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# **Gender & Health Issues in South Africa**

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**Presented by**  
**Mr. Mfanozelwe Shozi**  
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## CGE Mandate

- ❑ The Commission for Gender Equality (CGE) is an independent statutory body established in terms of Section 181 of the Constitution of South Africa.
- ❑ The mandate of the CGE is provided for in Section 187 of the Constitution and in the CGE Act of 1996 (as amended)
- ❑ CGE is mandated to promote respect for, protect, develop and attain gender equality, and to make recommendations on any legislation affecting gender.
- ❑ Section 11 (h) of the CGE Act mandates the Commission to monitor and evaluate the implementation of international and regional conventions acceded to by South Africa, that impact on gender equality.



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## Background

□ South Africa ratified the Beijing Platform of Action (BPA) and other treaties. The BPA which amongst other things advocated for the right to health.

□ Among other clauses, BPA required state institutions to address the core elements of health which are as follows:

□ **Availability:** i.e. the functioning public health and health care facilities, good services as well as programmes, have to be available in sufficient quantity within the State party.

□ **Accessibility:** i.e. information accessibility; economic accessibility (affordability); physical accessibility; Non-discrimination.

□ **Acceptability:** i.e. all health facilities, goods and services must be respectful of medical ethics and culturally appropriate (respectful culture of individuals, minorities, peoples communities, sensitive to gender and life-cycle requirements)

□ **Quality:** this requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation



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## Legal Framework

### ❑ Other International Treaties on (Health) :

#### ❑ SDGs

- ❑ Goal 3: Ensure Healthy lives and promote well being for all ages
- ❑ Goal 5: Achieve Gender Equality and empower all women and girls
- ❑ Goal 10: Reduce inequality within and among countries

#### ❑ CEDAW

- ❑ Article 12: Equality in Access to Health Care

#### ❑ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

- ❑ Article 25 - Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.

#### ❑ Universal Declaration on Human Rights (UDHR)

- ❑ "1. Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- ❑ 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born on or out of wedlock, shall enjoy the same social protection."



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## Legal Framework Cont...

### **Convention on the Rights of the Child (CRC)**

- Article 24: right of a child to the highest attainable standard of health

### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

- Article 12: right to health

### **Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

- Article 5(e)(iv): guarantees equality in the enjoyment of the right to public health, medical care, social security and social services

### **International Covenant on Civil and Political Rights (ICCPR)**

- Article 6: right to life Article 9: right to security of the person



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## Legal Framework Cont...

❑ **International Conference on Population and Development (ICPD)** Programme of Action (also known as the Cairo Consensus) and ICPD +5 and ICPD +10 goals, 1994, 1999, 2004 ,

❑ ICPD reaffirms the health principles and built on them to define reproductive rights and putting them at the heart of sustainable development, Spacing and number of children; Right to highest standard of sexual reproductive health

❑ **The African Charter on Human and People's Rights**

❑ Article 16: 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

❑ **National Development Plan (NDP)**

❑ Chapter 10: Promoting Health



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## Legal Framework Cont...

### ❑ South African Constitution, 1996

- ❑ The right to access to health care services including reproductive health care, moreover no person may be refused emergency treatment (Chapter 2, Section 27).
  
- ❑ The right to bodily and psychological integrity which includes the right to make decisions concerning reproduction, to security in and control over their body and to not be subjected to medical or scientific experiments without their informed consent (Chapter 2, Section 12).
  
- ❑ The right to freedom from discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (Chapter 2, Section 9).



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## Legislation

- ❑ Choice on Termination of Pregnancy Act 92 (1996); Amendment Acts (2004, 2008)
- ❑ Sterilisation Act 44 (1988); Sterilisation Amendment Act 3 (2005)
- ❑ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 (2007); National Directives and Instructions on conducting a Forensic Examination on survivors of Sexual Offence cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; Government Notice 223, 6 March 2009
- ❑ National Health Act 61 (2003)
- ❑ National Policy on Rape, Sexual Assault and Other Related Sexual Crimes (2010 draft, drawing on the National Sexual Assault Policy 2005)
- ❑ White paper on the National Health Insurance
- ❑ Clinical Guidelines: Prevention of Mother-to-Child Transmission (2010)



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## **The *status quo***

- ❑ In September, 2015, member states of the United Nations (UN) adopted a set of universally applicable sustainable development goals (SDGs) and targets.
  
- ❑ South Africa has been complying with the international standards in fighting against inequalities, inadequacies and unequal access to health care and related services.
  
- ❑ There are still challenges that remain in the country to address on policy implementation particularly from a human rights based approach.



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## Access to health care in South Africa

- ❑ The access barriers include vast distances and high travel costs, especially in rural areas; high out-of-pocket (OOP) payments for care; long queues and disempowered patients.
- ❑ According to the (ILO) report, 56 per cent of people living in rural areas worldwide do not have access to essential healthcare services .
- ❑ Women need access to antenatal care during pregnancy, they need skilled care during childbirth and further care and support in the weeks after childbirth. In some instances women have access to the health facilities and not attended by a skilled health professional i.e. doctor, midwife or trained nurse.
- ❑ In some areas women experience obstetric violence, this is physical or mental violation towards a woman during her pregnancy and birth by her healthcare
- ❑ The rising costs and poor access to generic medications and insufficient regulatory control.



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## Introduction of the National Health Insurance Scheme (NHI)

- ❑ The NHI has been introduced in South Africa with effect from 2012 and started out as a pilot project .
- ❑ The NHI is intended to bring about reform that will improve service provision of access to health care in South Africa
- ❑ It will promote equity and efficiency so as to ensure that all South Africans have access to affordable, quality health care services regardless of their socio-economic status.
- ❑ The NHI is a progressive policy and a good sign that government is committed in ensuring that access to health care services is fully realised in South Africa.
- ❑ It is hoped that the NHI will restore the dignity of women in the rural areas by improving the quality of basic health care services in remote areas.



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## Case Law

- ❑ The South African judiciary had since 1994 faced with a task as to whether the right to health care services had been infringed.
- ❑ In the case of ***Minister of Health and others v Treatment Action Campaign (2002) 5 SA 721 (CC)*** our Constitutional Court ordered that the government must make available anti-retroviral treatment and that set the tone as to how far reaching the obligation to provide health care must be exercised.



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## Mental health

- ❑ A study conducted by Medical Research Council (MRC), revealed that mental health support or care was not found to be integrated throughout the post-rape care services.
- ❑ Most staff working in the post-rape care clinics did not have specific mental health training and generally, data from interviews suggested that there were generally very low levels of mental health literacy among the staff.
- ❑ Yet, according to the General Household Survey (2013), nearly seven in every ten ( 69, 9%) households reported that they went to public clinics and hospitals as their point of access when households members fell ill or got injured.
- ❑ Request Health Professional to be vigilant and assist law enforcement agencies and provide medical information to assist with conviction of alleged rapists who rape disable women especially mental health patients.



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## The Victim's Charter

- A study conducted by the Commission for Gender Equality on the implementation of the Victims Charter revealed the following:
  - There was a widespread understanding among health workers of the VC and their expectations. Contrary to this, health workers in lower levels failed to make a connection between their work and the VC.
  - There is no systematic evaluation of the services rendered to the victims at DoH facilities except for the monthly collection of statistics.
  - There is no evidence to suggest that statistics collected is used for further planning and improving the quality of services to the victims.
  - Department's lack of a sufficient budget for activities related to VC hinders the establishment of more centres, especially in rural areas.



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## **CGE's Investigation into Obstetric and Gynecological functions at provincial hospitals**

- During the 2014/2015 financial year , the CGE out of its own initiative conducted an in-depth investigative study regarding obstetric and gynecological functions at provincial hospitals across the nine provinces.
- The following significant aspects were interrogated :-
  1. Bed Occupancy
  2. Maternity workload
- Number of deliveries, caesarian sections , total operations and hospital occupancy.
- Number of medical staff covering gynecology and maternity especially the antennal ward, post natal ward, labour ward.
- Night duty in respect of all sections relating to obstetrics and gynecology.



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## CGE's Investigation into Obstetric and Gynecological functions at provincial hospitals

### 3. Forced and coerced sterilisations

- ❑ Sterilization can be defined as “a process or act that renders an individual incapable of sexual reproduction”. In turn, forced sterilization entails a person being sterilized after expressly refusing the procedure, or without full knowledge of the consequences thereof.
  
- ❑ Coerced sterilization is defined when financial incentives, duress or intimidation tactics are used to force the person to undergo the procedure.
  
- ❑ In South Africa people belonging to certain population groups, including people living with HIV, persons with disabilities, indigenous peoples and ethnic minorities, and transgender and intersex persons, continue to be sterilised without their full, free and informed consent.
  
- ❑ The SA National Aids Council's stigma index reported on forced sterilisation cases. According to the survey results 498 women agreed to being forced to sterilise. The highest percentage of forced sterilisation took place in Edenburg in the Western Cape (22%), Buffalo City in the Eastern Cape (20%) and Sedibeng in Gauteng (19%).



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## **CGE's Investigation into Obstetric and Gynecological functions at provincial hospitals**

- ❑ The investigative report was finalised in the beginning of March 2015, however publishing of same was embargoed as to include the findings of a formal complaint lodged on behalf of 48 women - who were either being coerced or forced to sterilise at public health facilities and as evidence suggests because they are HIV+, refugees or poor.
- ❑ Her Rights Initiative (HRI) and the International Community of Woman ( ICW) assisted by the Women's Legal Centre lodged the complaint on behalf of the 48 women on the 20<sup>th</sup> of March 2015.
- ❑ The CGE has engaged the relevant provincial health departments and the national health ministry in investigating the complaint and is nearing finalisation of the report. The findings and recommendation of which will then also assimilated into the investigative report of 2014/2015 – thus providing an all encompassing perspective.



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## Women's Health Post 2015

❑ A survey commissioned by the South African National AIDS Council (SANAC), the report revealed that 14 percent of the surveyed women living with the virus reported not receiving ARVs during pregnancy despite national policies.

❑ In most cases patients' privacy and confidentiality were mostly undermined by health care workers and refugees or migrants information was not confidential enough where women's partners had to be requested to translate.

❑ There are still barriers to accessing contraceptives which disproportionately impact on vulnerable and marginalised populations, such as adolescents, and persons living with disabilities, as services are not designed to ensure accessibility for persons belonging to these groups.

❑ Teenage pregnancy in South Africa is driven by many factors including: gender inequalities; gendered expectations of how teenage boys and girls should act; sexual taboos (for girls) and sexual permissiveness (for boys); poverty; poor access to contraceptives and termination of pregnancies; inaccurate and inconsistent contraceptive use; judgmental attitudes of many health care workers; high levels of gender-based violence; and poor sex education.



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## Policy Recommendations

- ❑ It is recommended that the Department of Health introduces a system of regular and on-the-job training and skills development for healthcare workers who are regularly involved in the provision of vital services to victims of crime. The training should be aimed at healthcare workers in clinics and in the hospitals. In particular, the need is for skills such as forensic medical services (including collecting, storing and presenting forensic evidence), psycho-social counselling services, and awareness of the standards of services for victims of crime outlined in the Victim's Charter.
- ❑ Advocacy for the participation of men in being supportive partners from pregnancy, birth and care giving of children is necessary to responsible fatherhood.
- ❑ The Department should also adopt a human rights based approach in laws, policies and programmes related to health system at the national level.



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### **Cost of Gender Based Violence**

- KPMG Gender Based Violence Report indicates that GBV costs the Country between 22 Billion and 42 Billion Rands
  
- We all have a duty to reduce and eradicate this scourge
  
- Request health professionals to assist with the eradication of GBV (Economic, Emotional, Physical and psychological)
  
- Assist Victims of violence by providing quality care and assist law enforcement agencies by professionally adhering to all health related standards and requirements which should be performed when someone is abused, raped or killed
  
- Please avail yourselves and testify in Courts on behalf of the Department of Health and State and this will reduce immunity in these cases
  
- Health Care Workers should also be trained to assist Victims of Gender Based Violence



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## Conclusion

- ❑ South Africa has a long and rather complex history regarding the provision of reliable and quality health care to its citizens. This however does not suggest that the health care system in its past and present form is wholly inadequate.
- ❑ Critical initiatives taken by the government on NHI really reaffirms the commitment by the government to ensure that citizens across different socio-economic backgrounds have access to quality health care. This is critical especially in a country wherein the majority of citizens depend on the public sector for health services.
- ❑ Improvements have been made since the dawn of democracy, and in light of the challenges highlighted in this presentation, more still needs to be done.



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# Thank You

***HAVE A GENDER RELATED COMPLAINT ????***  
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