

# ACCESS TO **SAFE AND LEGAL ABORTION** SERVICES IN UGANDA

CASE  
BRIEF

## CASE BEFORE THE EAST AFRICAN COURT OF JUSTICE

**WHO:** The Women's Probono Initiative  
*Versus*  
The Attorney General of Uganda  
*Reference No. 22 of 2022*

**WHERE:** The East African Court of Justice, Arusha

**WHAT:** The East African Court of Justice sitting in Arusha will hear Reference No. 22 of 2022, a case that challenges the government of Uganda's failure to reinstate the 2015 Standards and Guidelines for Reduction of Mortality and Morbidity due to Unsafe Abortion in Uganda.

## CONTEXT

There are legal restrictions on access to safe and legal abortion in Uganda. As a result, women and girls, resort to seeking unsafe abortions due to the restrictive laws. The Guttmacher Institute in February 2017 released a factsheet which showed that 1 in 10 pregnancies in Uganda ends in an abortion. The report elaborates that in 2013 almost 314,300 women carried out abortions, resulting into 14/100 of all pregnancies ending up in abortion - or a rate of 39 abortions for every 1,000 women in the age bracket of 15–49<sup>1</sup>. Unsafe abortion has important consequences for morbidity and mortality, accounting for an estimated 13% of maternal deaths in developing countries, and for 5 million women being treated for complications of induced abortion each year.<sup>2</sup> In Uganda unsafe abortions account for up to 8% of all maternal deaths.<sup>3</sup> Uganda is a signatory to regional and international human rights instruments such as the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) which guarantee the right to reproductive autonomy. These place an obligation on the Government of Uganda to enact and amend its laws in consonance with international standards which guarantee bodily autonomy and access to safe and legal abortion.

## FACTS OF THE CASE

On 7<sup>th</sup> December 2015, the Ministry of Health of Uganda withdrew the 2015 standards and guidelines (S&GS) on reducing maternal morbidity and mortality from unsafe abortion in Uganda which provided guidance on how one can access a safe and legal abortion in Uganda. The primary purpose of this document was to address unsafe abortion, that is, through primary and secondary prevention which includes reducing the number of unwanted pregnancies through health education and increasing access to safe, effective and appropriate family planning services. The guidelines also addressed provision of safe and legal abortion services and post abortion care.

These guidelines, previously approved by the Ministry of Health in August and printed, were expected to be launched at the 2<sup>nd</sup> National Conference on Family Planning on September 27, 2017, but instead Dr. Joyce Kaducu, the then State Minister for Primary Healthcare disowned the document stating that as a Ministry they would not launch the guidelines because they do not represent the values of Uganda and that's the existing position up to date. The Ministry of Health stayed the publication of the guidelines in order to consult with religious leaders about terminology, which is viewed as 'problematic'. The result has been an increase in unsafe abortions. The stay of implementation of the standards and guidelines for reduction of mortality and morbidity due to unsafe abortion in Uganda exacerbated an environment where

1 Guttmacher Institute 'Abortion and Post abortion Care in Uganda' (2017) Available at <https://www.guttmacher.org/sites/default/files/factsheet/abortion-and-postabortion-care-uganda.pdf>

2 Singh S. Hospital admissions resulting from unsafe abortion: estimates from 13 developing countries. *Lancet* 2006;368(9550):1887–92.

3 Uganda Demographic Health Survey 2016

women eligible for safe and legal abortion services such as survivors of sexual violence cannot access services in reality in the absence of guidance or information as to whom and where the services can be accessed.

Unsafe abortion continues to be among the leading causes of maternal death. Many women continue to suffer as a result of complications that are serious, debilitating, or life-threatening which violates women's rights to access comprehensive, accurate, and evidence-based health-related information and forces them to resort to inaccurate information through informal sources.

A case against the government of Uganda and Mukono District Local Government was brought for the continued violations against women and girls; Miscellaneous Cause No. 32 of 2021 (The Women's Probono Initiative & Another *versus* The Attorney General and Another). This case was stayed by the judge at the High Court in Mukono pending the determination of Constitutional Petitions No. 10 of 2017 and No. 25 of 2020.

## PARTIES

Women's Probono Initiative (WPI) which is the Applicant in the matter, is a Non-profit legal and advocacy organization promoting women's health and human rights in Uganda. WPI utilises legal tools for the promotion and protection of women's rights through awareness creation, legal representation, research and knowledge sharing. It gets its mandate /locus standi from Article 30 (1) of the Treaty for the Establishment of the East African Community which permits any person who is resident in a Partner State to refer a matter to the East African Court of Justice for determination.

The Respondent to the case is the Attorney General. Article 250 of the Constitution of the Republic of Uganda states that civil proceedings by or against the government shall be instituted against the Attorney General; and all documents required to be served on the government for the purpose of or in connection with those proceedings shall be served on the Attorney General.

## NATURE OF CASE

The reference filed in the East African court is a case challenging the stay and withdrawal of the 2015 Standards and Guidelines for Reduction of Mortality and Morbidity due to Unsafe Abortion in Uganda.

It is on this background that the Applicant has gone to court seeking court for the following declarations and orders:

## DECLARATIONS SOUGHT

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- i. A declaration that the decision dated March 01, 2022 of the High Court of the Republic of Uganda sitting at Mukono staying the proceedings in Miscellaneous Cause No. 32 of 2021 *vide* **The Women's Probono Initiative & Another** *versus* **The Attorney General and Another** pending the determination of Constitutional Petitions No. 10 of 2017 and No. 25 of 2020 violates Articles 5, 7 (d), 9 (1), 16 and 18 (3) of the African (Banjul) Charter on Human and People's Rights.
- ii. A declaration that the decision dated March 01, 2022 of the High Court of the Republic of Uganda sitting at Mukono staying the proceedings in Miscellaneous Cause No. 32 of 2021 *vide* **The Women's Probono Initiative & Another** *versus* **The Attorney General and Another** pending the determination of Constitutional Petitions No. 10 of 2017 and No. 25 of 2020 violates the letter and spirit of Articles 6 (d), 7 (2), 8 (1) (c), 118 (g), and 121 (e) of the Treaty for the Establishment of the East African Community.

## ORDERS SOUGHT

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- a) An order to quash and set aside the decision dated March 01, 2022 of the High Court of the Republic of Uganda sitting at Mukono staying the proceedings in Miscellaneous Cause No. 32 of 2021 *vide* **The Women's Probono Initiative & Another** *versus* **The Attorney General and Another** pending the determination of Constitutional Petitions No. 10 of 2017 and No. 25 of 2020.
- b) An order for reinstatement and implementation of the Standards and Guidelines for Reducing Maternal Morbidity and Mortality from Unsafe abortions in Uganda, 2015.
- c) In the alternative the High Court be ordered to hear the enforcement application in Miscellaneous Cause No. 32 of 2021 *vide* **The Women's Probono Initiative & Another** *versus* **The Attorney General and Another**.

## CURRENT CASE STATUS:

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The case was filed on the 12<sup>th</sup> day of May, 2022, and the Attorney General of Uganda was served with the pleadings. The case is yet to be given a hearing date before the East African Court of Justice in Arusha.

However, an application for a certificate of urgency is being filed to compel the court to urgently hear the matter to bring an end to needless deaths of women due to unsafe abortions.

### FOR MORE DETAILS, CONTACT US AT:

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