

# UNDERSTANDING THE LAW & POLICY ON SAFE ABORTION IN UGANDA

## 5 Quick Steps

Developed by:  
**The Legal Support  
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## Acknowledgement

This document was developed to guide health service providers by the lawyers of the Legal Support Network (LSN). The Network brings together lawyers that provide *pro bono* legal services to health service providers caught up in the criminal justice system for providing abortion-related services.

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## FIVE QUICK STEPS IN UNDERSTANDING THE LAW & POLICY ON SAFE ABORTION IN UGANDA

**I**n order to appreciate the provisions of the law on abortion or termination of a pregnancy in Uganda one has to consider their application in practice and the policy framework that supports their implementation. The laws are found in a number of legal instruments which have to be interpreted collectively.

The laws and policies specify “the rights and duties”, “dos” and “don’ts”; and the “where, how and by who” an action can be undertaken or not.



## WHAT DOES THE LAW ALLOW?

**The Constitution**, which is the Supreme law of Uganda, provides for the termination of a pregnancy in exceptional circumstances as authorized by law [Article 22(2) Constitution of Uganda].

The **Penal Code Act** of Uganda provides that where a person who in good faith and with reasonable care and skill performs a surgical operation upon an unborn child for the purpose of saving the mother's life is legally protected [Section 224]. This means the law permits medically executed terminations of pregnancies that are intended to save a mother's life.

**The 2006 National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights** provides that Ugandans are entitled to "comprehensive abortion care services (CAC)." This is defined as "... health care provided to a woman or a couple seeking advice and services either for terminating a pregnancy or managing complications arising from an abortion." In 2012, new guidelines were made but Ministry of Health stayed them.

The 2006 Policy Guidelines on CAC indicate that such service should be made available to persons with:

- 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 and anencephaly;
- Cervical cancer;
- HIV-positive women requesting for termination in accordance with bullet one above; and
- Victims of rape, incest and defilement whose pregnancy is affecting the health of the mother.

The 2006 Policy guidelines further outline the level of facility in which termination of a pregnancy may be performed and what cadre of health workers can perform such procedures.

- A medically induced abortion<sup>1</sup> can be performed in a general or referral hospital, or a health center IV (HC IV) by a midwife, nurse, clinical officer, medical officer, or gynecologist/surgeon;

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1 *Medically conducted* refers to an abortion obtained with the use of drugs, such as misoprostol.

- A surgically conducted abortion<sup>2</sup> can be performed only in a general or referral hospital and must be done by a gynecologist/surgeon.

The 2006 Policy Guidelines also allow for and define Post Abortion Care (PAC) as “health care given to a woman who has had an abortion due to any cause. The care, to be provided on a 24-hour basis, is to be an integral part of sexual and reproductive health services. The services are to be provided in all health facilities adequately equipped to handle such cases.”<sup>3</sup>

Services under PAC include:

- emergency care to respond to abortion complications including resuscitation, evacuation of the uterus for incomplete abortion and other surgical interventions;
- appropriate referrals;
- Post abortion counseling including self care, post treatment expectations, post-abortion family planning and services. This will include information on emergency contraception; and

<sup>2</sup> *Surgically induced* indicates an abortion performed through the use of an MVA or D&C procedure, or any type of surgical intervention.

<sup>3</sup> Evacuation for incomplete abortion can be done in a Health Centre II-III (HC II-III) facility, HC IV facility, general hospital, or referral hospital; and midwives, nurses, clinical officers, medical officers, and gynecologists may all offer evacuation for incomplete abortion and post-abortion family planning services.

- Linking of PAC clients to other existing sexual and reproductive health services (SRHS) including STI/HIV/AIDS treatment and counseling, infertility and screening for gynecological cancer, among others.

Target and priority groups for PAC are all women and girls who have had abortions and are faced with abortion complications, including their partners and caretakers who may need counselling to provide the necessary support to ensure quick recovery. The following are the priority groups for PAC services:

- adolescents;
- women with repeated abortions who need contraception;
- women with repeated abortions/ termination of pregnancies who desire to have babies; and
- Women with other medical conditions.



## WHAT ARE THE LEGAL RESTRICTIONS?

The Penal Code specifies instances in which abortion is not permitted. These include:

- Unlawfully administering to any woman any substance or using any force or any means on her for the purpose of terminating a pregnancy [Section 141]. This means even health workers are prohibited from taking any of the above mentioned actions as they will be violating the law;
- A woman unlawfully administering to herself any substance or using any force or any means on herself or even permitting such a thing to be used on her with the purpose of terminating a pregnancy [Section 142]. This means no woman is allowed to terminate or even allow another person to terminate her pregnancy unlawfully.
- A person supplying anything well knowing that it will be used unlawfully to terminate a pregnancy does so in violation of the law and policy guidelines. This means not even the pharmacist is allowed to provide anything to a woman or to any person knowingly that it is to be used for termination of a pregnancy.

The two key features that the law looks at to find one guilty are: the intention and purpose which must be for the termination of a pregnancy and the circumstances are unlawful.

- Any person through any act or omission who prevents a child, who about to be delivered a child from being born alive [Section 212] commits an offence. Here the law does not look at intention to terminate. It goes an extra step to protect a child that is about to be born.
- Any person through any act or omission prevents a child who is about to be delivered, from being delivered alive.



## WHAT ARE THE RIGHTS OF THE PATIENT?

The patient is entitled to CAC and PAC and other rights that are protected under law. The purpose of the policies is to provide guidance to practitioners on how to respect the law and provide quality sexual and reproductive health services to all categories of women, by promoting access to health care, equity and patient autonomy.

The rights of a patient are detailed in the Ministry of Health Client Charter and other instruments and these include the following:

### **Right to Medical Care**

Every person in need of medical care is entitled to impartial access to available services at any given time in the government health care system. For patient who may end up in a health care facility set up by other actors in the health sector the patient still has a right to receive medical care in case of an emergency to save life or to be referred and assisted to get to a government facility in the shortest time possible to attend to his or her condition in order to save life as the first call of duty.

### **Right to Proper Medical Care**

A patient is entitled to receive appropriate health care with regard to the level of professionalism and quality assurance;

### **Right of Access to emergency medical care**

Right of access to emergency medical care in any health facility without having to pay any fees prior to the provision of medical care and where the facility is unable to provide the service, ensure an effective referral system is in place so that the person is able to receive appropriate medical care.

### **Right to Respect and human dignity**

Every patient is entitled to be treated with respect and his/her dignity upheld at all times.

### **Prohibition of Discrimination**

Every patient has a right to be treated equally and not to be subjected to any form of discrimination based on any grounds that are outlawed including on the basis of the disease, religion, political, disability, race, sex, age, social status, ethnicity, nationality, country of birth or any other such grounds. Positive discrimination may occur where the circumstances justify this in order to save life.

**Identity of Healthcare Provider:** Every patient has the right to know the identity and professional position of the person providing health care and this information is normally displayed in conspicuous places in the health facility and on the badges that are worn by health care providers.

**Right to Informed Consent:** Every patient has the right to make decisions on their own health after a full explanation of their condition or state of health, treatment or procedure to be undertaken.

**Right of Refusal of Treatment:** A patient may refuse the treatment prescribed verbally or in writing after receipt of all relevant information and prerequisite counselling to make a decision provided that such refusal does not endanger the health of others.

**Confidentiality:** Every patient has a right to confidentiality on their health status or condition. Information concerning one's health may only be disclosed with informed consent, except when required by law or on court order;

**Privacy:** Every patient has the right to privacy in the course of consultation and treatment.

**Access to One's Medical Information:** Every patient is entitled to medical information concerning his or her health status, including a copy of his/her medical records.



## WHAT ARE THE RESPONSIBILITIES OF THE PATIENT?

As the patients claim and enjoy the rights highlighted above, there are corresponding responsibilities:

**Provision of information:** Every patient has the responsibility to provide relevant complete and accurate information for diagnosis, treatment, rehabilitation or counseling purposes;

**Compliance with instructions:** The patient has the responsibility to comply with the prescribed treatment or rehabilitation procedures meant to improve his/her health;

**Responsibility for own actions:** A patient who refuses to receive treatment or does not follow the instructions of the health worker takes responsibility for his/her actions. In case of children below 18 years and the elderly who may depend on the decisions of the caretaker, the caretaker takes full responsibility.

**Respect and consideration:** A patient has a responsibility to respect other patients and health workers by helping to prevent the spreading of disease, control noise, smoke and the number of visitors, and to refrain from using verbal abuse or physical violence against any health workers or other patients.



## WHAT ETHICAL CONSIDERATIONS MUST A HEALTH CARE GIVER HAVE?

Regard must be paid to the following provisions of the Code of Professional Ethics for Medical and Dental Practitioners:

**Respect for human rights:** All violations of rights of any nature are forbidden including neglect of duty and negligence while on duty and health service providers are mandated to report any violations to the Council.

**Respect for persons:** All patients should be respected in their individual right, without any discrimination or violent, inhuman, degrading or indecent treatment.

**Respect of privacy:** A patient's confidentiality and privacy must be respected. Information on a patient's health should be only be released to other parties with his/her consent; in case of a minor with the consent of the parent/guardian; in the case of a mentally disadvantaged or unconscious or deceased patient, with the consent of his/her authorized next of kin.

**Respect of person's integrity:** A patient is entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading treatment are prohibited.

**Access to healthcare services:** No patient will be denied emergency treatment or health care and all patients will be entitled to services of good quality.

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