4 Mainstreaming the ‘abortion question’ into the right to health in Uganda

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1 Introduction

Uganda has an estimated 775,000 unintended pregnancies per annum, of which 25% are among adolescents.¹ It is estimated that 297,000 (38.3%) mothers have abortions carried out, usually in dangerous health conditions.² These include lack of qualified health practitioners and medication.³ This still does not engage the reasons that inform the woman’s decision to undergo an abortion in dangerous health conditions.⁴ This is without regard to the influence of religion and culture concerning abortion.⁵ These polarities between the woman and other societal players continue to contribute to the 8% rate of maternal deaths due to unsafe abortion.

According to the World Health Organization (WHO), 47,000 women die from having unsafe abortions carried out.⁶ In Uganda, a total of 128,682 women were hospitalized for complications from induced abortions.⁷ Disaggregated results show that 93,265 had induced abortions. The methodology of this study shows that the data was obtained from 418 health centres across the country. This data is based on the fact that it is only the women who went for treatment or who had no option but to go to a health centre. The women who procured abortions in other places other than health centres are not reported, and as such the figures would be higher than this. This is fortified by the fact that some women opt for abortions under dangerous conditions due to fear of legal repercussions like imprisonment, societal stereotyping and stigma.⁸ As such, first, the research does not question the reasons that lead women to have an abortion. Secondly, it does not contextualize the eminent probability of possible prosecution of the women who have the abortion carried out, or the individuals who procure it. Prosecution of the latter category is based on the use of common purpose through aiding and abetting as principles of criminal liability. What this restrictive regime does to the woman who considers an abortion needs to be evaluated.

In some cultures, the preference for children of a particular sex as a patriarchal element coupled with the scientific prenatal sex identification techniques may inform the reason for an abortion.⁹ Other reasons include the existence of non-consensual sex, sexual violence or one’s inability to deny a man’s sexual

advances.¹⁰ Non-consensual sex is evident in instances where women or girls are not willing to have their first sexual experience.¹¹ This is worsened where they are unable to negotiate the use of contraceptives that leads to increased risk of unwanted pregnancies.¹² Further research shows that the prevailing socio-cultural norms and values in Uganda, influenced by religion and the law, are against abortion.¹³ On the other hand, men seem to support abortion where it serves their interest.¹⁴ This still posits the control of a girl or woman's sexuality. In effect, the continued protection of the perspectives of the community other than the realities of the girl or woman points to a protection that conflates the meaning of a right to life of the foetus and the mother. There is a need to balance reasons for state action that protects the rights of women along with the default emphasis on the protection of unborn human life as a constitutional value.¹⁵

The foregoing statistics call for introspection into the position of international, regional and national law on abortion. The chapter evaluates the position of international law on abortion followed by an evaluation of regional initiatives under the African human rights system. This is followed by an examination of Uganda's reservation to the Maputo Protocol. This chapter draws on Uganda's restrictive legislative position to inform the subsequent analysis. Conclusions and recommendations follow.

2 International law on abortion

The right to safe, legal and effective abortion is provided for in international law in the context of other rights. Concerning the right to life, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states in part that every human being has the inherent right to life. In its General Comment, the Human Rights Committee argues that deprivation of life involves an intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. The failure by any state to take on deliberate pro-active steps to ensure that abortion does not lead to maternal death is a violation of the right to life. This right is buttressed by the provision of the right to the highest attainable standard of health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The women's right to health extends to their sexual and reproductive health.¹⁶ States have an obligation to respect, protect and fulfil rights related to women's sexual and reproductive health. This obligation extends to the use of necessary steps to reduce the stillbirth and infant mortality rate and to provide for the healthy development of the child. In its General Comment 14 on the Right to Health, the Committee on Economic, Social and Cultural Rights (CESCR) underscores the need for state parties to implement measures to

[I]mprove child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.

Barriers that would otherwise affect the women's enjoyment of the highest level of care need to be removed to ensure that the right to health is enjoyed without any form of discrimination. The CECSR has recommended to State Parties to ensure that these barriers are removed. A complete discussion of the international law on abortion is beyond the scope of this chapter. What can be shown in the interim is that despite the lack of a direct provision that speaks to the right to abortion, an engagement of various rights indicates that the right is recognized in international law.

In the regional human rights system, the African normative framework presents the first human rights instrument that expressly articulates a woman's right to an abortion in specified circumstances. The African Charter on Human and Peoples' Rights (ACHPR) provides for the right to the highest attainable standard of health. It establishes the African Commission on Human and People's Rights (African Commission) to promote and protect the rights of the people. In Africa pursuant to the need to engage women's rights, the African Commission adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Under the Maputo Protocol, the relevant article provides:

States Parties shall take all appropriate measures 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 mother or the life of the mother or the foetus.

According to the drafting history of this article, the intent was to cover all aspects that affect the reproductive rights of women that needed the engagement by state parties. It was after a subsequent meeting of experts that the draft was amended to state as follows: to 'protect the reproductive rights of women particularly by authorizing medical abortion in cases of sexual assault, rape and incest'.¹⁷ At a subsequent preparatory meeting in Addis in January 2003, both national and regional women rights organizations proposed that the grounds of danger to life, physical or mental health of the mother had to be included as abortion grounds.¹⁸ This led to the final wording in Article 14(2) (c). The article in this review was not imposed upon the state parties. Conversely, its development was through engaged dialogue with stakeholders such as civil society organizations, experts and state parties.

According to the African Commission's General Comment 2 on the Maputo Protocol, three points underscore the application of Article 14(2) (c). First, the conduct of unsafe abortions in Africa contributes to preventable maternal mortality and disabilities. This is due to restrictive legal regimes that make it hard for women to seek a safe abortion. Secondly, discrimination is embodied in the state's parties' use of impediments to the health services reserved for women and the use of the conscientious objections by health personnel. The African Commission reiterates the non-application of the conscientious

objection where a woman's health is compromised, and one requires emergency care or treatment. Other discriminatory practices include bureaucratic challenges in administrative laws, policies, procedures, practices and socio-cultural attitudes that violate the woman's right to life, non-discrimination and health through the deprivation of decision-making power on her sexual and reproductive rights. This discrimination extends to the subjection of women to criminal proceedings, prosecution or disciplinary action for benefiting from health services like abortion and post-abortion care. Thirdly, the categories of women who should benefit from abortion and post-abortion care ought to include those who conceive due to sexual assault, rape and incest. It highlights the possible trauma that a woman may suffer where she is forced to keep the pregnancy to its full term. As such, the Maputo Protocol promotes women's control of their sexual and reproductive health and rights. However, Uganda entered a reservation on the application of Article 14.¹⁹ As will be shown, the recommendations on Uganda's reservations to these articles impede the full enjoyment of women's health and reproductive rights concerning medical abortion.

The African Union has policies like the Maputo Plan of Action for the Operationalization of the Continental Policy Framework for Sexual and Reproductive Health. Adopted in 2006, this Plan of Action requires states to adopt administrative and legal frameworks aimed at reducing unsafe abortions, including providing comprehensive safe abortion services under the law and educating communities on the services provided under the laws.

As a socio-economic right, it is expected that states progressively realize this right through the creation of a conducive environment for the enjoyment of good health including the ability to control one's body in the sexual and reproductive form. Any barriers that affect the enjoyment of this right like lack of access to health services and education in the sexual and reproductive rights are a violation of the right to health. As such the application of restrictive abortion laws and their undue regard to the consequences of unsafe abortion on women's health have to be placed into perspective. A practitioner who is not willing to carry out an abortion should refer the woman to another practitioner who may be consulted. This approach envisages abortion as a measure that offers a woman the ability to make a decision that in the long run accords her the attainment of a high standard of health. This autonomy enables her to make informed decisions about her sexual and reproductive rights.

Another principle that underscores the right to health is the requirement for progressive realization by states.²⁰ The state has to take steps to ensure the maximum utilization of its available resources, to progressively achieve the full realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights.²¹ The state uses the principles of availability, accessibility, acceptability and quality. The failure to progressively realize this duty within a state's financial resources eludes the incremental enjoyment of economic, social and cultural rights.²² Where resources are insufficient, states should show the steps taken to ensure an improvement in the enjoyment of

these rights.²³ Two points are evident. First, in international law, the right to abortion can be engaged through the enjoyment of other rights. Secondly, as a point of departure, Africa's Maputo Protocol expressly articulates a woman's right to an abortion in specified circumstances. Thirdly, the right to health can be progressively realized. The author now considers Uganda's reservation to the Maputo Protocol.

3 An examination of Uganda's reservation to the Maputo Protocol

Uganda entered a reservation to Article 14 (2) (c), to the effect that the article would be interpreted subject to domestic legislation on abortion. Although it has been suggested that this reservation is limited to the application of Article 14 of the Maputo Protocol without rendering abortion illegal,²⁴ this position is not reflected in the wording of the reservation.

It is argued instead that Uganda seeks to maintain the domestic regulation of abortion to override the notion that a woman's right to abort forms part of the sexual and reproductive rights. This presents a dangerous predicament; first, the reservation defeats the purpose of the Maputo Protocol. Secondly, it does not consider the polarities that misinform the abortion question in the Ugandan society.²⁵ The cumulative effect of this reservation is a restriction on the ability of the Protocol to address the question of abortion. This reservation should be subject to the Limburg Principles, which require that state parties begin the immediate implementation of the obligations under the ICESCR.²⁶ The Limburg Principles state that:

Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant.

This provision applies to Uganda by virtue of its stand on the position of international law. Although the applicability of international law is not clearly indicated in the Constitution, this is solved by the requirement that its application in Ugandan Courts is conditioned on the ratification of a treaty under the Ratification of Treaties Act and then domesticated by an Act of the Ugandan parliament. The continued application of the reservation is a violation of the requirement for the immediate implementation of the non-violation of the right against discrimination. An evaluation of the right to health in the context of abortion needs to be placed into perspective.

4 An evaluation of the right to health in Uganda

4.1 The position of the right under the Constitution

The Constitution of the Republic of Uganda does not provide for the right to health. However, various principles and provisions on how the woman may

enjoy this right are evident. According to the national objectives and principles of state policy,

[t]he State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that ... all Ugandans enjoy rights and opportunities and access to ... health services...

Policies developed by the government should be used to improve the welfare of all persons including the woman to have and enjoy health services. The goal of the health policy is to protect and promote the health of individuals and the community.²⁷ The drafting of any policy on health starts from the recognition of the foundation under the National Objectives. All policies on health require that

[t]he State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

In addition, the state is mandated to protect women and their rights, taking into account their unique status and natural maternal functions in society. These policy directives should guide the state in enhancing the welfare of women, to the position of achieving their potential with due regard to their maternal function.

The Constitution recognizes equality between women and men, which underscores freedom from discrimination, for affirmative action in favour of women and for outlawing practices that undermine the welfare, dignity and interests of women. Provisions that undermine the welfare and dignity of women affect her attempt to secure a livelihood. In *Salvatori Abuki v the Attorney General*, the court held that the right to life encompasses the enjoyment of other rights which lead to the ability to have a livelihood. These provisions have to be reconciled and used as a guide in 'mainstreaming' the abortion question.

Also, Uganda is a signatory to the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples, Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, as well as being a member of the United Nation's World Health Organization. All these bodies interpret the right to health as the right to the highest attainable standard of health. In this regard, the state has a duty to ensure the progressive realization of this right by respecting, protecting, fulfilling and promoting it.²⁸ As such, Uganda's status concerning these various human rights instruments enables it to apply them. In addition, the Supreme Court ruled that International Customary Law is applicable in Uganda.

The judgements from the courts speak to the enjoyment of the right to health. For instance in *The Centre For Health, Human Rights & Development &*

2 Others v The Executive Director, Mulago Referral Hospital & Another, the Court acknowledged various duties of the state with regard to the provision of the right to health. It referred to General Comment 14 and stated,

The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive health, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable level of health.

This position reads the existence of the right to health into Uganda's Constitution, lays out the nature of the right, recognizes Uganda obligations under international law about the right to health, and requires that whoever seeks to enjoy that right has to do so in a manner that envisages his or her freedom in making such decisions.

Based on the foregoing discussion, it is clear that the lack of the right to health in the Constitution is not a justifiable reason to the provision of an enabling environment for its subsequent enjoyment by the woman. Various hypotheticals question the context of abortion: is the government doing enough to enhance the plight of the woman on issues relating to her maternal health? Do the policies progressively enhance the woman's enjoyment of the right to health? A look at the subsidiary legislation and national policies may give some guidance.

4.2 Subsidiary legislation and national policies

The Penal Code Act (PCA) has various provisions that speak to the position of abortion in Uganda. It provides,

[a]ny person who, with intent to procure the miscarriage of a woman ... unlawfully administers to her or causes her to take any poison or other noxious thing ... or uses any other means, commits a felony and is liable to imprisonment for fourteen years.²⁹

This section of the Act makes several dangerous assumptions about abortion. First, it does not qualify the type of person referred to. In so doing, it fails to recognize persons with professional qualifications and experience, such as doctors and other medical officers. It conflates professionals with all other persons. Secondly, based on this conflation, it implies that such persons, regardless of their professional qualifications or experience, have the intention of procuring an abortion – an act which is portrayed in a false negative light. The intention, indeed, may be to save the mother's life or to uphold the rights of the mother, among other things, an intention which is then put into practice by procuring

an abortion. Thirdly, the section assumes that abortion is a mode of family planning that is outlawed by the section. It is argued that abortion should not be seen as a form of family planning but as a mode of promoting the sexual health and reproductive rights of the woman. Therefore, this provision is based on assumptions that do not take into account the various circumstances that may inform a Ugandan woman's decision to procure an abortion.³⁰

A similar section provides:

Any person who unlawfully supplies to or procures for any person anything, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, commits a felony and is liable to imprisonment for three years.³¹

Section 141 adds to the previous section by criminalizing the actions of the person referred to therein. To reiterate, the two sections fail to capture the reasons that may lead a woman to procure an abortion. The cumulative effect of these two provisions is to discriminate against the woman on account of her sex and her need to decide when to have a child. This discrimination is further evident in the failure of the penal laws to appreciate the sexual and reproductive health and rights of a woman, because of the community misconceptions about abortion.

Furthermore, the PCA provides that

[a]ny woman who, being with child, 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, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.³²

This provision criminalizes a woman's attempt to procure an abortion on herself. While this is a good provision insofar as it criminalizes abortion where a woman performs it herself, it fails to engage with the circumstances of the woman who has done so: there is a need to focus on the 'why' question.

The final provision in the Penal Code that deals with abortion states as follows:

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 or her benefit, or upon an unborn child for the preservation of the mother'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.³³

One may raise the defence that he or she acted in good faith and with reasonable care in performing the operation to save a mother's life. However, this a defence can only be raised after one has been arrested and has been prosecuted.

The persons who have acted in good faith and with reasonable care are still subjected to the same process as those who have not exercised good faith. This defence may not necessarily lead to an acquittal but rather may be used to mitigate the sentence in terms of the length of imprisonment or the amount of the fine payable. The application of the penal provisions results in criminal justice procedures that undermine the welfare and dignity of women. Consequently, the provisions fail to reflect the constitutional values that are ascribed to a woman.

Apart from the legal framework, the policy framework needs to be addressed as well. The National Gender Policy (NGP) recognizes gender as a useful concept in understanding the social roles and relations of women and men of all ages and how these impact on development.³⁴ With regard to sexual and reproductive health and rights, the NGP, at its core, has a specific strategy to develop and implement sexual and reproductive health rights programmes.³⁵ It follows that reduction of the high teenage pregnancy rate, which addresses the discriminatory tendencies that the penal laws present, is part of this agenda. On a positive note, the NGP recognizes the high incidence of teenage pregnancies and the risks that arise concerning the health of the mother and child.³⁶ Since Uganda is a signatory to the International Conference on Development and Population (ICDP), the policy reiterates the government's commitment to the promotion of sexual and reproductive health rights by putting gender relations at the centre of health and population interventions.³⁷ The position consequently raises questions about Uganda's reservation about the implementation of the Maputo Protocol.³⁸ Furthermore, it raises questions on the ability of the Penal Code Act to promote the sexual and reproductive health and rights of women given the restrictive regime coming to the fore. While the NGP recognizes the woman and the peculiar realities she faces, the penal laws criminalize abortion. The policy and the laws present a parallel engagement in dealing with abortion in Uganda.

In addition, the Uganda National Policy Guidelines and Service Standards for Sexual and Reproductive Health Rights (GSS) were adopted to address all aspects of SRR.³⁹ This was a broad-based approach that moved beyond a narrow engagement with family planning and maternal health.⁴⁰ The GSS recognize that the prevention and management of unsafe abortion is a component of sexual and reproductive health.⁴¹ While this is a welcome development, it should be recalled that the Penal Code Act does not provide for safe abortion. It criminalizes the acts of the person and the woman without clarifying what constitutes safe or unsafe abortions and generalizes all acts of abortion as illegal.

The GSS provides for comprehensive abortion care services for a woman or a couple seeking advice or services for termination of a pregnancy on grounds like life-threatening maternal illness, severe foetal abnormalities, cervical cancer or HIV, or rape, incest and defilement.⁴² This is a radical departure from the general provisions of the PCA, insofar as they acknowledge the various situations that may require a woman to terminate a pregnancy. In addition, the GSS is silent on the use of abortion as a mode of family planning. As with

the NGP, the GSS embrace the constitutional values of non-discrimination, affirmative action and equality.

However, the implementation of these values is curtailed by the general criminal provisions of the PCA. The simultaneous application of the legal and policy regimes presents a parallel application of the policy and the restrictive regime. This position does little to harmonize the contradictory position of the abortion question. This position is similar to that in other policy documents, such as the National Policy on Post Abortion Care (NPPAC) and the Africa Plan of Action for Abortion (APAA).⁴³ These contribute to the lack of medical infrastructure to conduct safe abortions.

4.3 The marginalization of women in Uganda

The Ugandan woman forms the backbone of Uganda's economy. She has been able to engage in activities that have the potential to create lucrative livelihoods and lift thousands of Ugandans out of poverty, especially with the adoption of modern techniques and better quality inputs.⁴⁴ While women control only 27% of plots and 20% of all cultivated land, 73% of the plots and 80% of cultivated land are either controlled by men or managed jointly with women.⁴⁵ The bigger picture indicates that 77% of women are involved in agriculture, compared to 62% of men. While women's engagement in economic activities would mitigate poverty, it is hindered by discrimination in various aspects of their lives. A notable concern is discrimination in the realization of their socio-economic right to reproductive health.⁴⁶

As earlier indicated, Uganda has an estimated 775,000 unintended pregnancies per annum, of which 25% are among adolescents.⁴⁷ A total of 297,000 (38.3%) result in abortions.⁴⁸ The continued recourse to abortion under dangerous conditions due to the restrictive regime negatively affects women's economic productivity.⁴⁹

Uganda has reported great strides towards the realization of Sustainable Development Goal 5 on Gender Equality. At the presentation of its Report on the Sustainable Development Goals (SDG) of gender equality, it reported progress in the reduction of the rate of discrimination and marginalization by 4%.⁵⁰ Uganda reported progress in the mainstreaming of gender and rights in policies, plans and programs in all sectors.⁵¹ It also reported strides in the formulation of gender-sensitive regulatory frameworks, promotion of women's economic empowerment initiatives and protection of the rights of vulnerable groups.⁵² The report made no mention of the rights of the reservation to the Maputo Protocol as a step towards gender equality. This marked a missed opportunity that Uganda would have used to withdraw its reservation to the Maputo Protocol.

The marginalization extends to the failure to correct the disconnect between the Ugandan woman's hard work and the failure to recognize her right to sexual and reproductive health in totality.⁵³ While she contributes to the economy, she is hampered by the lack of adequate protection under the

law concerning abortion.⁵⁴ Her inability to make decisions about her sexual and reproductive health and rights hinders her enjoyment of the highest attainable standard of health.⁵⁵ This marginalization violates the right to equality and freedom from discrimination as provided for in Uganda's Constitution and its international law obligations.

5 Conclusion

While abortion can be read into international law as a result of evolving jurisprudence, the Maputo Protocol expressly articulates a woman's right to an abortion in specified circumstances. Both regional and international law point uphold progressive realization of the right to health. The lack of an express provision to the right to health in the Constitution does not oust Uganda's obligation to the ratified human rights instruments. The existence of a reservation to the provision of abortion in the Maputo Protocol makes it an uphill task to contextualize any progressive realization of the right to abortion. This is exacerbated by the restrictive laws on abortion in the country. While the policies seem to progressively enhance the woman's enjoyment of the right to health, the law provides otherwise. As such, there is a parallel regime, where the executive policies seem to contradict the legislation. Until the policies and legislation speak to each other to the benefit of the woman, the parallel engagement is far from over.

The research has identified a silence that does not interrogate the position of the woman. This is contrary to the various voices in the legislation, in the community, from religious and cultural circles that all point to the shunning of abortion. A model that engages all the competing voices needs to be adopted. Durojaye and Oluduro use an interesting principle to evaluate the African Commission's jurisprudence on the rights of women.⁵⁶ They argue that the African Commission's development of jurisprudence on the rights of women requires that it not only ask the 'woman question' but the question that affects the 'African woman'.⁵⁷ When one asks the right question, the African woman has to be placed at the centre of any decision in the light of her realities. A hybrid approach needs to be added to this model. The realities of the Ugandan woman should inform the conversation, other than the assumptions that are held by society. An evaluation of the various polarities needs to be done. It is clear that there are competing polarities. On one hand, the society controls the sexuality of the woman, through various restrictive laws, cultural, religious and economic undertones. On the other hand, there is a woman whose realities inform her decision to have an abortion. The competition arises in the need for each party or entity to control the decision of the woman without having an informed evaluation of her realities. The control of a woman's reality at the expense of misunderstood notions needs to be stopped. There is a need to recognize that there is no need for competition but conversations that look at the various polarities and harmonize perspectives of the various voices. An empirical study on the position of women from a psychological and psychosocial

position should be deliberately done. This should inculcate a similar study on other societal aspects like culture and religion. Following the hybrid approach, such findings should then be evaluated to make informed decisions.

The restrictive regimes on abortion have to be lifted, as they are doing more harm in terms of unsafe abortion. Research in Africa points to a link between the criminalization of abortion and unsafe abortion as a major public health and human rights challenge.⁵⁸ As required by the Maputo Protocol, abortions should be allowed in instances of 'sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus'. In the short run, education in sexual and reproductive rights has to remove discrimination and gender stereotypes against women. Central to this will be the correction of the misconception that the government seeks to use abortion as a family planning tool. This will be key to ensuring that societal, socio-cultural, religious stereotypes that inhibit discrimination are greatly reduced. These recommendations will go a long way to show that hybrid interventions that place the Ugandan woman at the centre of the abortion question are inevitable.

Notes

- 1 National Baseline Survey 'Uganda baseline survey on the African Women's Rights Protocol—The Maputo Protocol' (2013) <https://bit.ly/3cFSKmP> (accessed 21 April 2020).
- 2 As above.
- 3 As above.
- 4 As above.
- 5 As above.
- 6 World Health Organization (WHO) *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008* (2011) 1.
- 7 E Prada et al 'Incidence of induced abortion in Uganda, 2013: New estimates since 2003' (2016) 11(11) *PloS One* e0165812, 9.
- 8 B Ganatra et al 'Global, regional, and subregional classification of abortions by safety, 2010–14: Estimates from a Bayesian hierarchical model' (2017) 390 *Lancet* 2372–2381 generally.
- 9 S Pallikadavath & R Stones 'Maternal and social factors associated with abortion in India: A population-based study' (2006) *International Family Planning Perspectives* 120–125.
- 10 R Bairagi 'Effects of sex preference on contraceptive use, abortion and fertility in Matlab, Bangladesh' (2001) 27(3) *International Family Planning Perspectives* 137–143.
- 11 MYbarra et al 'Prevalence rates of sexual coercion victimization and perpetration among Uganda adolescents' (2012) 24(11) *AIDS Care* 1392–1400.
- 12 C Polis et al 'Coerced sexual debut and lifetime abortion attempts among women in Rakai, Uganda' (2009) 104(2) *International Journal of Gynecology & Obstetrics* 105–109.
- 13 A Moore et al 'Men's attitudes about abortion in Uganda' (2011) 43(1) *Journal of Biosocial Science* 31–45.
- 14 S Nyanzi et al 'Abortion? That's for women!' Narratives and experiences of commercial motorbike riders in south-western Uganda' (2005) *African Journal of Reproductive Health* 142–161.
- 15 Valuable insights are evident in A Lamačková 'Women's rights in the abortion decision of the Slovak constitutional court' in R Cook et al (eds) *Abortion law in transnational perspective: Cases and controversies* (2014) 56–76, 67.

- 16 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Report A/61/338GA adopted at the 61st session of the General Assembly dated 13 September 2006.
- 17 Report of the Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Expt/Prot.Women/Rpt(1) (12–16 November 2001 in Addis Ababa, Ethiopia). See also Nabaneh (2012) 11.
- 18 Meeting by the Africa Regional Office and the Law Project of Equality Now on 4–5 January 2003 in Addis Ababa (6 January 2003) indicated that the 2001 draft Protocol fell below existing international standards, and needed to be amended as such. This may lead one to question the regional and international standards and who sets them for application. This is, however, beyond the scope of this paper.
- 19 This is discussed under sec 3 of the chapter below.
- 20 L Chenwi 'Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance' (2013) 46(3) *De Jure* 742.
- 21 L Forman et al 'Conceptualising minimum core obligations under the right to health: How should we define and implement the 'morality of the depths' (2016) 20(4) *International Journal of Human Rights* 531.
- 22 As above 532.
- 23 As above 532.
- 24 C Ngweni 'Reforming African abortion laws and practice: The place of transparency' in R Cook et al (eds) *Abortion law in transnational perspective: Cases and controversies* (2014) 166.
- 25 C Oguttu et al 'Time to act—comprehensive abortion care in east Africa' (2016) 4(9) *The Lancet Global Health* 1. See also Center for Reproductive Rights Briefing paper: A technical guide to understanding the legal and policy framework on termination of pregnancy in Uganda (2012) generally. JD Mujuzi 'The protocol to the African charter on human and peoples' rights on the rights of women in Africa: South Africa's reservations and interpretative declarations' (2008) 12(2) *Law, Democracy and Development* 41–61 generally.
- 26 Oguttu (n 26) generally.
- 27 H Fineberg et al *Society's choices: Social and ethical decision making in biomedicine* (1995) <https://bit.ly/3aytI7L> (accessed 21 April 2020).
- 28 Forman (n 22) 536.
- 29 The Penal Code Act Cap 120 Laws of Uganda, section 141.
- 30 For a detailed evaluation of the dangers of the abortion laws, see Center for Reproductive Rights, Facing Uganda's law on Abortion 'Experiences from Women and Service Providers' July 2016 <https://bit.ly/3of5Ddm> (accessed 2 December 2020).
- 31 The Penal Code Act (n 30), sec 143.
- 32 As above sec 142.
- 33 As above sec 224.
- 34 The Uganda Gender Policy (2007) <https://bit.ly/33CxPPp> (accessed 2 December 2020).
- 35 The Uganda Gender Policy (As above), para 2.13(d).
- 36 The Uganda Gender Policy (As above), para 2.9.
- 37 The Uganda Gender Policy (As above), para 2.9.
- 38 Status of Implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 3 <https://bit.ly/2JpUGqs> (accessed 2 December 2020).
- 39 The National Policy Guidelines and Service Standards for Reproductive Health Services 2001 <https://bit.ly/2HXMVas> (accessed 2 December 2020).
- 40 The National Policy Guidelines and Service Standards for Reproductive Health Services 2001 <https://bit.ly/2HXMVas> (accessed 2 December 2020).
- 41 As above para 4.13.
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