

MEDIA STATEMENT: Civil society organisations condemn Gauteng health facilities' defiance of laws and recent court order on free access to health care for pregnant women

4 July 2023 - In April 2023, the Gauteng High Court upheld [the right of all pregnant](#) and lactating women, and children under 6, irrespective of nationality and documentation status, to access free health services at all public health establishments, including hospitals. This ruling followed an application brought by SECTION27 alongside women who had been denied access to such services. The application was supported by [various amici curiae](#). The ruling reaffirms the rights set out in the Constitution, the National Health Act, and the Refugees Act.

Since the ruling, the Sexual and Reproductive Justice Coalition (SRJC) and other civil society organisations have received reports of various public health facilities (administrators and individual clinicians) demanding that pregnant migrant women pay to access services. The media has also carried [various reports](#) of pregnant migrants being turned away from hospitals or who are subjected to a [variety of threats](#). These facilities include: Charlotte Maxeke Hospital; Tambo Memorial Hospital; South Hills; Germiston City Municipal Clinic; Heidelberg Clinic; and Edenvale Clinic. Reports of extortion in the form of requirements to pay for ultrasound scans, childbirth and postnatal care – all of which are [free under existing legal frameworks](#) – as well as women being coerced into signing acknowledgments of debt, with their children's proof of birth forms withheld until payments are made. This is not only unlawful but places children at risk of being undocumented since the proof of birth is a prerequisite for birth registration with the Department of Home Affairs, which increases the vulnerability of children.

To be clear: these practices are unlawful, illegal and constitute unfair discrimination and human rights abuses. This is affirmed by South Africa's regional and international obligations for example, Article 14(2) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. These emphasise that South Africa has an obligation to "Provide adequate, affordable and accessible health services, including information, education and communication programmes to women..."

Additionally, Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women emphasises that South Africa has an obligation to: "take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." Furthermore, that South Africa as a signatory, "shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation".

"We are deeply concerned by recent reports that Gauteng Health continues to demand payment balances, and that mothers and newborns have been detained after discharge from the postnatal ward at Tambo Memorial Hospital until they have been able to bribe the Unit to let them go home. This extortion is a shame to O.R. Tambo's legacy." Kayan Leung, attorney, Lawyers for Human Rights

To lay the blame with non-nationals who make up an estimated 6.5% of the overall population in South Africa is to ignore the role of the state in the systematic and structural erosion of the health care system. The idea that non-nationals are draining South Africa of its resources not only is unsubstantiated but also diverts us from addressing the real issues and looking for real responses.

"From the inception of our democracy, the government understood that health care services are essential to all people, especially pregnant women; and the government accordingly promulgated laws and introduced measures to provide free maternal and child health services" says Sibusisiwe Ndlela, attorney at SECTION27.

"In lower- and middle-income countries in Africa, such as Kenya and Nigeria, where protective laws have not been in place, both citizens and non-nationals have been forced to pay for maternity services. In some cases, mothers, unable to pay for childbirth have been detained in hospitals, are made to work their debts off. South Africa's protection of all mothers prevents corruption and discrimination more generally" says Dr Jess Rucell, Sexual and Reproductive Justice Coalition.

We call on the Gauteng Department of Health to ensure that all facilities adhere to the prescripts of the court order and that the Department take decisive disciplinary action against any facility or staff member who demands payment for health services that should be free.

We call on the Health Ombud to initiate an inquiry into systemic health xenophobia in South Africa and to hold institutions and their management accountable.

We urge individuals who have experienced this illegal practice to seek assistance from:

SECTION27	060 958 9041
Lawyers for Human Rights	0646474719 [WhatsApp text only]
Centre for Child Law	012 420 4502

For media inquiries, please contact:

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This statement is endorsed by:

- Sexual and Reproductive Justice Coalition
- Sophiatown Community Psychological Services
- SECTION27
- Collective Voices for Health Access
- Asylum Seeker Refugee and Migrant Southern African Human Rights Defenders Network

- Centre for Applied Legal Studies
 - International Commission of Jurists
 - Embrace the Movement for Mothers
 - Lawyers for Human Rights
 - International Labour, Research and Information Group
 - Health Justice Initiative
 - The African Diaspora Forum
 - Women In Need Organisation
 - Congolese Civil Society of South Africa
 - Amnesty International (South Africa)
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