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THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH: CHALLENGES AND POSSIBILITIES DURING COVID-19

Submitted to:

Dr Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Submission by:

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I INTRODUCTION

1. We refer to the call of the UN Special Rapporteur (**‘the SR’**) on the right of everyone to the enjoyment of the highest standard of physical and mental health, inviting submissions to inform her next thematic report to the UN General Assembly in October 2021.
2. The report’s focus is **The right of everyone to sexual and reproductive health – challenges and opportunities during COVID-19**. We appreciate the opportunity to engage with the questions posed by the SR.
3. The submission of the Gender, Health and Justice Research Unit (**‘GHJRU’**) will focus on the provision of safe and legal abortion services during the pandemic, with an emphasis on the opportunity to expand access to abortion services through telemedicine.¹
4. Focusing on the South African context, unless otherwise mentioned, the submission is divided as follows:
 - 4.1. **Part II** introduces the GHJRU;
 - 4.2. **Part III** discusses the context of abortion service provision in South Africa;
 - 4.3. **Part IV** addresses specific key questions raised by the SR; and
 - 4.4. **Part V** concludes with recommendations.

II ABOUT THE GHJRU

5. The GHJRU is an interdisciplinary research unit with a proven history of empirical, evaluation and monitoring projects in the areas of gender-based violence, sexual and gender minority rights, and reproductive rights. The GHJRU uses empirical research to develop well-informed, evidence-based advocacy positions to support legal and policy reform in South Africa and similarly-situated countries.

¹ Lucia Berro Pizzarossa & Rishita Nandagiri ‘Self-managed abortion: A constellation of actors, a cacophony of laws?’ *Sexual and Reproductive Health Matters* (2021) 29, 1; BA Townsend, M Mars & RE Scott ‘The HPCSA’s telemedicine guidance during COVID-19: A review’ *South African Journal of Bioethics and Law* (2020) 13(2) 97 at 97. ‘Telemedicine’ refers to remote clinical services being provided through formal systems of information and communication.

III CONTEXT OF ABORTION SERVICE PROVISION IN SOUTH AFRICA

6. South Africa legalised abortion services through the Choice on Termination of Pregnancy Act,² ('CTOPA') in 1996. The law is considered one of the most progressive abortion laws globally.³ Though South Africa boasts commendable legislation providing for a right to safe and legal abortion, requiring the consent of only the pregnant woman⁴ (wording used in the Act; this submission will refer to 'pregnant persons' to include women, girls, transmen and non-binary individuals), the landscape of service provision is severely limited.
7. Poor training; unavailability and unwillingness of staff to offer abortion services on the grounds of religion and conscience; limited facilities designated to provide abortions; and poor information dissemination about where to access services are some of the main factors which prevent pregnant persons from safely accessing abortion services in South Africa. In 2017, Amnesty International reported⁵ that of the 3880 public health facilities, only 264, just under 7%, were providing abortion services.⁶
8. A vast majority, approximately 83%, of South Africa's population relies on public facilities with unequal access to services, infrastructure and resources cutting across the public/private divide; in contrast, approximately 17% of the population belong to medical aid schemes with access to private health care.⁷ The South African Human Rights Commission has found that the public health system in South Africa is '*largely under-resourced in terms of personnel, availability of suitable medication and infrastructure; conditions which are adversely impacting the ability to deliver adequate care to poor people, especially to those in rural areas.*'⁸ This inequality in access is racialised due to the racist laws, policies and practices of pre-democratic South Africa, and overwhelmingly impacts black people.

² Choice on Termination of Pregnancy Act 92 of 1996.

³ The Act permits abortions on request up to 12 weeks of pregnancy, and in specific circumstances thereafter.

⁴ Choice on Termination of Pregnancy Act, section 5.

⁵ Amnesty International *Briefing: Barriers to safe and legal abortion in South Africa* (2017) Amnesty International Publications, London.

⁶ *Ibid* at 12. This was based on information received from the Department of Health on 03 November 2016.

⁷ Department of Statistics South Africa 'Public healthcare: How much per person?' available at <http://www.statssa.gov.za/?p=10548> (accessed on 07 June 2021); Women's Legal Centre, Legal Resources Centre and Sexual and Reproductive Justice Coalition *Submission to Parliament: National Health Insurance Bill* (November 2019) at 5 available at: http://srjc.org.za/wp-content/uploads/2019/12/2019-11-29-Joint-Submission-NHI-Bill-WLC_LRC_SRJC.pdf (accessed on 07 June 2021).

⁸ South African Human Rights Commission *Access to healthcare educational booklet* at 3 available at: <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Health%20Care%20Educational%20Booklet.pdf> (accessed on 07 June 2021).

9. The public health system services historically marginalised and vulnerable groups who experience intersecting discrimination; such as women and girls, persons with disabilities, internally displaced persons, asylum seekers and refugees, sex workers, indigent persons, and trans and non-binary persons.
10. Access to sexual and reproductive health ('SRH') services, and particularly abortion services, follows this same pattern of unequal health care access and service provision.

IV KEY QUESTIONS

Question 1: Since the beginning of the COVID-19 pandemic, States have adopted new policies, laws and other measures in response to the crisis. Please refer to the relevant measures in your country (or countries in focus) and their impact on the right to sexual and reproductive health. Please share information on opportunities and challenges.

11. The COVID-19 pandemic had a global impact; however, resource-constrained countries with struggling healthcare systems have been disproportionately affected.⁹ In South Africa, the pandemic resulted in a 21-day national lockdown, which commenced on 27 March 2020. The country's response to the pandemic is a multi-leveled protocol requiring the enactment of regulations by multiple government Departments, the limitation of physical movement, and the interruption of 'normal life' at varying degrees depending on the alert level at which the country is placed.¹⁰ The alert level is largely dependent on the country's infection rates, and the capacity of the healthcare system to carry those rates.
12. As reported by Doctors Without Borders ('MSF'),¹¹ SRH needs are often neglected in times of emergency. The current pandemic has been no different, and has seen additional pressure placed on an already strained South African healthcare system. Some of the most pressing issues and challenges to SRH care include:

⁹ Rouzeh Eghtessadi, Zindoga Mukandavire, Farirai Mutenherwa 'Safeguarding gains in the sexual and reproductive health and AIDS response amidst COVID-19: The role of African civil society' (2020) 100 *International Journal of Infectious Diseases* 286.

¹⁰ South African Government 'About alert system' available at: <https://www.gov.za/covid-19/about/about-alert-system> (accessed on 02 June 2021).

¹¹ Doctors Without Borders 'Women and girls face greater dangers during covid-19 pandemic' (2 July 2020), available at: <https://www.msf.org.za/news-and-resources/latest-news/women-and-girls-face-greater-dangers-during-covid-19-pandemic> (accessed on 01 June 2021).

- “Closure and cuts to sexual and reproductive health services;
 - Movement restrictions, including travel bans, lockdowns, and curfews;
 - Global supply chain disruptions; and
 - A lack of clear public health information and guidance”.¹²
13. The regulations¹³ passed during lockdown limited the free movement of South Africa’s inhabitants to circumstances that were essential only. Initially, this caused confusion in communities and among health care providers about which goods and services were essential.¹⁴ For instance, MSF reported that abortion services in Rustenburg were initially shut down as they were interpreted not to be essential health care.¹⁵ At other sites, clinics turned away patients seeking SRH services as they were attending to COVID-19 matters only.¹⁶ This meant that access not only to abortion services, but contraceptives, HIV prevention and treatment medication, STI-related interventions, and the treatment of cancers of the reproductive system, were offered on a limited, disrupted or inequitable basis depending on the site visited or the type of service sought.¹⁷
14. In addition to the challenges faced at health facilities, challenges arose due to the broader measures implemented in response to the pandemic. The introduction of curfews, and parameters set around transportation meant that the times during which one could access health care, and the means by which one can do so were severely limited. While many workplaces encouraged workers to work from home where possible, essential frontline workers had no choice but to attend work daily. At the height of lockdown, many would not have had the time or opportunity to spend hours waiting at public health facilities for assistance. Furthermore, many were hesitant to move around ‘freely’, with a police presence monitoring movement,¹⁸ and to limit exposure to infection. This was especially

¹² *ibid.*

¹³ Disaster Management Act, 2002: Regulations issued in terms of section 27(2) GN 318 of 18 March 2020, as amended.

¹⁴ Spotlight ‘The dreadful effects of lockdown on access to sexual and reproductive health services’ (31 July 2020), available at: <https://www.spotlightnsp.co.za/2020/07/31/the-dreadful-effects-of-lockdown-on-access-to-sexual-and-reproductive-health-services/> (accessed on 02 June 2021).

¹⁵ Doctors Without Borders *op cit* note 11.

¹⁶ Spotlight *op cit* note 14; Doctors Without Borders ‘South Africa: Providing safe abortion care during a national lockdown’ (3 July 2020), available at: <https://www.msf.org.za/news-and-resources/patient-and-staff-stories/south-africa-providing-safe-abortion-care-during> (accessed on 31 May 2021).

¹⁷ Spotlight *op cit* note 14; Spotlight ‘COVID-19: What the lockdown means for sexual and reproductive health services’ (22 April 2020), available at: <https://www.spotlightnsp.co.za/2020/04/22/covid-19-what-the-lockdown-means-for-sexual-and-reproductive-health-services/> (accessed on 31 May 2021).

¹⁸ The initial months of lockdown saw a heavy police presence and the deployment of the South African Defence Force to monitor and ensure people adhered to the lockdown regulations restricting movement and implementing curfews. This

true of pregnant persons, who would miss antenatal care appointments in an effort to prevent infection.¹⁹

15. Job losses, which have had a damaging impact on many, have disproportionately affected women,²⁰ limiting access to sanitary and reproductive health products, and transport; creating food insecurity; and exacerbating existing barriers to basic health and social services. The measures put in place by the South African government to ease these challenges included the coordination and delivery of food parcels, and the provision of a R350 Social Relief of Distress grant.²¹
16. Social distancing and restrictions on movement also meant that women were stuck at home with their abusive partners, largely unable to leave to seek assistance. South Africa's devastatingly high sexual and gender-based violence ('SGBV') statistics increased exponentially during lockdown.²² This was compounded by the external stressors of unemployment and job insecurity; food insecurity; limited or restricted access to criminal justice services and processes, or psycho-social support services; and limited contact with community and family support structures, among others. The South African government's response to this was the implementation of a national hotline²³ that receives reports of SGBV; the reinforcement of Family Violence, Child Protection and Sexual Offences units at police stations;²⁴ and the restriction of alcohol. Increased screening at entrances to facilities created an additional barrier to access, as women

increase in security forces also brought with it an increase in violent incidents by security forces against inhabitants while policing the implementation of COVID-19 regulations. Parliamentary Monitoring Group 'Police management of COVID-19 lockdown: SAPS briefing; with Minister and Deputy Minister Present' (April 2020), available at <https://pmg.org.za/page/PolicemanagementofCOVID19lockdownSAPS%20briefing> (accessed on 10 June 2021); Atlantic Council 'Pandemic policing: South Africa's most vulnerable face a sharp increase in police-related brutality' (June 2020), available at: <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/>. (accessed on 10 June 2021)

¹⁹ Spotlight op cit note 14. Ronelle Burger et al 'Examining the unintended health consequences of the COVID-19 pandemic in South Africa' *Wave 1: National income dynamics study – Coronavirus rapid mobile survey* (15 July 2020) at 7-9, available at: <https://cramsurvey.org/wp-content/uploads/2020/12/16.-Examining-the-unintended-consequences-of-the-COVID-19-pandemic-on-public-sector-health-facility-visits-The-first-150-days-2.pdf> (accessed on 09 June 2021).

²⁰ Daniela Casale and Debra Shepherd 'The gendered effects of the Covid-19 crisis and ongoing lockdown in South Africa: Evidence from NIDS-CRAM Waves 1 – 3' (2021), available at: <https://cramsurvey.org/wp-content/uploads/2021/02/4.-Casale-D.-Shepherd-D.-2021-The-gendered-effects-of-the-Covid-19-crisis-and-ongoing-lockdown-in-South-Africa-Evidence-from-NIDS-CRAM-Waves-1-3.pdf>. (accessed on 03 June 2021).

²¹ This was a monthly amount. The grant was initially set at 6 months, but was later extended for a further 6 months following the outbreak of the second wave of infections.

²² Amnesty International 'Southern Africa: Homes become dangerous place for women and girls during COVID-19 lockdown' (9 February 2021), available at: <https://www.amnesty.org/en/latest/news/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/> (accessed on 02 June 2021).

²³ Department of Social Development, Republic of South Africa 'About Us', available at: <http://gbv.org.za/about-us/> (accessed on 03 June 2021).

²⁴ Spotlight op cit note 14.

would choose to forego assistance rather than explain that they had been raped or required abortion services.²⁵

17. The effects of the pandemic have been, and will continue to be, most damaging in countries like South Africa, where SRH services and public healthcare systems have historically been under-resourced and often inaccessible for the population it is meant to serve.²⁶

Question 2: Please also specify legal or other measures introduced during the pandemic aiming at recognizing, or restricting, banning or criminalizing:

a) access to legal abortion

Abortion service provision during the pandemic

18. On 17 April 2020, necessitated by the uncertainty around which services were ‘essential’ and accessible during the initial period of lockdown,²⁷ public interest organisations wrote to the Minister of Health requesting, among others, an unequivocal statement that SRH services were essential services. Furthermore, that the services were accessible during the lockdown period; and that the Department of Health (**‘the Department’**) remained committed to providing access to such services during the lockdown period, which health users were free to leave their homes to access safely, free from violence, discrimination and stigma.²⁸
19. In the letter, organisations reported receiving complaints relating to the lack of access to services, namely contraceptive and abortion services, since the start of the lockdown period. It was, therefore, necessary to obtain clarity on the types of services that would be accessible at facility level, and how to access these services. A follow-up letter was

²⁵ Doctors Without Borders op cit note 11.

²⁶ Guttmacher Institute ‘Investing in Sexual and Reproductive Health in Southern Africa’ (2020), available at: <https://www.guttmacher.org/fact-sheet/investing-sexual-and-reproductive-health-southern-africa#> (accessed on 02 June 2021); Nirvana Pillay, Lenore Manderson & Nolwazi Mkhwanazi ‘Conflict and care in sexual and reproductive health services for young mothers in urban South Africa’ (2019) 22(4) *Culture, Health and Sexuality* 459; Sexual and Reproductive Justice Coalition ‘Challenges for Achieving Sexual and Reproductive Justice in South Africa’, available at: <https://srjc.org.za/2019/05/06/challenges-for-achieving-sexual-and-reproductive-justice-in-south-africa/> (accessed on 03 June 2021).

²⁷ Disaster Management Act Regulations op cit note 13, as amended on 16 April 2020.

²⁸ Women’s Legal Centre, Section 27 & Sexual and Reproductive Justice Coalition Letter to Minister of Health, 17 April 2020, available at: <https://wlce.co.za/wp-content/uploads/2020/05/Letter-to-Minister-of-Health-Access-to-SRHR.pdf> (accessed on 31 May 2021).

sent on 09 June 2020,²⁹ but the Minister did not respond to either communication. The Gauteng Department of Health, however, responded and agreed that SRH services were essential services accessible during lockdown.

20. Restricting access to abortion services does not decrease the demand or occurrence of abortions, but results in an increase in unsafe abortions.³⁰ Fifty percent of abortions in South Africa occur in the informal sector.³¹ Intensified screening of reasons for movement may have impacted on pregnant persons' ability to access abortion services, and redirected access into "informal" abortion services, or resulted in waiting beyond legal time limits to access services.³² Though a decrease in rates of abortion services being provided in the public health care sector in the first quarter of 2021 have been reported,³³ which overlaps with the national lockdown, this may not represent an accurate account of the number of abortions that took place during this period, given the uncertainty as to what constituted 'essential services'.³⁴
21. In a report on the impact of the pandemic on family planning and gender-based violence, the United Nations Population Fund ('UNFPA') estimated that global lack of access to contraception in middle – and low-income countries would result in 7 million unintended pregnancies.³⁵ The consequences of unintended pregnancies in an overburdened healthcare system include redirecting pregnant persons into informal and unsafe environments to seek abortion care; mental and physical distress as a result of being compelled to continue an unwanted pregnancy; and barriers to pregnancy-related care due to health and safety measures in place at health facilities.³⁶

²⁹ Women's Legal Centre, Section 27 & Sexual and Reproductive Justice Coalition *Follow up letter to Minister of Health* (09 June 2020) accessible at: <http://psam.org.za/wp-content/uploads/2020/06/SRHR-follow-up-letter-to-Minister.pdf> (accessed on 31 May 2021).

³⁰ Jaime Todd-Gher & Payal K. Shah 'Abortion in the context of COVID-19: A human rights imperative' *Sexual and Reproductive Health Matters* (2020) 28:1.

³¹ National Department of Health *Presentation 2: SRHR Policy and guidelines dissemination* (November 2020).

³² Doctors Without Border op cit note 16; Doctors Without Borders op cit note 11.

³³ Presentation of the provincial departments of health (Limpopo, Free State, KwaZulu Natal, Mpumalanga, North West, Northern Cape, and Western Cape) to National Department of Health *Sexual Reproductive Health Rights Policy And Related Guidelines Dissemination Workshop* (09-13 November 2020). Following the easing of lockdown levels on and after 01 June 2021, provinces reported an increase in abortions for quarter 3 (July to September 2020).

³⁴ This period refers to the 'hard' lockdown where the country was placed on Alert levels 5 and 4 of the lockdown. On 01 June 2020, the country moved down to Alert Level 3.

³⁵ UNFPA *Interim Technical Note: Impact of the COVID-19 pandemic on family planning and ending gender-based violence, female genital mutilation and child marriage. Pandemic threatens achievement of the Transformative Results committed to by UNFPA* Available at: www.unfpa.org/resources/impact-covid-19-pandemicfamily-planning-and-ending-gender-based-violence-femalegenital (accessed on 01 June 2021).

³⁶ Todd-Gehr and Shah Op cit note 30 at 28.

Abortion services and telemedicine

22. In April 2020, The Health Professions Council of South Africa ('HPCSA') issued an amended advisory on the use of telemedicine during the pandemic, stating that medical practitioners could dispense medical advice and treatment remotely.³⁷ The advisory is only applicable during the pandemic; prefers a pre-existing relationship between practitioners and patients; and encourages in-person consultations where a practitioner believes a remote consultation would not be in the patient's best interests.³⁸
23. This presented a unique opportunity for the Department to clarify that SRH services, including abortion care, could be made available both virtually and physically at public health facilities. Since the advisory, there have been reports of abortion service provision via telemedicine; however, the reports were in the private sector (Marie Stopes),³⁹ with no documented cases in the public health sector.
24. In the Sexual Reproductive Health Rights Policy And Related Guidelines Dissemination Workshop held by the Department from 09-13 November 2020, a suite of guidelines on the provision of SRH services was introduced, of which the implementation of the CTOPA had its own guidelines.⁴⁰ The development of the guidelines pre-dated the pandemic, but made no provision for abortion services via telemedicine; or a uniform process of designating health facilities to increase physical access to abortion services. It did, however, state that obstruction to care on the basis of conscience could take place by a direct service provider. Arguably, this would only impact negatively on access to abortion services given the already limited landscape of service provision.
25. There have been clear measures and opportunities for the Department to take concrete, meaningful steps to shore up SRH services, particularly in the public sector, on which a large proportion of the population relies, and which population is made up of disparate

³⁷ Health Professions Council of South Africa *Guidance on the application of telemedicine guidelines during the COVID-19 pandemic* (26 March 2020), as amended on 03 April 2020 in terms of Health Professions Council of South Africa *The Health Professions Council of South Africa (HPCSA) response to COVID-19 pandemic*.

³⁸ HPCSA op cit note 37, 26 March 2020, para (d).

³⁹ Kathryn Church, Jennifer Gassner & Megan Elliott 'Reproductive health under COVID-19 – challenges of responding in a global crisis' *Sexual and Reproductive Health Matters* 28(1) 522 at 523; Marie Stopes South Africa *Safe abortion pills: How to access medical services in South Africa during the pandemic* available at: <https://mariestopes.org.za/safe-abortion-pills-how-to-access-medical-services-during-the-covid19-pandemic/> (accessed on 31 May 2021).

⁴⁰ National Department of Health *National clinical guidelines for the implementation of the Choice on Termination of Pregnancy Act* (November 2020). The foreword to these guidelines state that despite the enactment of the CTOPA, South Africa still suffers from 'barriers to high-quality legal services remain; these include poor general provider knowledge on termination of pregnancy, lack of training and mentorship, and the inadequate availability of relevant medicines and equipment.' The purpose of the Guidelines is therefore said to be the standardisation and expansion of service delivery in order to reaffirm 'all citizens' right to comprehensive reproductive health care...'

and interrelated marginalised groups. For this reason, though certain measures were introduced, it is argued that the lack of reliance on the measures and their current formulation only perpetuate and exacerbate inequalities and barriers in access to SRH services.

26. Use of telemedicine to provide abortion services would incrementally increase access to abortion services, guard against overburdening the public healthcare system during the pandemic, and ensure the safety of patients in line with guidelines on physical distancing and restricting movement.⁴¹ It can also be administered for pregnancies up to 12 weeks, as recommended by the World Health Organisation;⁴² which would increase early access to abortion services, and decrease the number of women presenting physically at health facilities.

Question 3: Regarding sexual and reproductive health care, what services, goods and information is being provided in your country (or countries in focus), during the pandemic?

27. This section discusses services, goods and information on abortion services made available in South Africa.

Any changes compared to pre-COVID 19? Has any service, good or information been deprioritized or defunded? Who is this affecting in particular?

28. At the start of the lockdown period, there were projected disruptions to reproductive health commodities, with stock-outs of contraceptives and abortion medication.⁴³ The global impact of the pandemic on the movement of goods and need for physical distancing measures to be strictly respected, combined with factories and borders closing, resulted in the production and movement of reproductive commodities being affected. This, however, was not irregular as South Africa routinely experiences stock-outs of reproductive health commodities, and particularly contraceptives, at public health

⁴¹ Sexual and Reproductive Health Matters 'Accessing safe abortion services amid the COVID-19 pandemic' *Sexual and Reproductive Health Matters* (23 September 2020) available at: http://www.srhm.org/news/accessing-safe-abortion-services-amid-the-covid-19-pandemic/#_ftn6 (accessed on 01 June 2021).

⁴² WHO consolidated guideline on self-care interventions for health: sexual and reproductive health and rights (2019) Geneva: World Health Organization at 67.

⁴³ Doctors without Borders op cit note 11.

facilities.⁴⁴ With these shortages, and the confinement of persons to their homes, pregnancy rates would foreseeably increase.⁴⁵

29. These stock-outs overwhelmingly affect low-income and poorer communities who are reliant on the public health system.⁴⁶ In South Africa this is predominantly black people, given the history of apartheid, and includes groups with intersecting vulnerabilities, such as children, women, persons living with disabilities, persons living with HIV/AIDS, sex workers, LGBTIQIA+ persons, indigent persons, asylum seekers and refugees. The limited environment of access to abortion services disproportionately affects persons from these communities, and further exacerbates existing inequalities.

Please also share information on other practical obstacles or challenges to access sexual reproductive services during the pandemic, and who were most affected.

30. Due to physical distancing and limiting the capacity of individuals in public spaces, access to transport, facilities, medical services and commodities have been affected. Restrictions on public transport meant that fewer people were able to access services in a timely fashion. Abortion is a time-sensitive health care intervention and these restrictions have implications for pregnant persons. At facilities, there are limited numbers of consultations being conducted to keep staff and patients safe, leading to fewer appointments and longer waiting times. Thus, without an existing appointment, patients are not guaranteed assistance when they are able to present at a health care facility.
31. Planning is required to ensure access to abortion services, requiring communication services; understanding which public health facilities offer abortion services and when they do so; having the option to take time off work to visit a health facility; funds for transport; and if a pregnant person were to opt to have an abortion in a private health

⁴⁴ Rural Health Advocacy Project 'Contraceptive Shortages across South Africa' (2018), available at: <http://rhap.org.za/contraceptive-shortages-across-south-africa/> (accessed on 31 May 2021); Mail and Guardian 'This popular birth control shot is out of stock for the second year running. Read why' (2019), available at: <https://mg.co.za/article/2019-03-01-00-birth-control-injection-south-africa-unplanned-pregnancy-tender-delay-bayer/> (accessed on 31 May 2021); Spotlight 'COVID-19: Pandemic puts pressure on medicine supply' (June 2020), available at: <https://www.spotlightnsp.co.za/2020/06/02/covid-19-pandemic-puts-pressure-on-medicine-supply/> (accessed on 01 June 2021); Medical Brief 'Birth control stockouts remain a problem in SA' (06 March 2019), available at: <https://www.medicalbrief.co.za/archives/birth-control-stockouts-remain-problem-sa/> (accessed on 09 June 2021).

⁴⁵ Rishita Nandagiri, Ernesta Coast and Joe Strong 'COVID-19 and Abortion: Making structural violence visible' *International Perspectives on Sexual and Reproductive Health* (2020) 46(1) 83 at 83; Jasmine Aly et al 'Contraception access during the COVID-19 pandemic' *Contraception and Reproductive Medicine* (2020) 5(17) at 1.

⁴⁶ Stats SA: Department Statistics of South Africa 'Public healthcare: How much per person?' (October 2017), available at: <http://www.statssa.gov.za/?p=10548> (accessed on 07 June 2021).

facility, then access to funds to pay for the service. All of these barriers are intensified during the pandemic.

32. These practical obstacles greatly affect pregnant persons from poor and low-income communities, due to the financial inaccessibility of the private healthcare system. Other key populations, such as sex workers, also reported struggling to access contraceptives and abortion services during the pandemic.⁴⁷ In addition, the COVID-19 regulations impacted sex workers' ability to work, compounding their already-vulnerable position in society. Undocumented migrants are also significantly affected, having to access unsympathetic and exclusionary environments. Furthermore, people living in rural areas, where services are far and difficult to reach; persons experiencing intimate partner violence; minors; persons with disabilities; and indigent persons, have all been affected by these measures.⁴⁸

Please also share good practices and opportunities in the provision of sexual and reproductive health care during the pandemic.

33. The pandemic presents an opportunity to make 'self-managed abortions'⁴⁹ a key and sustained part of abortion service provision in South Africa. It would be a step towards improving access to abortion services, especially in the public health sector. It could help address certain crippling barriers to access that have pre-dated the pandemic, whilst continuing the effort to improve the lives of marginalised and vulnerable groups. Implementing self-managed abortions '*allows for a cost effective, non-judgemental, and private experience which might be particularly beneficial for marginalized communities who have not always felt respected by the formal health system.*'⁵⁰ It is a step that the South African government has thus far chosen not to take, thereby foregoing the opportunity to improve access to services.

⁴⁷ Spotlight 'COVID-19: Sex workers say they struggle to access contraception, abortion and other services' (August 2020), available at: <https://www.spotlightnsp.co.za/2020/08/03/covid-19-sex-workers-say-they-struggle-to-access-contraception-abortion-and-other-services/> (accessed on 03 June 2021).

⁴⁸ Todd-Gher & Shah op cit note 30 at 29; Michelle Lokot & Yeva Avakyan 'Intersectionality as a lens to the COVID-19 pandemic: Implications for sexual and reproductive health in development and humanitarian contexts' *Sexual and Reproductive Health Matters* 28(1) 40 at 41.

⁴⁹ Self-managed abortion is an abortion that takes place outside formal health settings, is controlled and administered by the pregnant person in an environment of their choosing. WHO op cit note 42.

⁵⁰ Church et al op cit note 39.

Question 4: *In connection to questions 1 to 3, please also share other relevant information on legal, policy or other changes affecting the right to sexual and reproductive health and related health care in your country or countries in focus, unrelated to COVID-19.*

34. In South Africa, facilities must be designated by the Department in order to be permitted to perform abortions. This limits the number of facilities available to provide abortions, particularly in rural areas. Compounding this limitation is the phenomenon of health providers who object to performing abortions on the grounds of conscience. This raises a conflict between rights of bodily autonomy,⁵¹ and freedom of religion, belief and opinion.⁵² The CTOPA criminalises the prevention of a lawful termination or obstruction of access to a facility.⁵³ Despite this, section 15 of the Constitution is invoked by medical practitioners in order to object to performing abortion services.⁵⁴
35. As discussed in paragraph 24, the Department released guidelines on the CTOPA.⁵⁵ These guidelines permit direct abortion providers to refuse care based on belief, but they must refer patients to a colleague or facility that would offer abortion services. This provision must be seen in light of the 2017 Amnesty International report findings about the number of facilities providing abortion services; and as a barrier to access.

V RECOMMENDATIONS AND CONCLUSION

36. In light of the above, we make the following recommendations:
- 36.1. The enactment and implementation of a detailed legal framework for self-managed abortions;
- 36.2. The uniform provision and implementation of telemedicine for women accessing SRH interventions or medication, from either public or private health care providers;

⁵¹ Section 12 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

⁵² Section 15 of the Constitution; Jane Harries, Diane Cooper, Anna Strelbel et al. 'Conscientious objection and its impact on abortion service provision in South Africa: a qualitative study' (2014) 11 *Reproductive Health* 1.

⁵³ Choice on Termination of Pregnancy Act, section 10.

⁵⁴ Harries et al op cit note 52; C Ngwenya 'Conscientious objection and legal abortion in South Africa: delineating the parameters' (2003) 28 *Journal for Juridical Science* 1; Mary Favier, Jamie M.S Greenberg & Marion Stevens 'Safe abortion in South Africa: "We have wonderful laws but we don't have people to implement those laws"' (2018) 143 *International Journal of Gynecology and Obstetrics* 38.

⁵⁵ Available at: https://www.knowledgehub.org.za/system/files/elibdownloads/2021-03/Termination%20of%20Pregnancy%20Guideline_Final_2021.pdf

36.3. An amendment of the guidelines on the implementation of the CTOPA in line with its stated objectives,⁵⁶ namely to:

36.3.1. remove those sections providing for a right to refuse the provision of abortion services;

36.3.2. introduce clear and uniform national guidelines for the designation of health facilities to provide abortion services; and

36.3.3. provide guidance on the use of telemedicine in SRH service provision, during and after the pandemic.

37. We trust you find the submission useful, and thank you for the opportunity to engage. Should you have queries or questions, kindly contact Ms Solomons at nasreen.solomons@uct.ac.za and Ms Gihwala at harsha.gihwala@uct.ac.za.

****ENDS****

⁵⁶ Clinical Guidelines on the implementation of the Choice on Termination of Pregnancy Act, at ii.