

**Submission on the Choice on Termination of Pregnancy Amendment Act
(No 38 of 2004) to the Provincial Standing Committee on Social
Development**

Submitted by the AIDS Legal Network and OUT LGBT Well-being

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Introduction

Thank you for giving the AIDS Legal Network and OUT LGBT Well-being the opportunity to make a joint submission on the Choice on Termination of Pregnancy Amendment Act (No 38 of 2004).

The **AIDS Legal Network (ALN)** is a national non-profit human rights organisation committed to the promotion, protection and realisation of fundamental rights and freedoms of people living with, and affected by, HIV and AIDS - through capacity building, education and training, research, networking, lobbying and advocacy activities. We focus primarily on the promotion and advancement of the principles of equality, non-discrimination, human dignity and the equal enjoyment of all rights and freedoms. A main goal of the ALN is to address discriminatory practices and attitudes, to promote behavioural change and to facilitate a holistic human rights-based response to HIV and AIDS.

OUT LGBT Well-being (OUT) is a registered, national, non-profit organisation, in existence for 12 years. OUT's vision is to build healthy, empowered lesbian, gay, bisexual and transgender (LGBT) communities in Tshwane, Gauteng and South Africa. OUT seeks to reduce heterosexism and homophobia in society at large and our mission is to work toward LGBT peoples' physical and mental health and related rights. Programmatic areas include: the provision of sexual and mental health services; qualitative and quantitative research; mainstreaming programmes; and advocacy and lobbying toward the realisation of sexual and gender rights.

1. Enhancing access to reproductive health: Choice on Termination of Pregnancy Amendment Act

We begin by stating that in principle we commend the amendments to the Choice on Termination of Pregnancy Act (CTOP), as they attempt to increase the access to safe termination of pregnancy services for women in South Africa.

The CTOP Amendment Act [hereafter "the Act"] provides the legislative framework for the enhanced access to termination of pregnancy services and thus, gives effect to the constitutionally guaranteed right of everyone to have access to healthcare services, including reproductive healthcare (Section 27(1)).

More specifically, the Act simplifies the procedures to approve facilities to provide termination of pregnancy services, and expands the pool of healthcare providers performing such services. Since its inception in 2004, the Act has created the legal framework to:

- Lessen bureaucratic barriers to reproductive health services and to increase administrative efficiency, through empowering MEC's to approve facilities and develop regulations
- Increase service points and access, through exempting 24-hour maternity facilities from having to obtain approval to conduct terminations under specified conditions
- Provide for the enhanced recording of information and statistics related to terminations, which further regulates data recording and management
- Increase the number of qualified people to provide services, by allowing registered nurses and midwives, following prescribed training, to perform terminations
- Make it an offence for any person or facility, that does not meet specified requirements, to unlawfully terminate a pregnancy

As such, the Act gives further effect to the constitutionally guaranteed right to make informed reproductive choices and to access relevant services.

Furthermore, according to the Constitutional Court judgement in August 2006 the provisions of the Act itself are not in dispute.

It is important to note that, as a result of the promulgation of the Choice of Termination of Pregnancy Act (No 92 of 1996), abortion-related deaths among women dropped by 91 percent between 1994 and 2001.

Remaining Challenges

In reality, however, access to reproductive healthcare services, including termination of pregnancy services, are characterised by great disparities in availability and quality of services between the provinces, and between rural and urban areas; and by a lack of sufficient staff, training and equipment to respond to the need for termination of pregnancy services. In addition, prevailing discriminatory attitudes, practices and behaviours amongst healthcare providers, as well as a lack of assured confidentiality, impact negatively on the adequacy and quality of care, and may also, at times, deter patients from accessing termination of pregnancy services.

In addition, it is the social, cultural and religious context in which services are provided and/or accessed that often limit and/or deny clients the right to have access to safe and legal termination of pregnancy procedures.

The Act provides the legislative framework for the enhanced access to termination of pregnancy services, and thus, provides for the enhanced access to, and realisation of, the constitutionally guaranteed right to have access to healthcare services, including reproductive services. While the Act is imperative to afford a legislative and policy framework in which termination services can be accessed, it has to be noted that only the adequate and effective implementation and application of the Act will ensure that the right to access safe termination of pregnancy services will become a reality for women in South Africa.

2. Creating an enabling environment for reproductive health: Choice on Termination of Pregnancy Amendment Act

We believe that the Act, through increasing access to termination of pregnancy services, enhances the realisation of sexual and reproductive health and rights. In support of the Act's implementation, there is a need to create a supporting and enabling environment so as to ensure adequate and effective application and implementation of the Act and thus, ensure equal access to, and realisation of, sexual and reproductive health and rights, as guaranteed in the Constitution of South Africa.

We are concerned about the lack of an enabling and supportive environment for the adequate and effective application and implementation of the Act providing for greater access to legal and safe termination of pregnancies. For, only 55 percent of health facilities authorised to provide safe, legal termination of pregnancy services are currently doing so. While only a small number of women utilised the service during the first decade (less than 3 percent of pregnancies ended in safe termination of pregnancies between 1997 and 2006), it should be made available at more facilities to make the service accessible to more women.

It is imperative to 'provide reproductive health to all, and also to provide safe conditions under which the right of choice can be exercised without fear of harm' so as to realise not only the potential of the Act, but also the constitutional guarantee to have the right to choose, the right to security in and control over one's body, and to be free from all forms of violence.

The right to choose

While the right to make informed decisions about reproduction, the right to security in and control over one's body, and the right to be free from all forms of violence is constitutionally guaranteed to everyone, it is the societal context in which these rights and freedoms are accessed that seem to define their limitations.

Gendered inequalities, imbalances and injustices; and prevailing discriminatory attitudes, beliefs and practices - combined with social, cultural and religious value, norm and belief systems used to justify the very same - are but some of the indicators determining that the right to freely make informed sexual and reproductive choices remains limited based on a person's sex, gender, sexual orientation, age and/or HIV status. Subsequently, it is the societal context in which choices are made which seems, to an extent, not only impact on/pre-define sexual and reproductive choices, but also affects the individual safety of a person making a choice, especially if the choice is perceived to be 'different'.

We also take cognisance of the fact that while choices are often made in the context of violence, force and coercion, freely made choices are often responded to with violence and abuse. Thus, it is argued that the societal context is non-conducive for anyone to freely make informed sexual and reproductive choices.

Recognising the general lack of a pro-choice environment further undermines the extent to which the provisions of the Act can be fully realised. While the societal context already limits individual sexual and reproductive choices, relevant healthcare services and providers further limit the access to, and realisation of, the right to choose to terminate a pregnancy by a lack of adequate and quality care, as well as discriminatory attitudes, beliefs and practices that violate a client's right to dignity, autonomy, confidentiality and non-discrimination.

The Act, premised on affording reproductive healthcare to all, also provides the legislative framework for exercising the right of choice without fear of harm and thus, provides the framework for the access to, and realisation of constitutional guarantees of informed choice, autonomy and freedom from all forms of violence. In reality, however, it is important to note that while legislation can create a legislative and policy framework regulating the conditions of accessing termination of pregnancy services, legislation in and of itself cannot ensure the environment in which reproductive choices are made is conducive for women to make an informed choice, to have autonomy over their bodies and to be free from all forms of violence. As it is imperative to have the legislation in place, it is equally imperative to create an enabling and supportive environment for women to freely choose whether or not to access termination of pregnancy services that are safe, free of stigma and discrimination, and confidential.

Conclusions

The CTOP Amendment Act creates the legislative framework to facilitate increased access to reproductive health and the realisation of reproductive and sexual rights for women. A repeal of the Act would therefore have a profoundly negative effect and signal a retrogressive step for reproductive health care in South Africa.

While the Act responds to some of the challenges facing health service provision in South Africa, as briefly outlined in this submission, we strongly believe that the constitutional imperative of access to reproductive healthcare can only be enjoyed through an enabling and supportive environment in which safe and quality termination of pregnancy services are equally available and accessible to everyone, irrespective of age, sexual orientation and/or HIV status.

Thus, only as and when the application and implementation of the Act occurs within a societal context which promotes, respects and protects fundamental rights and freedoms of choice, autonomy, dignity, confidentiality and equality and non-discrimination, will the purpose of the Choice of Termination of Pregnancy Act, as stated in the Preamble, become a lasting reality for all women:

...[to] promote reproductive rights and extend freedom of choice by affording every woman the right to choose whether or not to have an early, safe and legal termination of pregnancy according to her individual beliefs.