



ISSUE PAPER

UNSAFE ABORTION AND REFUGEES IN UGANDA

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PREFACE

Unsafe abortion is a social, legal and public health challenge in Uganda. Society strongly opposes abortion and those who practice or participate in it are severely stigmatised.¹ Abortion is also criminalised and only permissible in unclear and restricted circumstances.² As a result, abortion is mostly undertaken in secret and carried out by persons who are not qualified to perform such a procedure, often in conditions which fall short of the required standards of hygiene for clinical procedures.³ As a result, many women and girls die during or after undergoing unsafe abortions.⁴ Others suffer severe and in some cases permanent injuries as a result of undergoing such procedures.⁵

This issue paper discusses the challenge of unsafe abortion in Uganda in light of the restrictive legal and policy environment and the human rights implications for women and girls. The purpose of the paper is to take a critical look at the issue of unsafe abortion in the country, and to consider how the effects of this dangerous practice in a restrictive environment impact female refugees, who are particularly vulnerable.

¹ Human Rights Awareness and Promotion Forum (HRAPF) *The enforcement of criminal abortion laws in Uganda and its impact on the human rights of women, girls and health workers* (2016) 9, 29 & 43.

² As above at 2-4.

³ HRAPF (n 1 above) 1.

⁴ As above.

⁵ As above.

1. INTRODUCTION

From the ambiguities in the legal and policy frameworks that seek to restrict it, to the cultural and religious inclinations that moralise and stigmatise it, abortion in Uganda is a controversial practice that remains prevalent. Due to the restrictions and stigmatisation surrounding abortion, it is mostly carried out 'underground' in sub-standard and unhygienic conditions by persons who are not qualified to perform such intricate procedures.⁶

Complications arising from unsafe abortion practices are one of the leading contributors to global maternal mortality rates.⁷ The majority of these deaths occur in low-income countries, particularly those with restrictive abortion laws and low levels of access to contraception.⁸ In Uganda - a country which can be classified as low income, which has restrictive abortion laws and where contraceptives are not accessible to all - the estimated number of maternal deaths per year have increased from 294,000 in 2003 to 314,000 in 2013.⁹ These figures are particularly disturbing considering that out of the 314,000 women who undergo unsafe abortion, only 50% seek post-abortion care (PAC) to relieve their pain and suffering, while the fate of the other 50% remains unknown.¹⁰ Consequently, unsafe abortion contributes an estimated 26% to maternal mortality rates in the country.¹¹

Women with low socio-economic statuses, particularly in rural areas and adolescents of school-going ages are the most vulnerable to unintended pregnancies and unsafe abortions.¹² Refugee women and girls who live in Refugee Settlements are considered particularly vulnerable to unintended pregnancies and unsafe abortions.¹³

This paper considers the issue of unsafe abortion in Uganda, with a particular focus on the situation for the large refugee population who reside in refugee settlements or among the general population. The paper defines unsafe abortion; analyses the gaps in the legal and policy framework in respect of unsafe abortion; discusses the factors that predispose refugee women and girls to unsafe abortions; considers the effects and implications of unsafe abortions in general and on refugees in particular, and finally

⁶ HRAPF (n 1 above) 34; 48.

⁷ A Faundes 'Unsafe abortion the current global scenario: Best practice and research' 24:4 *Clinical Obstetrics and Gynaecology* (2010) 474.

⁸ As above.

⁹ M Mulumba et al 'Access to safe abortion in Uganda: leveraging opportunities through the harm reduction model' 138:2 *International Journal on Gynaecology and Obstetrics* (2017) 231.

¹⁰ As above at 232.

¹¹ Uganda Ministry of Health *Roadmap for accelerating the reduction of maternal and neonatal mortality and morbidity in Uganda 2007-2015* (2007) 17.

¹² IH Shah et al 'Access to safe abortion: progress and challenges since the 1994 International Conference on Population and Development (ICPD)' 90:6 *Contraception* (2014) S39.

¹³ R Nara, A Banura & AM Foster 'Exploring Congolese refugees' experiences with abortion care in Uganda: a multi-methods qualitative study' (2019) 27:1 *Sexual and Reproductive Health Matters* 262-263.

recommends the actions needed to make abortion safe in order to protect and save the lives of refugee women and girls.

2. DEFINITION OF UNSAFE ABORTION

An 'unsafe abortion' is the termination of a pregnancy by someone who does not have the skill to do so.¹⁴ Unsafe abortion can also mean the termination of pregnancy taking place 'in conditions which do not meet hospital or clinical standards of hygiene, facilities and without the availability of emergency care'.¹⁵

3. LEGISLATION AND POLICY FRAMEWORK REGULATING ABORTION IN UGANDA

Abortion is criminalised in Uganda and there are very few instances in which abortions can be legally permitted. Sections 141, 142 and 143 of the Penal Code Act respectively criminalise attempts to procure an abortion, procuring a miscarriage and the unlawful supply of drugs or other substances for procuring an abortion. These offences are punishable with prison sentences ranging from three to fourteen years.¹⁶ These provisions, along with their substantial punishments for transgression, have the effect of deterring health care providers from even providing post abortion care – which is lawful – out of fear that they would be found to fall foul of the laws prohibiting the procurement of an abortion. Any assistance to abortion invites arrest for health providers.¹⁷

Article 22(2) of the 1995 Constitution of Uganda provides that 'No person has the right to terminate the life of the unborn child except as may be prescribed by law'. Since 1995, no law has been adopted which prescribes the circumstances under which the life of an unborn child may be terminated.¹⁸ A few policies have been adopted in attempts to bridge this gap. In 2006, the Ministry of Health adopted National Guidelines and Service Standards for Sexual and Reproductive Health and Rights. Under these guidelines, abortion is permissible for severely ill pregnant women whose lives could be in danger if a pregnancy was not terminated.¹⁹ In 2012, these guidelines were updated and make provision for circumstances under which safe abortion services are to be availed. These circumstances include life-threatening conditions for the pregnant woman, such as

¹⁴ Human Rights Awareness and Promotion Forum (HRAPF) *What the law says about abortion: a guide for sex workers and women living with HIV and AIDS* (2016) 2.

¹⁵ As above.

¹⁶ Secs 141-143 of the Penal Code Act.

¹⁷ Mulumba (n 9 above) 233.

¹⁸ HRAPF (n 1 above) 13.

¹⁹ As above at 15.

eclampsia or severe cardiac disease, or in cases where the pregnancy is due to rape, defilement or incest.²⁰

In 2015, the Ministry of Health developed 'Standards and Guidelines on Reducing Maternal Morbidity and Mortality from Unsafe Abortions in Uganda'. These Guidelines aim to ensure access to contraceptive services, so as to prevent unsafe abortion while also make provision for the safe termination of pregnancy and post-abortion care.²¹ The Guidelines go a step further than the 2012 National Guidelines and Service Standards and provide that abortions should be permissible in circumstances where the continued pregnancy places a risk on the woman's physical and mental health.²² The Guidelines incorporate the principle that high quality services for the termination of pregnancy should be available and accessible to all women and girls, regardless of their marital status or age.²³ These progressive guidelines were, however, stayed by the Ministry of Health in December 2015 in order to conduct further consultations with stakeholders, particularly religious leaders.²⁴

Uganda's laws do not entirely prohibit abortion, but they do restrict the circumstances under which it can be carried out.²⁵ The laws do not set out the circumstances under which abortions may be carried out; this is only dealt with in policies which do not have the force of law.²⁶ As a result, women and girls cannot confidently seek abortions, even if the policy exceptions apply to their individual circumstances; health workers are also reluctant to carry out abortions, even under circumstances where the policy exceptions apply.²⁷

4. CURRENT REALITY OF UNSAFE ABORTIONS AMONG REFUGEES IN UGANDA

Obstructive laws and policies tend to fail to prevent women and girls from carrying out abortions, while at the same time leading to the propagation of unsafe abortions in many developing countries, including Uganda.²⁸ There are various interlinked factors predisposing women and girls to unsafe abortion in Uganda. These factors include inadequate health care resources and infrastructure, socio-cultural practices, stigma, and women's lack of empowerment. Refugee women and girls are particularly vulnerable to both unwanted pregnancy and unsafe abortion.²⁹

²⁰ Uganda Ministry of Health 'National Policy Guidelines and Service Standards for Sexual and Reproductive Rights' (2012) 47.

²¹ HRAPF (n 1 above) 17.

²² Uganda Ministry of Health *Standards and Guidelines on Reducing Maternal Morbidity and Mortality from Unsafe Abortion in Uganda* (2015) 3-4, 10 & 15.

²³ As above at Part II, sec 3.

²⁴ HRAPF (n 1 above) 17.

²⁵ HRAPF (n 1 above) 20.

²⁶ As above.

²⁷ HRAPF (n 1 above) 50-52.

²⁸ C Hord & M Wolf 'Breaking the cycle of unsafe abortion in Africa' (2004:33) *African Journal of Reproductive Health* 31.

²⁹ Nara (n 13 above) 262.

Uganda hosts approximately 1.5 million refugees who have fled from mainly neighbouring Burundi, Democratic Republic of the Congo and South Sudan.³⁰ In 2018, there were 985,512 South Sudanese, 271,967 Congolese and 36,677 Burundian refugees in the country with a continuing influx.³¹ The majority of these refugees are living in refugee settlements, while others have integrated with the local population in towns and cities.³²

Refugees are vulnerable to sexual violence since they find themselves outside of protective family and social support structures and often live in communal, multi-household dwellings.³³ The socio-cultural practices, poverty and insecurity suffered by refugees within refugee settlements also contribute to their vulnerability to sexual violence.³⁴ This exposure to sexual violence, coupled with limited access to contraceptives on an ongoing basis, render refugee women and girls vulnerable to unwanted pregnancy.³⁵

Refugee women who reside in countries where abortion is legally restricted, as is the case in Uganda, face barriers in accessing abortion care.³⁶ Even if refugee women qualify to obtain a legal abortion in terms of Uganda's restrictive abortion regime, it may be particularly challenging for them to access a local health service provider and obtain the needed abortion services.³⁷ Government health centres do not routinely provide abortion services and thus this service has to be sought from a limited number of private clinics.³⁸ Other factors related to health facilities which limit access to safe abortion services are the health workers themselves. In many cases health personnel are found to be judgemental and rude towards women especially adolescents that may require assistance.³⁹ This is made worse by the fact that because abortion is stigmatised, health workers may be found to lack confidentiality that in most cases cause women to seek unsafe methods where their privacy is guaranteed.⁴⁰

Inadequate healthcare resources and infrastructure also perpetuate the practice of unsafe abortion in the country.⁴¹ Uganda does not measure up well in terms of 'meeting

³⁰ UNHCR *Uganda Country Refugee Response Plan: The integrated response plan for refugees from South Sudan, Burundi and the Democratic Republic of the Congo January 2019 - December 2020* (2019) 6.

³¹ As above at 6.

³² Nara (n 13 above) 265.

³³ UNHCR *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response* (2003) 22.

³⁴ H Liebling, H Barrett & L Artz 'South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda' (2020) 17 *International Journal of Environmental Research and Public Health* 5.

³⁵ Nara (n 13 above) 262.

³⁶ Nara (n 13 above) 263.

³⁷ As above.

³⁸ Nara (n 13 above) 266.

³⁹ RJ Cook 'Abortion, human rights and the International Conference on Population and Development' in IK Warriner & IH Shah *Preventing unsafe abortion and its consequences: Priorities for research and action* (2006) 29.

⁴⁰ As above.

⁴¹ S Singh, E Prada, F Mirembe & C Kiggundu 'The incidence of induced abortion in Uganda' (2005:188) *International Family Planning Perspectives* 188.

the contraception needs of both married and unmarried women'.⁴² As a result, this forces the incidence of unintended pregnancies to unprecedented levels. In 2003 the rate of unintended pregnancies was reported to be 141 per 1000 women aged between 15 and 49.⁴³ Shortages in contraceptives, coupled with restrictive abortion laws and negative socio-cultural beliefs on contraceptives force many women to seek unsafe abortion to meet their fertility goals.⁴⁴

Since premarital sex is condemned by the majority of social structures in refugee communities, and since any form of abortion is criminalised by the law in Uganda, refugee women and girls are forced to terminate unwanted pregnancies through unsafe methods.⁴⁵

5. EFFECT OF UNSAFE ABORTIONS

Unsafe abortion can have severe health consequences for women and girls. Common complications include haemorrhage, trauma and sepsis.⁴⁶ It is also documented that some women will experience long-term health problems including chronic pain, pelvic inflammatory disease and infertility after unsafe abortions.⁴⁷

In one of the studies carried out in 2003, it was found that women totalling 85,000 in Uganda were treated for complications related to unsafe abortions.⁴⁸ Even in the absence of precise data on the burden of induced abortion in Uganda, unsafe abortion has been found to be one of the leading contributors to maternal mortality and morbidity. As previously noted, it is estimated that unsafe abortions contribute 26% to the maternal mortality rate in the country.⁴⁹

From the above evidence, besides the social cost that usually results in death and permanent health complications to many women, unsafe abortion is also estimated to bear an annual financial cost of USD14 million on Uganda.⁵⁰ Besides bearing direct costs

⁴² Uganda Bureau of Statistics, ICF International and Measure DHS (2012) 'Uganda Demographic and Health Survey 2011' 89.

⁴³ S Singh, E Prada, F Mirembe & C Kiggundu 'The incidence of induced abortion in Uganda' (2005:188) *International Family Planning Perspectives* 188.

⁴⁴ A Sundaram, M Vlassoff, F Mugisha, A Bankole, S Singh, L Amanyana & T Onda 'Documenting the individual-and household-level cost of unsafe abortion in Uganda' 39:4 *International perspectives on sexual and reproductive health* (2013) 174.

⁴⁵ Al Mudigo 'Determinants of unsafe induced abortion in developing countries' IK Warriner & IH Shah *Preventing unsafe abortion and its consequences: Priorities for research and action* (2006) 59; Nara (n 13 above) 263.

⁴⁶ I Shah & E Åhman 'Unsafe abortion: global and regional incidence, trends, consequences, and challenges' (2009) 31:12 *Journal of Obstetrics and Gynaecology Canada* 1149-1158.

⁴⁷ As above at 7.

⁴⁸ Singh (n 43 above) 183.

⁴⁹ See Uganda Ministry of Health, n 10 above.

⁵⁰ Vlassoff, M; Mugisha, F; Sundaram, A; Bankole, A; Singh, S; Amanyana, L; Kiggundu, C and Mirembe, F 'The health system cost of post-abortion care in Uganda' (2014:56) 29:1 *Health Policy and Planning* 56-66.

to medical practitioners that perform the operations, women seeking unsafe abortion also buy their own drugs.⁵¹ A study conducted almost a decade ago estimates that an average woman in Uganda pays USD62 per abortion in direct costs, which is a considerable amount of money for vulnerable women who often rely on aid for basic nutrition.⁵²

6. ACTION FOR MAKING ABORTION SAFE

It is clear that the discourse about safe abortion in Uganda indicates a serious need for advocacy pressure to be enhanced. Those that have studied the situation argue that the country requires high quality abortion care to be more available and accessible, especially at the primary care level and to the full extent permitted by the law.⁵³ There is also need to remove unnecessary policy and legal restrictions on abortion.⁵⁴

The country needs to be transparent and open to better inform healthcare professionals, women and communities, including refugee communities, about the impact of unsafe abortion and the circumstances under which abortion can be legally performed and obtained.⁵⁵ There is need to move towards decriminalising and liberalising abortion, as the global trend suggests, especially through the broadening of grounds for eligibility.⁵⁶ The right to abortion should be made a human rights issue to protect women from seeking unsafe ways of terminating unwanted pregnancies at all levels in Uganda, especially for the most vulnerable populations.

7. RECOMMENDATIONS

Policy level actions

- Support pregnancy prevention programmes among adolescents in refugee settlements.
- Educate girls and boys in refugee settlements about sexuality.
- Build and strengthen community support for preventing early pregnancy in refugee settlements.

⁵¹ As above.

⁵² JB Babigumira, A Stergachis, DL Veenstra, JS Gardner, J Ngonzi, P Mukasa-Kivunike & LP Garrison 'Estimating the costs of induced abortion in Uganda: a model-based analysis' (2011) 11:1 *BMC Public Health* 6.

⁵³ C Hord & M Wolf 'Breaking the cycle of unsafe abortion in Africa' (2004) *African Journal of Reproductive Health* 29, 32, 34.

⁵⁴ As above.

⁵⁵ As above.

⁵⁶ R Boland & L Katzive 'Developments in laws on induced abortion: 1998–2007' (2008) 34:3 *International Family Planning Perspectives* 110.

- Enforce prohibitions of sexual violence within refugee settlements.
- Legalise abortion in Uganda by making the exceptions in terms of which abortions are permitted clear in the law.

Individual, family & community-level actions

- Educate adolescents within refugee settlements about contraceptive use.
- Build community support for contraceptive provision to adolescents in refugee settlements.
- Enable adolescents to obtain contraceptive services within refugee settlements.
- Empower girls in refugee settlements to protect themselves against sexual violence.
- Influence social norms within refugee settlements that condone sexual violence.
- Engage men and boys in refugee settlements to critically assess gender norms.
- Advocate against socio-cultural practices that prohibit access to sexual reproductive health services for men and women in refugee settlements.

8. CONCLUSION

The area of safe abortion is greatly influenced by cultural and social norms, socio-economic factors and existing laws and regulations. The social structural climate may affect both access to and quality of sexual and reproductive health care and the intervention thus either provoking or perpetuating discrimination or protecting and empowering communities to access such rights. In Uganda, restrictive laws regarding abortion need to be bridged. In their current form, exceptions to the prohibition of abortion are only expressed in policies, which do not have the force of law. The restrictive legal environment is a major cause of unsafe abortions in the country, including in refugee settlements where women and girls are particularly vulnerable to unwanted pregnancy.

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