



Q & A

ABORTION AND THE LAW IN MAINLAND TANZANIA

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

› High Rates of Maternal Death

- Unsafe abortion accounts for approximately 13% of all maternal deaths worldwide;¹ 44% of deaths from unsafe abortion take place in Africa.²
- In Tanzania, the Ministry of Health estimates that 30% of maternal deaths are attributable to unsafe abortion.³
- However, existing figures are likely underestimates since comprehensive data on abortion is difficult to obtain in Tanzania due to the criminalization of, and stigma surrounding, abortion.⁴
- According to one study of unsafe abortion in Tanzania, “Assessing the magnitude of the problem of unsafe induced abortion and its consequences is one of the least documented reproductive health problems. . . .”⁵

› High Rates of Maternal Morbidity

- A 2003 country evaluation estimated that nearly one-third of all hospitalized cases of unsafe or incomplete abortions in Tanzania are women under 20.⁶
- In 2009, the *New York Times* reported that in one hospital in Berega, 17 of the 31 minor surgical procedures performed in January 2009 were to repair incomplete or botched abortions by untrained individuals.⁷
- Data from 2001 suggests that 38% of admissions with obstetric complications in a hospital in Shinyanga, the second most populated region in Tanzania,⁸ were due to unsafe abortions.⁹

› 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.”¹⁰
- 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.”¹¹

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.”¹²

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.”¹³ 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 Tanzania include ingestion of herbs and roots, often administered by an**

unskilled provider; ingestion of “blue,” a concentrated household cleaning product; and vaginal insertion of herbs, roots, or other sharp objects.¹⁴

Complications from unsafe abortion may include incomplete evacuation of the products of conception;¹⁵ “hemorrhage, sepsis, peritonitis, and trauma to the cervix, vagina, uterus, and abdominal organs”;¹⁶ and vaginal or cervical lacerations.¹⁷ Should sepsis or haemorrhaging become life-threatening, the woman may need to undergo a hysterectomy.¹⁸ Gas gangrene and tetanus can also result from the insertion of foreign bodies into the uterus.¹⁹ In the longer term, unsafe abortion may result in chronic pelvic pain, tubal blockage,²⁰ 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.²¹ 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.²²

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;²³ conversely, countries with more liberal abortion laws have seen their maternal mortality rates drop dramatically.²⁴ 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%.²⁵ 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.”²⁶ Likewise, in Nepal, “abortion-related complications fell from 54% to 28% of all maternal morbidities treated at relevant facilities between 1998 and 2009.”²⁷ Nepal liberalized its abortion law in 2002.²⁸

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

In mainland Tanzania, termination of pregnancy is permitted to preserve the life or mental or physical health of the pregnant woman, as well as in cases of sexual violence. 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 and obtain their consent in writing before performing the procedure.

To fully understand mainland Tanzania’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 Tanzania’s Constitution, Penal Code, and national policies; and case law. The following text describes mainland Tanzania’s legal framework governing termination of pregnancy. For more detailed guidance on Tanzania’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 Mainland Tanzania*.

› International Human Rights Law

The Government of Tanzania has ratified the African Charter's Protocol on the Rights of Women in Africa (Maputo Protocol).²⁹ This groundbreaking Protocol represents the first time that an international human rights instrument has explicitly articulated a woman's right to abortion in certain cases. Article 14(2) calls upon states to "provide adequate, affordable and accessible health services"³⁰ to women and to

protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the [pregnant woman] or the life of the [pregnant woman] or the foetus.³¹

By ratifying the Protocol,³² the Tanzanian Government is obligated under regional human rights law to ensure that safe and legal abortion is available and accessible on all of these grounds.

The Government of Tanzania has also ratified most major regional and international human rights treaties.³³ Although it has not domesticated the majority of these treaties, the state is nonetheless legally bound to respect, protect, and fulfil the rights in the international and regional conventions that it has signed or ratified.³⁴

The Tanzanian 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.

› Constitution

Although Tanzania's Constitution makes no direct mention of termination of pregnancy or abortion, key provisions support access to safe and legal abortion services and post-abortion care. Specifically, the Constitution affirms the importance of respecting the rights to life, human dignity, equality and non-discrimination, privacy, and freedom from inhuman and degrading treatment.³⁵

› Penal Code

Mainland Tanzania's Penal Code criminalizes "unlawful" abortion, indicating that there are circumstances under which procuring an abortion is lawful. It further makes explicit, in section 230, that termination of pregnancy is not criminalized if done to preserve the woman's life. This life exception has been interpreted to include an exception for the preservation of the woman's mental and physical health as well. [See Holding in a Key Case, below.]

Section 219 of the Penal Code also provides for the separate offence of “child destruction.” This section criminalizes the destruction of a “child capable of being born alive” and stipulates that there is a presumption that the foetus is capable of being born alive after the 28th week of pregnancy. While this section criminalizes a termination of pregnancy performed in the final weeks of pregnancy, as with the provisions criminalizing “unlawful abortion,” there is an exception when the termination is done to preserve the pregnant woman’s life or health.

RELEVANT PROVISIONS FROM THE PENAL CODE

150. Attempts to procure abortion. Any person who, with intent to procure 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 whatever is guilty of an offence and is liable to imprisonment for fourteen years.³⁶

151. Procuring own miscarriage. A woman being with child who 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 whatsoever, or permits any such thing or means to be administered or applied to her, is guilty of an offence and is liable to imprisonment for seven years.³⁷

152. Supplying drugs or instruments to procure abortion. Any person who unlawfully supplies to or procures for another anything whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of an offence, and is liable to imprisonment for three years.³⁸

204. When child deemed to be a person. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of [the pregnant woman], whether it has breathed or not, and whether it has an independent circulation or not, and whether the naval string is severed or not.³⁹

219. Child destruction. (1) Subject to subsection (2) any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes the child to die before it has an existence independent of [the pregnant woman], shall be guilty of child destruction and shall be liable on conviction to imprisonment for life.

(2) A person shall be guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the [pregnant woman].

(3) For the purpose of this section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at the time pregnant of a child capable of being born alive.⁴⁰

230. Responsibility as to 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 benefit, or upon an unborn child for the preservation of the [pregnant woman’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.⁴¹

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

In *Bourne*,⁴² an English case affirmed by the East African Court of Appeal⁴³ and applicable in Tanzania, “preservation of the [woman’s] life” [see section 230 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 pregnant woman] mean merely for the purpose of saving the [pregnant woman] 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 [pregnant woman].⁴⁴

› National Policy Guidelines and Curricula

Despite the fact that termination of pregnancy is legal in mainland Tanzania to preserve a woman’s life or health and in cases of sexual violence, our research revealed no mainland Tanzanian government policies or guidelines pertaining to safe abortion services.⁴⁵ This absence of comprehensive guidelines demonstrates a fundamental failure on the part of the state to comply with both its own policies and its obligations under international and regional human rights law.

At the same time, the government has repeatedly acknowledged the harm of unsafe abortion and affirmed its commitment to providing comprehensive post-abortion care.⁴⁶ The primary government document devoted to post-abortion care is the 2002 *Post-Abortion Care Clinical Skills Curriculum*.⁴⁷ This curriculum is used for in-service training of providers, including medical officers, assistant medical officers, clinical officers, and nurse/midwives,⁴⁸ thereby **clearly permitting mid-level providers to offer post-abortion care services.**

The curriculum explicitly refers to Tanzania’s abortion law, stating:

- *Tanzania Law allows therapeutic abortion, with life of [the pregnant woman] as priority.*
- *However, few women and men know this law.*
- *Knowledge that the law does not allow abortion “by demand”, makes women fear being reported to “justice” and thus they undergo unsafe abortion even when the law might have allowed it.*⁴⁹

This government document thus affirms that termination of pregnancy is legal in Tanzania for life and health indications. It further recognizes the lack of awareness about these exceptions among providers and the public, and it acknowledges the fact that many women unnecessarily resort to unsafe abortion due to a lack of information about the scope and content of the abortion law.

Endnotes

- 1 David A. Grimes et al., *Unsafe Abortion: The Preventable Pandemic*, 368 THE LANCET 1908, 1910 (2006).
- 2 *Id.* at 1910.
- 3 MINISTRY OF HEALTH AND SOCIAL WELFARE, POST-ABORTION CARE CLINICAL SKILLS CURRICULUM: VOLUME 2, TRAINEE'S HANDBOOK 40 (2002) [hereinafter PAC TRAINEE'S HANDBOOK].
- 4 NEIL PRICE ET AL., ADDRESSING THE REPRODUCTIVE HEALTH NEEDS AND RIGHTS OF YOUNG PEOPLE SINCE ICPD: THE CONTRIBUTION OF UNFPA AND IPPF, TANZANIA COUNTRY EVALUATION REPORT 24 (2003).
- 5 Vibeke Rasch & Rose Kipingili, *Unsafe Abortion in Urban and Rural Tanzania: Method, Provider and Consequences*, 14 JOURNAL OF TROPICAL MEDICINE AND INTERNATIONAL HEALTH 1128, 1132 (2009).
- 6 PRICE ET AL., *supra* note 4, at 25.
- 7 Denise Grady, *The Deadly Toll of Abortion by Amateurs*, N.Y. TIMES, June 1, 2009. In 2010, the *Globe and Mail* reported that unsafe abortion continues to account for nearly one-fifth of all maternal deaths in Tanzania. Geoffrey York, *Africa's Deadly Backroom Abortions*, THE GLOBE AND MAIL, May 10, 2010.
- 8 NATIONAL BUREAU OF STATISTICS & SHINYANGA REGIONAL COMMISSIONER'S OFFICE, SHINYANGA REGIONAL SOCIO-ECONOMIC PROFILE 4 (2d ed. 2007), available at <http://www.tanzania.go.tz/regions/SHINYANGA.pdf>.
- 9 PRICE ET AL., *supra* note 4, at 24–25.
- 10 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).
- 11 *Id.* (citing S. SINGH ET AL., ADDING IT UP: THE BENEFITS OF INVESTING IN SEXUAL AND REPRODUCTIVE HEALTH CARE, 2003).
- 12 *Id.* at 1908 (citing U. Hogberg & I. Joelsson, *Maternal Deaths Related to Abortions in Sweden, 1931–1980*, 20 GYNECOL. OBSTET. INVEST. 169–78 (1985)).
- 13 World Health Organization, *Preventing Unsafe Abortion*, http://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/index.html (last visited Apr. 23, 2012).
- 14 *Abortion Remains a Crime in Tanzania*, DAILY NEWS ONLINE EDITION, Nov. 26, 2010, <http://www.dailynews.co.tz/home/?n=14901> (last visited Oct. 27, 2011); Grady, *supra* note 7.
- 15 Hailemichael Gebreselassie et al., *The Magnitude of Abortion Complications in Kenya*, 112 BJOG: AN INTERNATIONAL JOURNAL OF OBSTETRICS AND GYNAECOLOGY 1229, 1229 (2005).
- 16 Grimes et al., *supra* note 1, at 1910.
- 17 Gebreselassie et al., *supra* note 15, at 1232.
- 18 Grimes et al., *supra* note 1, at 1911.
- 19 *Id.* at 1911–12.
- 20 Gebreselassie et al., *supra* note 15, at 1229.
- 21 Grimes et al., *supra* note 1, at 1911; Gebreselassie et al., *supra* note 15, at 1229.
- 22 Grimes et al., *supra* note 1, at 1908.
- 23 *Id.* at 1913; Gilda Sedgh et al., *Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008*, 379 THE LANCET 635, 631 (2012).
- 24 Grimes et al., *supra* note 1, at 1913; Sedgh et al., *supra* note 23, at 631.
- 25 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)).
- 26 *Id.*
- 27 Sedgh et al., *supra* note 23, at 7 (citing BAL KRISHNA SUEVEDI ET AL., NEPAL MATERNAL MORTALITY AND MORBIDITY STUDY 2008/2009: SUMMARY OF PRELIMINARY FINDINGS, 2009).
- 28 Muluki Ain (Eleventh Amendment), 2059 (2002), sec. 28.
- 29 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, *adopted* July 11, 2003, 2nd African Union Assembly, Maputo, Mozambique (*ratified* Mar. 3, 2007) [hereinafter Maputo Protocol].
- 30 *Id.* art. 14(2)(a).
- 31 *Id.* art. 14(2)(c).
- 32 There is no indication that Tanzania made any reservations when ratifying the Maputo Protocol.
- 33 For example, Tanzania 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* Feb. 18, 1984); 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* Mar. 16, 2003); Maputo Protocol, *supra* note 29; South African Development Community, Protocol on Health, *adopted* Aug. 18, 1999 (*entered into force* Aug. 14, 2004, *ratified* July 11, 2002); 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 11, 1976); 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* June 11, 1976); 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* Aug. 20, 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* June 10, 1991); 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* Oct. 27, 1972); 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* Nov. 10, 2009).
- 34 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 Tanzania is therefore obligated under international law to protect the rights guaranteed by these instruments. 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." *Id.* art. 27.
- 35 CONSTITUTION (1977), arts. 12–14, 16, 29; see also arts. 9, 11(1).
- 36 Penal Code Act, Cap. 16, sec. 150.
- 37 *Id.* sec. 151.
- 38 *Id.* sec. 152.
- 39 *Id.* sec. 204.
- 40 *Id.* sec. 219.
- 41 *Id.* sec. 230.
- 42 Rex v. Bourne, [1939] 1 K.B. 687.
- 43 Mehar Singh Bansel v. R, [1959] E. Afr. L. Rep. 813 (East African Court of Appeal, Kenya).
- 44 Rex v. Bourne, [1939] 1 K.B. 687, at 692–694.
- 45 This was confirmed in an interview with an official in the Reproductive and Child Health Section, who is responsible for post-abortion-care-related services at the Ministry of Health ("There are no Ministry Guidelines on abortion. Only PAC."). Interview with Official, Reproductive and Child Health Section, Ministry of Health and Social Welfare (May 2, 2012).
- 46 Post-abortion care is a fundamental part of the Ministry of Health's *National Package of Essential Reproductive and Child Health Interventions and National Package of Essential Health Interventions in Tanzania*, and is a key component of the proposed intervention package for maternal, newborn, and child health in the *National Road Map Strategic Plan to Accelerate Reduction of Maternal, Newborn and Child Deaths in Tanzania 2008–2015*. MINISTRY OF HEALTH AND SOCIAL WELFARE, NATIONAL PACKAGE OF ESSENTIAL REPRODUCTIVE AND CHILD HEALTH INTERVENTIONS 7 (2002); MINISTRY OF HEALTH AND SOCIAL WELFARE, NATIONAL PACKAGE OF ESSENTIAL HEALTH INTERVENTIONS IN TANZANIA 32, 37 (2000); MINISTRY OF HEALTH AND SOCIAL WELFARE, THE NATIONAL ROAD MAP STRATEGIC PLAN TO ACCELERATE REDUCTION OF MATERNAL, NEWBORN AND CHILD DEATHS IN TANZANIA 2008–2015 at 78 (annex 2), 85 (annex 6) (2008).
- 47 The curriculum comprises a trainer's guide and a trainee's handbook. MINISTRY OF HEALTH AND SOCIAL WELFARE, POST-ABORTION CARE CLINICAL SKILLS CURRICULUM: VOLUME 1, TRAINER'S GUIDE (2002) [hereinafter PAC TRAINEE'S GUIDE]; PAC TRAINEE'S HANDBOOK, *supra* note 3. The curriculum's goal is to "scal[e] up comprehensive PAC [post-abortion care] so as to reduce abortion related maternal mortality and morbidity through training of middle level health service providers such as clinical officers, nurse-midwives in addition to the medical doctors. The aim is to ensure that comprehensive PAC services are available at lower level health facilities." PAC TRAINEE'S GUIDE, *supra* note 47, at 1; PAC TRAINEE'S HANDBOOK, *supra* note 3, at 1.
- 48 PAC TRAINEE'S GUIDE, *supra* note 47, at 17. The curriculum is also used as a reference for pre-service curricula for nurses and midwives. Interview with Registrar, Tanzania Nursing and Midwifery Council (May 3, 2012).
- 49 PAC TRAINEE'S HANDBOOK, *supra* note 3, at 41.

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