



THE ENFORCEMENT OF CRIMINAL ABORTION LAWS IN UGANDA AND ITS IMPACT ON THE HUMAN RIGHTS OF WOMEN AND HEALTH + WORKERS

Research Brief

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THE ENFORCEMENT OF CRIMINAL ABORTION LAWS IN UGANDA AND ITS IMPACT ON THE HUMAN RIGHTS OF WOMEN AND HEALTH WORKERS

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RESEARCH BRIEF

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ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

Human Rights Awareness and Promotion Forum (HRAPF) is an independent, non-partisan, non-governmental human rights advocacy organisation. HRAPF seeks to create awareness of human rights and provide legal support to the most marginalised groups as a means of stemming abuse of their fundamental rights. HRAPF envisions a society where the human rights of all persons, including marginalised groups, are valued and respected. This is achieved through promoting respect and observance of human rights of marginalised groups through legal and legislative advocacy; research and documentation; strategic litigation, legal and human rights awareness; and capacity building and partnership.

ACRONYMS

CRR	Centre for Reproductive Rights
CEHURD	Centre for Health, Human Rights and Development
DPP	Directorate of Public Prosecutions
HRAPF	Human Rights Awareness and Promotion Forum
TASO	The Aids Support Organisation
UNCST	Uganda National Council of Science and Technology
UPF	Uganda Police Force
UPS	Uganda Prisons Service
WHO	World Health Organization

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EXECUTIVE SUMMARY

Abortion is criminalised in Uganda, with few, limited exceptions. The country's laws and policies on abortion are confusing and their parameters remain contested among health service providers, law enforcement officers, judges, and women and girls. Women and girls cannot access legal abortions and many resort to unsafe means of terminating unwanted pregnancies. Unsafe abortion contributes to Uganda's already high rate of maternal mortality. Yet despite the ambiguous legal framework, abortion laws are actively enforced in the country. Women, girls, and health workers are vulnerable to law enforcement personnel and face possible harassment, arrest, prosecution imprisonment and blackmail and extortion by law enforcement agencies.

In this report Human Rights Awareness and Promotion Forum studied the trends of enforcement of Uganda's criminal abortion laws, and the impact this has on the human rights of the healthcare providers, women and girls who fall victim to these laws.

The study examined data over the five-year period from 2011 to 2015. It reviewed national annual crime and traffic/road safety reports and focused on the two structurally different districts of Kampala and Kitgum. The study found that abortion laws are being haphazardly enforced. Still the numbers of arrests are low compared to the estimated number of abortions carried out in Uganda every year. Nationally, there were at least 182 arrests for abortion-related charges during the five-year period. At least 20 persons were arrested in Kampala, and 18 in Kitgum during the study period. Many of the arrests are conducted in order to extort money from women or girls who had abortions. Health workers, and midwives are particular targets of extortion. The study also found that the laws are discriminatorily enforced, and without exception, the persons arrested were poor.

Very few of the cases reported to the police lead to prosecution. The Directorate of Public

Prosecutions does not usually find enough evidence to prosecute the cases, effectively turning the arrests into persecution rather than prosecution.

Of the cases that do go to court, the study found more convictions than acquittals or dismissals at the national level. In Kampala, two of the six cases heard in court led to convictions. There were convictions in all three of the cases heard in Kitgum court.

Women and girls convicted of abortion related crimes generally tend to receive light sentences. Healthcare workers are rarely convicted, and third parties - usually older men who impregnated girls and force them to have abortions - tend to be convicted and receive higher sentences.

The study concluded that the overall national enforcement of abortion laws and specifically, in the two districts of Kitgum and Kampala is done to harass rather than to prosecute. Many stakeholders including magistrates, state attorneys, police officers and medical professionals, believe that the abortion laws are not necessary. These laws are not easy to enforce as there is usually little evidence. The study found significant human rights violations against women, girls and health workers in the process of enforcing these laws.

These findings show that Uganda's strict abortion laws do not work: they do not prevent women from accessing abortions and indeed, these punitive laws are harmful to women, girls, their families and communities. Uganda must decriminalise abortion. It needs a clear law that enables women and girls to access the full range of their sexual and reproductive rights, including the right to a safe, free and legal abortion. Such a law would transform societal attitudes towards abortion and increase the protection of human rights for women, girls and health workers.

1. INTRODUCTION AND OVERVIEW OF THE LEGAL FRAMEWORK

Allana¹ was sixteen and unemployed when she fell pregnant. She had attended school to Senior 2. A pregnancy would prevent her from continuing her studies. Because of her age and the uncertainty of her position, she sought an abortion. She went to her nearest clinic and received pills to terminate the pregnancy free of charge since she did not have the 5,000 Uganda shillings to pay for it. When Allana's stepmother saw her bleeding, she alerted the village members, including the Local Council Chairperson. All came to see her in that state. She was taken to hospital where she spent two nights. While in hospital she was interviewed by police officers. She reported to the police station three days later where she was held for one night. In violation of her due process rights, Allana was not informed of the reason for her arrest at any point, nor told that she was entitled to a lawyer. Because of lack of evidence, Allana's case was never taken to court. Nevertheless, she is punished daily through the judgemental attitudes of the people in her community and even members of her own family. She is made to feel ashamed of her actions.

In 2016 Human Rights Awareness and Promotion Forum (HRAPF) conducted a study investigating the trends of enforcement of Uganda's criminal abortion laws. The study looked at the impact of this enforcement on the human rights of healthcare providers, women and girls who are harassed, intimidated, arrested, convicted or imprisoned under the law. The study includes recommendations to improve Uganda's abortion law and to address stigmatizing attitudes of society. This brief condenses the full study. It includes the background, methodology, and the study's findings and recommendations.

Allana's story is one of many cases that HRAPF recorded as it investigated how Uganda's restrictive abortion laws violate

human rights and result in physical and emotional harm to women, girls and health workers.

Abortion is criminalised in Uganda. However, the law provides for limited circumstances where it is not illegal,² and in these cases the state has a duty to ensure access to safe abortion services.³ Despite the exceptions, access to legal abortions in Uganda is almost non-existent; the law is unclear and there is no government guidance on the provision of legal abortion services. Health workers and hospital staff, police officers, lawyers, judges and women themselves are often unaware of the law.

Because there is little or no access to legal abortion services, many women who want to end a pregnancy do so under unsafe conditions, thereby contributing to Uganda's high rates of maternal mortality and morbidity. More than 300,000 abortions take place in Uganda every year.⁴ For every 100,000 babies born alive, 438 women die during or after pregnancy.⁵ Unsafe abortion is responsible for approximately a quarter of these maternal deaths.⁶ Women will self-induce an abortion or use unqualified providers who often operate without the necessary medical equipment and in

1 Not her real name.

2 The exceptions are in Article 22 of the Constitution and section 224 of the Penal Code Act, which decriminalises the acts of surgeons who conduct an abortion to save the life of the woman.

3 C Ngwena *Using human rights to realise access to safe, legal abortion in Uganda: The State's obligation to implement national abortion law* CEHURD Discussion Series No. 1 January 2014, 5.

4 Prada, E et al 'Incidence of induced abortion in Uganda, 2013: New estimates since 2003' *PLOS One* (2016) 11(11), 9.

5 Uganda Ministry of Health *Roadmap for accelerating the reduction of maternal and neonatal mortality and morbidity in Uganda 2007-2015* (2007) 17.

6 As above.

unhygienic conditions. Maternal deaths from unsafe abortions violate the state's duty to respect, protect, and fulfil the rights to health and life as well as various other rights guaranteed in Uganda's Constitution and international human rights instruments the government has ratified.⁷

In June 2015, the Ministry of Health undertook to clarify Uganda's ambiguous abortion law and developed *Reducing maternal morbidity and mortality from unsafe abortion: Standards and Guidelines*.⁸ For the first time, Uganda had clear regulations guiding the provision of safe termination of pregnancy and post-abortion care.⁹

In an unexpected move, in December 2015, the government recalled the guidelines. Questions on legal access to abortion remain unanswered and women continue having unsafe and dangerous abortions.¹⁰

Despite being a common practice, because

abortion is criminalised, it is considered a social taboo in Uganda. Women with unwanted pregnancies find themselves isolated. Abortion is not publicly discussed and it is difficult for women and girls to obtain accurate information about services and alternatives. It also means that when women resort to dangerous methods for terminating a pregnancy, they will often bear the unsafe medical consequences without reaching out for urgent medical care.

Given that abortions take place on a daily basis in Uganda, it is clear that criminalising abortion does not prevent women from seeking and undergoing the procedure.

The current law does not work. Abortion laws enforced by the criminal justice system in Uganda unfairly impact women, health workers and third parties (men responsible for the pregnancies and supporters of the woman having an abortion). Even though abortion cases are rarely prosecuted, the law's existence and the absence of clear guidelines enables opportunistic family and community members to extort and blackmail women and health workers. The police often cooperate either by abandoning the case or by releasing an arrested person in exchange for extorted money.

7 Human Rights Awareness and Promotion Forum *The enforcement of criminal abortion laws in Uganda and its impact on women and health workers* (2016) 17-20. Uganda is a signatory to various international and regional human rights instruments. Uganda acceded to the UN Covenant on Civil and Political Rights, 1966 on 21 January 1987 and ratified the African Charter on Human and Peoples' Rights, 1981 on 10 May 1986. Article 287 of the Constitution of Uganda 1995, read together with objectives XIV and XXXVIII (i)(b) of the National Objectives and Directive Principles of State Policy and Articles 2, 8A and 45 recognise the treaties that Uganda entered into before the coming into force of the Constitution. Uganda's Constitution also protects various human rights including the right to life, dignity and equality, chapter four of the Constitution of the Republic of Uganda, 1995.

8 Ministry of Health *Reducing Maternal Morbidity and Mortality From Unsafe Abortion: Standards and Guidelines*, 2015.

9 This includes in cases of rape, defilement, incest and other forms sexual and gender based violence. The guidelines also addressed critical issues such as prevention of unsafe abortion through family planning and contraceptive service delivery.

10 Interview with Joy Asasira, coordinator of the Coalition to Stop Maternal Mortality as a result of Unsafe Abortion (CSMMUA), 21 September 2016.

2. METHODOLOGY

This study tracked the experiences of women and health providers who interface with the criminal justice system for abortion-related crimes, and the rates of arrests, prosecutions, convictions and incarcerations for abortion related crimes.

It reviewed national data and then specifically focused on the districts of Kampala and Kitgum covering the time period of 2011 to 2015. These two districts were selected to showcase different experiences in urban and rural settings with contrasting income levels. The project reviewed records from six select police stations serving Kampala, and six in Kitgum. It also reviewed records from magistrates' courts serving Kampala and Kitgum.

The team interviewed women, girls and health workers who had been through the criminal justice system, which includes contact with the police, courts or prisons.¹¹ In Kampala and Kitgum researchers interviewed key stakeholders from the health, legal, judicial and police sectors, as well as advocates and members of civil society.¹² Interviewees described their own stories, addressing their own lived experiences, and how these experiences affected themselves, their families and communities.¹³

11 The study was originally designed to interview women and girls in the two study districts. However, because of community stigma it was difficult to engage women to discuss their experiences. Instead, women who had contact with the criminal justice system for abortion-related crimes from the districts of Arua, Iganga, Jinja, Luwero and Mityana were interviewed.

12 This includes midwives and other health workers who were arrested for performing abortions; police officers involved with arrests for abortion-related crimes; state attorneys; prosecutors; private legal practitioners (advocates); magistrates, prison officials and members of civil society organisations. Informants from key stakeholder institutions, including the Directorate of Public Prosecutions; the Uganda Prisons Service's Policy and Planning Division and the Coalition to Stop Maternal Mortality Due to Unsafe Abortions (CSMMUA) at the Center for Health, Human Rights and Development (CEHURD), were selected to give their views.

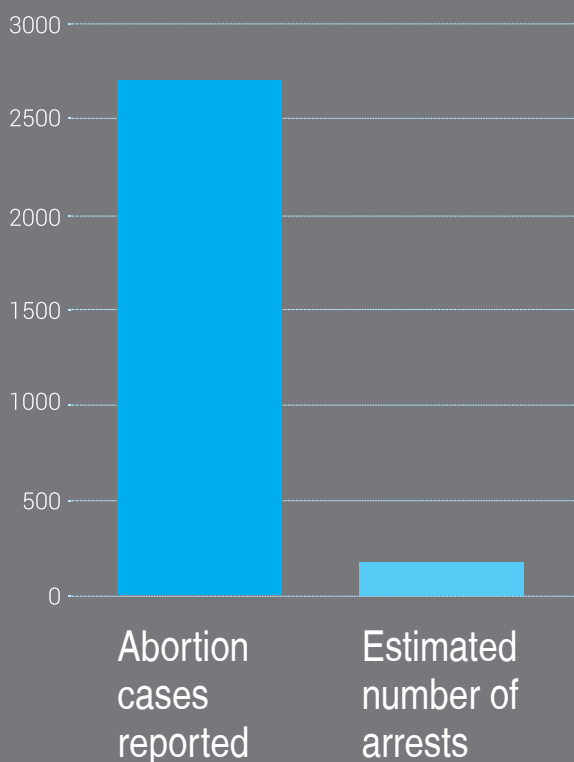
13 Allana's story in the introduction recounts the lived experience of a woman who has been in contact with the criminal justice system because of the criminal abortion law.

3. FINDINGS

3.1 Trends in arrests

The study found that nationally and at the district level, abortion laws are being enforced.¹⁴ The number of arrests are very low compared to the estimated number of abortions carried out in Uganda every year, as illustrated in the chart below.¹⁵

Chart 1:
Numbers of abortion cases reported and estimated number of arrests nationally, 2011 – 2015¹⁶



¹⁴ See HRAPF, n 4 above at 29.

¹⁵ As above.

¹⁶ As above at 28.

While there are high rates of illegal abortions in Uganda, few of these cases come to the attention of the police. The study found that in some cases, communities feel that abortion laws must be enforced at all costs and work to ensure that their neighbours are reported to the police. In other cases, communities resist enforcement and try to protect women, health workers and even third parties from arrest.

Nationally, from 2011 to 2015 there were at least 182 abortion-related arrests.¹⁷ At least 20 people were arrested in Kampala during this timeframe.¹⁸ In Kitgum, there were a total of 18 abortion-related arrests.¹⁹

¹⁷ As above at 23-24.

¹⁸ As above 24-26. Because police records from different stations, covering different periods were inconsistent and often cryptic, the research team could not always know whether a particular case recorded in a police crime record book involved an actual arrest. The research team only counted a case as an 'arrest' if the information provided was very clearly laid out. There would likely have been more arrests than what was counted, therefore a minimum number of arrests are indicated.

¹⁹ As above 26-27.

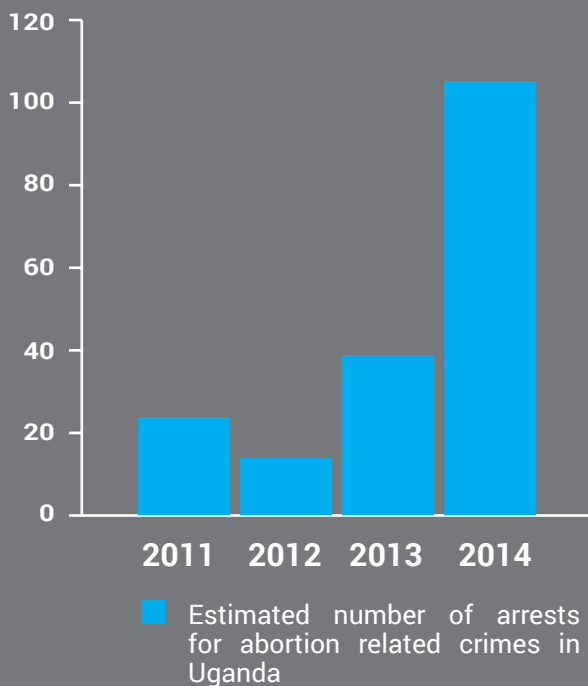
Table 1:

National data on abortion cases investigated by the police ²⁰

Year	Cases reported	Cases investigated	Cases put under inquiry	Cases submitted to the DPP
2011	-	54	36	24
2012	-	48	35	14
2013	1003	425	174	39
2014	1689	786	702	105
2015	Not available			
Total	2692	1313	947	182

Chart 2:

Estimated number of abortion related arrests in Uganda per year ²¹

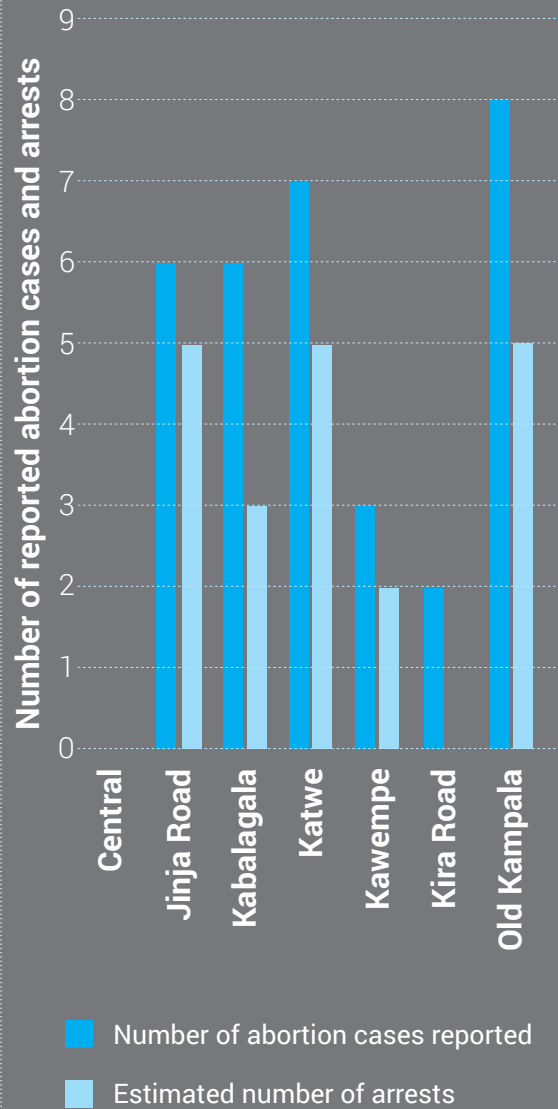


²⁰ As above at 23 (with addition of number of cases submitted to the DPP). In determining national numbers from the Annual Crime Reports, only cases submitted to the Directorate of Public Prosecutions were counted to have had arrests.

²¹ As above at 24.

Chart 3:

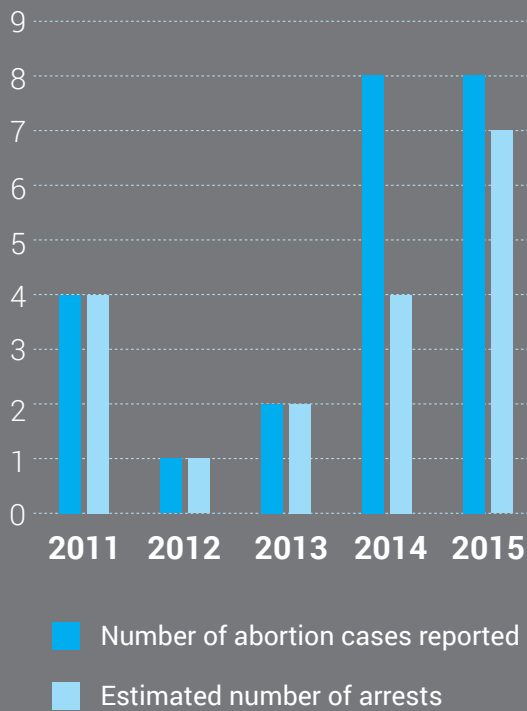
Number of abortion cases reported and number of subsequent arrests at the selected Kampala Police Stations 2011 - 2015 ²²



²² As above at 26.

Chart 4:

Total number of abortion cases reported and abortion-related arrests per year in Kitgum, 2011-2015²³



Data from Kampala and Kitgum suggest there was not much difference in the number of people arrested in each of these districts during the five-year period. National data, on the other hand, indicates a steady increase in the number of arrests over the course of the study period. This is due in part to improvements in record-keeping by the Uganda Police Force.²⁴ The annual rate of abortion-related arrests did not necessarily increase, but the capacity of the police to record arrests was greatly improved.²⁵

²³ As above at 27.

²⁴ Interview with unnamed senior police officer in charge of records, 4 November 2016.

²⁵ This explanation was given by a senior police officer in charge of records, 4 November 2016.

The study revealed a much higher rate of reporting and arrests in Kitgum compared with Kampala. This is an unusual finding given Kampala's larger population and suggests that urbanisation influences the measure of secrecy with which an abortion can be carried out. The study makes the finding that individuals living in small, close-knit communities are more likely to be outed to the public.

The study found that many arrests are initiated by family members and police officers who want to extort money from women, girls and healthcare providers. Health workers are particular targets of such extortion. In many cases a family member of a woman or girl who has had an abortion will find out the identity of the health worker who has provided medical assistance. The family member then approaches the police. Together they agree to blackmail the health worker into giving them money in exchange for avoiding arrest, or to be released from police custody, or to keep the police from sending the case to the state attorney's office. Many health workers, out of fear of being associated with abortion and the effect it would have on their professional reputation, seeing no other option, pay the bribe. For this reason, the study found that in both districts health workers are rarely arrested. This can be attributed to several reasons: high fees prevent most women from using qualified health workers and health workers avoid arrest by paying off extortion bribes.

Three categories of arrestees were identified: women or girls who had undergone abortions; health workers who had performed abortions and third parties (usually the men responsible for the pregnancies) who were involved in procuring an abortion. In Kampala, more women were arrested while in Kitgum, more third parties were arrested. One explanation for this higher rate of third party arrests is the higher defilement rates in Kitgum. Kitgum was a war-torn district for many years and the high levels of defilement are a legacy of the war.

The study also considered the socio-economic status of the people arrested under Uganda's abortion laws and found that almost without exception, the persons arrested were poor and/or living on or near poverty levels. This finding shows that beyond the discrimination which women generally suffer due to the criminalisation of abortion, the enforcement of these laws in Uganda also breach the right to equality and non-discrimination based on socio-economic status.

3.2 Trends in prosecution

Few cases reported in Kampala and Kitgum reach the Directorate of Public Prosecutions (DPP),²⁶ and of these even fewer go to the courts.²⁷ In Kampala, 20 cases were referred to the DPP for sanctioning of which six made it to court.²⁸ In Kitgum, only three of the 18 cases referred to the DPP were eventually heard in courts.²⁹

HRAPF's research identified a trend of pregnant under-aged girls, defiled by older men, who were then pressured into abortions. In these cases, the prosecution would place the focus on the crime committed against the girl and issue charges of defilement rather than abortion; it is generally easier to gather evidence to prove that defilement has taken place. In other cases, if a man agreed to marry the girl or to pay her medical bills, the girl's family would drop the charges. If the girl herself has little or no say in these negotiations, this then violates her right to bodily autonomy and self-determination.

26 The Directorate of Public Prosecutions (DPP) is the state institution which is responsible for bringing cases against persons who had been accused of committing a crime. Resident State Attorneys are part of the DPP and must look at the evidence available against a person who has been charged with a crime by the police in order to decide whether it would be worth the resources to take the case to court. This process is called 'sanctioning'.

27 See HRAPF, n 4 above at 38.

28 As above at 40.

29 As above at 41.

Some state prosecutors allowed abortion cases to proceed to court, despite the low probability of successful prosecution, because of pressure from communities once it was clear an abortion had taken place.

At a national level, more third parties, which can include health workers, are prosecuted than women. In the two districts, however, most of the people charged are the women, followed by third parties. There are no cases of a health worker reaching the court in either district, which may be the result of cases being dropped where health workers agree to pay bribes.

3.3 Trends in convictions, acquittals and dismissals

The study found that when considering national data there are more convictions than acquittals or dismissal for cases that go before the courts.³⁰ In Kampala, two of the six cases heard in court lead to convictions while there were convictions in all three of the cases in Kitgum.³¹

The report also found when sentences were issued where a woman or girl had been convicted, they were generally light, including imprisonment for short periods and fines. Magistrates reported that the light sentences were motivated by sympathy for the situation of the woman or girl involved. It also indicated a push-back from the judiciary against the criminalisation of women and girls for abortion-related crimes in situations where the evidence available did justify a conviction under the existing criminal provisions. Third parties involved in the procurement of abortions, however, are treated more harshly and do not elicit the same level of sympathy from magistrates. This may be because men, especially older men, pressure or mislead the woman or girl involved.

30 As above at 44.

31 As above at 45.

3.4 Human rights violations suffered because of abortion laws

While abortion-related crimes are rarely successfully prosecuted, the existence and enforcement of these laws lead to significant violation of the human rights of women, girls and health workers.

- **Rights of women and girls**

Criminal abortion laws that force women to undergo unsafe and secret abortions, violate their rights to life and health. The rights of women and girls to be informed, when they are arrested, of the charges against them and their right to legal representation is violated, which amounts to an infringement of their right to liberty and security of person as well as their basic civil and political rights. Some communities and police officers will enforce abortion laws rather than provide medical treatment to women and girls that have suffered complications or need emergency care following an unsafe abortion. This violates their right to be free from cruel, inhuman and degrading treatment and punishment.

The study found that while abortion laws discriminate against women in general, women of lower socio-economic status, as well as girls under the age of 18, are particularly prone to suffer the effects of its enforcement.

Due to the criminalisation of abortion, women and girls feel they cannot approach professional healthcare providers for advice on the legal position and medical options concerning abortions, which violates their right to information. The study finds that the arrest of a woman or girl often leads to the publication of the facts of the abortion, and personal details surrounding the abortion, to the community, which infringes upon the rights to privacy and confidentiality. Due to the very existence of these laws, many women do not even attempt to seek safe abortion services and end up going for unsafe abortions, which violates their rights to life and health.

- **Rights of health workers**

The study found that a broad range of rights of health workers are violated in the process of enforcing abortion laws. Health workers are usually arrested under the abortion laws for the mere purpose of blackmailing them and extorting bribes, which violates their right to liberty and security of person. The experience of an arrest is humiliating and violates health workers' right to dignity, especially when they are arrested from their places of work. They also suffer severe stigma and they tend to feel the same pressure as the women involved to move elsewhere in cases where the community has been made aware of the arrest. Cases were also reported of health workers being beaten by the police during and after arrest, which violates their right to be free from cruel, inhuman and degrading treatment.

4. CONCLUSION

Criminal abortion laws in Uganda are actively enforced, and complaints and arrests are frequent. Still, few of these cases make it to court and if they do, even fewer end with convictions. There are no clear sentencing patterns for people convicted under abortion laws.

The existence and enforcement of criminal abortion law means that women with unwanted pregnancies face the dilemma of having an unsafe abortion while knowing that the law and society is not on their side. Along with the emotional and physical trauma of an unwanted pregnancy and an unsafe abortion, a woman or girl faces the added fear of being found out by the police. The existence and enforcement of criminal abortion laws violate the dignity and rights of women and girls to life, health, privacy, information as well as the right to be free from torture and cruel, inhuman and degrading treatment or punishment. Health workers also suffer violations of their dignity and rights to privacy, freedom from degrading treatment or punishment as well as an interference with their right to practise their occupation of choice.

A major law change as well as in the attitude of society towards abortion is necessary; not only to protect the health and rights of women, but also to safeguard the country's strained health system. This report provides a basis for legislative advocacy as it equips key stakeholders with the necessary data and tools to advocate for law reform for safe and legal abortion and sheds light on the magnitude and experience of women and health providers going through the criminal justice system.

5. RECOMMENDATIONS

To Parliament

- Repeal sections of the Penal Code Act that criminalise abortion.
- Pass legislation that makes abortion available to all who need it.

To the Uganda Law Reform Commission

- Recommend review of relevant sections of the Penal Code Act on abortion and ensure it is in accordance with Uganda's domestic, regional and international human rights obligations.
- Review whether the criminal law serves as a deterrent to the termination of pregnancies and review reputable studies that demonstrate a link between the legalisation of abortion and a reduction in the incidence of abortion.
- Fast-track the development of a bill to decriminalise and regulate abortion in Uganda that is in line with Uganda's domestic, regional and international human rights obligations.

To the Ministry of Health

- Immediately reinstate the *Standards and Guidelines on Reducing Maternal Mortality from Unsafe Abortions in Uganda*, publication of which has been stayed since 2015.

To the Uganda Police Force

- Immediately cease arresting health workers for abortion-related offences.
- Immediately cease arresting women or girls for abortion and ensure that emergency healthcare provision takes precedence over criminal law enforcement.

To the Judiciary

- Be responsive to any constitutional violations concerning suspects arrested on abortion-related charges.

To the DPP

- Refrain from sanctioning abortion charges where a prosecution cannot reasonably be sustained.
- Develop a specific prosecutorial policy for abortion charges against health workers. The policy should make plain the distinction between abortion crimes and acts of medical negligence.

To mainstream civil society organisations and legal aid service providers

- Lobby for the revision of restrictive Penal Code Act provisions on abortion and expand access to legal abortion that is in accordance with Uganda's domestic, regional and international human rights obligations.
- Lobby for the adoption of an Act which broadens and clarifies the grounds for legal abortion in Uganda.
- Ensure the availability of legal representation for women, girls and health workers arrested and charged with abortion crimes.
- Ensure the widespread accessibility of information on the legal regime governing abortion, especially for women in rural areas and women belonging to marginalised groups such as girls, low-income populations, sex workers and those living with HIV/AIDS.
- Ensure the availability and accessibility of government-sponsored abortion care, post-abortion care and emergency treatment.
- Engage the judiciary, police and government on the issue of the violation of rights of women, girls and health workers through the existence and use of abortion laws.

- Conduct awareness-raising and sensitisation of government officials and law enforcers on the issue of abortion.
- Engage in targeted work to address abortion-related stigma that drives women and girls to seek abortions under unsafe conditions.

To the President and cabinet

- Approach the incidence of unsafe abortion as a public health emergency rather than a criminal justice issue.

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