

# 10 Key Points About Uganda's Laws and Policies on Termination of Pregnancy

The following key findings are based on an extensive review by the Center for Reproductive Rights of relevant policies, guidelines, training manuals, curricula, codes of conduct/ethics; an analysis of key laws, court cases, legal texts; and interviews with lawyers, healthcare providers and administrators, advocates and academics in Uganda.

1. **Uganda's laws and policies on termination of pregnancy are often unclear, confusing and contradictory. Yet, these laws and policies are more expansive than most believe** and opportunities for increasing access to safe abortion services exist within the current legal and policy framework.
2. **The Ugandan Constitution does not prohibit abortion. Art. 22(2) which states that "No person has the right to terminate the life of an unborn child except as may be authorised by law"** does not preclude access to termination of pregnancy; it simply requires a legal framework to do so.
3. **The Ugandan Constitution contains key provisions that can be used to ensure access to safe and legal abortion services and post-abortion care.**<sup>1</sup> The Constitution affirms the importance of respecting human dignity, protecting people from inhuman treatment,<sup>2</sup> and according women full and equal dignity.<sup>3</sup> International and regional human rights standards have established that access to safe and legal abortion and post-abortion care is essential to protecting women's most fundamental human rights.
4. **There is no absolute prohibition on termination of pregnancy in Uganda. It is permitted to preserve the life and health of the pregnant woman. Health is defined to include both physical and mental health.** This understanding was made clear in the widely recognized English case of *Rex v. Bourne* (1938). This case has been widely affirmed throughout the Commonwealth, including by the East African Court of Appeal in *Mehar Singh Bansel v. R* (1959).
  - *Rex v. Bourne* was the first case that addressed the grounds upon which an abortion could legally be provided in the U.K.<sup>4</sup>

This case has had a profound and lasting impact on the legal regimes of former British colonies and Commonwealth countries. Most colonies, Uganda included, had—and continue to have—an abortion provision essentially identical to the one at issue in *Rex v. Bourne* in their penal codes and, under common law principles, can look to British case law as an authoritative interpretation of that law.<sup>5</sup> In *Bourne*, Judge Macnaghten reasoned that the use of the word “unlawfully” in the provisions criminalizing abortion in the English Offences Against the Person Act—similar to Sections 141-143 of Uganda's Penal Code—was intentional and suggested that there were circumstances under which abortion could be “lawfully” procured. He then reasoned that a life exception had always been implicit in the provisions criminalizing abortion and found that a “reasonable view” of preserving a pregnant woman's life included preserving her mental and physical health. In essence, Bourne created an explicit life and mental and physical health exception to the criminalization of abortion in the United Kingdom.

- In 1959, the East African Court of Appeal, which had jurisdiction over the territory of Uganda, affirmed the *Bourne* decision in *Mehar Singh Bansel v. R*, an abortion case on appeal from the Supreme Court of Kenya.<sup>6</sup>

5. **The Ugandan government itself acknowledges that the law on termination of pregnancy contains a life and mental and physical health exception.** This was the position of the Permanent Secretary at the Ministry of Health in response to a survey distributed by the Commonwealth Secretariat in 1976,<sup>7</sup> the Solicitor General in a 2002 legal memo to the Director General of Health Services at the Ministry of Health,<sup>8</sup> and the Ministry of Health in its 2001 *National Training Curriculum for Health Workers on Adolescent Health and Development*, 2006 *National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights* and 2007 *Management of Sexual and Gender Based Violence Survivors* (Trainees' Handbook).

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6. The Ugandan government has affirmed the importance of access to safe termination of pregnancy services and issued guidelines that specifically address who can obtain these services. **The 2006 National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights provide for access to termination of pregnancy services in cases of:**
  - “severe maternal illnesses threatening the health of a pregnant woman e.g. severe cardiac disease, renal disease, severe pre-eclampsia and eclampsia;
  - severe foetal abnormalities which are not compatible with extra-uterine life e.g. molar pregnancy, anencephaly;
  - cancer cervix;
  - HIV-positive women requesting for termination;
  - Rape, incest and defilement.”<sup>9</sup>
7. **Government policies permit abortion in cases of sexual violence** – this has been policy for over a decade.
  - The Ministry of Health’s 2001 *National Training Curriculum for Health Workers on Adolescent Health and Development* provides that, “in the case of rape, [service providers can] . . . offer referral for abortion if appropriate and possible.”<sup>10</sup>
  - The Ministry of Health’s 2006 *National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights* and the 2007 *Management of Sexual and Gender Based Violence Survivors* (Trainees’ Handbook) provide for access to termination of pregnancy in cases of sexual violence.<sup>11</sup>
8. **There is no law, policy, regulation or code of conduct/ethics in Uganda that requires a provider to consult with one or more doctors** before performing a termination of pregnancy. This is also not a legal requirement under common law.<sup>12</sup>
9. Under the *National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights*, mid-level providers can offer termination of pregnancy and post-abortion care services.<sup>13</sup>
10. **There is no law, policy, or regulation in Uganda requiring that a woman obtain her husband’s consent** before obtaining any reproductive health services, including a termination of pregnancy. The absence of a spousal consent requirement is reflected in the *2006 National Policy Guidelines and Service Standards*.

### ENDNOTES

- 1 CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995, at part XIV(b), XX, articles 27, 34(3) and 41.
- 2 *Id.* at art. 24.
- 3 *Id.* at art. 33.
- 4 R v. Bourne, [1939] 1 K.B. 687.
- 5 See COOK AND DICKENS, ABORTION LAWS IN COMMONWEALTH COUNTRIES (1979) 13.
- 6 Mehar Singh Bansel v. R, [1959] E.A.C.A. 813, 832.
- 7 In 1976, the Commonwealth Secretariat distributed a questionnaire to 36 member states and over 60 commonwealth jurisdictions to collect information about their abortion laws. The Permanent Secretary in the Ugandan Ministry of Health responded to this survey on behalf of Uganda. His statement on Uganda’s abortion law reflects the reasoning in *Bourne*: “I have to inform you that in this country abortion is acceptable for health and medical reasons and it is done only to save the life of the mother when it is threatened by the continuing pregnancy.” In addition, in an attached questionnaire, the Permanent Secretary clearly marked life, physical health and mental health as legal grounds for abortion in Uganda. Letter from Dr. S.L.D. Muyanga for the Permanent Secretary, Ministry of Health, to Dr. K.G. Mather, Chief Executive Officer, Medical Section (Oct. 18, 1976) (on file with the Center for Reproductive Rights).
- 8 In the memo, the Solicitor General states that *Rex v. Bourne* “introduced the common law health exception to the law against abortion” and explicitly states that “[i]n Uganda abortions for health reasons are carried out on the basis of the English Common Law.” P.K. Asimwe for the Solicitor General, ADM/7/161/01, Re: Seeking Guidelines on the Legal Definition of Abortion in Uganda, sec. 3.4, at 4 (May 7, 2002) (on file with the Center for Reproductive Rights).
- 9 REPRODUCTIVE HEALTH DIVISION, MINISTRY OF HEALTH, NATIONAL POLICY GUIDELINES AND SERVICE STANDARDS FOR SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS sec. 4.13, at 45 (2006) (on file with the Center for Reproductive Rights) [hereinafter NATIONAL SEXUAL AND REPRODUCTIVE HEALTH GUIDELINES].
- 10 Ministry of Health, NATIONAL TRAINING CURRICULUM FOR HEALTH WORKERS ON ADOLESCENT HEALTH AND DEVELOPMENT: TRAINEE HANDBOOK 157 (2001).
- 11 NATIONAL SEXUAL AND REPRODUCTIVE HEALTH GUIDELINES, *supra* note 9, sec. 4.13, at 45; MINISTRY OF HEALTH, MANAGEMENT OF SEXUAL AND GENDER BASED VIOLENCE SURVIVORS (Trainees’ Handbook) 49 (Apr. 2007) (on file with the Center for Reproductive Rights).
- 12 GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW (1958) 170; GLANVILLE WILLIAMS, TEXTBOOK OF CRIMINAL LAW, SECOND EDITION 302 (1983) .
- 13 NATIONAL SEXUAL AND REPRODUCTIVE HEALTH GUIDELINES, *supra* note 9, at 48, 77.