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CONCLUSION: RETHINKING CONSCIENTIOUS OBJECTION IN ABORTION CARE

Looking in from the outside at a country that has liberal law and provides state-supported abortion services one might assume that all is well for women's access to safe abortion services.¹

Over the past 23 years, South Africa has had a legal framework that recognises reproductive rights through its Constitution and the Choice on Termination of Pregnancy Act. However, access to safe abortion services remains a challenge due to the exercise of conscientious objection by health professionals, including nurses. Conscientious objection allows healthcare providers to refuse to provide abortion services based on their personal or religious beliefs, potentially restricting access to safe and legal abortion for women. This book set out to answer the question of how legal, political, social, and institutional contexts shape nurses' understanding and exercise of conscientious objection on the provision of legal abortion.

My starting point was to develop a critical feminist perspective to develop strategies to improve the transformative potential of sexual and reproductive health and rights for women and girls. By employing feminist socio-legal methodologies to explore discourses and power dynamics, I argued for a principled approach to conscientious objection that balances healthcare providers' rights with women's fundamental rights.

As I conclude this book, I must acknowledge that my personal identity and social locations have played a significant role in shaping my selection of this topic, the research questions, and the approaches taken to answer those questions. As a feminist researcher, I attempted to be reflexive throughout the research process and acknowledged the limitations of my standpoint. The data presented in this book is an abstract view of the research conducted, and it does not fully capture the human interactions, emotions, and motivations of the interviewees. Although the data

1 KA Trueman & M Magwentshu 'Abortion in a progressive legal environment: the need for vigilance in protecting and promoting access to safe abortion services in South Africa' (2013) 103 *American Journal of Public Health* 397.

presented in this book is what I believe to be worthy of presentation, it is not a complete reflection of the views of the interviewees.

Throughout this research, I have taken measures to avoid selectively highlighting evidence that supports my arguments and interpretations. In doing so, I have made a concerted effort to provide an explanation of the methodology used to arrive at my ideas. As demonstrated in previous chapters, I have also drawn upon the works of other researchers to support my conclusions, thus ensuring a well-rounded and rigorous analysis.

1 Main findings

Throughout this book, I have argued that the current ambiguity surrounding conscientious objection in South Africa's liberal abortion law has resulted in unpredictable access to safe and legal abortion services. The competing rights claims of reproductive autonomy and freedom of conscience remain unresolved, creating significant challenges for healthcare providers and patients alike. Specifically, I have asked what practices of discretionary power affect nurses' exercise of conscientious objection, and how and why nurses choose to invoke this implied right. I have also examined the broader socio-cultural, political, and legal factors that shape nurses' actions or inaction when it comes to providing legal abortion services. By considering these questions, I have aimed to provide a comprehensive understanding of the challenges and complexities associated with conscientious objection in the context of legal abortion in South Africa.

The main argument of this book is that the absence of a conscience clause in South Africa's Choice on Termination of Pregnancy Act has resulted in the exercise of conscientious objection by healthcare professionals, particularly nurses, which has negatively impacted women's access to safe and legal abortion services. The book highlights the need for regulation and legal oversight to ensure that the right to conscientious objection does not impede women's access to legal abortion services, while protecting the providers' implied right to refuse. While international and regional human rights instruments guarantee the freedom of conscience, the right is not absolute and can be subject to limitations. The South African Constitution provides a constitutional basis for placing limitations on the right to freedom of conscience. Litigation and judicial interpretation based on a human rights approach could advance the law in relation to conscientious objection and abortion rights, leading to transformative jurisprudence that applies the proportionality framework to protect providers' right to refuse while guaranteeing women's right to access abortion services. I have also shown that courts in various settings have

shown that they can play a crucial role in providing clarity and ensuring greater accountability regarding conscientious objection and abortion care. Despite the potential limitations of engaging with the courts, I argue that various political, economic, and socio-cultural factors create an opportunity structure for litigation processes to regulate conscientious objection in South Africa. These processes can lead to significant legal effects, such as changes in legislation or jurisprudence, as well as material effects on policy and administrative practices, which can address the obstacles posed by the current lack of regulations.²

Furthermore, regulating conscientious objection through the law would send a signal that the state has an obligation to effectively implement the right to safe and legal abortion by ensuring that this right is not impeded by the refusal to offer services. In this context, it is essential that the law regulates the practice of conscientious objection by healthcare professionals, including nurses, to safeguard women's right to access abortion services and ensure their reproductive autonomy.

The role of nurses in conscientious objection and abortion care is complex and multifaceted. This book sheds light on the decision-making process that nurses go through and highlights that their decisions are not solely based on their religious beliefs or moral convictions. Rather, their willingness to be involved in abortion care is also influenced by their perceptions of the woman seeking care and the reasons behind her decision. However, this decision-making process can lead to a form of paternalistic control that homogenises all women seeking abortion care and ignores the intersectional factors that influence their decision-making process. Therefore, it is crucial to examine the social and relational context in which nurses make decisions about providing or not providing abortion care, in addition to the legal and medical discourse. By doing so, we can better understand the implications of conscientious objection in practice and develop strategies to ensure that women's reproductive autonomy is respected and protected.

The final aspect of this book concerns the power dynamics that support or constrain nurses in their role as abortion service providers. The findings indicate that inadequate medical supplies, lack of infrastructure, and insufficient support from management are major obstacles that impact the availability and quality of care provided by nurses in public health facilities. These conditions not only make it difficult for nurses to provide

2 S Gloppen 'Studying courts in context: The role of nonjudicial institutional and socio-political realities' in L Haglund & R Stryker (eds) *Closing the rights gap: From human rights to social transformation* (2015) 291-318.

safe and ethical care, but also perpetuate stigma and discrimination against nurses who provide abortion services. Another significant challenge is the lack of recognition and remuneration for nurses specialising in abortion care. This not only limits the motivation of nurses to specialise in this area, but also contributes to a shortage of abortion service providers. Moreover, power dynamics play a role in the designation process, with nurses who own standalone private abortion clinics facing unique challenges and treated differently from doctors. This perpetuates hierarchies within the health system and further marginalises nurses who provide abortion care.

Despite these challenges, nurses continue to offer care because of their core ethical values and commitment to the reproductive autonomy of women. However, addressing the challenges faced by nurses providing abortion services is crucial for ensuring access to safe and ethical abortion services. This requires addressing power dynamics within the health system, providing adequate medical supplies, infrastructure, and support from management, and recognising and remunerating nurses as specialists in abortion care. The WHO emphasises the importance of well-equipped facilities and trained healthcare providers in ensuring the availability of safe abortion services.³ Only by addressing these challenges can we ensure that women have access to the care they need and deserve.

Overall, the findings in this book provide a vital contribution to the under-theorised issue of conscientious objection in the African context and its impact on the provision of abortion services. By exploring the complex relationship between gendered power dynamics, subjective fields, and nurses' decision-making processes, it offers an understanding of the disparities between the legal framework of abortion and its actual implementation in practice. Through an African feminist lens, the book broadens the scholarship on abortion discourses and women's resistance, providing a nuanced perspective on the complex relationship between gendered norms, practices, and ideals. It illuminates the challenges nurses face when providing legal abortion care and offers concrete strategies to address the growing use of conscientious objection to deny safe care, information, and referral. By providing insights into the lived experiences of nurses, this book sheds light on the complexities of abortion and the ways in which power dynamics intersect with other processes, thereby offering valuable insights for researchers, policymakers, and healthcare providers alike.

3 See World Health Organisation (WHO) 'Health worker roles in providing safe abortion care and post-abortion contraception' (2015).

2 Avenues for future research

While beyond the scope of this book, the findings suggest several avenues for future research related to the polarising issue of abortion among nurses. Some are willing to provide abortion services, while others refuse to provide care. In between are nurses who determine who is deserving or undeserving of abortion services. To encourage potential providers to assist in abortion services, there needs to be increased awareness of the law, better remuneration, and improved conditions of service. Future research could focus on strategies to move non-providing nurses towards providing or assisting in abortion services, including the removal of barriers to training and addressing the lack of interest in the specialisation, which could be incentivised with remuneration.

On the other hand, it is important to understand what causes nurses to become less supportive of abortion, particularly in light of conservative activism. Research on resistance at the level of managers could help identify strategies to address resistance to abortion rights, including training on reproductive health rights and values clarification sessions. Additionally, it is crucial to explore the unique situation of nurses running their own abortion clinics and how they navigate the legal and political challenges they face.

Clearer legal and policy guidelines on conscientious objection, stricter rules for objectors, and effective enforcement of laws relating to obstructing access are necessary to ensure women's right to access legal abortion services in South Africa. Bringing attention to the issue by addressing the Parliamentary Portfolio Committee on Health could highlight the problems faced by women and potentially lead to policy changes aimed at protecting their reproductive rights. Ultimately, these future research avenues can help to ensure that women's rights to access timely and safe abortion services are protected.⁴

3 Implications for access to abortion in Africa

While the focus of this book is mainly on South Africa, the findings have strong implications for mediating competing rights and supporting a legal framework that enables access to abortion in Africa.

Over the past few years, Africa has experienced a remarkable shift in its abortion legislation, moving towards more progressive frameworks

4 Interview with legal practitioner via Email on 29 March 2019.

that acknowledge women's fundamental reproductive rights. As emphasised in Chapter 2, these changes reflect a growing recognition of the critical role that access to safe and legal abortion plays in advancing women's health, well-being, and autonomy. It becomes crucial to discuss conscientious objection and the South African case because this has significant implications for the implementation of these more progressive abortion laws in Africa. The South African case highlights the challenges in balancing healthcare providers' right to conscientious objection with women's right to access abortion services. For example, countries such as Benin, Democratic Republic of the Congo (DRC), Ethiopia, and Mozambique have made significant strides in reforming their abortion laws to ensure women's reproductive rights. Ethiopia has made progress by expanding the legal grounds for abortion to include rape, incest, foetal abnormality, and physical or mental health risks. However, there are concerns that healthcare providers' conscientious objection may limit access to abortion services in practice. Similarly, in Mozambique, the new Penal Code of 2014 decriminalised abortion in cases of rape, incest, foetal abnormality, or risk to the woman's health. Despite this progress, there are reports of healthcare providers denying women access to abortion services based on conscientious objection.

It is important to note that the majority of African countries still have restrictive abortion laws in place, underscoring the need for continued efforts to advance reproductive justice across the continent. One crucial aspect of ensuring access to safe and legal abortion services is equipping healthcare providers with the necessary knowledge and resources to provide such care. Additionally, it's important to ensure that women have access to comprehensive reproductive health information and counselling, regardless of the legal framework surrounding abortion. Overall, while Africa has made significant progress in reforming its abortion laws, there is still a long way to go in ensuring that women have access to safe and legal abortion services. Addressing conscientious objection and finding a balance between healthcare providers' rights and women's rights is crucial for achieving this goal.

4 Concluding reflections

Choice and conscience is the culmination of a personal journey and an unwavering commitment to advancing women's rights, particularly reproductive rights in Africa. Throughout my research, I have been struck by the question of why so many women still struggle to access safe and legal abortion, even in countries with supposedly liberal laws. I have delved into the intricate web of legal, social, and cultural factors that contribute to this persistent injustice. I strongly advocate for a rights-

based approach to regulating conscientious objection, which would utilise international human rights law and comparative law and adopt an intersectional framework. I believe that such an approach is necessary to protect the rights of women seeking abortion care and ensure that healthcare providers can offer these services without discrimination.

As I reflect on the significance of this work, I am struck by the profound implications of conscientious objection for women's rights and gender equality. During my research, I was moved by the remarkable bravery, perseverance, and dedication of the nurses who offer abortion services despite facing numerous challenges. By exploring the experiences and perspectives of nurses, I hope to contribute to a more nuanced and inclusive understanding of this complex issue. Ultimately, my aim is that this book will contribute to creating a more just and equitable society where women can exercise their reproductive rights without fear or stigma, and healthcare providers, including who want to provide these essential services can work in a more supportive environment.

I am committed to making modest but meaningful contributions in terms of theory, methodology, and empirical evidence to the ongoing global discourse on reproductive rights through my work as an African feminist legal scholar-activist.

