first and second amicus curie in this matter.
6. I have read the affidavit of Seehaam Samaai deposed on behalf of the WLC and confirm her introduction and characterisation of the submissions sought to be presented by WLC and WISH Associates if they are admitted as amicus curia.
7. In this affidavit, I will set out WISH Associate' interest in the matter and provide an outline of its intended submissions.

MS<sup>2</sup> 

## WISH ASSOCIATES' INTEREST IN THE PROCEEDINGS

8. WISH Associates, is an organisation established in terms of a constitution, a copy of which is attached hereto marked "MS2". WISH Associates consists of women from diverse backgrounds, sexuality, age and of different legal and social backgrounds in South Africa aimed at providing sexual and reproduction health services to women.
  
9. WISH Associates support the South African constitutional and legal provisions underpinning sexual and reproductive health and all rights of women. WISH Associate's objective is to:
  - 9.1. Provide adequate support at different government levels to ensure that the legal framework of sexual and reproductive and health and rights in South Africa is implemented;
  
  - 9.2. Take steps to address the lack of progress towards achieving the health and rights of women;
  
  - 9.3. Ensuring that there is effective and necessary support for advocacy actions in relation to women's sexual and reproductive health and rights;
  
  - 9.4. Safeguarding the ability of women to make choices about their reproduction and sexuality;
  
  - 9.5. Fighting for and safeguarding the ability of women and girls to control of their own bodies; and

- 9.6. The need to address patriarchal, religious and political values (among others) that continue to limit women's choice, control of their own bodies and their sexuality.
10. Through its work, WISH Associates have provided support towards the implementation of programmes aimed at advancing women's sexual and reproductive health and rights, including the realisation of South Africa's commitment towards providing women with safe and legal abortions services free from fear, stigma and marginalisation.
11. I submit that the WISH Associates are ideally placed to make submissions to this Honourable Court on how the remedy sought in this matter will impact this access.

## **ACCESS TO REPRODUCTIVE HEALTHCARE IN SOUTH AFRICA**

12. The CTOPA has been credited for advancing women's health and rights specifically in light of its commitment towards affording women the right to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and providing conditions under which the right of choice can be exercised without fear or harm.
13. However, in spite of the enactment of the CTOPA, women in continue face challenges in exercising their rights to access safe and legal abortions for reasons set out below.

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## Terminations within the broader healthcare context in South Africa

14. It is common cause that a majority of South Africans from low-income and poor households rely on public health facilities. In February 2013 the National Health Care Facilities Baseline Audit National Summary Report (**the Report**) states that about 83% (Eighty Three Percent) of South Africans rely on the public health care system.
15. The Report found that there are currently 3880 public health facilities including 318 hospitals and of the total number of health facilities, only 264 facilities provide termination of pregnancy services. The Report further found that nearly half of the 3 074 clinics (47%) and 20% of the 238 Community Health centres were reported no access to doctors whom, in terms of the CTOPA, are authorised to provide abortion services. All the above is contained in the report compiled by Amnesty International in 2017 titled Briefing: Barriers To Safe And Legal Abortion 2 Amnesty International in South Africa marked "**MS3**".
16. The Department of Health published the Human Resources for Health South Africa, (2011) HRH Strategy for The Health Sector (**the HRH Strategy**). The HRH Strategy document was aimed at providing a guide towards developing new policies, programmes and detailed plans for new service strategies, and management of health care workforce in ways that will provide quality health care for all South Africans. Attached herein marked "**MS4**" is a copy of the front page of the HRH Strategy document and the relevant pages. Should the parties wish to receive the full document, we can make it available.

17. According to the findings of the HRH Strategy document, rural communities are only served by 12% of the country's doctors and 19% of nurses registered in the country.
18. What we can draw from the abovementioned statistics is the manner in which health care services, particularly within the context of termination of pregnancies in the public health sector, is the manner in which women from poor communities are in most instances, unable to access safe and legal abortions.

### **Limited facilities**

19. One of the main issues relating to the lack of implementation of CTOPA relates to the fact that access to abortion services is wholly dependent on the availability of medical service providers to provide the service. In addition to the already limited facilities available to provide abortion services, access to safe and legal abortions is further limited by the medical practitioners who refuse to terminate pregnancies on religious grounds i.e. conscientious objections.
20. The CTOPA fails to provide for instances where a medical practitioner may object to the termination of pregnancy, therefore failing to making provision for objections on conscientious grounds., The Department of Health has not taken steps to implement a clear framework of the CTOPA in relation to the medical practitioner's rights to object on religious grounds. Such failure to regulate has resulted in many women being refused the service by medical practitioners in public facilities on unreasonable grounds.

### **Social perception and/or attitudes towards termination of pregnancies.**

21. It is common cause that a majority of South Africans hold conservative views regarding the termination of pregnancy. Because termination of pregnancy is often perceived as immoral, such views contribute towards the stigma attached to the termination of pregnancies.
22. In a report by Health Economics and HIV/AIDS Research Division (**HEARD**), instances of women being reprimanded by state medical practitioners for choosing to terminate were reported. Attached herein marked "**MS5**" is a copy of the report.
23. Although section 10(1)(c) of the CTOPA makes it an offence to prevent or obstruct access to legal abortions, the lack of accountability measures or mechanisms to hold medical practitioners and their support staff accountable results in many women opting to use less conventional and sometimes illegal methods of termination thus further causing barriers to accessing safe and legal abortions.

### **Inadequate knowledge on the legal framework of the CTOPA**

24. Both women seeking to terminate their pregnancies and medical service providers have limited understanding of the legal framework as set out by the CTOPA therefore resulting in women being unable to assert their rights.
25. Research studies have found that that in many instances, women have little knowledge regarding the CTOPA, particularly in relation to the gestation period in which termination may occur. In study by Women's Health Research Unit,

School of Public Health & Family Medicine, University of Cape Town attached herein marked as annexure "MS6", it was found 32% of women in the Western Cape did not know that the CTOPA legalises abortion in South Africa and of those who knew of the CTOPA, a minority of them knowledge of the gestation restrictions set out in the law.

26. A study conducted at three hospitals in Gauteng Province by Rachel Jewkes and five others found that 54% of women in Gauteng had not made use of legal abortion services due to the lack of knowledge of the CTOPA while 15% of those who had knowledge of their rights had no knowledge of facilities that provided the service.
27. Accordingly, due to the lack of knowledge, women often seek abortions much later in their pregnancy and in some instances, resort to illegal and unsafe abortion services.

### **Conducive environment for illegal and unsafe abortions**

28. It is the Applicant's view that the factors discussed above which contribute towards the limitation and/or the hindrance to access to safe and legal abortions in South Africa, many women are forced to seek services outside of the public healthcare facilities. In a study by HEARD, already attached herein as annexure "MS5", it was estimated that 50% of abortions occur outside of the designated health facilities. This is commonly known as 'backyard abortions'.
29. Much of what encourages women to opt for backyard abortions rests on accessibility of the unlicensed and illegal facilities. Street marketing plays a significant role in that many of these illegal abortion facilities advertise their



service on lamp posts, street lights claiming to offer 'safe', 'pain-free', 'quick', and 'cheap' abortions. Attached herein marked as annexure "MS7" is an image of such advertising. The proliferation of this advertising, and the fact that it is posted in public spaces such as taxi ranks and shopping centres make many women believe they are accessing a legitimate service.

## THE IMPACT OF THE RELIEF ON ACCESS TO REPRODUCTIVE HEALTHCARE

30. If admitted as *amicus curiae*, we intend to highlight the manner in which the relief sought by the applicants in the main application will have a direct implication on women seeking to terminate their pregnancies in terms of CTOPA. In their pursuit of the abovementioned order, VUB seeks to have certain words or phrases to have a particular meaning. The two words that the Applicant wish to bring to the Court's attention are the following:

30.1. '**bereaved parent or parents**' shall mean, in the context of pregnancy loss, a person or persons who would have been a parent or parents as defined in the Children's Act, 38 of 2005, of such child that would have been born had the pregnancy resulted in a live birth;

30.2. '**loss of pregnancy**' shall mean the death of a foetus prior to or during separation from the pregnant woman's body, irrespective of whether through natural causes or human intervention.

31. In light of the various factors that are currently contributing towards limiting and/or hindering women from accessing safe and legal abortion, it is the Applicant's view that the relief sought will contribute further towards the limitations as discussed above.

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## **The relief may undermine protections in the CTOPA**

32. The definition as proposed by the VUB has the effect of extending burial rights to include both the woman and the man.
33. By so doing, the order affords the woman and the man rights to decide on what is to happen to the foetal remains. VUB presupposes that where termination by means of human intervention, including the termination in terms of CTOPA, both the woman and the man will be in agreement as to the disposal of the foetal remains. The, however, fails to address this Court on how the dispute over the disposal of foetal remains may be resolved.
34. Consider a situation where the couple is married or in a committed relationship and after discovering that the woman is pregnant and she wishes to terminate the pregnancy. In such instances, the applicants in the main application fail to address the issue of which parent will have a preferred right to make the final decision regarding the foetal remains.
35. The applicants VUB further fail to address the issue relating to the breach of confidentiality in terms of subsection 7(5) of the CTOPA. Sub-section 7(5) provides that 'the identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she herself chooses to disclose that information'. However, the effect of affording both bereaved parents the right to bury the dead foetus results in the identity of the woman who has requested or obtained a termination of pregnancy being disclosed in order to afford the man an opportunity to decide on what to do with the remains.

36. In addition to the risk of disclosure of the woman's identity, the relief will ultimately have an impact on section 5 of the CTOPA. Although section 5 of the CTOPA expressly provides that the termination of a pregnancy may only take place with the informed consent of the pregnant woman, the relief acts as a hindrance. Due to the fear of discrimination and stigmatization of the man being informed of the termination of pregnancy, a woman might be hesitant to terminate the pregnancy.

### **The relief will impose additional burdens on designated facilities**

37. I am advised that the order will create an additional burden on healthcare facilities insofar there being an obligation on them to correctly identify foetal remains in preparation for burial. In essence, the relief further required the establishment of methods of identifying and creation of storage facilities where the foetus may be kept for safe keeping until its burial.

38. Such a requirement will result in the amendment of section 3(1) of the CTOPA in that a facility will be required to provide this further service. Should a facility fail to provide the additional requirements, there are risks criminal offence and penalties in terms of s10(1)(b) of the CTOPA.

39. This approach is similar to that of the Chapter 697 of the Texas Health and Safety Code, and the Court in **Whole Woman's Health v Hellerstedt**, these additional requirements are subject to constitutional challenge on the grounds that they will impose an undue burden on women's constitutionally protected rights to freedom of choice as contemplated in section 12(2)(a) and (b) of the Constitution.

40. It is important to further note that the termination of pregnancies may occur is different procedures. As there is no national protocol for abortion I have relied on the Western Cape Provincial Standardised Guidelines and Protocols on the Choice of Termination of Pregnancy (Western Cape Guideline), which I have attached marked 'MS8'. According to the Western Cape Guideline, the termination of pregnancy may occur in one or two ways:

40.1. Firstly, by way pharmaceutical drugs for pregnancies up to 63 days (9 weeks) of gestation where with mifepristone and misoprostol is ingested orally. The pills provoke an abortion, a process similar to miscarriage. Such procedure is done as an outpatient procedure and the termination is mostly monitored by the woman and could possible take place at home.

40.2. Secondly, for terminations from 9 to 12 weeks, terminations may be by way of surgical methods through trans-cervical procedures such as vacuum aspiration, and dilatation and evacuation to remove the contents of the woman's womb. Such a procedure may be performed by medical practitioner in a facility that has beds for observation and administering drugs.

40.3. Thirdly, terminations of 12 weeks and 1 day to 17 weeks, may be done by way of dilation of the cervix and surgical evacuation of the contents of the uterus.

41. Generally, in all the above mentioned methods of expulsion, it is not guaranteed that one may be able to separate and identify a foetus. During the early stages of pregnancy the woman would simply bleed and it is almost

impossible to separate the foetus from the blood due to its size. The same applies where expulsion occurs in terms of a manual vacuum aspiration, the foetus, together with other matter is expelled from the uterus. The obligation will rest on the medical facility to put in place measures to identify, separate and store the foetal remains.

### **Potential abuse**

42. As demonstrate in part III above, lack of knowledge of the legal framework of the CTOPA, the stigma associated with termination of pregnancies and the unregulated refusal to perform abortions have contributed immensely towards the limitation to access to safe and legal abortions.
43. It is our submission that the relief sought has the potential to further limit access in that healthcare facilities and/or medical practitioners may present the burial of the foetus as a requirement for disposal rather than an option. Women, in fear of being obliged to bury the dead foetus, may not seek abortion services or opt for illegal abortion clinics. Such is a possibility that cannot be disregarded in light of the constitutionally protected right at risk of limitation.

### **CONCLUSION**

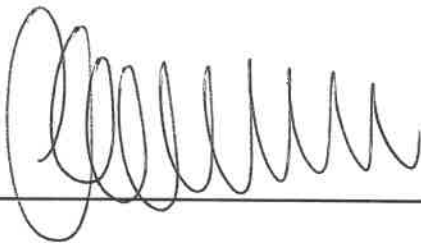
44. The WLC and WISH Associates accordingly pray for an order admitting them as the first and second *amicus curiae*.



**MARION STEVENS**

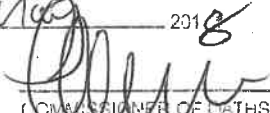
I certify that on this \_\_\_\_\_ day of **May 2018**, in my presence at **CAPE TOWN** the deponent signed this declaration and declared that she:

- a) knew and understood the contents hereof;
- b) has no objection to taking this oath;
- c) considered this oath to be binding on his/her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".

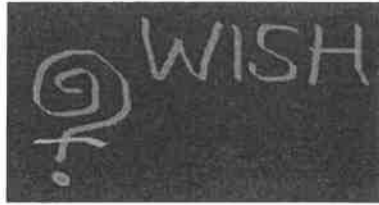


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**COMMISSIONER OF OATHS**

I certify that: <u>Marion Stevens</u>
1. The Deponent acknowledged to me that:
1.1. He knows and understands the content of this Declaration;
1.2. He has no objection to taking the prescribed oaths;
1.3. He considers the prescribed oath to be binding on his conscience.
2. The Deponent thereafter uttered the words "I swear that the contents of this Declaration are true, so help me God".
3. The Deponent signed this Declaration in my presence at the address set out hereunder on this <u>22</u> day of <u>May</u> 201 <u>8</u> .
 COMMISSIONER OF OATHS Advocate Owen Kleinhaus Advocate of the High Court of South Africa

MS1



22 March 2018

**RESOLUTION OF THE STEERING COMMITTEE OF WISH ASSOCIATES**

The EXECUTIVE COMMITTEE of WISH ASSOCIATES (organisation) hereby resolves that:

1. The organisation will bring an application to be admitted as *amicus curiae* in the matter ***The Voice of the Unborn Baby NPC vs Minister of Home Affairs and Others Case No: 16402/17*** in the High Court of South Africa, Gauteng Division, Pretoria. The organization will intervene in order to make submissions relating to the need for the state to realise the sexual and reproductive health rights of women especially those seeking to terminate their pregnancies in terms of the Choice of Termination of Pregnancy Act 92 of 1996 in light of the remedy sought in the case above.
2. Marion Stevens is hereby authorized to take all necessary steps to sign all papers in order to bring the application on behalf of the organisation in the above matter.
3. The organization will approach the Legal Resources Centre to represent them in bringing this application to Court and take all steps necessary to advance arguments in the application.

**Dated in Cape Town on the 22 day of MARCH 2018.**

Yours sincerely

Marion Stevens  
WISH Associates – Coordinator  
6 Wherry Road, Muizenberg 7945

WISH Associate members: Nicole Le Roux (Treasurer), Toni Stuart, Marion Stevens (Chairperson), Khathatso Mokoetle (Vice-Chair person), and Delene Van Dyk (Secretary)

Registration Number: 093-332-NPO

**WISH ASSOCIATES CONSTITUTION  
APRIL 2011**

<b>Clause</b>	<b>Heading</b>
1.	Name
2.	Objectives
3.	Legal Status
4.	Non Profit Distributing Character
5.	Powers
6.	Members
7.	Structure of the Association
8.	The Management Committee
9.	General Meetings
10.	Notices
11.	Financial Matters
12.	Amendments to the Constitution and Dissolution
13.	Indemnity
14.	Disputes
Schedule A:	General Administrative and Investment Powers
Schedule B:	Schedule of Initial Members



**1. NAME**

A voluntary association is hereby established under the name of:

**WISH Associates**

(hereafter referred to as the "Association")

**2. OBJECTS**

The Association is a public, non-profit organisation established for the following sole object:

In January 2011 nine women sat around a dining room table and formed WISH (Women in Sexual and Reproductive Rights and Health) Associates. We are a diverse group of women from different parts of South Africa. Some of us are straight, some bisexual and some lesbian. Some of us have disclosed our HIV status and are HIV positive. Some of us are in our twenties and some of us are gracefully embracing our sixties. We are women working in the area of sexual and reproductive health either as consultants or in organisations. We support the South African constitutional and legal provisions underpinning sexual and reproductive health and rights, and we are working in various spaces to support implementation of and progress towards achieving the health and rights of women in this regard. We work in spaces that mirror our society's patriarchy and racially unjust legacy. We acknowledge that we have differences and diverse experiences influenced by our past and current struggles. We are prochoice, feminist, committed to human rights and social justice and are not hetero-normative. Our commitment is towards supporting the creation of a network space for the sharing of ideas and journeys; stimulating dialogue and debate; creating new leaders; building capacity in this area; and supporting or endorsing advocacy actions in relation to women's sexual and reproductive health and rights. We are also committed to supporting each other through acknowledging the need to take care of ourselves and to avoid burn out and note the at times harsh environment we work in. We may also partner in projects and share information for comment or discussion.

**3. LEGAL STATUS**

The Association is a body corporate with its own legal identity which is separate from its individual members. The Association shall continue to exist even if the members change. The Association may own property, enter into contracts, and sue or be sued in its own name.

**4. NON-PROFIT DISTRIBUTING CHARACTER**

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4.1 The income and property of the Association shall be used solely for the promotion of its stated objectives. The members and the office-bearers shall have no rights to the property or other assets of the Association solely by virtue of them being members or office-bearers. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Committee, except as:

4.1.1 reasonable compensation for services actually rendered to the Association;

4.1.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

4.2 Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management Committee (and failing which any division of the High Court) considers appropriate and which has objectives the same or similar to the objectives of the Association.

**5. POWERS**

The Association, acting through its Management Committee, or at General Meeting, shall have all the powers necessary for it to carry out its stated objectives effectively. Such powers shall include, but not be limited to, the General Investment and Administrative Powers set out in the attached **Schedule A**.

**6. MEMBERS**

6.1 The initial membership shall be those persons whose names and signatures appear on the attached **Schedule B**.

6.2 The Management Committee may admit further members from time to time:

6.2.1 Subject to due compliance with any conditions of membership (including payment of any membership fees) which the Management Committee may stipulate from time to time; and

6.2.2 In accordance with the following criteria:

Currently we are not admitting new members. A membership policy shall be developed after WISH Associates has been registered for six months

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.3 The Management Committee may suspend or terminate the membership of any member provided that:

  
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- 6.3.1 At least (14) fourteen days prior written notice is given to all members of the Management Committee of the intention to terminate a membership; and
- 6.3.2 At least (14) fourteen days prior written notice is given to the member concerned. The notice shall invite the member to make written or verbal representations to the meeting as the member may consider appropriate.
- 6.4 The decision of the Management Committee to admit an applicant to membership, or to suspend or terminate a membership shall lapse unless confirmed by a resolution of two thirds of the members of the Association present at the next General Meeting.

## 7. STRUCTURE OF THE ASSOCIATION

The Structure of the Association shall consist of:

- 7.1 The Management Committee, and
- 7.2 The Members in General Meeting

## 8. THE MANAGEMENT COMMITTEE

### 8.1 Powers

- 8.1.1 The affairs of the Association shall be controlled and managed by the Management Committee. Subject to the terms of this constitution and to the resolutions of members in General Meeting, the Management Committee may exercise all the powers of the Association.
- 8.1.2 In General Meeting, the Association may review, approve or amend any decision taken by the Management Committee but no such resolution of the Association shall invalidate any prior action taken by the Management Committee in accordance with the provisions of this Constitution.

### 8.2 Election

- 8.2.1 The members of the first Management Committee shall be elected at the General Meeting at which this Constitution is adopted, and shall hold office until the first Annual General Meeting held after their appointment. At such first Annual General Meeting and at every subsequent Annual General Meeting held thereafter, not less than one half of the Management Committee members shall retire by rotation. The members to retire shall be those who have been in office the longest since their last appointment. As between members of equal seniority, the members to retire, in the absence of agreement between them, shall be determined by ballot.
- 8.2.2 Resigning Management Committee members shall be eligible for re-election or co-option.

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8.2.3 Management Committee members shall be members of the Association.

### 8.3 Composition

8.3.1 The Management Committee shall comprise at least nine WISH Associate members. Currently Marion Stevens is the Coordinator. The membership of the Management Committee shall comprise.

- (a) the Chairperson (Coordinator);
- (b) the Vice-Chairperson;
- (c) the Treasurer;
- (d) the Secretary;
- (e) at least three (3) other persons.

8.3.2 The Management Committee may co-opt up additional non-voting members as it may consider appropriate from time to time. The co-opted members shall serve for such period as the Management Committee considers appropriate.

### 8.4 Management Committee Member Vacating Office

8.4.1 The office of a Management Committee member shall be vacated if a member:

- (a) resigns; or
- (b) becomes unfit and/or incapable of acting as such; or
- (c) would be disqualified, in terms of the Companies Act or equivalent legislation in force from time to time, from acting as a Director of a Company; or
- (d) is removed by the Management Committee, by resolution adopted by at least three-quarters (3/4) of its members in office from time to time, being not less than the required minimum of \_\_\_\_ [ ], The Management Committee shall only furnish reasons for its decision/s regarding removal to the member removed and to the members of the Association in General Meeting.

8.4.2 Should a position on the Management Committee fall vacant, the Management Committee, by resolution adopted at least two-thirds (2/3) of its members, may (and if the vacancy reduces the number of members to less than \_\_\_\_ [ ], shall) co-opt a member/s to fill the vacancy/ies. The office of any person so co-opted as member of the Management Committee shall lapse unless confirmed by resolution of members at the next General Meeting.

### 8.5 Procedure at Management Committee Meetings



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8.5.1 The Management Committee shall conduct its meetings and regulate its proceedings as it finds convenient, provided that:

- (a) The Chairperson, or in his or her absence, the Vice-Chairperson, shall chair all meetings of the Management Committee which he or she attends. In the absence of the Chairperson and the Vice-Chairperson, the remaining members of the Management Committee shall elect a chairperson from those attending.
- (b) The Chairperson shall convene a meeting of the Management Committee, quarterly and at the written request of any two (2) members of the Management Committee and may convene such a meeting at any other time.
- (c) The quorum necessary for the transaction of any business by the Management Committee shall be two-thirds (2/3) of the Management Committee members serving at any given time.
- (d) At meetings of the Management Committee each member shall have one (1) vote.
- (e) Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.
- (f) Proper minutes shall be kept of the proceedings of the Management Committee, and a record of the persons present at each meeting. The minutes shall be signed by the member who chairs the meeting, and shall be available at all times for inspection or copying by any member of the Management Committee, and on two (2) days' notice to the Secretary or his or her deputy, by any member of the Association.
- (g) A resolution signed by all members of the Management Committee shall be as valid as if passed at a duly convened meeting of the Management Committee.


8.6 The Management Committee may delegate any of its powers to any of its members, or to a special purpose committee. The member, committee, employee or agent to whom such delegation is made shall conform to any regulations and procedures that may be stipulated by the Management Committee from time to time.

8.7 The Management Committee may appoint a Chief Executive and other officers and employees as it may consider necessary from time to time upon such terms and conditions as it may consider appropriate.

## 9. GENERAL MEETINGS

### 9.1 Annual General Meeting

9.1.1 An Annual General Meeting of the Association shall be held within a period of fifteen (15) months of the adoption of this Constitution. Subsequent Annual General Meetings shall be held within three (3) months of the end of each financial year.

  
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9.1.2 Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.

9.1.3 The business of an Annual General Meeting shall include:

- (a) the presentation and adoption of the Annual Report of the Chairperson;
- (b) the consideration of the Annual Financial Statements;
- (c) the election of members to serve on the Management Committee for the following year;
- (d) the appointment of Auditors;
- (e) other matters as may be considered appropriate.

## 9.2 Other General Meetings

9.2.1 Other General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of the Management Committee or one quarter (1/4) of the members of the Association.

9.2.2 Any General Meeting other than the Annual General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting: provided that: should the Chairperson, having been requested to give such notice, fail to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

9.2.3 WISH Associates aims to meet physically twice a year and electronically via Skype conference twice, thus having four meetings a year. One of the physical meetings will be a retreat for reflection. We aim to host a public open dialogue once a year and this might involve inviting general members to join.

## 9.3 Quorum

9.3.1 A quorum constituting a General Meeting of the Association shall one quarter (1/4) of the members.

9.3.2 Should any General Meeting have been properly convened but no quorum be present, the meeting shall stand adjourned to another date, which shall be within seven (7) days thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution. At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

## 9.4 Resolutions and Voting

  
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9.4.1 At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.

9.4.2 Each member present or represented at such meeting shall be entitled to one (1) vote.

9.4.3 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

#### 9.5 Communication and Minutes

Proper minutes shall be kept of the proceedings of all General Meetings, and a record of the persons present at each meeting. The minutes shall be signed by the chairperson of the meeting, and shall be available for inspection or copying by any member on two (2) days notice to the Secretary or his or her deputy.

WISH Associates communicates via a google elist ([wisha@googlegroups.com](mailto:wisha@googlegroups.com)) and intends to develop a Facebook site. We have developed a website (<https://sites.google.com/site/wishassoc/>) to enhance communication between ourselves and those we would like to communicate with.

#### 9.6 Powers

Subject to the provisions of Clause 8.1.2 above, a duly convened General Meeting of the Association, at which a quorum is present, is competent to carry out all the objectives and to exercise all the powers of the Association as set out in this Constitution.

## 10. NOTICES

10.1 Notice of all meetings provided for in this Constitution, shall be delivered personally, or sent by prepaid post, to the last address notified by each person concerned to the Association, or in any other manner as the Management Committee may decide from time to time.

10.2 The accidental omission to address notice/s to any person shall not invalidate the proceedings of any meeting.

10.3 If posted, notices shall be deemed to have been received seven (7) days after posting.

## 11. FINANCIAL MATTERS

### 11.1 Bank Account

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The Management Committee shall open a bank account in the name of the Association with a registered Bank or Building Society. The Management Committee shall ensure that all monies received by the Association are deposited in the abovementioned bank account as soon as possible after receipt.

## **11.2 Signatures**

All cheques, promissory notes and other documents requiring signature on behalf of the Association shall be signed by two (2) of the Management Committee members.

## **11.3 Financial Year End**

The Association's financial year end shall be: 31 March annually

## **11.4 Financial Records**

The Management Committee shall ensure that the Association keeps proper records and books of account which fairly reflect the affairs of the Association.

## **11.5 Annual Narrative Report and Financial Statements**

11.5.1 The Management Committee shall ensure that the Association prepares an annual narrative report describing the Association's activities and an Annual Financial Statement for each financial year. The Annual Financial Statements shall conform with generally accepted accounting principles and shall include a statement of income and expenditure and a balance sheet of assets and liabilities.

11.5.2 Within two (2) months after drawing up the Annual Financial Statements, the Management Committee shall ensure that the books of account and financial statements are audited and certified in the customary manner by an independent practising chartered accountant.

11.5.3 A copy of the Annual Financial Statements and annual narrative report shall be made available to all members as soon as possible after the close of the financial year.

## **12. AMENDMENTS TO THE CONSTITUTION AND DISSOLUTION**

The terms of this Constitution may be amended, the name of the Association may be changed and the Association may be dissolved by resolution of sixty six per cent (66%) of the members present at a General Meeting; provided that proper notice of the meeting is given not less than twenty-eight (28) days prior to the date of the Meeting and such notice states the nature of the resolution to be proposed.

## **13. INDEMNITY**

13.1 Subject to the provisions of any relevant statute, members of the Management Committee and other office bearers shall be indemnified by the Association for all acts done by them in good faith on its behalf. It shall be the duty of the Association to pay all costs and expenses which

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any such person incurs or becomes liable for as a result of any contract entered into, or act done by him or her, in his or her said capacity, in the discharge, in good faith, of his or her duties on behalf of the Association.

- 13.2 Subject to the provisions of any relevant statute, no member of the Management Committee and or other office bearer of the Association shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the Association, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

#### 14. DISPUTES

- 14.1 In the event of a serious disagreement between the members of the Management Committee and/or the Association regarding the interpretation of this constitution then any two (2) Management Committee members or any five (5) members of the Association shall be entitled to declare a dispute. Such declaration shall be in writing, state the issue in dispute, and be addressed to the Management Committee.
- 14.2 The Management Committee shall consider such declaration within two (2) weeks of receiving it. Should the Management Committee not be able to resolve the dispute to the satisfaction of the person(s) declaring it, the dispute shall be referred either to a mediator or arbitrator.
- 14.3 Should the dispute be referred to a mediator, the person(s) declaring the dispute and the Management Committee must agree on a suitable mediator and to the costs of such mediation. A mediator may recommend an appropriate resolution of the dispute.
- 14.4 In the absence of agreement regarding a mediator or should mediation not resolve the dispute, the dispute shall be referred to arbitration. The arbitrator shall be such suitably qualified person/s as the person(s) declaring the dispute and the Management Committee may mutually agree. Alternatively, each of the parties shall be entitled to nominate one arbitrator, who shall act jointly with a third person to be nominated jointly by the respective nominees of the parties; on the basis that a majority decision of the appointed arbitrators shall be final and binding.
- 14.5 The arbitration shall be held on an informal basis, and the arbitrator shall have the power to determine the procedure to be adopted subject to principles of natural justice.
- 14.6 The arbitrator may base her/his award not only upon the applicable law but also upon the principles of equity and fairness.
- 14.7 The person(s) declaring the dispute and the Management Committee, beforehand, may agree to share the costs of the arbitration. In the absence of such agreement the arbitrator shall decide which parties shall be liable for the costs.
- 14.8 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an Order of Court on application by any of them.

**GENERAL ADMINISTRATIVE AND INVESTMENT POWERS**

1. To employ staff and hire professional and other services.
2. To institute or defend any legal or arbitration proceedings and to settle any claims made by or against the Association.
3. To open and operate accounts with registered banks and building societies.
4. To make and vary investments and re-invest the proceeds of such investments on condition that any investments made by the Association shall be with Financial Institutions as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); units of a Mutual Fund duly established in terms of The Unit Trusts Control Act No. 54 of 1981, and/or in securities listed on a duly licensed Stock Exchange as defined in the Stock Exchanges Control Act No.1 of 1985.
5. To accept donations made to the Association and retain them in the form in which they are received, or sell them and re-invest the proceeds.
6. With regard to movable and immovable property and tangible and intangible assets of whatsoever nature:
  - 6.1 to purchase or acquire property and assets;
  - 6.2 to maintain, manage, develop, exchange, lease, sell, or in any way deal with the property and assets of the Association;
  - 6.3 to donate and transfer the property and assets of the Association to organisations with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.
7. To borrow and to use the property or assets of the Association as security for borrowing;
8. To guarantee the performance of contracts or obligations of any person on condition that any such person is primarily engaged in activities which further the objectives of the Association.
9. To execute any act or deed in any deeds registry, mining titles or other public office.
10. To work in collaboration with other organisations and to amalgamate with any organisation with the same or similar objectives and the same exemptions from taxes and duties to those of the Association.
11. To exercise all the management and executive powers that are normally vested in the Board of Directors of a Company.
12. To exercise all the powers and authority of the Association not only in the Republic of South Africa but in any other part of the world.

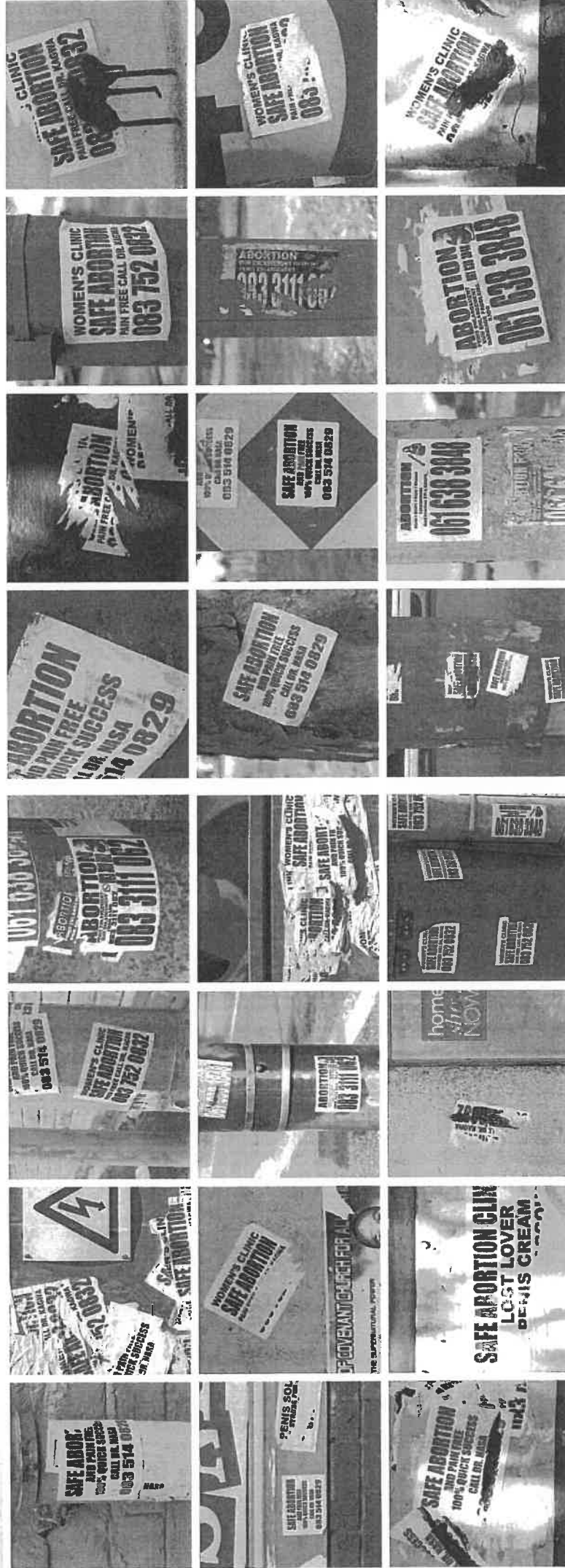
## SCHEDULE B

## SCHEDULE INITIAL MEMBERS

	NAME	ADDRESS	
1.	Marion Stevens	6 Wherry Road Muizenberg, 7945	
2.	Delene Van Dyk	9 Nederzetting, Heritage Hill, Centurion, 0158	
3.	Jenny Parsley	11 Alexander Road Muizenberg, 7945	Resigned
4.	Joanna Ncala	6 Woodside Manor, 66 A Yeo Street, Yeoville, 2198	Passed away
5.	Mushahida Adihkari	8 Church Square House, 5 Spin Street, Cape Town	Resigned
6.	Nicole Le Roux	18 b Royal Road Muizenberg	
7.	Penny Parentzee	Vlei Road Lakeside	
8.	Toni Stuart	129 Taronga Road, Lansdowne	
9.	Khathatso Mokoetle	16 Swallow Place, Albemarle Ext 1. Germiston. 1401.	
	Phone no	email	birthday
<b>Marion Stevens Chairperson</b>	021 7886726 0832569825	marionstevens@iafrica.com	19 May
<b>Penny Parentzee Treasurer</b>	0829266948 021 7889615	penny@onpar.co.za	21 December
<b>Delene Van Dyk Secretary</b>	0832535122	delene@2ndsight.co.za	20 October
<b>Toni Stuart Member</b>		tonistuart@gmail.com	21 January 83
<b>Nicole Le Roux Member</b>	0715688970	nicci.leroux@gmail.com	30 October
<b>Khathatso Mokoetle Deputy Chairperson</b>	0836018229	sothatdc@gmail.com	27 October

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# Barriers to Safe and Legal Abortion in South Africa



We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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# The South African Government's Human Rights Obligation to Ensure Access to Safe and Legal Abortion Services

## ACCESS TO SAFE AND LEGAL ABORTION SAVES LIVES

The World Health Organisation (WHO) is clear that access to safe abortion is a key step for avoiding maternal deaths and injuries.<sup>1</sup> In contrast, restrictive access to abortion services violates numerous human rights, including the right to life, health, privacy, and to be free from discrimination, torture and ill-treatment.

Abortion has been legal in South Africa for almost twenty years. The Choice on Termination of Pregnancy Act (CTOPA) (1996), gives women and girls the right to have an abortion on request up until the 12th week of pregnancy and with certain conditions before the 20th week. This legislation has been credited for advancing women's health and rights.<sup>2</sup> Abortion related deaths and injuries are estimated to have reduced by over 90% since the CTOPA came into force.<sup>3</sup>

Despite the progressive legal framework, many women and girls - especially those in the poorest and most marginalised communities - are still struggling to access safe abortion services. A recent expert review of maternal deaths has indicated growing concern that the lives of pregnant women and girls are put at unnecessary risk due to barriers to abortion services, which are legal and available.<sup>4</sup>

1. World Health Organization (WHO), Safe Abortion: Technical and Policy Guidance for Health Systems, 2012, pp. 23, 47-49. The WHO defines unsafe abortion as a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills, or in an environment that does not conform to minimal medical standards, or both (Hereafter WHO 2012).
2. R. Jewkes, H Rees SAMJ Vol 95, No 4. (2005) Dramatic decline in abortion mortality due to the Choice on Termination of Pregnancy Act.
3. Ibid. The CTOPA 92 of 1996 was amended by Choice on Termination of Pregnancy Amendment Act 1 of 2008 from 18 Feb 2008: Section 1, 3, 7-10; the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 from 16 Dec 2007: Section 1; the Choice on Termination of Pregnancy Amendment Act 38 of 2004 from 11 Feb 2005: Section 1, 3, 7-10 see further <http://www.gov.za/documents/choice-termination-pregnancy-act> accessed 1 December 2016.
4. National Committee for Confidential Enquiry into Maternal Deaths, Saving Mothers 2011-2013: Sixth report on confidential enquiries into maternal deaths in South Africa Short report (2014)

This briefing focuses on South Africa's human rights commitments, which place clear obligations on the government to safeguard women and girls' access to safe abortion care.<sup>5</sup> It discusses three key barriers, in policies and practice, to safe abortion services:

- **The failure to regulate conscientious objection;**
- **Inequalities in access to services for women and girls from poor and marginalised communities;**
- **Lack of access to information on sexual and reproductive rights, including how and where to access legal abortion services.**

Women and girls who are unable to access safe and legal abortion care, because of or in part of these barriers, may be compelled to seek unsafe alternatives.

## METHODOLOGY

This briefing is based on desktop and qualitative research from Amnesty International and The Women's Health Research Unit, School of Public Health and Family Medicine at the University of Cape Town.<sup>6</sup>

On 29 September 2016 Amnesty International wrote to the South African Minister of Health and the National Department of Health requesting further information in relation to the barriers to safe abortion and the related government programmes and policies in place to implement the CTOPA. Information received in reply on 3 November is reflected in this briefing. The National Department of Health emphasized that the provision of termination of pregnancy services in South Africa is part of the provision of comprehensive sexual and reproductive health and rights.

This briefing draws on guidance from human rights bodies, including the Technical Guidance on Reducing Preventable Maternal Mortality and Morbidity developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which has urged States parties (where abortion is legal) to include authoritative public health guidelines on access to safe abortion to which universal access should be effectively ensured in the national plan – as essential for improving maternal health. This briefing makes a number of recommendations in relation to addressing the identified barriers to safe abortion, to support South Africa's full compliance with its human rights obligations.

5. The World Health Organisation advises governments that they have an obligation to ensure that every woman who is legally eligible has ready access to safe abortion care. WHO 2012, pages 9, 87 and 98.

6. The Women's Health Research Unit would like to acknowledge the funding they received from the South African Medical Research Council for some of the research on which their input to this briefing is based.

## THE NEED FOR SAFE AND LEGAL ABORTION SERVICES

The untimely death of a 19 year old student in Johannesburg in 2016, following complications due to an unsafe abortion, highlights the urgent need for action to address barriers to abortion services. Speaking at the United Nations in April 2016, the Representative for South Africa cited health systems deficiencies, stigma and discrimination as impacting the student's access to safe abortion services.



"[She] was a poor student, who could not access private health care. There was insufficient information available of the [abortion] services that she could access at public health care facilities and there is also some speculation that she may have been afraid of the attitudes of the public health care workers based on the experiences of some of her friends."<sup>7</sup>

Choosing to have an abortion is a personal decision based on women and girls' individual social or economic life circumstances. High rates of sexual violence in South Africa, as well as unpredictable health and life risks in pregnancy and the possibility of severe foetal abnormalities, mean that no matter how well fertility management services and information are implemented, there will always be a need to ensure access to abortion services.

7. Special Advisor to the Minister of Social Development of South Africa, Speech to United Nations, April 2016.

The CTOPA gives women and girls the right to an abortion in the following circumstances:

### TERMINATION OF PREGNANCY (TOP) AND GESTATIONAL LIMITS ON ABORTION UNDER THE SOUTH AFRICAN CTOPA

TIMELINE FOR PREGNANCY	CONDITIONS	ABORTION PERFORMED BY:
First 12 weeks of gestation	Termination of pregnancy available on request	Registered medical practitioner (Dr), registered nurse or midwife (who has completed the training)
13-20 weeks of gestation	Termination of pregnancy available under following conditions: <ul style="list-style-type: none"> <li>• Rape or incest</li> <li>• Danger to woman's physical or mental health</li> <li>• Foetus not viable</li> <li>• Affect woman's socio-economic status</li> </ul>	Registered medical practitioner (Dr)
Above 20 weeks of gestation	Termination of pregnancy only available under very limited circumstances: <ul style="list-style-type: none"> <li>• Severe threat to life of woman or foetus</li> <li>• Severe foetal congenital problems</li> </ul>	Registered medical practitioner (Dr)

Abortion is a safe procedure when performed by skilled health care providers in sanitary conditions. However, illegal abortions are generally unsafe and lead to high rates of complications and to maternal deaths and injuries.<sup>9</sup> Under the CTOPA, abortion is a time restricted service in South Africa (see table above). As the pregnancy progresses there is a higher risk of complications.

Women and girls should not have to risk their lives and health to end a pregnancy.

## HUMAN RIGHTS FRAMEWORK

Access to sexual and reproductive health care is a constitutional right in South Africa<sup>9</sup> and part of the universal right to health. South Africa has ratified international human rights treaties and agreements which place South Africa under a duty to ensure that abortion services and information are available, accessible, and acceptable and of good quality.<sup>10</sup>

South Africa has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All forms of Discrimination Against Women, the African Charter on Human and Peoples' Rights, the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child.

The international and regional human rights treaties provides for the establishment of monitoring mechanisms including different committees of independent experts who are mandated to oversee State parties' compliance with their respective treaty obligations. The committees issue concluding observations on State parties' progress and also issue general comments and recommendations, which clarify the content and scope of States parties' obligations under the specific treaty provisions. Taken together, these rulings provide guidance to governments and advocates in further advancing and promoting human rights. They are also a crucial tool for holding governments accountable under international human rights law.<sup>11</sup>

See further: ANNEX 1: Table of South Africa's Human Rights Obligations

9. Constitution of the Republic of South Africa (Act Number 108 of 1996) Section 27. 1. A: "Everyone has the right to have access to health care, including reproductive health care", emphasis added.

10. E/C.12/GC/22. United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (Hereafter CESCR General Comment 22), paras 1-21; CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) paras 12 (a)-(d).

11. For further information related to the International Framework for Human Rights and Abortion, see the Center for Reproductive Rights, "Bringing Rights to Bear: Abortion and Human Rights Government Duties to Ease Restrictions and Ensure Access to Safe Services", Briefing Paper, 2008, available at: [https://www.reproductiverights.org/sites/crr.civicauctions.net/files/documents/BRB\\_abortion\\_br\\_revised\\_3\\_09\\_WEB.PDF](https://www.reproductiverights.org/sites/crr.civicauctions.net/files/documents/BRB_abortion_br_revised_3_09_WEB.PDF), on which Annex 1 relies, in addition to updates from Amnesty International research and reports. Annex 1 also draws from Ipas Africa Alliance: Human Rights and African Abortion Laws: A Handbook for Judges, Nairobi, Kenya, Ipas Africa Alliance 2014, available at: <http://www.ipas.org/resources/ipas%20Publications/Human-Rights-and-African-Abortion-Laws-A-Handbook-for-Judges.aspx> in relation to the Maputo Protocol.



## THE FAILURE TO REGULATE CONSCIENTIOUS OBJECTION

**The Department of Health's response to the request for information from Amnesty International confirms that 505 facilities are designed to provide termination of pregnancy services and of these, only 264 health facilities are providing first and second trimester termination of pregnancy services.<sup>12</sup>**

The unregulated refusal by health care professionals to provide abortion services is a major contributor to the shortage of health facilities providing abortion services.<sup>13</sup> Such refusal is often referred to as 'conscientious objection', which means: 'to object in principle to a legally required or permitted practice'.<sup>14</sup>

The CTOPA does not refer to conscientious objection, but under the right to freedom of conscience in the South African Constitution,<sup>15</sup> health care professionals are understood to have the right to refuse to perform an abortion in certain cases. This right applies only in relation to the direct provision of services and not to pre- and post-abortion care.<sup>16</sup> In addition, the right to conscientious objection would not apply in cases where there is a risk to the woman's life or an immediate risk to her health. For example, conscientious objection is always limited by the clear professional and ethical duty on health care providers that they must provide the necessary care in emergency situations.<sup>17</sup>

The CTOPA stipulates that any person who prevents or obstructs access to legal abortion services is guilty of an offence, punishable by a fine or imprisonment.<sup>18</sup> Therefore, in terms of the law, health care providers who are not directly involved with the abortion procedure cannot use their beliefs as a reason for not assisting a woman seeking abortion services with information and appropriate referrals. Despite the clarity of the law, there is an apparent lack of understanding among many health care providers and individuals working in health care facilities of the obligations the CTOPA imposes.<sup>19</sup> The WHO warns that "allowing conscientious

objection without referrals on the part of health-care providers and facilities" is one of the major barriers to access of safe abortion services in contexts where abortion is legal.<sup>20</sup>

The lack of clear policy guidelines for all involved in health care provision creates a vacuum for conscientious objection to be applied in an "ad hoc, unregulated and at times incorrect" manner.<sup>21</sup> Despite the development of a National Strategic Plan for the Implementation of the CTOPA by the National Department of Health<sup>22</sup> and a Draft National Policy for Conscientious Objection in the Implementation of the CTOPA (2007),<sup>23</sup> Amnesty International and the Women's Health Research Unit (WHRU) have documented failures in the referral process.<sup>24</sup> Left unchecked, conscientious objection has been found to lead to fragmented care,<sup>25</sup> and risks being invoked opportunistically,<sup>26</sup> restricting women and girls' access to lawful procedures.

**A 2013 study of women in Cape Town found that "45% of women did not receive the abortions they sought at the clinic".<sup>27</sup> The related 2016 study highlighted that of those denied care, 20% were turned away for advanced gestational age, 20% because the clinic did not have the staff to perform their abortions that day, and 5% because of an inability to pay for their abortions.<sup>28</sup>**

An expert review of all maternal deaths in South Africa from 2011-2013 has recommended that: "Facility managers must ensure that all doctors and nurses are aware of their professional and ethical responsibilities when on-duty, and must hold them accountable when these responsibilities are neglected."<sup>29</sup>

20. WHO 2012 page 87, noting further at page 96, that the right to conscientious objection is not unlimited; "while the right to freedom of thought, conscience, and religion is protected by international human rights law, international human rights law also stipulates that freedom to manifest one's religion or beliefs might be subject to limitations necessary to protect the fundamental human rights of others. Therefore laws and regulations should not entitle providers and institutions to impede women's access to lawful health services."

21. Harries J, Cooper D, Strebel A, Colvin CJ. Conscientious objection and its impact on abortion service provision in South Africa: A qualitative study. *BMC Reproductive Health*. 2014, Feb 26;11(1):16.

22. Information received by Amnesty International from the National Department of Health 3 November 2016.

23. National Department of Health, Sexual and Reproductive Health and Rights: Fulfilling our Commitments 2011-2021 and beyond Final Draft, accessed <http://www.agenda.org.za/wpcontent/uploads/2012/09/SRRH-Fulfilling-our-Commitments.pdf> 28 November 2016

24. Amnesty International interviews with health care providers conducted in KwaZulu-Natal and Mpumalanga in 2014; Harries J, Ormer P, Gabriel M, Mitchell E. Delays in seeking an abortion in the second trimester: a qualitative study in South Africa *BMC Reproductive Health*; 2007, 4:7.

25. Harries J. What health-care providers say on providing abortion care in Cape Town, South Africa: findings from a qualitative study Social Science Policy Brief Department of Reproductive Health and Research World Health Organization 2010.

26. In a recent study, health care providers were found to have "only provided certain aspects of care which were linked to various interpretations of what they were prepared to provide underscored by negative attitudes towards abortion provision and care" see further, Harries J, Cooper D, Strebel A, Colvin CJ. Conscientious objection and its impact on abortion service provision in South Africa: a qualitative study. *BMC Reproductive Health*. 2014, Feb 26;11(1):16. doi: 10.1186/1742-4755-11-16.

27. J Harries, Denial of Legal Abortion in South Africa, Reproductive Health Research Policy Brief, March 2016. See further Harries J, Momborg M, Gerdtis C, Greene Foster D. An exploratory study of what happens to women who are denied abortions in a legal setting in South Africa. *BMC Reproductive Health* 2015 12:21

28. J Harries, Denial of Legal Abortion in South Africa, Reproductive Health Research Policy Brief, March 2016.

29. National Committee for Confidential Enquiry into Maternal Deaths, Saving Mothers 2011-2013: Sixth report on confidential enquiries into maternal deaths in South Africa Short report (2014) at page 63.

12. Information received by Amnesty International from the National Department of Health 3 November 2016. These figures correspond to estimates that only half of the facilities that should be offering abortion services currently do so, see further Karen A. Trueman and Makgoale Magwenhshu. Abortion in a Progressive Legal Environment: The Need for Vigilance in Protecting and Promoting Access to Safe Abortion Services in South Africa. *American Journal of Public Health*; March 2013, Vol. 103, No. 3, pp. 397-399.

13. Harries J, Cooper D, Strebel A, Colvin CJ. Conscientious objection and its impact on abortion services provision in South Africa: A qualitative study. *BMC Reproductive Health*. 2014, Feb 26;11(1):16.

14. New Dictionary of Medical Ethics, quoted in N. Naylor and M. O'Sullivan, Conscientious Objection and the Implementation of the Choice on Termination of Pregnancy Act 92 of 1996 in South Africa, 2005.

15. Section 15 (1) which reads, "Everyone has the right to freedom of conscience, religion, thought, belief and opinion." <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf> Accessed 16 August 2016.

16. N. Naylor and M O'Sullivan Conscientious Objection and the Implementation of the Choice on Termination of Pregnancy Act 92 of 1996 in South Africa, 2005, Women's Legal Centre

17. In terms of the constitutional right of all people in South Africa to emergency health care, Section 27 (3) of the Constitution, a conscientious objector is ethically and legally obliged to care for patients with complications arising from an abortion.

18. Section 10 (1) (c).

19. Condoms yes! Sex Not Conflicting responsibilities for Health Care Professionals under South Africa's framework on reproductive Rights. Hoffman-Wendler et al at 2013; <http://www.ghru.uct.ac.za/ghru/publications/recent-research-reports#sthash.uEdbzA9.dpuf>.

"It is always a problem to get somebody to assist as we don't have a fully functioning clinic with permanent staff. I need a doctor who can prescribe misoprostol, and a doctor to help me, but then they say, "No, it's against my religion and I'm not doing it". But it's not my position to say to them 'where is your written excuse'? It is not part of my responsibility, so then I have to look around for somebody who will be able to assist me."

*Nurse involved in abortion provision, Western Cape*

Under regional and international human rights standards, South Africa has a duty to ensure that conscientious objection does not impact on access to services and that a functioning referral process is in place to ensure that the person seeking care can be guaranteed timely and appropriate quality care.<sup>30</sup> Both the African Commission on Human and People's Rights (ACHPR)<sup>31</sup> and the United Nations Committee on Economic, Social and Cultural Rights (CESCR) are clear that States have an obligation to ensure that the practice of conscientious objection is not a barrier to accessing abortion services.<sup>32</sup> Human rights standards also require that South Africa must ensure "an adequate number of health care providers willing and able to provide such services should be available at all times in both public and private facilities and within reasonable geographical reach."<sup>33</sup>

The UN Special Rapporteur on the right to health has warned of the dangers of inadequate regulation of conscientious objection as a barrier that contributes to making legal abortions inaccessible.<sup>34</sup> The Special Rapporteur has recommended that States "ensure that conscientious objection exemptions are well-defined

in scope and well-regulated in use and that referrals and alternative services are available in cases where the objection is raised by a service provider."<sup>35</sup> Evidence indicates that conscientious objection risks becoming a way of 'gate-keeping' access to services in South Africa.<sup>36</sup>

"Individual health-care providers have a right to conscientious objection to providing abortion, that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk"<sup>37</sup>

*WHO*

The ACHPR further requires that States ensure accountability mechanisms are in place, along with the 'development of implementation standards and guidelines; a monitoring and evaluation framework, and availing accessible, timely and efficient redress mechanisms for women whose sexual and reproductive rights have been violated.'<sup>38</sup>

A woman's right to life, health and dignity must always take precedence over the right of a health care professional to exercise conscientious objection to participation in an abortion procedure. This is not the reality in South Africa. The government's failure to sufficiently regulate and monitor conscientious objection means that South Africa risks breaching its human rights obligations. Regulation and clear policy guidelines are urgently required to both respect the right of health care professionals and ensure that women and girls' right to reproductive health care is uniformly fulfilled within the health system.<sup>39</sup>

30. CESCR General Comment 22, citing CESCR, Concluding Observations: Poland, para. 28, UN Doc. E/C12/POL/CO/5 (2009); interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para. 24 & 65(m), UN Doc. A/66/254 (2011); CEDAW, General Recommendation No. 24: Women and health, (1999), para. 11.; ACHPR General Comment 2 (para 48 and at para 29-"State parties must ensure that the necessary infrastructure is set up to enable women to be knowledgeable and referred to other health care providers on time"; See also The European Court of Human Rights in the case of *RR v Poland*, para 206 (2011); *P and S v Poland* (2012), para 106) "...States are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation."

31. ACHPR Gen Comment 2 on A1.4 para 48.

32. ACHPR Gen Comment 2 on A1.4.

33. CESCR General Comment 22.

34. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/66/254, (2011) para.24.

35. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. A/66/254, (2011) para.65.

36. Orner and Cooper, Investigation of health care worker's responses to HIV/AIDS care and treatment in South Africa, December 2011, noting healthcare providers in the public sector frequently act as "gate keepers" to abortion services, 'refusing to provide any information about the procedure or misinforming women about the legal conditions for abortion', at page 3 of 9; Hoffman-Wandinger et al. 2013, the report notes the failure of some healthcare professionals to even inform pregnant girls who do not wish to continue with their pregnancies of their right to seek an abortion.

37. WHO 2012 Page 69.

38. ACHPR, General Comment No. 2 Africa at para 50.

39. Harries et al., Conscientious objection and its impact on abortion service provision in South Africa: a qualitative study *Reproductive Health* 2014;11:16, DOI: 10.1186/1742-4755-11-16, available at: <http://reproductive-health-journal.biomedcentral.com/articles/10.1186/1742-4755-11-16>; Editorial *SHM* December 2014, Vol. 104, No. 12, page 857, noting the need for "comprehensive engagement and a appropriate response at the broader policy and institutional levels as well as at community and individual levels."

*Ms. P*

## INEQUALITY OF ACCESS TO SERVICES

Delivery of public health services remains hampered by the legacy of South Africa's colonial and apartheid past.<sup>40</sup> Despite efforts to invest in the public health care system since 1994, inequalities remain deeply entrenched,<sup>41</sup> many women and girls - especially those in the poorest and most marginalised communities - are still struggling to access safe abortion services.

Profound inequalities persist between the private and public health systems in terms of infrastructure and resources. Nearly 83% of the population relies on the public health system<sup>42</sup>, yet the private health care sector employs the majority of health care professionals and spends nearly 6 times more per patient.<sup>43</sup>

Access barriers to abortion are greatly exacerbated by the failure to ensure abortion services are available at the primary health care level. A National Department of Health audit reported in 2013, recorded 3880 public health facilities in South Africa, including over 318 hospitals.<sup>44</sup> In contrast, as noted above, the National Department of Health have confirmed only 264 health facilities are providing termination of pregnancy services.<sup>45</sup>

**While the National Department of Health note that 'all General Practitioners can provide medical terminations (of pregnancy) as part of the general medication services that they provide',<sup>46</sup> the 2013 audit found nearly half of the 3 074 clinics (47%) and 20% of the 238 Community Health Centres reported no access to Doctors.<sup>47</sup>**

Only 76% of primary health care facilities offered termination of pregnancy counselling,<sup>48</sup> As an urgent step to implement increased access, South Africa's Expert Committee on Maternal Deaths has advised that "All hospitals must be able to provide medical termination of pregnancy to ensure that all women have access to safe [termination of pregnancy]. Medical [termination of pregnancy] must be available at, but not restricted to, dedicated [termination of pregnancy] clinics."<sup>49</sup>

40. The health and health system of South Africa: historical roots of current public health challenges  
Covadita, Hoosen et al. *The Lancet*, Volume 374, issue 9692, 817 – 834.

41. HST District Health Barometer 2012; Negotiated Service Delivery Agreement 2013  
[http://www.hst.org.za/sites/default/files/NSDA\\_booklet.pdf](http://www.hst.org.za/sites/default/files/NSDA_booklet.pdf), page 6; South Africa National Development Plan  
2030 Executive Summary <http://www.gov.za/sites/www.gov.za/files/Executive%20SummaryNDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf>, page 41.

42. National Health Care Facilities Baseline Audit National Summary Report, February 2013  
[http://www.hst.org.za/sites/default/files/NHFA\\_webready\\_0.pdf](http://www.hst.org.za/sites/default/files/NHFA_webready_0.pdf) Accessed 28 November 2016

43. Department of Health, Human Resources for Health South Africa, (2011). 2012/13 - 2016/17, page 26; RSA Negotiated Service Delivery Agreement for Outcome Two: 'A Long and Healthy Life for All South Africans' 2010 notes the disparity in per capita spending: "In 2009 nominal terms, the per capita spend in the public sector is estimated at R1,900 whilst in the private sector it is R11,300." And that "in the public sector there are about 4,200 patients to a general doctor compared to 243 patients to a general doctor in the private sector", page 6.

44. National Health Care Facilities Baseline Audit National Summary Report, February 2013, at page 11.

45. Information received by Amnesty International from the National Department of Health 3 November 2016.

46. Information received by Amnesty International from the National Department of Health 3 November 2016.

47. National Health Care Facilities Baseline Audit National Summary Report, February 2013, at page 24.

48. National Health Care Facilities Baseline Audit National Summary Report, February 2013, Table 4;

PHC Clinical Services Audited, at page 28 and at page 11, Table 1: Number of audited facilities, by facility classification, which lists 263 District Hospitals, 55 Regional Hospitals and 10 Tertiary Hospitals

Those living in rural areas (43.6% of the population) often experience the greatest adversities accessing quality health care.<sup>51</sup> For example, they are served by only 12% of the country's doctors and 19% of nurses.<sup>52</sup> Across the country, especially in rural areas, access to safe abortion (both medical and surgical) is severely hampered due to large distances to facilities and the high costs of transport to reach them.<sup>53</sup>

**Additional disparities occur between and within South Africa's nine provinces and 52 health districts. These are associated with divergent rates of spending on health care provision and health systems management,<sup>54</sup> which often have a discriminatory effect on women and girls' health, by virtue of significant differences in sexual and reproductive health services and outcomes, including varying rates of unplanned pregnancies,<sup>55</sup> teenage pregnancies,<sup>56</sup> and prevalence of HIV.<sup>57</sup> This system has exacerbated inequalities and access barriers to safe abortion due to the lack of national guidelines and standards.**

The National Department of Health refer only to the Western Cape Province as having developed specific guidelines for the management of conscientious objection.<sup>58</sup> However, Amnesty International and the Women's Health Research Unit remain concerned that these guidelines are not formalised or operational across all facilities. In addition, there are reports of disparities in access to the medicines necessary for medical termination of pregnancy in some provinces.

49. National Health Care Facilities Baseline Audit National Summary Report, February 2013, Table 4;

PHC Clinical Services Audited, at page 28 and at page 11, Table 1: Number of audited facilities, by facility classification, which lists 263 District Hospitals, 55 Regional Hospitals and 10 Tertiary Hospitals

50. Saving Mothers 2011-2013: Sixth report on the Confidential Enquiries into Maternal Deaths in South Africa Short Report Compiled by the National Committee for Confidential Enquiry into Maternal Deaths, page 63.

51. Department of Health, Human Resources for Health South Africa, (2011) 2012/13 - 2016/17, page 30.

52. Department of Health, Human Resources for Health South Africa, (2011) HRH STRATEGY FOR THE HEALTH SECTOR 2012/13 - 2016/17, page 30.

53. Amnesty International interviews with community representatives in conducted in KwaZulu-Natal and Mpumalanga from 2014 to 2016.

54. HST, District Health Barometer 2012/13.

55. HST District Health Barometer 2012 noting: "Districts in socio-economic quintile 5 (highest) appear to have the best access to contraception and quintile 1 (poorest), the worst," page 97; Wehrl N, Chesich M, Zuma K, Blaauw D, Goudge J, et al. (2013) Equity in Maternal Health in South Africa: Analysis of Health Service Access and Health Status in a National Household Survey. PLoS ONE 8(9): e73864. doi:10.1371/journal.pone.0073864, found nationally only 44.4% of pregnancies were planned, with the lowest rates in KwaZulu-Natal (25.5%). Further, almost 90% of pregnancies of those aged under 20 were unplanned. "Among women with HIV, only 31.7% of pregnancies were planned, compared with 42.1% of those non-infected (p = 0.07)", page 12.

56. Indicated by the birth rate for girls aged under 18 who gave birth at a health facility, the national average is 8%, "the highest proportion of 2012/13 under-18 deliveries was in the Eastern Cape (10.3%) and the lowest in Gauteng Province (4.8%)." HST, District Health Barometer 2012/13, page 60.

57. Wabiri HSRC (2014) Page XXV.

58. Information received by Amnesty International from the National Department of Health 3 November 2016.

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The WHO urges governments to ensure that "The availability of facilities and trained providers within reach of the entire population is essential to ensuring access to safe abortion services."<sup>59</sup> Human rights standards place an obligation on states to ensure that marginalised communities are provided with communication and transport to care.<sup>60</sup> The ACHPR has recently emphasised that State parties should take all appropriate measures to remove obstacles to safe abortion, including economic and geographic barriers faced by marginalised women and girls, such as those living in rural areas.<sup>61</sup>

## THE RIGHT TO ACCESS INFORMATION

Research from South Africa has highlighted the lack of knowledge among women and girls in relation to the legality of abortion as a major driver of unsafe abortions.<sup>62</sup> Lack of information can lead to unnecessary delays in women and girls accessing abortion services. Delays can result in women and girls being denied abortion services due to gestational limits under the CTOPA. South Africa has high rates of second trimester abortions, which account for over 25% of abortions performed,<sup>63</sup> and been linked to long delays between the date of first clinic appointment and the date of admission for an abortion and complex referral processes.<sup>64</sup>

Higher rates of injury are associated with abortions later in pregnancy.<sup>65</sup> In this context, a plethora of online illegal abortion providers portraying themselves as legal providers is worrying, especially as women accessing legal services have reported accessing these online illegal providers.<sup>66</sup>

Health care workers are often the main source of health related information.<sup>67</sup> The CTOPA requires health care providers to inform anyone requesting an abortion of their rights under the Act.<sup>68</sup>

59. WHO 2012, page 65.

60. CESCR General Comment 22 at Para 16; CESCR General Comment 14, paras 12 (b), 37 (ii), 40, 43 (a) and (f), and 52.

61. ACHPR General Comment 2 para 61.

62. Jewkes R et al. Why are women still aborting outside designated facilities in metropolitan South Africa? *British Journal of Obstetrics and Gynaecology*, 2005, 112:1236–1242 which found "Lack of information on abortion rights under the Act and perceived poor quality of designated facilities were the most important barriers to access and should be addressed by policymakers and health service management."; Morroni C, Myer L, Thabazawa K. Knowledge of the abortion legislation among South African women: a cross-sectional study. *Reproductive Health*, 2006, 3:7; Harries et al. Delays in seeking an abortion until the second trimester: a qualitative study in South Africa. *Reproductive Health* 2007, 4:7.

63. J Harries et al. *J. Biosoc. Sci.* (2012) 44, 197-208 at page 199, noting comparable figures with the USA and UK where 12% or less of abortions take place in the second trimester; D Constant et al. Clinical out comes and women's experiences before and after the introduction of mifepristone into second-trimester medical abortion services in South Africa. *Published: September 1, 2016* <http://dx.doi.org/10.1371/journal.pone.0161843>, noting that in the Western Cape Province of South Africa, 28% of all abortions are performed in the second trimester, which is higher than reported for the United States, United Kingdom, Nepal and the Russian Federation.

64. Grossman et al. Surgical and medical second trimester abortion in South Africa: A cross-sectional study. *BMC Health Services Research* 2011;11:224, DOI: 10.1186/1472-6963-11-224.

65. WHO 2012, p. 97 notes: "Abortion is a very safe procedure but the risk of complications increases with increasing gestational age".

66. Harries J, Mombberg M, Geddes C, Greene Foster D. An exploratory study of what happens to women who are denied abortions in a legal setting in South Africa. *BMC Reproductive Health* 2015 12:21

67. Amnesty International October 2014, Index: AFR 53/006/2014.

68. Section 6 amended by Section 7 of Act 98 of 2004.

However, negative attitudes of health care workers in relation to sexual and reproductive health services – including abortion – are a well-documented barrier to services, especially among adolescents.<sup>69</sup>

"They make it difficult for you. They spread the word in the community... and also isolate you in the hospital where you're supposed to work hand in hand, and you can become extremely unhappy. And you'd often find mid-wives who would often not be practicing doing abortions because they fear the victimization, being stigmatized, being isolated from their peers."<sup>70</sup>

*A hospital manager describes feelings of isolation experienced by some nurse providers*<sup>70</sup>

Amnesty International has previously highlighted the importance of human rights training for health care workers who provide sexual and reproductive services and information.<sup>71</sup> The WHO recommends that health care workers should ensure respect for women and girls' autonomy, confidentiality and privacy and be trained to support women's informed and voluntary decision-making.<sup>72</sup> At the primary health care level, the WHO recommend that "all health-care workers providing reproductive health services [are] trained to provide counselling on contraception, unintended pregnancy and abortion"<sup>73</sup> and to "provide information on, and referral to, pregnancy-detection and safe, legal abortion services."<sup>74</sup> This duty is emphasised by the ACHPR as a human rights obligation.<sup>75</sup>

69. Amnesty International October 2014, Index: AFR 53/006/2014; Myers, L. (2014). A rapid assessment of the need for teenage pregnancy communication in O.R. Tambo district, EC and uMgungundlovu district, KZN. Cape Town: CADRE, Wood, K. & Jewkes R. (2006) *Blood Blockages and Scolding Nurses: Barriers to Adolescent Contraceptive Use in South Africa. Reproductive Health Matters*, 14(7):109-118; Ehlers, V. (2003) *Adolescent mothers' utilization of contraceptive services in South Africa. International Nursing Review*, 50(4).

70. Harries J. What health-care providers say on providing abortion care in Cape Town, South Africa: findings from a qualitative study. *Social Science Policy Brief Department of Reproductive Health and Research World Health Organization* 2010.

71. Amnesty International 2014, *Struggle for Maternal Health: Barriers to Antenatal Care in South Africa* Index: AFR 53/007/2014.

72. WHO 2012, page 68.

73. WHO 2012, page 68.

74. WHO 2012, page 68.

75. ACHPR General Comment 2 at para 29.

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"State parties must ensure that the necessary infrastructure is set up to enable women to be knowledgeable and referred to other health care providers on time"

*African Commission on Human and People's Rights, 2015<sup>76</sup>*

**Training on sexual and reproductive rights has potential to reduce the professional stigma experienced by abortion providers. The National Department of Health has acknowledged that some health care providers work in contexts of physical and psychological stress, which are often exacerbated when they are offering stigmatised services - for example, termination of pregnancy.<sup>76</sup>**

Research has also highlighted the difficult working conditions of abortion providers and feelings of isolation or being stigmatized by colleagues in the work place.<sup>77</sup> This has led to "burn-out" with professionals leaving the services, as "they could not endure the comments or the attitudes of their colleagues."<sup>78</sup> In turn, such contexts exacerbate the challenges in ensuring South Africa fulfils its human rights obligations to ensure accessible services.

Ensuring access to information on how and where to access lawful abortion services is a critical part of protecting access to sexual and reproductive rights and ensuring that women and girls are empowered to make decisions regarding their own health and lives. In the context of the country's very high rates of maternal deaths, medical experts have called for the government to ensure that women and girls are aware of their right to abortion and where to access services, recommending that: "Communities must be educated about... how to access safe [termination of pregnancy]"<sup>79</sup> As an essential first step, information on which public health facilities provide abortion services and at which gestational ages, should be available on the Department of Health website and at health facilities.

The provision of education and access to information about the main health problems in the community is a core obligation under the right to health.<sup>80</sup> The Maputo Protocol requires States to "provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas".<sup>81</sup> Human rights bodies are clear that such information should be

76. ACHPR General Comment 2 at para 29.  
77. National Department of Health, *Sexual and Reproductive Health and Rights: Fulfilling our Commitments 2011-2021 and beyond Final Draft 2011*.

78. Harries J, Stinson K, Orner P. Health care providers' attitudes towards termination of pregnancy: A qualitative study in South Africa. *BMC Public Health* 2009, 9: 296. Page 7.

79. *Saving Mothers 2011-2013*: Sixth report on confidential enquiries into maternal deaths in South Africa.

80. CESCR General Comment 14, para 43.

81. Article 14 (2) (e) Maputo Protocol.

82. ACHPR General Comment 2 para 28; CESCR General Comment 14, paras 11, 12 (b), 14, 21-23, 34, 35, 44 and 50.

## CONCLUSION

The government of South Africa has taken noteworthy steps towards respecting, protecting and fulfilling women's and girls' sexual and reproductive rights. The CTOPA is among the most progressive legislative frameworks worldwide, in providing women and girls the right to abortion. However, as the research presented in this briefing highlights, implementation of the CTOPA remains inadequate, risking violations of the government's obligations under international human rights law.

In failing to regulate the practice of conscientious objection, and to ensure access to safe abortion information and services, South Africa has failed to fulfil obligations under the Maputo Protocol and other human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All forms of Discrimination Against Women.

83. All sexuality education programmes, both in and out of school should not censor or withhold information or disseminate biased or factually incorrect information, such as inaccurate information on contraceptives or abortion. See, Committee on the Rights of the Child, General Comment 3 HIV and the rights of the Child, para 16 (2003); Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, para. 23 & 34 (2000); Report of the UN Special Rapporteur on the Right to Education, para. 39, Doc. /A/65/162 (2010).

84. ACHPR General Comment 2 at para 51; CESCR General Comment No. 14, para. 34 (2000); Report of the UN Special Rapporteur on the Right to Education, paras. 21-23, 63, 87 (d), Doc. /A/65/162 (2010).

## RECOMMENDATIONS TO THE SOUTH AFRICAN GOVERNMENT

- Collate and publish disaggregated data on maternal deaths resulting from abortion, including unsafe and illegal abortions, as part of the Confidential Enquiry into Maternal Deaths in South Africa.

In relation to:

### CONSCIENTIOUS OBJECTION

- Issue clear guidelines and protocols, to all health care professionals and health facility management, including:
  - What constitutes conscientious objection;
  - The conditions in which conscientious objection can be applied;
  - The measure which must be undertaken in order to lodge one's right to conscientious objection;
  - The limits of conscientious objection including the ethical duties of health care professionals who exercise their right to conscientious objection to provide accurate information and referrals;
  - The accountability mechanisms for health professionals who fail to comply with their ethical duties; and
  - Ensure careful record keeping and mapping of health care professionals who have registered their conscientious objection and ensuring an adequate number of health care providers willing and able to provide such services are available in both public and private facilities and within reasonable geographical reach. Including such concerns within the next Human Resources for Health Strategy for the Health Sector.<sup>85</sup>
- Continued value clarifications training of health care workers especially around conscientious objection.

In relation to:

### INEQUALITY OF ACCESS TO SERVICES AND INFORMATION

- Provide information of where women can access abortion, including easy identification of hospitals designated as termination of pregnancy sites, which is publically available and easy to access, including on the National Department of Health website, Department of Health mobile apps including MomConnect and B-Wize, and via telephone call centres.
- Ensure accurate information and referrals are provided by all health care personnel, regardless of their personal views.
- Ensure planned patient transport is available for all women and girls needing to access health facilities offering abortion services.
- Prioritize the prevention of unwanted pregnancy through access to comprehensive sexuality education and modern contraception, including emergency contraceptives, which must be available without any barriers to all women, especially women and girls who have been raped.
- Implement stigma reduction strategies, including through educating health care providers and communities on what the right to health requires of service provision and ensuring the delivery of health care that is free from stigma, coercion, discrimination, violence and respects human rights, including the rights to confidentiality, privacy and informed consent.

<sup>85</sup> Noting the gap that the Human Resources for Health Strategy for the Health Sector 2012/13 – 2016/17 does not reference termination of pregnancy services.

MS [Signature]

## ANNEX 1:

## South Africa's Human Rights Obligations in relation to Access to Abortion<sup>1</sup>

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

*Ratified by South Africa:* 10 December 1998

*Treaty Monitoring Committee:* Human Rights Committee (HRC)

#### Human rights obligation related to abortion

Article 6 recognizes every person's right to life.

Article 7 establishes the right to be free from torture and from cruel, inhuman, or degrading treatment or punishment.

Article 17 protects the right to privacy.

#### General Comments/General Recommendations

International and regional human rights treaty provisions protecting the right to life, and the official bodies that interpret articles protecting life and other human rights guarantees, do not extend such protections prenatally. No international human rights body has ever recognized a fetus as a subject of protection under the right to life under Article 6 (1) of the ICCPR or other provisions of international human rights treaties, including the Convention on the Rights of the Child.

**CCPR General Comment 6: The Right to Life<sup>2</sup>** emphasizes that the inherent right to life should not be understood in a restrictive manner and that States should take positive measures to increase life expectancy (Para. 5).

**CCPR General Comment 28: Equality of Rights Between Men and Women<sup>3</sup>** calls upon States, when reporting on women's enjoyment of Article 6 on the right to life, to "give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions" (Para.10).

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has urged States parties where abortion is legal to include authoritative public health guidelines on access to safe abortion to which universal access should be effectively ensured in the national plan – as essential for improving maternal health.<sup>4</sup>

In its General Comment 28, the Committee also asks States parties to report on laws and public or private actions that interfere with women's equal enjoyment of the right to privacy, and to take measures to eliminate such interference (Para. 20).

#### Concluding Observations

The HRC has discussed illegal and unsafe abortion as a violation of Article 6 of the Civil and Political Rights Covenant, the right to life,<sup>5</sup> and has made the link between illegal and unsafe abortions and high rates of maternal mortality.<sup>6</sup> The UN Human Rights Committee has criticized a State party's Constitution which grants the right to life of the "unborn" on an equal footing with a pregnant woman's right to life. Human rights bodies have refrained from stating that right to life protections apply prenatally as these would inevitably lead to conflicts between a pregnant woman or girl and her fetus. A position such as this would not only undermine the rights of the woman in the context of access to abortion, but also in other maternal health and general health care services required.<sup>7</sup> The Committee has urged States parties to revise laws to help women prevent unwanted pregnancies and to prevent women from resorting to clandestine abortions, which put their lives at risk.<sup>8</sup>

### INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

*Ratified by South Africa:* 10 December 1998

*Treaty Monitoring Committee:* Committee on Economic, Social and Cultural Rights (CESCR)

#### Human rights obligation related to abortion

Article 12 protects the right to the highest attainable standard of physical and mental health.

#### General Comments/General Recommendations

**CESCR General Comment 14: The Right to the Highest Attainable Standard of Health<sup>9</sup>** clarifies that States are required to implement measures to "improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information" (Para. 14).

The Committee underlines the need for States parties to provide a full range of high-quality and affordable health care, including sexual and reproductive services; reduce women's health risks and lower maternal mortality rates; remove all barriers to women's access to health services, education, and information, including in the area of sexual and reproductive health (Para. 21). While abortion is not explicitly mentioned, the OHCHR has outlined the categories of good practices to address maternal mortality and morbidity in compliance with human rights obligations, which include: enhancing the status of women, ensuring sexual and reproductive health rights, strengthening health systems, addressing unsafe abortion, and improving monitoring and evaluation.

The general comment also elaborates on the application of principles of non-discrimination on the basis of gender and equal treatment with respect to the right to health (Paras. 18-19) and recommends that States parties integrate a gender perspective into their health-related policies, planning, programs, and research (Para 20).

CESCR General Comment 22 on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)<sup>10</sup> recommends that "preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexuality education, including for adolescents, liberalize restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care including by training health care providers, and respect women's right to make autonomous decisions about their sexual and reproductive health" (Para. 28).

#### Concluding Observations

**Unsafe Abortions and Maternal Mortality:** The CESCR has expressed concern over the relationship between high rates of maternal mortality and illegal, unsafe, and clandestine abortions.<sup>11</sup> The Committee has recommended that States parties expand educational programs regarding reproductive and sexual health<sup>12</sup> as well as implement programs to increase access to family planning services and contraception.<sup>13</sup>

### THE CONVENTION AGAINST TORTURE AND OTHER CRUEL INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

*Ratified by South Africa:* 10 December 1998

*Treaty Monitoring Committee:* Committee against Torture (CAT)

#### Human rights obligation related to abortion

Article 1 defines torture as any intentional act, inflicted for reasons based on discrimination of any kind, which causes severe physical or mental suffering, and is committed with the consent or acquiescence of a public official.

#### General Comments/General Recommendations

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that: "International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender." Examples of such violations include denial of legally available health services such as abortion and post-abortion care.<sup>14</sup>

#### Concluding Observations

The CAT expressed concern to one State party that "medical personnel employed by the State deny[ ] the medical treatment required to ensure that pregnant women do not resort to illegal abortions that put their lives at risk."<sup>15</sup> The Committee recommended that the State party "take whatever legal and other measures are necessary to effectively prevent acts that put women's health at risk, including by providing the required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents."<sup>16</sup>

### THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

*Ratified by South Africa:* 10 December 1998

*Treaty Monitoring Committee:* Committee on the Elimination of Racial Discrimination (CERD)

#### Human rights obligation related to abortion

Article 5(b) links the right to be free from racial discrimination to the enjoyment of the right to security of person and the right to protection from violence and bodily harm.

Article 5(e) links the right to be free from racial discrimination to the enjoyment of a number of economic, social, and cultural rights, including the right to health.

#### General Comments/General Recommendations

**General Recommendation 25: Gender Related Dimensions of Racial Discrimination<sup>17</sup>** specifically recognizes that some forms of racial discrimination may be experienced only by women and may be directed at women because of their gender (Para. 2). The Committee states that it will take gender into account when evaluating and monitoring racial discrimination against women and how such discrimination affects the exercise of all other rights (Para. 3). This would include the rights to health and to life, which are implicated in the case of women and abortion.

#### Concluding Observations

The CERD has expressed concern and regret that certain groups are disproportionately affected by maternal mortality as a result of lack of access to reproductive health-care and family planning services.<sup>18</sup> It has recommended that one State party address persistent racial disparities in reproductive health by improving access to health care and family planning and expressed regret over the high incidence of unintended pregnancies and greater abortion rates among women belonging to a minority group.<sup>19</sup> In a subsequent review the Committee recommended that State party effectively identify and address the causes of disparities, and to improve monitoring and accountability mechanisms for preventable maternal mortality.<sup>20</sup>



## THE CONVENTION ON THE RIGHTS OF THE CHILD

*Ratified by South Africa: 16 June 1995*

*Treaty Monitoring Committee: Committee on the Rights of the Child (CRC)*

### Human rights obligation related to abortion

**Article 2** prohibits discrimination on several grounds, including sex or "other status."

**Article 6** ensures children's right to life and survival.

**Article 13** establishes children's right to impart and receive information of all kinds.

**Article 24** guarantees children's right to the highest attainable standard of health and places responsibility on States parties to ensure proper health care for mothers, children, and families.

**Article 37** ensures children's right to liberty and security of person.

### General Comments/General Recommendations

**CRC General comment No. 20 (2016)** on the implementation of the rights of the child during adolescence recognizes unsafe abortion as a particular health risk during adolescence (Para 13), and urges States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions (Para. 60).

**CRC General Comment No. 4: Adolescent Health and Development**<sup>24</sup> recommends that "States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents." (Para. 37)

### Concluding Observations

**Unsafe Abortions and Maternal Mortality:** On several occasions, the CRC has made the link between maternal mortality and high rates of clandestine<sup>25</sup> and unsafe abortions.<sup>26</sup> The Committee has called upon at least one State party to undertake a study on the negative impact of early pregnancy and illegal abortion.<sup>24</sup> The Committee has called upon a State party to ensure that abortions "could be conducted with all due attention to minimum standards of health safety,"<sup>25</sup> and recommended that States parties provide greater access to youth-sensitive and confidential counseling and reproductive health education.<sup>26</sup>

The Committee has recommended a State party "take urgent measures to reduce maternal deaths relating to teenage abortions and ensure children's access to safe abortion and post-abortion care services, in law and in practice."<sup>27</sup>

The Committee has asked States to provide adolescents with youth-friendly counseling services.<sup>28</sup> The Committee has also advocated for adolescents' access, without parental consent, to youth-sensitive and confidential counseling, care, and rehabilitation facilities,<sup>29</sup> and to reproductive health and family planning information.<sup>30</sup>

The Committee has called on States to guarantee the best interests of pregnant adolescent girls, and ensure, in law and in practice, that the views of the child are always heard and respected in abortion decisions.<sup>31</sup>

## THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

*Ratified by South Africa: 15 December 1995*

*Treaty Monitoring Committee: Committee on the Elimination of Discrimination against Women (CEDAW Committee)*

### Human rights obligation related to abortion

**Article 12** protects women's right to health and requires States parties to eliminate discrimination against women in the area of health care, including reproductive health care such as family planning services.

**Article 16** protects women's right to decide on the number and spacing of their children and to have access to the information and means to do so.

### General Comments/General Recommendations

**CEDAW General Recommendation 24: Women and Health**<sup>32</sup> states that it is the duty of States parties to "respect, protect and fulfill women's rights to health care" (Para. 13). The Committee recognizes the importance of women's right to health during pregnancy and childbirth as it is closely linked to their right to life (Para. 2). The Committee has explicitly stated that "[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women" (Para. 11).

### Concluding Observations

**Unsafe Abortions and Maternal Mortality:** The CEDAW Committee has given considerable attention to the issue of maternal mortality due to unsafe abortion in numerous sets of Concluding Observations.<sup>33</sup> The Committee has explicitly framed the issue as a violation of women's right to life.<sup>34</sup> The Committee has emphasized that access to sexual and reproductive health services is essential to reducing maternal mortality and protecting women from resorting to unsafe abortion,<sup>35</sup> and it has called upon States parties to study behavioral patterns of women to determine why they do not use available health services.<sup>36</sup>

The Committee has expressed concern regarding high rates of maternal mortality due to high numbers of abortions among adolescents,<sup>37</sup> and unsafe,<sup>38</sup> clandestine,<sup>39</sup> and illegal abortions.<sup>40</sup> It has noted that women's need to resort to unsafe abortion is linked to their lack of access to family planning services<sup>41</sup> and has recommended that States parties increase access to family planning<sup>42</sup> as well as to sexual and reproductive health information.<sup>43</sup>

The Committee has raised general concerns about the lack of accessibility of safe abortion,<sup>44</sup> particularly in cases of rape.<sup>45</sup> The Committee has also urged States parties to ensure access to post-abortion care to reduce maternal mortality.<sup>46</sup>

The Committee has also recommended that States parties provide comprehensive, youth-friendly,<sup>47</sup> and gender-sensitive<sup>48</sup> reproductive health services. In one instance, it recommended that the State party provide social security coverage for abortions.<sup>49</sup>

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The Committee has called upon States parties to provide detailed information in their next periodic reports regarding incidence of abortion,<sup>50</sup> including rates and causes of maternal mortality, contraception use, and access to family planning services.<sup>51</sup> The Committee also recommended that at least one State party conduct a survey regarding high rates of maternal mortality due to abortions, and adopt legislative and policy measures to reduce and eliminate abortion-related deaths.<sup>52</sup>

The Committee has expressed concern regarding situations where women do not have access to safe abortion despite legalization of the procedure. It has recommended that States parties provide safe abortion services or ensure access where they are permitted by law,<sup>53</sup> and review restrictive interpretations of abortion legislation.<sup>54</sup>

**Conscientious Objection:** The CEDAW Committee has expressed concern over the lack of access to abortion services due to laws permitting conscientious objection by hospital personnel.<sup>55</sup> The Committee has made it clear that, in these circumstances, it considers a government's failure to ensure access to another provider willing to perform the procedure an infringement of women's reproductive rights.<sup>56</sup> The Committee has recommended that States parties ensure access to abortion in public health services.<sup>57</sup> The Committee has praised the provision of South Africa's CTOPA that health workers may not obstruct access to services for termination of pregnancy.<sup>58</sup>

The Committee has called on a State party to "[c]ease all negative interference with women's sexual and reproductive rights including by ending campaigns that stigmatize abortion and seek to negatively influence the public view on abortion and contraception," and "establish an adequate regulatory framework and a mechanism for monitoring of the practice of conscientious objection by health professionals and ensure that conscientious objection is accompanied by information to women about existing alternatives and that it remains a personal decision rather than an institutionalized practice."<sup>59</sup>

### THE MAPUTO PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL)

*Ratified by South Africa: 17 December 2004*

*Treaty Monitoring Committee: African Commission of Human and People's Rights (ACHPR)*

#### Human rights obligation related to abortion

**Article 2** commits States to combat all forms of discrimination against women and modify social and cultural patterns of conduct of women and men in order to eliminate all practices based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

**Article 3** protects every woman's right to respect for her dignity, free development of her personality, and recognition and protection of her human and legal rights including protection from all forms of violence, particularly sexual and verbal violence.

**Article 4** protects every woman's right to life, integrity and security of the person and prohibits all forms of cruel, inhuman or degrading punishment and treatment and exploitation.

**Article 8** enshrines every woman's right of equal protection before the law including obligating States to reform or existing discriminatory laws and practices in order to promote and protect the rights of women.

**Article 14.1** protects the right to health of women, including sexual and reproductive health, including the right to control their fertility; the right to decide whether, when and how many children to have; the right to choose any method of contraception; the right to self-protection and to be protected against STIs and HIV/AIDS; the right to be informed on one's health status and on the health status of one's partner; the right to have family planning education.

**Article 14.2** obligates States to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas; b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; and c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

**Article 25 (a)** obligates States to provide for appropriate remedies when rights or freedoms under the Charter have been violated.

**Article 26.2** obligates States to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.

#### General Comments/General Recommendations

**General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:** The General Comment clarifies that in order for States to meet their international human rights obligations, they must remove the legal and administrative barriers that impede women's access to safe abortion services (Para. 20); reform socio-cultural structures and norms that promote and perpetuate gender inequality, and remove all barriers stemming from intersectional forms of discrimination in laws, policies, plans, administrative procedures and the provision of resources, information and services concerning contraception and safe abortion in the specific cases listed in the Protocol (Paras. 22, 60 and 61).

The General Comment also emphasizes that women must have access to sexual and reproductive health information, services and commodities needed only by them (including related to contraception and safe abortion) in order to enjoy their rights in a non-discriminatory manner and achieve gender equality (Para. 31).

Women must not be criminalized and should not incur any legal sanctions for having benefited from health services needed only by them such as abortion and post-abortion care. Furthermore, the health personnel should not fear neither prosecution, nor disciplinary reprisal or others for providing these services in the specific cases provided for in the Protocol (Para. 32).

In order to ensure that women equally benefit from scientific progress (as per ICESCR Article 15.1.b), they must not be denied the means to interrupt an unwanted pregnancy safely, using effective modern services (Para. 33).

The General Comment recognizes that women's rights to privacy and confidentiality are violated when women seeking therapeutic abortion services are interrogated why they want to interrupt a pregnancy by health care providers, police and/or judicial authorities or when they are charged or detained for suspicion of illegal abortion when seeking post-abortion care (Para. 34).

States are required to ensure, immediately and unconditionally the treatment required for anyone seeking emergency medical care including women seeking post-abortion care regardless of legality of abortion (Para. 35).

States must ensure that women are not treated in an inhumane, cruel or degrading manner when they seek reproductive health services such as contraception or safe abortion, where provided for by national law and the Protocol (Para. 36).

States must create legal, economic and social conditions that enable women to exercise their sexual and reproductive rights. To this end, States must address stigmatization and discrimination related to reproductive health by supporting women's empowerment, sensitizing and educating communities, religious leaders, traditional chiefs and political leaders on women's sexual and reproductive rights as well as training health-care workers (Para. 44).

State parties must provide comprehensive information and education on human sexuality, reproduction and sexual and reproductive rights, especially to adolescent girls and young people. The content must be evidence-based, rights-based, non-judgmental and according with evolving capacity of children and adolescents (Para. 51). Educational programmes should reach out to women and girls out of and in school (both public and private) (Para. 52).

States must ensure available, accessible, acceptable and good quality services that are comprehensive, integrated, rights-based, and sensitive to the reality of women in all contexts, and adapted to women living with disabilities and the youth, free from any coercion, discrimination and violence (Para 53 and 61). This includes ensuring specific budget allocations and tracking health expenditures on these budget lines for the purposes of monitoring, control and accountability (Para 63).

### Regional Policy Initiatives

**The Maputo Plan of Action:** The African Union has also adopted several policy initiatives to address unsafe abortion<sup>60</sup> and is most recently guided by the Maputo Plan of Action 2016-2030 for the Operationalisation of the Continental Policy Framework for Sexual and Reproductive Health and Rights.<sup>61</sup> The Maputo Plan of Action includes the goal of reducing levels of unsafe abortion,<sup>62</sup> and calls for health legislation and policies to ensure access to safe abortions to the full extent of national laws and policies.<sup>63</sup> Strategies for implementation include the need for ensuring gender equality, women and girls' empowerment and respect of human rights;<sup>64</sup> improving sexual and reproductive health and rights information, education and communication;<sup>65</sup> and investing in sexual and reproductive health and rights needs of adolescents, youth and other vulnerable and marginalized populations.<sup>66</sup> Member States are tasked to domesticate and implement the Plan, including by establishing advocacy, resource mobilization and budgetary provision.<sup>67</sup> The AU Commission has an oversight role, including through ensuring 'policies and strategies among member states are harmonized with continental and global instruments' and by establishing 'a monitoring, reporting and accountability mechanism for the plan under which a biennial, five-year, ten-year and end of term evaluations of progress of implementation would be ensured.'<sup>68</sup>

In January 2016 the ACHPR launched a continental Campaign for the Decriminalization of Abortion in Africa, with the aim to bring attention to the serious threat to women's and girls' rights to sexual and reproductive health posed by unsafe abortion.<sup>69</sup>

### Notes

1. This table draws on information compiled by the Center for Reproductive Rights, "Bringing Rights to Bear: Abortion and Human Rights, Government Duties to Ease Restrictions and Ensure Access to Safe Services", Briefing Paper, 2008, available at: [https://www.reproductiverights.org/sites/crr/activations.net/files/documents/BRB\\_abortion\\_br\\_revised\\_3\\_09\\_WEB.PDF](https://www.reproductiverights.org/sites/crr/activations.net/files/documents/BRB_abortion_br_revised_3_09_WEB.PDF), on which Annex 1 relies. In addition to updates from Amnesty International research and reports. Annex 1 also draws from Ipsos Africa Alliance: Human Rights and African Abortion Laws: A Handbook for Judges, Nairobi, Kenya, Ipsos Africa Alliance 2014, available at: <http://www.ipsos.org/~/media/ipsos/pas%20Publications/Human-Rights-and-African-Abortion-Laws-A-Handbook-for-Judges.aspx> in relation to the Maputo Protocol.
2. CPCR General Comment No. 6: Article 6 (Right to Life), Adopted at the Sixteenth Session of the Human Rights Committee, on 30 April 1982
3. CPCR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), Adopted at the Sixty-eighth session of the Human Rights Committee, on 29 March 2000
4. Report of the Office of the United Nations High Commissioner for Human Rights, Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (Hereafter, OHCHR Technical Guidance 2012) *A/HRC/21/22*, 2 July 2012, at para 33.
5. See, e.g., Chile, para 15, U.N. Doc. CPCR/C/79/Add.104 (1999); El Salvador, para 14, U.N. Doc. CPCR/C/78/SLV (2004); Guatemala para 19, U.N. Doc. CPCR/C/72/GTM (2001); Kenya, para 14, U.N. Doc. CPCR/C/83/KEN (2003); Mauritius, para 9, U.N. Doc. CPCR/C/83/MUS (2005); Paraguay, para 10, U.N. Doc. CPCR/C/79/PRY/CO/2 (2006); Peru, para 15, U.N. Doc. CPCR/C/79/Add.72 (1998); Peru, para 20, U.N. Doc. CPCR/C/70/PER (2000); United Republic of Tanzania, para 15, U.N. Doc. CPCR/C/79/Add.97 (1998); Trinidad and Tobago, para 18, U.N. Doc. CPCR/C/77/TTO (2000); Venezuela, para 19, U.N. Doc. CPCR/C/71/VEN (2001); Vietnam, para 15, U.N. Doc. CPCR/C/75/VNM (2002).
6. See, e.g., Bolivia, para 22, U.N. Doc. CPCR/C/79/Add.74 (1997); Colombia, para 24, U.N. Doc. CPCR/C/79/Add.76 (1997); Costa Rica, para 11, U.N. Doc. CPCR/C/79/Add.107 (1999); Equatorial Guinea, para 9, U.N. Doc. CPCR/C/79/EGN (2004); Gambia, para 17, U.N. Doc. CPCR/C/075/GMB (2004); Guatemala, para 19, U.N. Doc. CPCR/C/79/Add.107 (1999); Kenya, para 14, U.N. Doc. CPCR/C/72/GTM (2001); Kenya, para 14, U.N. Doc. CPCR/C/83/KEN (2005); Mali, para 14, U.N. Doc. CPCR/C/77/MIL (2005); Mongolia, para 8(b), U.N. Doc. CPCR/C/79/Add.120 (2000); Paraguay, para 208; 219, U.N. Doc. CPCR/C/79/Add.48; ASO/AG (1995); Paraguay, para 10, U.N. Doc. CPCR/C/PRY/CO/2 (2006); Peru, para 15, U.N. Doc. CPCR/C/79/Add.72 (1998); Peru, para 20, U.N. Doc. CPCR/C/70/PER (2000); Poland, para 11, U.N. Doc. CPCR/C/79/Add.110 (1999); Senegal, para 12, U.N. Doc. CPCR/C/79/Add.82 (1997); Sudan, para 10, U.N. Doc. CPCR/C/79/Add.85 (1997); United Republic of Tanzania, para 15, U.N. Doc. CPCR/C/79/Add.97 (1998); Zambia, para 9, U.N. Doc. CPCR/C/79/Add.62 (1996).
7. Amnesty International, She is not a criminal: the impact of Ireland's restrictive abortion laws Index: EUR 29/1597/2015.
8. OHCHR Technical Guidance 2012 *A/HRC/21/22*, 2 July 2012, at para 33.
9. CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000.
10. EC.12/GC/22.4 March 2016.
11. See, e.g., Benin, para 23, U.N. Doc. EC.12/1/Add.78 (2002); Brazil, para 27, U.N. Doc. EC.12/1/Add.87 (2003); Cameroon, para 25, U.N. Doc. EC.12/1/Add.40 (1999); China, para 36, U.N. Doc. EC.12/1/Add.107 (2005); Mauritius, para 15, U.N. Doc. EC.12/1/99/48 (1994); Mexico, para 25, U.N. Doc. EC.12/1/Add.41 (1999); Mexico, para 25, U.N. Doc. EC.12/ME/CO/4 (2006); Nepal, para 32, U.N. Doc. EC.12/1/Add.66 (2001); Panama, para 20, U.N. Doc. EC.12/1/Add.64 (2001); Paraguay, para 21, U.N. Doc. EC.12/PRY/CO/3 (2008); Poland, para 12, U.N. Doc. EC.12/1/Add.26 (1998); Russian Federation, para 35, U.N. Doc. EC.12/1/Add.94 (2003); Senegal, para 26, U.N. Doc. EC.12/1/Add.62 (2001).
12. See, e.g., Benin, para 42, U.N. Doc. EC.12/1/Add.78 (2002); Bolivia, para 43, U.N. Doc. EC.12/1/Add.60 (2001); Mexico, para 43, U.N. Doc. EC.12/1/Add.41 (1999); Mexico, para 44, U.N. Doc. EC.12/ME/CO/4 (2006); Nepal, para 55, U.N. Doc. EC.12/1/Add.66 (2001); Poland, para 50, U.N. Doc. EC.12/1/Add.82 (2002).
13. See, e.g., Brazil, para 51, U.N. Doc. EC.12/1/Add.87 (2003); Poland, para 12, U.N. Doc. EC.12/1/Add.26 (1998); Poland, para 50, U.N. Doc. EC.12/1/Add.82 (2002).
14. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, February 2013, *A/HRC/22/53*, para 46, as cited in Amnesty International report The state as a catalyst for violence against women: Violence against women and torture or other ill-treatment in the context of sexual and reproductive health in Latin America and the Caribbean AMR 01/3368/2016.
15. See Peru, para 23, U.N. Doc. CATY/PER/4 (2006).
16. See Peru, para 23, U.N. Doc. CATY/PER/4 (2006).
17. General Recommendation 25: Gender Related Dimensions of Racial Discrimination adopted at the Fifty-sixth session of the Committee on the Elimination of Racial Discrimination, 2000.
18. See, e.g., India, para 24, U.N. Doc. CERD/C/IND/CO/19 (2007); United States, para 33, U.N. Doc. CERD/C/USA/CO/6 (2008).
19. See United States, para 33, U.N. Doc. CERD/C/USA/CO/6 (2008).
20. Concluding observations on the combined seventh to ninth periodic reports of United States of America, CERD/C/USA/CO/7-9, 29 August 2014.

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21. CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child. Adopted at the Thirty-third Session of the Committee on the Rights of the Child, on 1 July 2003. CRC/C/2003/4.
22. See, e.g., Honduras, para 61, U.N. Doc. CRC/C/HND/CO/3 (2007); Mozambique, para 46, U.N. Doc. CRC/C/15/Add.172 (2002); Nicaragua, para 19, U.N. Doc. CRC/C/15/Add.36 (1995).
23. See, e.g., Benin, para 55, U.N. Doc. CRC/C/BEN/CO/2 (2006); Colombia, para 48, U.N. Doc. CRC/C/15/Add.137 (2000); Peru, paras 52-53, U.N. Doc. CRC/C/PER/CO/3 (2006); Venezuela, paras 60-61, U.N. Doc. CRC/C/VEN/CO/2 (2007).
24. See Chad, para 30, U.N. Doc. CRC/C/15/Add.107 (1999).
25. See Mozambique, para 47, U.N. Doc. CRC/C/15/Add.172 (2002).
26. See, e.g., Antigua and Barbuda, para 54, U.N. Doc. CRC/C/15/Add.247 (2004); Chile, para 55, U.N. Doc. CRC/C/CHL/CO/3 (2007); Colombia, para 71, U.N. Doc. CRC/C/COLO/CO/3 (2006); Kenya, para 49, U.N. Doc. CRC/C/KEN/CO/2 (2007); Liberia, para 49, U.N. Doc. CRC/C/15/Add.235 (2004); Malaysia, para 67, U.N. Doc. CRC/C/MYS/CO/1 (2007); Nicaragua, para 53, U.N. Doc. CRC/C/15/Add.265 (2006); Ukraine, para 59, U.N. Doc. CRC/C/15/Add.191 (2002).
27. See Zimbabwe, para 60 (c), U.N. Doc. CRC/C/ZWE/CO/2 (2016).
28. See, e.g., Albania, para 57, U.N. Doc. CRC/C/15/Add.249 (2005); Barbados, para 25, U.N. Doc. CRC/C/15/Add.103 (1999); Belarus, para 44, U.N. Doc. CRC/C/15/Add.180 (2002); Czech Republic, para 51, U.N. Doc. CRC/C/15/Add.142 (2001); Lithuania, para 40, U.N. Doc. CRC/C/15/Add.146 (2001); Mali, para 27, U.N. Doc. CRC/C/15/Add.113 (1999); Sweden, para 34, U.N. Doc. CRC/C/15/Add.248 (2005); Ukraine, paras 57, 59, U.N. Doc. CRC/C/15/Add.191 (2002).
29. See, e.g., Mali, para 27, U.N. Doc. CRC/C/15/Add.113 (1999); Seychelles, para 47, U.N. Doc. CRC/C/15/Add.189 (2002).
30. See Kuwait, para 60, U.N. Doc. CRC/C/KWT/CO/2 (2013); Morocco, para 57 (b), U.N. Doc. CRC/C/MAR/CO/3-4 (2014); Sierra Leone, para 32 (c), U.N. Doc. CRC/C/SLE/CO/3-5 (2016).
32. CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health). Adopted at the Twentieth Session of the Committee on the Elimination of Discrimination against Women, in 1999.
33. See, e.g., Argentina, para 304, U.N. Doc. A/52/38 Rev.1, Part II (1997); Azerbaijan, para 73, U.N. Doc. A/53/38 (1998); Belize, para 56, U.N. Doc. A/54/38 (1999); Bolivia, para 28, U.N. Doc. CEDAW/C/BLZ/CO/4 (2007); Benin, para 158, U.N. Doc. A/60/38 (2005); Bolivia, paras 82-83, U.N. Doc. A/50/38 (1995); Bolivia, para 44, U.N. Doc. CEDAW/C/BOL/CO/4 (2007); Brazil, para 29, U.N. Doc. CEDAW/C/BRA/6 (2007); Burkina Faso, para 349, U.N. Doc. A/60/38 (2005); Burundi, para 61, U.N. Doc. A/66/38 (2011); Burundi, para 36, U.N. Doc. CEDAW/C/BUR/CO/4 (2008); Cape Verde, para 29, U.N. Doc. CEDAW/C/CPV/CO/6 (2006); Chile, para 152, U.N. Doc. A/50/38 (1995); Chile, paras 209, 228, U.N. Doc. A/54/38 (1999); Chile, para 19, U.N. Doc. CEDAW/C/CHL/CO/4 (2006); Colombia, para 393, U.N. Doc. A/54/38 (1999); Dominican Republic, para 337, U.N. Doc. A/53/38 (1998); Dominican Republic, para 308, U.N. Doc. A/59/38 (SUPP) (2004); Eritrea, para 22, U.N. Doc. CEDAW/C/ERI/CO/3 (2006); Georgia, para 111, U.N. Doc. A/54/25 (1999); Ghana, para 31, U.N. Doc. CEDAW/C/GHA/CO/6 (2006); Jamaica, para 35, U.N. Doc. CEDAW/C/JAM/CO/5 (2006); Kyrgyzstan, para 136, U.N. Doc. A/54/38 (1999); Madagascar, para 244, U.N. Doc. A/49/38 (1994); Malawi, para 31, U.N. Doc. CEDAW/C/MWI/CO/5 (2006); Mali, para 33, U.N. Doc. CEDAW/C/MLI/CO/5 (2006); Mexico, para 32, U.N. Doc. CEDAW/C/MEX/CO/6 (2006); Mongolia, para 273, U.N. Doc. A/56/38 (2001); Morocco, para 68, U.N. Doc. A/52/38/Rev.1 (1997); Myanmar, para 129, U.N. Doc. A/58/38 (2000); Namibia, para 111, U.N. Doc. A/52/38/Rev.1, Part II (1997); Nepal, para 147, U.N. Doc. A/64/38 (1999); Nicaragua, paras 300-303, U.N. Doc. A/56/38 (2001); Nicaragua, para 17, U.N. Doc. CEDAW/C/NIC/CO/6 (2007); Pakistan, para 40, U.N. Doc. CEDAW/C/PAK/CO/3 (2007); Paraguay, paras 108, 131, U.N. Doc. A/51/38 (1996); Paraguay, para 32, U.N. Doc. C/PAR/CO/3-5 (2005); Peru, para 443, U.N. Doc. A/50/38 (1995); Peru, paras 300, 339, U.N. Doc. A/53/38 (1998); Peru, para 24, U.N. Doc. CEDAW/C/PER/CO/6 (2007); Philippines, para 27, U.N. Doc. CEDAW/C/PHI/CO/5 (2006); Republic of Moldova, para 30, U.N. Doc. CEDAW/C/MDA/CO/3 (2006); Romania, para 314, U.N. Doc. A/55/38 (2000); Venezuela, para 236, U.N. Doc. A/52/38/Rev.1 (1997); Zimbabwe, para 159, U.N. Doc. A/53/38 (1998).
34. See, e.g., Belize, para 56, U.N. Doc. A/54/38 (1999); Colombia, para 393, U.N. Doc. A/54/38 (1999); Dominican Republic, para 337, U.N. Doc. A/53/38 (1998).
35. See Dominican Republic, para 309, U.N. Doc. A/59/38 (SUPP) (2004).
36. See, e.g., Democratic Republic of Congo, para 36, U.N. Doc. CEDAW/C/DRC/CO/5 (2006); Mali, para 34, U.N. Doc. CEDAW/C/MLI/CO/5 (2006).
37. See Mexico, para 445, U.N. Doc. A/57/38 (2002).
38. See, e.g., Moldova, para 30, U.N. Doc. CEDAW/C/MDA/CO/3 (2006); Mongolia, para 273, U.N. Doc. A/56/38 (2001).
39. See, e.g., Chile, para 19, U.N. Doc. CEDAW/C/CHL/CO/4 (2006); Eritrea, para 22, U.N. Doc. CEDAW/C/ERI/CO/3 (2006); Morocco, para 30, U.N. Doc. CEDAW/C/MAR/CO/4 (2008); Uganda, para 147, U.N. Doc. A/57/38 (2002).
40. See, e.g., Paraguay, para 287, U.N. Doc. A/60/38, Part I (2006); Peru, para 482, U.N. Doc. A/57/38 (2002).
41. See, e.g., Chile, para 19, U.N. Doc. CEDAW/C/CHL/CO/4 (2006); Democratic Republic of the Congo, para 36, U.N. Doc. (2006); Guyana, para 62, U.N. Doc. A/50/38 (1995); Ukraine, para 287, U.N. Doc. A/51/38 (1996).
42. See, e.g., Antigua and Barbuda, para 267, U.N. Doc. A/52/38/Rev.1, Part II (1997); Argentina, para 381, U.N. Doc. A/59/38 (SUPP) (2004); Benin, 23/07/2005, U.N. Doc. A/60/38, para 158; Burkina Faso, para 275, U.N. Doc. A/55/38 (2000); Burkina Faso, para 350, U.N. Doc. A/60/38 (2005); Burundi, para 62, U.N. Doc. A/56/38 (2001); Cameroon, para 60, U.N. Doc. A/55/38 (2000); Cape Verde, para 30, U.N. Doc. CEDAW/C/CPV/CO/6 (2006); Chile, para 229, U.N. Doc. A/54/38 (1999); Cuba, para 28, U.N. Doc. CEDAW/C/CUB/CO/3 (2006); Czech Republic, para 102, U.N. Doc. A/57/38 (2002); Democratic Republic of Congo, para 361, U.N. Doc. CEDAW/C/DRC/CO/5 (2006); Eritrea, para 22, U.N. Doc. CEDAW/C/ERI/CO/3 (2006); Estonia, para 112, U.N. Doc. A/57/38, Part I (2002); Georgia, para 112, U.N. Doc. A/54/38 (1999); Greece, para 208, U.N. Doc. A/54/38 (1999); Ireland, para 186, U.N. Doc. A/54/38 (1999); Kazakhstan, paras 76, 106, U.N. Doc. A/56/38 (2001); Lithuania, para 159, U.N. Doc. A/55/38 (2000); Mali, para 34, U.N. Doc. CEDAW/C/MLI/CO/5 (2006); Mongolia, para 274, U.N. Doc. A/55/38 (2001); Mozambique, para 36, U.N. Doc. CEDAW/C/MOZ/CO/2 (2007); Myanmar, para 130, U.N. Doc. A/55/38 (2000); Nicaragua, para 301, U.N. Doc. A/56/38 (2001); Nicaragua, para 18, U.N. Doc. CEDAW/C/NIC/CO/6 (2007); Paraguay, para 131, U.N. Doc. A/51/38 (1996); Paraguay, para 288, U.N. Doc. A/60/38 (2005); Peru, para 25, U.N. Doc. CEDAW/C/PER/CO/6 (2007); Slovenia, para 119, U.N. Doc. A/52/38/Rev.1 (1997); Togo, para 28, U.N. Doc. CEDAW/C/TGO/CO/5 (2006); Ukraine, para 290, U.N. Doc. A/57/38 (2002); Vanuatu, para 35, U.N. Doc. CEDAW/C/VUT/CO/3 (2007); Venezuela, para 243, U.N. Doc. A/52/38/Rev.1 (1997); Zambia, para 243, U.N. Doc. A/57/38 (2002).
43. See, e.g., Benin, para 158, U.N. Doc. A/60/38 (2005); Benin and Herzegovina, para 36, U.N. Doc. CEDAW/C/BH/CO/3 (2006); Burkina Faso, para 350, U.N. Doc. A/60/38 (2005); Cape Verde, para 30, U.N. Doc. CEDAW/C/CPV/CO/6 (2006); Eritrea, para 23, U.N. Doc. CEDAW/C/ERI/CO/3 (2006); Lebanon, para 112, U.N. Doc. A/60/38 (2005); Mali, para 34, U.N. Doc. CEDAW/C/MLI/CO/5 (2006); Mozambique, para 34, U.N. Doc. CEDAW/C/MOZ/CO/2 (2007); Namibia, para 25, U.N. Doc. CEDAW/C/NAM/CO/3 (2007); Saint Lucia, para 32, U.N. Doc. CEDAW/C/LCA/CO/6 (2006); Togo, para 28, U.N. Doc. CEDAW/C/TGO/CO/5 (2006); Vanuatu, para 35, U.N. Doc. CEDAW/C/VUT/CO/3 (2007).
44. See, e.g., Ireland, para 185, U.N. Doc. A/54/38 (1999); Mexico, para 399, U.N. Doc. A/53/38 (1998); Saint Vincent and the Grenadines, para 148, U.N. Doc. A/52/38/Rev.1 (1997); Tunisia, para 246, U.N. Doc. A/50/38 (1995).
45. See, e.g., Dominican Republic, para 309, U.N. Doc. A/59/38 (SUPP) (2004); Jordan, para 9, U.N. Doc. CEDAW/C/JOR/CO/4 (2007); Jordan, para 180, U.N. Doc. A/55/38 (2000); Myanmar, paras 128-130, U.N. Doc. A/55/38 (2000); Panama, para 201, U.N. Doc. A/55/38/Rev.1 (1998); Venezuela, para 236, U.N. Doc. A/52/38/Rev.1 (1997).
46. See, e.g., Brazil, paras 29-30, U.N. Doc. CEDAW/C/BRA/6 (2007); Chile, para 20, U.N. Doc. CEDAW/C/CHL/CO/4 (2006); Honduras, para 25, U.N. Doc. CEDAW/C/HON/CO/6 (2007); Mauritius, para 31, CEDAW/C/MAR/CO/3 (2007); Nicaragua, para 18, U.N. Doc. CEDAW/C/NIC/CO/6 (2007); Pakistan, para 41, U.N. Doc. CEDAW/C/PAK/CO/3 (2007); Peru, para 482, U.N. Doc. A/57/38 (2002); Philippines, para 28, U.N. Doc. CEDAW/C/PHI/CO/5 (2006); Vanuatu, para 35, U.N. Doc. CEDAW/C/VUT/CO/3 (2007).
47. See, e.g., Jamaica, para 36, U.N. Doc. CEDAW/C/JAM/CO/5 (2006); Vanuatu, para 35, U.N. Doc. CEDAW/C/VUT/CO/3 (2007).
48. See India, para 41, U.N. Doc. CEDAW/C/IND/CO/8 (2007).
49. See Burkina Faso, para 276, U.N. Doc. A/55/38 (2000).
50. See, e.g., Cuba, para 28, U.N. Doc. CEDAW/C/CUB/CO/3 (2000); France, para 33, U.N. Doc. CEDAW/C/FRA/CO/6 (2008); Georgia, para 30, U.N. Doc. CEDAW/C/GEOR/CO/3 (2006); Saint Lucia, para 32, U.N. Doc. CEDAW/C/LCA/CO/6 (2006).
51. See Georgia, para 30, U.N. Doc. CEDAW/C/GEOR/CO/3 (2006).
52. See Bolivarian Republic of Venezuela, para 32, U.N. Doc. CEDAW/C/VEN/CO/6 (2006).
53. See Bolivia, para 44, U.N. Doc. CEDAW/C/BOL/CO/4 (2008); Colombia, paras 22-23, U.N. Doc. CEDAW/C/COLO/CO/6 (2007); Jamaica, paras 35-36, U.N. Doc. CEDAW/C/JAM/CO/5 (2006); Mexico, paras 32-33, U.N. Doc. CEDAW/C/MEX/CO/6 (2006); Peru, paras 24-25, U.N. Doc. CEDAW/C/PER/CO/6 (2007); Republic of Moldova, para 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006); Saint Lucia, paras 31-32, U.N. Doc. CEDAW/C/LCA/CO/6 (2006).
54. See Peru, para 25, U.N. Doc. CEDAW/C/PER/CO/6 (2007).
55. See, e.g., Croatia, para 109, U.N. Doc. A/53/38 (1998); Italy, para 363, U.N. Doc. A/52/38 Rev.1, Part II (1997); Poland, para 25, U.N. Doc. CEDAW/C/PLJ/CO/6 (2007).
56. See Croatia, para 109, U.N. Doc. A/53/38 (1998).
57. See, e.g., Colombia, para 23, U.N. Doc. CEDAW/C/COLO/CO/6 (2007); Croatia, para 117, U.N. Doc. A/53/38 (1998); Italy, para 360, U.N. Doc. A/52/38 Rev.1, Part II (1997).
58. Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions) A/53/38/Rev.1 1998 at para 113.
59. See, e.g., Hungary, para 31 (a), 31(g) U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013).
60. Including the 2006 Maputo Plan of Action on Sexual and Reproductive Health and Rights 2007-2010 (renewed until 2015).
61. Available: [https://www.au.int/web/sites/default/files/documents/24099-pea\\_5\\_-\\_revised\\_clean.pdf](https://www.au.int/web/sites/default/files/documents/24099-pea_5_-_revised_clean.pdf) and last accessed 1 December 2016.
62. MAPUTO PLAN OF ACTION 2015-2030 At para 17.
63. MAPUTO PLAN OF ACTION 2015-2030 At para 17 ii.
64. MAPUTO PLAN OF ACTION 2015-2030 At para 17 iv.
65. MAPUTO PLAN OF ACTION 2015-2030 At para 17 v.
66. MAPUTO PLAN OF ACTION 2015-2030 At para 17 vi.
67. MAPUTO PLAN OF ACTION 2015-2030 At para 30.
68. MAPUTO PLAN OF ACTION 2015-2030 At para 28.
69. See further <http://www.achpr.org/press/2016/01/4287/> Accessed 1 December 2016.