Q & A

ABORTION AND THE LAW IN UGANDA

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Q. WHAT IS THE IMPACT OF UNSAFE ABORTION IN UGANDA?

› High Rates of Maternal Death

- Unsafe abortion accounts for approximately 13% of all maternal deaths worldwide;[1] in Uganda, the Ministry of Health estimates that 26% of maternal deaths may be attributable to unsafe abortion.[2]
- Approximately 1,200 women die each year from unsafe abortions in Uganda.[3]
- Globally, 44% of deaths from unsafe abortion are in Africa.[4]

› High Rates of Maternal Morbidity

- According to one study, each year approximately 85,000 women in Uganda receive treatment in medical facilities or within the formal health care system for complications from unsafe abortion.[5]
- These statistics, however, represent only a fraction of the actual number of abortion-related complications: they do not capture women who cannot, or do not, obtain treatment at all. It is estimated that each year 65,000 women in Uganda "suffer complications [from unsafe abortion] that require medical care but do not get treatment in a medical facility."[6]
- Complications are more frequent among rural women, as they are more likely to obtain an unsafe abortion at the hands of an untrained person.[7]

› Devastating Impact on Women, Families, and Family Networks

- According to a recent *Lancet* article, "an estimated 220 000 children worldwide lose their mothers every year from abortion-related deaths. Such children receive less health care and social care than children who have two parents, and are more likely to die."[8]
- Globally, an estimated five million disability-adjusted life years "are lost per year by women of reproductive age as a result of mortality and morbidity from unsafe abortion."[9]

Q. WHAT IS UNSAFE ABORTION?

Abortion, when done by a trained health professional in an appropriate setting, is an extremely safe medical procedure—indeed, "legal abortion in industrialised nations has emerged as one of the safest procedures in contemporary medical practice, with minimum morbidity and a negligible risk of death."[10]

In contrast, unsafe abortion can result in life-long morbidities, disabilities, and death. Unsafe abortion is defined by the World Health Organization as "a procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking minimal medical standards or both."[11] This definition, however, fails to capture the full range of painful, dangerous, and often lethal methods that women resort to when they are unable to safely terminate a pregnancy. **Methods used**

by women in Uganda frequently include "drinking laundry detergent, bleach or gasoline"; inserting an "object into vagina (stick, reed, cassava, clothes hanger, metal)"; taking medications, such as sleeping pills, quinine, and chloroquine; and drinking or inserting into the vagina various local herbs or tea leaves.[12]

Complications from unsafe abortion may include incomplete evacuation of the products of conception;[13] "hemorrhage, sepsis, peritonitis, and trauma to the cervix, vagina, uterus, and abdominal organs"[14]; and vaginal or cervical lacerations.[15] Should sepsis or haemorrhaging become life-threatening, the woman may need to undergo a hysterectomy.[16] Gas gangrene and tetanus can also result from the insertion of foreign bodies into the uterus.[17] In the longer term, unsafe abortion may result in chronic pelvic pain, tubal blockage,[18] reproductive tract infections, upper-genital tract infections, and infertility, and may increase the risks of ectopic pregnancy, premature delivery, and spontaneous abortion in subsequent pregnancies.[19] It is important to reiterate that these injuries and deaths are caused by *unsafe* abortion—if performed by a competent health professional in the appropriate setting, abortion is an extremely safe medical procedure.[20]

Q. IS THERE A LINK BETWEEN RESTRICTIVE ABORTION LAWS AND HIGH RATES OF DEATH AND MORBIDITY FROM UNSAFE ABORTION?

YES. Researchers have consistently noted that countries with restrictive abortion laws have higher rates of mortality and morbidity from unsafe abortion;[21] conversely, countries that have liberalized their abortion laws have seen their maternal mortality rates drop dramatically.[22] For example, after South Africa liberalized its abortion law in 1997 by enacting the Choice on Termination of Pregnancy Act, abortion-related deaths dropped by 91%.[23] Similar declines in maternal mortality occurred in Romania after it liberalized its abortion law in 1989. In fact, "the mortality ratio fell by more than half [in Romania] . . . within the first year of safer access itself."[24] Likewise, in Nepal, "abortion-related complications fell from 54% to 28% of all maternal morbidities treated at relevant facilities between 1998 and 2009."[25] Nepal liberalized its abortion law in 2002.[26]

Q. WHAT IS THE LEGAL AND POLICY FRAMEWORK FOR TERMINATION OF PREGNANCY IN UGANDA?

In Uganda, termination of pregnancy is permitted to preserve the life and mental and physical health of the pregnant woman. Further, the health exception is understood to encompass cases of sexual violence. Mid-level providers may offer services—there is no legal requirement that the procedure be performed by a physician. There is also no legal requirement that a health care provider consult with one or more other health care providers before performing the procedure.

To fully understand Uganda's legal and policy framework on termination of pregnancy, one must take a comprehensive and holistic look at applicable international human rights law; relevant provisions from Uganda's Constitution, Penal Code, and national policies; and case law. The following text describes Uganda's legal framework governing

termination of pregnancy. For more detailed guidance on Uganda's legal and policy framework, see Center for Reproductive Rights, *A Technical Guide to Understanding the Legal and Policy Framework on Termination of Pregnancy in Uganda*.

› International Human Rights Law

The Government of Uganda has ratified all major regional and international human rights treaties.[27] Although it has not domesticated the majority of these treaties, the Ugandan Government is nonetheless legally bound to respect, protect, and fulfil the rights in the international and regional conventions that it has signed or ratified.[28]

The Ugandan Government's failure to ensure access to safe termination of pregnancy and post-abortion care, and the criminalization of abortion, are direct evidence of a failure to safeguard women's rights to

- life;
- health;
- liberty and security of person;
- freedom from torture and cruel, inhuman, or degrading treatment;
- equality and non-discrimination;
- dignity;
- information;
- privacy and family; and
- redress and legal assistance.

Although the Ugandan Government, in ratifying the Protocol on the Rights of Women in Africa (Maputo Protocol) to the African Charter on Human and Peoples' Rights, placed a reservation on article 14(2)(c) pertaining to reproductive health and abortion,[29] **this reservation has no effect on existing abortion legislation in Uganda, nor does it create new legislation in the country.** The government is simply stating that this particular clause on abortion in the Maputo Protocol does not apply in Uganda.

› Constitution

Article 22(2)*: No person has the right to terminate the life of an unborn child except as may be authorised by law.*[30]

This provision does not preclude access to termination of pregnancy; it merely requires a legal framework to do so. Uganda does, in fact, have such a framework, comprising section 224 of the Penal Code and applicable case law on abortion, discussed below.

› Penal Code

Uganda's Penal Code criminalizes "unlawful" abortion, indicating that there are circumstances under which procuring an abortion is lawful. It further makes explicit, in section 224, that termination of pregnancy is not criminalized if done to preserve the woman's life.

RELEVANT PROVISIONS FROM THE PENAL CODE

141. Attempts to procure abortion. *Any person who, with intent to procure the miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means, commits a felony and is liable to imprisonment for fourteen years.*[31]

142. Procuring miscarriage. *Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.*[32]

143. Supplying drugs, etc. to procure abortion. *Any person who unlawfully supplies to or procures for any person any thing, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, commits a felony and is liable to imprisonment for three years.*[33]

197. When child deemed a person. *A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the naval string is severed or not.*[34]

212. Killing unborn child. *Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that if the child had been born alive and had then died, he or she would be deemed to have unlawfully killed the child, commits a felony and is liable to imprisonment for life.*[35]

224. Surgical operation. *A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his or her benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.*[36]

› Holding in a Key Case: *Rex v. Bourne* (1938)

In *Bourne*, an English case applicable in Uganda, "preservation of the [woman's] life" [see section 224 of the Penal Code, above] was interpreted to include preservation of the woman's mental and physical health. The judge in that case stated:

> ***It is not contended that those words [for the purpose of preserving the life of the mother] mean merely for the purpose of saving the mother from instant death. . . . I think those words ought to be construed in a reasonable sense, and, if the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, . . . [then this constitutes] operating for the purpose of preserving the life of the mother.***[37]

› National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights

These guidelines, issued by the Ugandan Ministry of Health in 2006, directly address the circumstances under which safe abortion services should be made available.

> *People who can get services for termination of pregnancy:*
>
> - *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.*[38]

The guidelines also specify which health workers can perform abortions:

- A medically induced abortion can be performed by a midwife/nurse, clinical officer, medical officer, or gynaecologist/surgeon.
- A surgically induced abortion can be performed only by a gynaecologist/surgeon.
- Evacuation for incomplete abortion can be performed by a midwife/nurse, clinical officer, medical officer, or gynaecologist/surgeon.[39]

Finally, the guidelines address sexual and gender-based violence service standards. Specifically, they **permit midwives, nurses, clinical officers, medical officers, and gynaecologists/surgeons to offer termination of pregnancy to survivors of sexual violence**.[40] In this context, the guidelines do not distinguish between medically induced and surgically induced abortion.[41]

› Management of Sexual and Gender Based Violence Survivors

Under this Ministry of Health handbook/curriculum, issued in 2007, termination of pregnancy is presented as an option for survivors of rape. The handbook specifies that abortion services may be provided by a midwife, nurse, clinical officer, medical officer, or gynaecologist/surgeon.[42] Notably, the chart outlining who may provide services is identical to the sexual and gender-based violence chart in the national guidelines discussed above.

Endnotes

1 David A. Grimes et al., *Unsafe Abortion: The Preventable Pandemic*, 368 The Lancet 1908, 1910 (2006).

2 Stephen Mallinga & Anthony Mbonye, *Maternal Morbidity and Mortality in Uganda* 5 (submission to All-Party Parliamentary Group on Population, Development & Reproductive Health—U.K., Dec. 8–9, 2008). Neither the government's Health Management Information System nor local government information systems track maternal death and complications, and statistics regarding unsafe abortion are particularly difficult to obtain because of the clandestine nature of the procedure.

3 *Id.*

4 Grimes et al., *supra* note 1, at 1910.

5 Susheela Singh et al., Guttmacher Institute, Unintended Pregnancy and Induced Abortion in Uganda: Causes and Consequences 10, 17 (2006).

6 *Id.* at 17.

7 *Id.* at 5.

8 Grimes et al., *supra* note 1, at 1914 (citing Safe Motherhood Inter-Agency Group, *Maternal Health: A Vital Social and Economic Investment*, http://www.safemotherhood.org/facts_and_figures/good_maternal_health.htm).

9 *Id.* (citing S. Singh et al., Adding It Up: The Benefits of Investing in Sexual and Reproductive Health Care, 2003).

10 Grimes et al., *supra* note 1, at 1908 (citing U. Hogberg & I. Joelsson, *Maternal Deaths Related to Abortions in Sweden, 1931–1980*, 20 Gynecol. Obstet. Invest. 169–78 (1985)).

11 World Health Organization, *Preventing Unsafe Abortion*, http://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/index.html (last visited Apr. 23, 2012).

12 Singh et al., *supra* note 5, at 13.

13 Hailemichael Gebreselassie et al., *The Magnitude of Abortion Complications in Kenya*, 112 BJOG: An International Journal of Obstetrics and Gynaecology 1229, 1229 (2005).

14 Grimes et al., *supra* note 1, at 1910.

15 Gebreselassie et al., *supra* note 13, at 1232.

16 Grimes et al., *supra* note 1, at 1911.

17 *Id.* at 1911–12.

18 Gebreselassie et al., *supra* note 13, at 1229.

19 Grimes et al., *supra* note 1, at 1911; Gebreselassie et al., *supra* note 13, at 1229.

20 Grimes et al., *supra* note 1, at 1908.

21 *Id.* at 1913; Gilda Sedgh et al., *Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008*, 379 The Lancet 635, 631 (2012).

22 Grimes et al., *supra* note 1, at 1913; Sedgh et al., *supra* note 21, at 631.

23 Grimes et al., *supra* note 1, at 1913 (citing R. Jewkes et al., *The Impact of Age on the Epidemiology of Incomplete Abortions in South Africa after Legislative Change*, 112 BJOG: An International Journal of Obstetrics and Gynaecology 355–59 (2005)).

24 *Id.*

25 Sedgh et al., *supra* note 21, at 7 (citing Bal Krishna Suvedi et al., Nepal Maternal Mortality and Morbidity Study 2008/2009: Summary of Preliminary Findings, 2009).

26 Muluki Ain (Eleventh Amendment), 2059 (2002), sec. 28.

27 For example, Uganda has ratified the following international and regional instruments: African Charter on Human and Peoples' Rights, *adopted* June 27, 1981, O.A.U. Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986, *ratified* May 10, 1986); African Charter on the Rights and Welfare of the Child, *adopted* July 11, 1990, O.A.U. Doc. CAB/LEG/24.9/49 (*entered into force* Nov. 29, 1999, *ratified* Aug. 17, 1994); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *adopted* July 11, 2003, 2nd African Union Assembly, Maputo, Mozambique (*ratified* July 22, 2010); International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976, *acceded* June 21, 1995); International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976, *acceded* Jan. 21, 1987); Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981, *ratified* July 22, 1985); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990, *ratified* Aug. 17, 1990); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987, *acceded* Nov. 3, 1986); Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969, *acceded* Nov. 21, 1980); Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611 (*entered into force* May, 3 2008, *ratified* Sept. 25, 2008).

28 A state that ratifies or accedes to an international convention "establishes on the international plane its consent to be bound by a treaty." Vienna Convention on the Law of Treaties, art. 2.1(b), May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (*entered into force* Jan. 27, 1980). The Government of Uganda is therefore obligated under international law to protect the rights guaranteed by these instruments. The Ugandan Constitution makes clear the importance of "respect for international law and treaty obligations" [Constitution, objective XXVIII(i)(b) (1995)] and treaties that have been ratified but not yet domesticated are still considered persuasive authorities by Ugandan courts. Further, under the Vienna Convention on the Law of Treaties, "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Vienna Convention on the Law of Treaties, art. 27, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (*entered into force* Jan. 27, 1980).

29 Ministry of Foreign Affairs, AOG 238/01, Instrument of Ratification Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (July 21, 2010) (on file with the Center). *See* Center for Reproductive Rights, A Technical Guide to Understanding the Legal and Policy Framework on Termination of Pregnancy in Uganda (2012).

30 Constitution, art. 22(2) (1995).

31 Penal Code Act, Cap. 120, sec. 141.

32 *Id.* sec. 142.

33 *Id.* sec. 143.

34 *Id.* sec. 197.

35 *Id.* sec. 212.

36 *Id.* sec. 224.

37 Rex v. Bourne, [1939] 1 K.B. 687, at 692–694.

38 Reproductive Health Division, Ministry of Health, National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights 45 (2006).

39 *Id.* at 48, tbl.3.

40 *Id.* at 77, tbl.14.

41 *Id.*

42 Ministry of Health, Management of Sexual and Gender Based Violence Survivors 49 (Apr. 2007).

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