

**RELIGIOUS FUNDAMENTALISMS AND ITS INFLUENCE ON REGULATING  
REPRODUCTIVE RIGHTS IN UGANDA**

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF  
THE DEGREE LLM (SEXUAL REPRODUCTIVE RIGHTS IN AFRICA)

**BY  
ROSE WAKIKONA  
STUDENT NO. 22962892**

PREPARED UNDER THE SUPERVISION OF PROFESSOR EBENEZER DUROJAYE  
AT THE CENTRE FOR HUMAN RIGHTS, FACULTY OF LAW - UNIVERSITY OF  
PRETORIA

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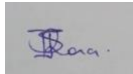
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## PLAGIARISM DECLARATION

I, ROSE WAKIKONA, declare that the work presented in this dissertation is original. It has not been given to any other University or Institution. Where other people's work has been used, it has been duly acknowledged.

Signature: 

Date: 12 August 2024

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## **ABSTRACT**

This research reflects on the influence of religious fundamentalisms on the proposed Human Assisted Reproductive Technology bill of 2023 in Uganda and how this shall affect the reproductive rights of people who do not conform to the heteronormative standards of sexuality and reproduction. Uganda has domesticated several international and regional human rights instruments that demonstrate an aspiration to rely on human rights standards and norms when legislating on reproductive rights but by adopting very narrow criteria on who can use Assisted Reproductive Technologies (ARTs), outlawing commercial surrogacy and failing to address the exorbitant cost of ARTs, the bill instead stands to violate reproductive rights by limiting choice all in a bid to centre the 'natural' family within reproduction. The research is divided into six chapters with chapter 1 giving background and context, chapter 2 discussing the theoretical framework of reproductive justice, chapter 3 analysing the obligations of Uganda under the human rights system, chapter 4 discussing the influence of religious fundamentalisms on reproductive rights in Uganda, chapter 5 looking at comparative legislation on ARTs from India and South Africa and chapter 6 making recommendations for embracing reproductive rights within ARTs.

## **ACRONYMS**

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AHA	Anti-homosexuality Act of 2023
ARTs	Assisted Reproductive Technologies
AU	African Union
CAPA	Council of Anglican Provinces of Africa
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
EAC	East Africa Community
EALA	East Africa Legislative Assembly
HART	Human Assisted Reproductive Technologies Bill of 2023
ICPD	International Conference on Population and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SDG	Sustainable Development Goals
SRHR	Sexual and Reproductive Health and Rights
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights
UDHS	Uganda Demographic Health Survey
UMDPC	Uganda Medical and Dental Practitioners' Council
UN	United Nations
USA	United States of America

## CHAPTER 1: INTRODUCTION

### 1.1 Background

Fundamentalism has been defined as ‘a movement or attitude stressing strict and literal adherence to a set of basic principles.’<sup>1</sup> Uganda has seen religion take root with over 72% of the population identifying as Christian and 14% identifying as Muslim.<sup>2</sup> The prevalence and growth of religion within the country has led to a rise in religious fundamentalisms and seen it influence laws and policies adopted on reproductive rights. This has served to enforce the heteronormative standards of a ‘traditional’ family based on a relationship between a man and a woman preferably endorsed by marriage, with children born naturally, this privileges certain categories of people while othering already disenfranchised categories of people.<sup>3</sup> The influence of religious fundamentalisms has found its way into decision-making spaces in Uganda permeating the three arms of government.<sup>4</sup>

Article 7 of the Constitution of the Republic of Uganda, 1995 declares that Uganda shall not adopt a state religion which means Uganda is a secular state,<sup>5</sup> however, we see the influence of religious fundamentalisms on reproductive health laws and policies like in the recently proposed Human Assisted Reproductive Technologies bill of 2023 (HART) which limits access of Assisted Reproductive Technologies (ARTs) to heterosexual couples and requires the use of ARTs only in instances of infertility. These provisions seek to enforce the heteronormative ideal of a ‘natural’ family while disregarding the reproductive rights of those who do not conform to the worldview of religious fundamentalisms.

Uganda does not expressly recognise reproductive rights within her laws but has ratified several human rights instruments that provide for reproductive rights and has domesticated some of these rights in chapter 4 of the Constitution specifically recognising the right to found a family in article 31(1), protection of the rights of women in article 33, the right to equality in article 21, the right to dignity in article 24, the right to privacy of the person in article 27 and the right to health. These cover the tenets of reproductive justice which recognises the right to have children, the right not to have children, and the right to raise one’s children in a safe and

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<sup>1</sup> R Peels ‘On defining ‘fundamentalisms’’ [2022] 59 *Religious Studies* 744.

<sup>2</sup> Uganda Bureau of Statistics (UBOS) ‘The National Population and Housing Census 2014 – Main Report’ (2016) 19.

<sup>3</sup> M Cense and others *Culture, Religion and Sexual and Reproductive Health & Rights* (2018) 5.

<sup>4</sup> The Constitution of the Republic of Uganda, 1995

<sup>5</sup> *Sharon Dimanche and others v Makerere University* (2006) UGSC 210 where Justice Odoki CJ of the Supreme Court of Uganda (as he then was) emphasised that Uganda is a secular state with religious equality amongst the diverse religions that are not immune from observing the law.



sustainable environment.<sup>6</sup> These are supposed to be the basis upon which the state legislates on reproductive rights, and they impose an obligation on the state to respect, protect, and fulfil the reproductive rights of its citizens, this research will consider the HART bill, querying the influence of religious fundamentalisms on it and its ability to guarantee reproductive justice.

## 1.2 Problem statement

Uganda is a pronatalist country that grapples with a high average birth rate of 5.5 children for every woman of reproductive age.<sup>7</sup> Uganda also registers substantial infertility rates majorly caused by morbidities due to unsafe abortion, lack of proper postpartum care, and poor management of sexually transmitted infections, which has led over 10% of couples and 3% of women of reproductive age to struggle with infertility.<sup>8</sup> World Health Organisation (WHO) shows that 1 in every 6 couples globally suffers from infertility with a 17.5% prevalence of infertility, suffice it to say the societal pressure on women to have children is immense especially since the value of a woman is usually based on her ability to reproduce, this heavily stigmatises infertility and places a heavy burden on women to procreate.<sup>9</sup>

The Constitution of the Republic of Uganda in Article 33(2) makes a strong statement for the protection of the rights of women by placing an obligation on the state to 'provide facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement.' Article 33(3) buttresses this point by obliging the state to 'protect women and their rights, taking into account their unique status and natural maternal functions in society'. These provisions not only recognise women as a vulnerable group in Uganda but also imply the protection of women's reproductive rights. The same Constitution guarantees the right to dignity, the right to privacy, access to health services and prohibits discrimination on grounds of sex and social standing.

Uganda has also ratified several international and regional instruments that prohibit discrimination on grounds of sex and gender and guarantee reproductive rights, like the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). These instruments plus the Constitutional provisions on human rights are expected to be the benchmarks upon which Uganda legislates on reproductive rights to guarantee equity

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<sup>6</sup> J Perritt and N Eugene 'Inequity and injustice: recognizing infertility as a reproductive justice issue' (2022) 3 *Fertility and Sterility Reports* 2.

<sup>7</sup> UBOS (n 2) 276.

<sup>8</sup> Z Nampewo 'Assisted reproductive technologies in Uganda: Law and practice' in CO Neill & others (eds) *Routledge Handbook of Global Health Rights* (2021) at 87.

<sup>9</sup> Nampewo (n 8) 92

in access to health services. Unfortunately, we see a heavy influence of religious fundamentalisms within laws and policies with these norms being reflected therein instead of human rights standards, to return to 'traditional' heteronormative standards of sexuality and reproduction.

Religious fundamentalisms have seen a massive rise within Africa, according to Jessica Horn this rise is characterised by a huge popular base that politicians see as important for votes; prosperity teachings that pull in the poor based on promises of wealth; lack of regulation compounded by poor oversight by the state and discouragement of debate on scripture which means the person of God and their interpretation of the holy books is always right.<sup>10</sup> To satisfy the whims of the popular base, politicians have now started codifying fundamentalist norms into law even where these norms do not align with human rights and reproductive rights have proved the low-hanging fruit to do just that.

The recently proposed HART bill which was allowed to be presented for debate in the Parliament of Uganda,<sup>11</sup> reflects this position by restricting access to ARTs to heterosexual couples and requires the use of ARTs only for infertile people. The bill intends to expand access to ARTs and protect the rights of users instead restricts the reproductive freedom of users who do not conform to the 'traditional' heteronormative ideas of sexuality and reproduction.

### **1.3 Research question**

The research aims to answer this primary question:

What is the effect of religious fundamentalisms on the regulation of reproductive rights in Uganda?

Within the main question, the research will address these sub-questions:

1. What are the international, regional, and national human rights norms and standards about reproductive rights?
2. How have religious fundamentalisms influenced the legal and policy framework on reproductive rights in Uganda?
3. What is the legal regime on ARTs in Uganda?

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<sup>10</sup> J Horn 'Christian Fundamentalisms and Women's Rights in the African Context: Mapping the Terrain' [2011] *AWID women's rights* 2.

<sup>11</sup> Parliament of the Republic of Uganda, 'Bill on surrogacy in the offing' 10 November 2021 <https://www.parliament.go.ug/news/5409/bill-surrogacy-offing> (accessed 19 April 2023).

4. What lessons can Uganda draw from other jurisdictions in upholding reproductive rights over religious norms?

#### **1.4 Research objectives**

The main objective of this research is to reflect on the influence of religious fundamentalisms on reproductive rights in Uganda and the effect this shall have on people who do not conform to the heteronormative standards of sexuality and reproduction.

The sub-objectives of this research are.

- To explore the legitimacy of reproductive rights in Uganda based on international, regional, and national human rights standards.
- To consider the influence of religious fundamentalisms on the regulation of reproductive rights in Uganda with a focus on the proposed Human Assisted Reproductive Technology Bill of 2023.
- To discuss the conflict between reproductive rights and religious fundamentalist norms as played out in the Human Assisted Reproductive Technology Bill of 2023.

#### **1.5 Research methodology**

The research design for this study was qualitative with data collection being done through document review and analysis of relevant laws, policies, case law, and guidelines on reproductive rights applicable to Uganda. The document review and analysis considered journals, articles, textbooks, reports, statistics, international and regional human rights instruments, and academic writings on religious fundamentalisms, ARTs, and reproductive justice.

#### **1.6 Limitations of study**

The study is limited by scarce information on the prevalence and causes of infertility in Uganda and Africa with very few studies dedicating themselves to interrogating this topic, this study will therefore borrow heavily from global north jurisdictions to cover information gaps. The study also recognises the wide scope of reproductive justice but will limit itself to interrogating the tenet of the right to have children.

## **1.7 Theoretical approach**

The research used the rights-based approach which emphasises the protection and recognition of the most vulnerable in society,<sup>12</sup> this approach was finetuned using the concept of reproductive justice which recognises the place of white supremacy, race, and colonisation when it comes to exercising reproductive autonomy.<sup>13</sup> Sylvia Tamale argues that colonialism used religion as a tool to deconstruct traditional African religion which was embedded within the culture and reinvent the roles of men and women in society making women subordinate to men with clear roles of reproduction and submission.<sup>14</sup>

Recognising that religion especially Christianity was introduced to Uganda through colonialism and the individual and organisational drivers of religious fundamentalisms are foreign,<sup>15</sup> the reproductive justice lens of analysis became critical to allow the study to portray these nuances. Through this approach, the study identified the standards on reproductive rights that Uganda is expected to domesticate and use while legislating. These standards were used to assess the proposed HART bill of 2023 for conformity and to check for influences of religious fundamentalisms making a case for equitable access to reproductive justice for all.

## **1.8 Significance of research**

Uganda is often listed as a shining example when it comes to implementing women's rights but has fallen short in applying reproductive rights in line with international and regional human rights standards. When it comes to guaranteeing reproductive justice for all, suddenly the state chooses to enshrine religious norms over human rights standards, and this affects access to reproductive health services for those who do not conform to the heteronormative ideals of sexuality and reproduction, and this is well and truly reflected in the proposed HART bill. This research will serve to demonstrate the impact of religious fundamentalisms on the regulation of reproductive rights for Ugandans specifically focusing on ARTs and how holding onto these norms serves to disenfranchise already marginalised groups of people. The research will also make recommendations to prompt the country to adopt legislation that aligns with its international and regional human rights commitments.

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<sup>12</sup> United Nations Human Rights Regional Office for Europe *Making a difference: An introduction to human rights* (2018) at 4.

<sup>13</sup> L Ross and R Solinger *Reproductive Justice: An Introduction* (2017) at 6.

<sup>14</sup> S Tamale *Decolonization and Afro-Feminism* (2020) at 173.

<sup>15</sup> Horn (n 10) 4.

## 1.9 Literature review

Scholars have written extensively about religious fundamentalisms being a barrier to the full enjoyment of Sexual and Reproductive Health and Rights (SRHR) in Africa, Sylvia Tamale notes that the people who wield religious power are using the law to control the SRHR of women by mandating them to conform to the heteronormative standards of sexuality and reproduction.<sup>16</sup> This remains true in Uganda where we see religious fundamentalist norms being reflected in legislation that governs SRHR and enforces the heteronormative standards of sexuality and reproduction. The same is elucidated by Jessica Horn who recognises the impact of religion on the political terrain noting that religion is global and that fundamentalists use it as a vehicle to drive their conservative ideologies of control.<sup>17</sup> Sylvia Tamale further discusses that religion is one of the tools used by colonialism to justify white supremacy and the oppression of black people, that religion was also used to justify the subjugation of women and control of their bodies, through the claim of religious supremacy and such norms are universalised and taken as the ultimate standard.<sup>18</sup>

We also know that Uganda has ratified several human rights instruments like the Maputo protocol, the African Charter on Human and Peoples' Rights, CEDAW, International Convention on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR), which prohibit discrimination, guarantee the rights to dignity, liberty, integrity, and health while also, recognising the reproductive rights of women. These human rights standards are supposed to be the basis upon which Uganda legislates on SRHR issues unfortunately these standards have found themselves in conflict with religious norms. Also noteworthy within these human rights instruments is the right to freedom of thought, conscience, belief, and religion seen in article 18 of the UDHR and the CCPR which is sometimes seen as a pass to codify the religious beliefs of a dominant religion in highly religious countries.

Scholars have also tracked the rise of religious fundamentalisms in Africa, Marinus Chijioke Iwuchukwu notes that religious fundamentalisms are on the rise in Africa complete with their social-political agenda which derives legitimacy from holy books, predominantly the Bible and Quran, he further argues that the growth of these religions has also equally increased their influence in politics and decision-making spaces.<sup>19</sup> Indeed this influence, is seen in Uganda and reflected in the current legislations being proposed and adopted on SRHR issues, one of

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<sup>16</sup> S Tamale 'Controlling women's fertility in Uganda' (2016) 13 *International Journal on Human Rights* 117.

<sup>17</sup> Horn (n 10) 2.

<sup>18</sup> Tamale (n 16) 173

<sup>19</sup> MC Iwuchukwu 'Pentecostalism, Islam, and Religious Fundamentalisms in Africa' in Adeshina Afolayan, Olajumoke Yacob-Haliso and Toyin Falola (eds) *Pentecostalism and Politics in Africa* (2018).

which is the proposed HART bill which enforces the heteronormative standard of a 'traditional' family. This reliance on religious ideals as the basis for law-making and not human rights disenfranchises groups of people who are historically vilified, demonised, and suppressed within religion like women, children, and sexual and gender minorities. Indeed, Rayah Feldman argues that religious fundamentalisms deliberately target control of women's reproductive autonomy and have turned the bodies of women into the current political battlefield that we see today.<sup>20</sup>

There is scant information or publications on ARTs and reproductive rights in Uganda and the few that exist are focused on limited access to ARTs due to prohibitive costs and the lack of a comprehensive legal framework as seen when Zahara Nampewo places Uganda as a country that is firmly pronatalist, with the value of women largely based on their ability to carry a pregnancy, deliver a baby and rear a child, she also notes that infertility affects a good portion of couples and ARTs is often used as a viable solution to address infertility for those who can afford, she, therefore, calls for a comprehensive law on ARTs that facilitates access.<sup>21</sup> Now a law to regulate ARTs has been proposed and tabled for debate before the Parliament of Uganda and this research seeks to build on the recommendations of Nampewo by assessing the proposed HART bill, its influences, and whether it conforms with reproductive rights standards.

Admittedly there have been assertions from scholars acknowledging the rising influence of religious fundamentalisms and their impact on the regulation of reproductive rights, but these have largely focused on the impact of religious fundamentalisms on the right not to have children which includes access to contraceptives and access to abortion but there is a limited discourse on the impact of religious fundamentalisms on the right to have a child, especially in a racialised context where black babies do not carry the same value as white babies and where black women have had to reckon with involuntary sterilisation and failure to economically access ARTs. This research will show how religious fundamentalisms have influenced reproductive rights legislation, particularly the right to have children through ARTs.

## **1.10 Outline of chapters**

Chapter 1 gives an overview of the research contextualising the situation by giving a background and problem statement. Chapter 2 considers the theoretical framework of the

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<sup>20</sup> R Feldman and K Clark 'Women, Religious Fundamentalisms and Reproductive Rights' (1996) 4 *Reproductive Health Matters* 15.

<sup>21</sup> Nampewo (n 8) 89.

study which is the rights-based approach with a specific focus on reproductive justice. Chapter 3 discusses the international, regional, and national reproductive rights standards and the obligations of Uganda under these instruments when it comes to the right to have children. Chapter 4 discusses religious fundamentalisms in Uganda and their influence within decision-making spaces looking at the colonial and post-colonial periods specifically focusing on the HART bill. Chapter 5 looks at the lessons Uganda can draw from the jurisdictions of India and South Africa to guarantee reproductive justice for her citizens. Chapter 6 will contain the recommendations and conclusions arising from the research.

## CHAPTER 2: REPRODUCTIVE RIGHTS THROUGH THE LENS OF REPRODUCTIVE JUSTICE

### 2.1 Introduction

This chapter will explore the international and regional legal framework that binds Uganda on reproductive rights. Reproductive health has found a foothold in human rights and this chapter shall look at the framework governing reproductive rights from the International Conference on Population and Development (ICPD) where reproductive health was first recognised as fundamental to human rights<sup>22</sup> to the codification of reproductive rights within the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo protocol).<sup>23</sup> This chapter shall also discuss the link between reproductive justice and reproductive rights and how reproductive justice adds to reproductive rights with a greater focus on intersectionality and the actualisation of reproductive rights wholistically.

### 2.2 International framework on reproductive rights

Women's rights activists have worked tirelessly to place reproductive health on the global agenda and indeed reproductive health has found a place within the international human rights legal framework being intrinsically linked to women's rights through the interpretation of existing international human rights instruments by human rights bodies and courts.<sup>24</sup> The definition of reproductive rights keeps evolving, what is clear is that reproductive rights include a basket of rights that affect reproduction, it is not one singular right but rather many rights.<sup>25</sup> To track the evolution of reproductive rights, we go to the global commitments within the ICPD programme of action and the Beijing Declaration and Platform for Action,<sup>26</sup> which Uganda adopted, where the international community first recognised reproductive health as integral to human rights,<sup>27</sup> these documents are among the first to provide language for reproductive rights and contain the most widely used definition for reproductive health, which states that.

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<sup>22</sup> MR Maziwisa and E Durojaye 'Engendering Legal and Institutional Reforms to Ensure Access to Reproductive Justice for Women in Zimbabwe: A Case Study of the Mapingure Case' (2022) 30 *African Journal of International and Comparative Law* at 83

<sup>23</sup> Art 14.

<sup>24</sup> R Rebouche 'Reproducing Rights: The Intersection of Reproductive Justice and Human Rights' (2017) 7 *University of California Irvine Law Review* at 584.

<sup>25</sup> ICPD 'Programme of Action' (1994) 20<sup>th</sup> Anniversary Edition <[https://www.unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf)> (accessed 30 August 2023) at 59.

<sup>26</sup> UN Women 'Beijing Declaration and Platform for Action' (1995) <[https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA\\_E\\_Final\\_WEB.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf)> (accessed 30 August 2023) at 9.

<sup>27</sup> Maziwisa and Durojaye (n 22) 83.



Reproductive health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes.<sup>28</sup>

The ICPD Programme of Action and the Beijing Declaration describe what reproductive rights entail; having a safe and satisfying sex life; having the capacity to have children; and having the ability to decide when and if to have children.<sup>29</sup> They also acknowledge the intersecting vulnerabilities that may affect an individual when accessing their reproductive rights and recognise gender inequality as a key driver for the full enjoyment of reproductive rights for women and girls.<sup>30</sup> These commitments are further enshrined within the United Nations (UN) 2030 agenda for sustainable development which place access to reproductive health and rights as a key priority action to ensure global development in Sustainable Development Goal (SDG) 3 on good health and wellbeing as well as in SDG 5 on gender equality.<sup>31</sup>

The SDGs, ICPD Programme of Action, and the Beijing Declaration draw on existing human rights instruments to legitimise and form a basis for discourse on reproductive rights thus building language and consensus on issues that are otherwise very divisive and contentious.<sup>32</sup> Such international human rights instruments recognise different rights that affect reproduction and impose obligations on states to realise these rights for their citizens. The core rights that affect reproduction include the right to equality and non-discrimination, the right to privacy, the right to liberty and autonomy, the right to health, and the right to dignity.<sup>33</sup> These are recognised within the Universal Declaration of Human Rights (UDHR),<sup>34</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>35</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>36</sup> and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).<sup>37</sup>

Uganda has ratified the CCPR, CEDAW, and CESCER without reservation and these instruments create specific obligations for states under reproductive rights and establish enforcement mechanisms to oversee the implementation of these covenants.<sup>38</sup> These

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<sup>28</sup> ICPD (n 25) para 7.2.

<sup>29</sup> ICPD (n 25) para 7.3.

<sup>30</sup> ICPD (n 25) para 7.34.

<sup>31</sup> <https://www.globalgoals.org/goals/> (accessed 28 August 2023).

<sup>32</sup> Rebouche (n 24) 584.

<sup>33</sup> Rebouche (n 24) 584.

<sup>34</sup> Arts 2, 7 & 12.

<sup>35</sup> Arts 2, 3 & 26.

<sup>36</sup> Arts 1, 2, 3 & 12.

<sup>37</sup> Arts 2 & 12.

<sup>38</sup> L Berro Pizzarossa 'Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law' (2018) 7 *Laws* at 9.

implementing bodies have provided further guidance through general comments and concluding observations, which have further supported in building consensus around the general understanding of reproductive rights, clarifying the obligations of states in implementation.<sup>39</sup>

Through the guidance provided by these human rights bodies, reproductive health has been especially linked to the right to health which is seen as the springboard for reproductive health,<sup>40</sup> This can be seen in the adoption of General Comment 14 in 2000 by the Committee on Economic, Social and Cultural Rights (Committee on ESCR), which expounds on the obligation of states to respect, protect and fulfil the right to health in a non-discriminatory manner, this General Comment recognises the prioritisation of sexual and reproductive health as crucial to the realisation of the right to health specifically looking at maternal health and access to family planning.<sup>41</sup>

The Committee on ESCR in 2016 further adopted General Comment 22 building on General Comment 14 but specific to sexual and reproductive health which explains it under Article 12 of the CESCR, seeing it as a fundamental part of the right to health but which is riddled with hurdles towards enjoyment.<sup>42</sup> This General Comment acknowledges that sexual and reproductive health is largely restricted through laws, policies, and practices, which is exacerbated for people who may have multiple intersecting vulnerabilities that make it harder for them to access sexual and reproductive health information and services.<sup>43</sup> It emphasises the need to ensure non-discrimination for women, adolescents, people with disabilities, women living with HIV, and sexual and gender minorities by taking into consideration their specific reproductive health needs.<sup>44</sup> It also calls on the state to amend or repeal all laws that might hinder the enjoyment of reproductive health and work towards changing attitudes that promote discrimination.<sup>45</sup>

This international human rights framework on reproductive rights keeps on evolving as consensus on the issue grows but it has been criticised by Loretta Ross for failing to recognise and address the historical oppressions that some individuals, especially women of colour, sexual and gender minorities, young people and people with disabilities have suffered when trying to enjoy their reproductive rights where often the biggest challenge is not deciding if and

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<sup>39</sup> Berro Pizzarossa (n 39) 8.

<sup>40</sup> Maziwisa and Durojaye (n 22) 83.

<sup>41</sup> General comment 14 paras 12 & 30.

<sup>42</sup> General comment 22 para 1.

<sup>43</sup> General comment 22 para 34.

<sup>44</sup> General comment 22 para 30.

<sup>45</sup> General comment 22 para 34.

when to have children, but being denied the right and opportunity to have children and parent these children in a safe environment.<sup>46</sup>

In this way it can be argued that the framework fails to explicitly address the impact of different systems of oppression like religion, colonialism, and racism on the reproductive rights of individuals instead focusing on the choice of an individual rather than their lived realities,<sup>47</sup> suffice to say different bodies and courts have sometimes used it to uphold the reproductive rights of those historically marginalised.<sup>48</sup> This framework has also been criticised by Rachel Rebouche for centring and prioritising abortion in the discourse of reproductive rights which is considered the primary issue in reproductive rights by white women's rights activists who are the dominant voice, ignoring the other reproductive health issues experienced by other women of colour.<sup>49</sup>

From the above discussion, it is clear that the global discourse on reproductive rights though evolving, lacks focus on intersectionality and inclusivity and instead has a heavy emphasis on population control, family planning, and access to abortion with motherhood considered a given right.<sup>50</sup> This ignores the real challenge of infertility that impacts many individuals and ignores the hegemony of heteronormative monogamous standards of sexuality and reproduction that often influence who can have a child, which becomes even more complex when considering the existing racial hierarchy that disenfranchises people of colour not just in reproduction but also in access to resources.

### **2.3 Regional framework on reproductive rights**

Uganda is primarily part of two regional blocks which include the African Union (AU) and the East Africa Community (EAC). The African human rights system has adopted several instruments that Uganda has ratified, these recognise human rights that have been used to enforce reproductive rights on the continent such as the right to equality and non-discrimination, the right to dignity, the right to the integrity of the person, the right to receive information and the right to health.<sup>51</sup>

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<sup>46</sup> Ross and Solinger (n 13) 238.

<sup>47</sup> Rebouche (n 24) 588.

<sup>48</sup> E Durojaye and others 'Introduction' in E Durojaye and others (eds) *Advancing Sexual and Reproductive Health and Rights in Africa: Constraints and opportunities* (2021) at 7.

<sup>49</sup> Rebouche (n 24) 580.

<sup>50</sup> Berro Pizzarossa (n 39) 4.

<sup>51</sup> E Durojaye 'Article 14: Health and reproductive rights' in A Rudman and others (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2023) at 314.

These rights are codified in instruments such as the African Charter on Human and Peoples' Rights (African Charter)<sup>52</sup> and the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo protocol).<sup>53</sup> The African Commission on Human and Peoples' Rights (African Commission)<sup>54</sup> and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) are charged with implementing these instruments and have enforced these rights in their decisions.<sup>55</sup> The Maputo Protocol has also gone on to explicitly address context-specific harmful cultural practices that impact the reproductive health of women like child marriage and female genital cutting calling for their total elimination.<sup>56</sup>

The Maputo Protocol does not stop there but also expressly recognises reproductive rights seen as women having the right to control their fertility, the right to access family planning services and information, and the right to protect themselves from HIV/AIDS, it also goes on to call on states to strengthen maternal health service delivery and authorise abortion in case of maternal illness, foetal abnormalities, and sexual assault.<sup>57</sup> It is important to note that Uganda has placed a reservation on Article 14(2)(c) of the Maputo Protocol limiting access to safe abortion to the laws of the land.<sup>58</sup>

The obligations for states under Article 14 are further expounded by the African Commission in two general comments. General Comment 1 addresses the obligations of states to respect, protect, promote, and fulfil the right to self-protection from HIV/AIDS stressing the importance of providing sexual and reproductive health services and information to all in a non-discriminatory manner. General Comment 2 expands on Article 14(2)(c) of the Maputo Protocol discussing the obligations of states to respect, protect, promote, and fulfil the reproductive rights of women by creating legal, political, and socio-economic conditions that support women to exercise autonomy and access information and services. Setting obligations for the states is important because it allows the rights holders to hold duty bearers accountable for the violations of reproductive rights<sup>59</sup>

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<sup>52</sup> Arts 2, 3, 4, 5, 9 & 16.

<sup>53</sup> Arts 2, 3, 4 & 14.

<sup>54</sup> Art 25 of the African Charter.

<sup>55</sup> See the case of *Legal and Human Rights Centre and another v Tanzania* Communication No. 0012/Com/001/2019 where ACERWC found that the mandatory expulsion of pregnant girls from school amounted to a violation of the rights to receive information, education, health, privacy, and freedom from discrimination.

<sup>56</sup> Art 4.

<sup>57</sup> Art 14.

<sup>58</sup> E Durojaye 'Article 14: Health and reproductive rights' in A Rudman and others (n 51) 310.

<sup>59</sup> E Durojaye 'Article 14: Health and reproductive rights' in A Rudman and others (n 51) 319.

The EAC on the other hand has been hesitant to fully recognise and provide for the full breadth of reproductive rights. The 1999 Treaty for the Establishment of the East Africa Community (EAC treaty), which Uganda has signed, recognises gender equality and the role of women as a tool for development, it also recognises as a foundational principle the adherence to the recognition, protection, and promotion of human rights.<sup>60</sup> The EAC also adopted a gender policy in 2018 which presents a vision and somewhat targeted plan to achieve gender equality,<sup>61</sup> the policy has priority action areas dedicated to the reproductive rights of women and these include maternal health, sexual and gender-based violence including ending harmful practices and addressing the HIV/AIDS pandemic.<sup>62</sup>

The policy goes ahead to create specific actions for member states for each of the priority action areas including reforming laws and increasing funding to cater for reproductive health.<sup>63</sup> This policy is seen as a small win for reproductive rights unfortunately it only addresses a small portion of reproductive rights and when a member of the East Africa Legislative Assembly (EALA)<sup>64</sup> attempted in 2021 to table for consideration a bill addressing the full breadth of sexual and reproductive health, religious leaders quickly shot it down for expanding reproductive rights to people who do not conform to heteronormative standards of sexuality and reproduction, the bill remains pending and a prickly point of contention to date.<sup>65</sup>

The Maputo Protocol has proved pivotal in placing reproductive health as central to realising women's rights and achieving women's empowerment, it has also become a catalyst for the prioritisation of reproductive health within the continent<sup>66</sup> with some African countries like Rwanda moving towards addressing the poor indicators on reproductive health through law reform and strengthening of the health system, with a primary focus on women.<sup>67</sup> At the same time the Maputo Protocol remains a very regional instrument that struggles to translate to the grassroots with countries failing to fully domesticate it, even where they have ratified it, this is largely due to religious and cultural sentiments surrounding issues like abortion, individual

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<sup>60</sup> Art 5(3).

<sup>61</sup> EAC gender policy <http://repository.eac.int/handle/11671/24328> (accessed 1 September 2023) at 7.

<sup>62</sup> EAC gender policy (n 61) 31.

<sup>63</sup> EAC gender policy (n 61) 45.

<sup>64</sup> The EALA is the legislative arm of the EAC established under articles 9(1)(f) and 48 of the EAC treaty.

<sup>65</sup> CSMMUA 'Demystifying misconceptions on the East Africa Community sexual and reproductive health bill, 2021' <https://www.cehurd.org/publications/download-info/demystifying-misconceptions-on-the-east-africa-community-sexual-and-reproductive-health-bill-2021/> (accessed 2 September 2023).

<sup>66</sup> EAC gender policy (n 40) 10.

<sup>67</sup> Law Relating to Human Reproductive Health No 21/2016 [https://www.partners-popdev.org/docs/2016/Rwandan\\_Reproductive\\_Health\\_Law\\_2016.pdf](https://www.partners-popdev.org/docs/2016/Rwandan_Reproductive_Health_Law_2016.pdf) (accessed 15 September 2023) which relies on the African Charter and the Maputo Protocol to provide for reproductive rights for the Rwandese people.

autonomy and deeply entrenched heteronormative and patriarchal norms.<sup>68</sup> Also, countries like Uganda have placed reservations on Article 14(2)(c) which calls for access to safe and legal abortion which means that her citizens cannot benefit from enforcement of such provisions.<sup>69</sup>

The regional framework on reproductive rights, just like the international framework heavily focuses on the capacity to reproduce but fails to address the issue of parenting and infertility viewing motherhood as a given right.<sup>70</sup> The silence surrounding infertility and parenting marginalises a group of the population whose reproductive rights are invibilised and not prioritised for implementation.<sup>71</sup> It also means that when states are legislating on silenced issues like infertility, sexual and gender minority rights, and who can have a child, because there is no regional position or guidance on such issues, they usually legislate in a way that fails to guarantee the full reproductive rights of its citizens, often reverting to religious and cultural standards on the issue.

#### **2.4 Through the lens of reproductive justice**

Ibrahim Obadina argues that when legislating on reproductive rights for women the ‘woman question’ should be front and centre of the discussion, addressing the impact of such legislation on the lived realities of women.<sup>72</sup> Reproductive justice seeks to centre the lived experiences of women navigating reproductive rights moving away from mere freedoms and entitlements to actual implementation of such rights.<sup>73</sup> Reproductive justice as a concept is often defined as.

The complete physical, mental, spiritual, political, social, and economic well-being of women and girls based on the full achievement and protection of women’s human rights.<sup>74</sup>

The concept was first floated by feminist women of colour from the USA in 1994 after participating in the ICPD conference and realising that the broader reproductive rights

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<sup>68</sup> I Obadina ‘Addressing maternal mortality through decriminalising abortion in Nigeria: Asking the ‘woman question’ in E Durojaye and others (eds) *Advancing sexual and reproductive health and rights in Africa* (2021) at 32.

<sup>69</sup> E Durojaye ‘Article 14: Heath and reproductive rights’ in A Rudman and others (n 51) 319.

<sup>70</sup> V Balogun and E Durojaye ‘The African Commission on Human and Peoples’ Rights and the promotion and protection of sexual and reproductive rights’ (2011) 11 *African Human Rights Law Journal* at 376.

<sup>71</sup> Perritt (n 6) 2.

<sup>72</sup> I Obadina ‘Addressing maternal mortality through decriminalising abortion in Nigeria: Asking the ‘woman question’ in E Durojaye and others (eds) *Advancing sexual and reproductive health and rights in Africa* (n 68) 32.

<sup>73</sup> Ross and Solinger (n 16) 60.

<sup>74</sup> L Ross ‘Reproductive justice briefing book: A primer on reproductive justice and social change’ (2007) *Reproductive Technologies* at 4.

movement was not addressing the lived realities of women of colour when it comes to enjoying reproductive rights due to the impact of racism, slavery, and colonisation on the reproductive capacities of these women.<sup>75</sup> Reproductive justice is, therefore, a tool for achieving reproductive rights that focuses on intersectionality and recognition that reproductive decisions are made based on the lived experiences of individuals, it prioritises positive rights that require the state not just to stay away from interfering in the autonomy of a person but to actively create an environment where everyone can enjoy their reproductive rights.<sup>76</sup>

In this way, reproductive justice addresses the historical oppressions faced by women who are greatly affected by different systems of oppression which see a furor of reproductive injustices being committed against them like forced sterilisation, forced abortion, sexual violence and so many other injustices that impact how they enjoy their reproductive rights, especially since these systems of oppression were used to determine and enforce sexuality and reproduction by deciding who is privileged enough to have sex, found a family and reproduce.<sup>77</sup> Reproductive justice as a concept is therefore intended to use human rights to draw attention to laws that discriminate against women to limit their reproductive autonomy because of their race, gender, sexual orientation, disability, economic status, and health status.<sup>78</sup>

It also considers the history of such laws and how often laws restricting sexuality and reproduction were influenced by religious and racial biases to uphold and promote heteronormative, often white, standards of sexuality and reproduction, the concept recognises that we all have a right to decide whether to have a child but often this decision is limited by discriminatory laws, policies, and practices, that are prejudiced by the existing racial hierarchy that places a low value on black and brown babies.<sup>79</sup> Reproductive justice uses three tenets to address the full breadth of reproductive rights believing that everyone has; a) a right to have children; b) a right not to have children; and c) the right to parent their children in a safe and healthy environment.<sup>80</sup> This means acknowledging and actively addressing the very real legal and socio-economic environment within which people make their reproductive decisions, manage their fertility, give birth, and parent.<sup>81</sup>

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<sup>75</sup> Ross and Solinger (n 13) 64.

<sup>76</sup> Maziwisa and Durojaye (n 22) 85.

<sup>77</sup> AA Eaton and DP Stephens 'Reproductive Justice Special Issue Introduction "Reproductive Justice: Moving the Margins to the Center in Social Issues Research" (2020) 76 *Journal of Social Issues* at 4.

<sup>78</sup> Ross and Solinger (n 13) 72

<sup>79</sup> Ross and Solinger (n 13) 130.

<sup>80</sup> Ross and Solinger (n 13) 9.

<sup>81</sup> Maziwisa and Durojaye (n 22) 86.

The human rights-based approach requires that one knows their rights, that such rights are recognised by the state, and that there is a mechanism to enforce these rights.<sup>82</sup> The reliance on state recognition of rights within law requires domestication of human rights treaties and a deference to the judiciary for enforcement of reproductive rights, this often leaves the interpretation of such rights open to external biases and influences which may be used to uphold the heteronormative standards of sexuality and reproduction.<sup>83</sup> Reproductive justice expands on this approach to address the collective oppressions of certain groups of people that have impacted their reproductive rights and validate choice by ensuring positive rights are applied like ensuring availability and accessibility of healthcare services and information, and removal of legal restrictions thus making it easy for women to exercise autonomy and enjoy full reproductive rights regardless of whether society deems them suitable for such.<sup>84</sup>

Rachel Rebouche argues that the principle of universalism within reproductive rights is limited to the priorities of the global north thus centring on controlling fertility.<sup>85</sup> This disregards the reproductive health needs of women in the global south which lack prioritisation, there is also a demonisation of the cultures of women in the global south on sexuality, reproduction, and birthing practices, with the imposition of the standards of the global north as the norm.<sup>86</sup> This according to Rebouche reflects the fact that it is those in power who set the agenda and determine what the rules are and where the resources should go.<sup>87</sup> This is true because society through those in power has granted a privileged few the right and ability to manage their fertility based on their marital status, sexual orientation, economic status, and able-bodied status, and where one does not conform to the ideal standards of motherhood your reproductive rights are suddenly stripped from you because of the perceived moral or physical failings.<sup>88</sup>

Reproductive justice recognises that the church has been placed as a supervisor of sexuality and reproduction within our society and has been given the power to enforce heteronormative standards of sexuality and reproduction by deciding who can found a family, who and when one can have sex, who can have a child and how to raise these children.<sup>89</sup> Religion also legitimises motherhood by deciding who is best suited to have a child while decrying certain types of motherhood.<sup>90</sup> By recognising that reproductive rights do not merely depend on

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<sup>82</sup> Rebouche (n 24) 594.

<sup>83</sup> Rebouche (n 24) 599.

<sup>84</sup> Ross and Solinger (n 13) 120.

<sup>85</sup> Rebouche (n 24) 599.

<sup>86</sup> Rebouche (n 24) 599.

<sup>87</sup> Rebouche (n 24) 602.

<sup>88</sup> Ross and Solinger (n 13) 195.

<sup>89</sup> Ross and Solinger (n 13) 130.

<sup>90</sup> Feldman and Clark (n 20) 12.



individual choice, reproductive justice moves from merely stating the entitlements and freedoms of individuals to addressing the effect of religion on reproductive rights as a system of oppression.<sup>91</sup> It also expands the breadth of reproductive rights by recognising that sometimes for women, motherhood is not a given right, instead motherhood is controlled using discriminatory laws and practices to either force women to have or not have babies thus disregarding their autonomy, needs, and desires.<sup>92</sup>

## **2.5 Conclusion**

In conclusion, international and regional standards on reproduction have been set within the UN human rights system and the African human rights system with mechanisms put in place to ensure enforcement of reproductive rights. These standards are expected to be the yardstick when legislating on reproductive rights nationally, unfortunately, domestication of reproductive rights at the grassroots remains a challenge due to the influence of several systems of oppression. One such system, which is the focus of this dissertation, is religion which as discussed above has been placed as the supervisor of sexuality and reproduction enforcing standards that often do not align with Uganda's international and regional commitments on reproductive rights.

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<sup>91</sup> Ross and Solinger (n 13) 119.

<sup>92</sup> Ross and Solinger (n 13) 119.

## CHAPTER 3: CONTEXTUALISING RELIGIOUS FUNDAMENTALISMS IN AFRICA

### 3.1 Introduction

This chapter will consider religious fundamentalisms through the colonial and post-colonial times in Africa. The chapter will discuss what informs religious fundamentalist beliefs and how they target the reproductive rights of marginalised communities seeking to entrench a heteronormative standard of sexuality and reproduction. The chapter will also plot the use of religion as a tool to imbed and justify colonisation and the leadership religious institutions took in providing social services like education and health services which further entrenched religion within African societies. The chapter will finally look at the wild spread of religion in post-colonial Africa and how this has created a massive social base of support to legislate and govern according to religious norms.

### 3.2 Fundamentalist perspectives on reproduction and sexuality.

Fundamentalisms has been defined as 'a movement or attitude stressing strict and literal adherence to a set of basic principles.'<sup>93</sup> Jessica Horn further defines religious fundamentalisms as; 'A morally conservative ideology based on, and justified by, a particular interpretation of scripture that seeks to promote and establish itself as hegemonic', the scripture here is believed to be the only version of truth and this truth is drawn from holy books that are said to be authored or inspired by God which is the bible for Christianity and the Quran for Islam.<sup>94</sup> Religion is thus cast as the voice of morality and tradition and any other belief system is demonised.<sup>95</sup> By inheriting religion through colonisation Africans by default inherited religious fundamentalisms which have gone on to permeate all spheres of society including the law as a manoeuvre to assert hegemony.<sup>96</sup>

At the forefront of fundamentalisms is using religion as a tool to achieve power and social influence by controlling women, and their fertility and by subjugating women's bodies and behaviours through attacking issues like abortion, sexuality education, and contraception.<sup>97</sup> Christian fundamentalists inherently believe that sexuality and reproduction are natural functions ordained by God to be exercised within the confines of marriage based on the creation story as recorded in the bible,<sup>98</sup> from the creation story it is believed that the biological

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<sup>93</sup> Peels (n 1) 15.

<sup>94</sup> Horn (n 10) 1.

<sup>95</sup> Feldman and Clark (n 20) 14.

<sup>96</sup> Tamale (n 16) 177.

<sup>97</sup> Feldman and Clark (n 20) 13.

<sup>98</sup> The creation story is found in the Bible Genesis 1:26-29 and Genesis 2:5-25 which describes the creation of the earth generally and specifically the creation of man (here called Adam) and woman (here called Eve). Woman was created out of the rib of man and as a 'suitable helper' for him, placing her in a position of servitude to man.

differences between men and women determine the different roles they hold in society with women given the role of reproduction, nurture and homemaker while men are given the role of leadership, protection and provision, a model that each gender is expected to strictly comply with.<sup>99</sup> The authority to lead by men and to serve by women is believed to be from God and cannot be questioned, to reject this authority is to sin against God.<sup>100</sup>

Muslim fundamentalist beliefs do not differ much from those of their Christian counterparts with both believing in and pushing for reproduction and sexuality to be exercised only within a patriarchal heterosexual society where the man is the head and the woman is subordinate.<sup>101</sup> The biggest difference between the two religions is that Muslims accept polygamy as one of the ways to form a family while Christians largely believe in monogamy.<sup>102</sup> Muslims also believe in the fundamental differences between a man and a woman brought on by their biological differences, with women ascribed the role of reproduction and nurturing the family to the exclusion of all other roles in society.<sup>103</sup> This similarity in beliefs has provided an opportunity for Christians and Muslims to gang up together in support of laws, policies, and practices that promote this idealised way of practicing reproduction and sexuality forming a critical support base that supports sexuality and reproduction as per the holy books.<sup>104</sup>

The fundamentalists believe that although the roles of women and men in society are distinctively different, they also complement each other and each role is relevant for the raising of good children.<sup>105</sup> Men leading their families and women submitting to their husbands is considered the recipe for a successful family and fundamentalists often decry the breakdown of families and the ills in society as a result of failing to adhere to this way of forming and running a family.<sup>106</sup> Everyone is expected to accept their gendered roles in society and prioritise these as their primary focus, failing to do so would mean one is sinning against God.<sup>107</sup> Torkel Brekke argues that religious fundamentalists struggle to delineate religion from law and politics, universalising their religious beliefs as the standard of how one should live, often using the law as a tool to entrench and uphold these norms regardless of other people's

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<sup>99</sup> T Brekke *Fundamentalisms: Prophecy and Protest in an Age of Globalization* (2011) 238.

<sup>100</sup> Brekke (n 99) 260.

<sup>101</sup> S Shaikh 'Morality, justice and gender: reading Muslim tradition on reproductive choices' in S Tamale (ed) *African sexualities: A reader* (2011) at 344.

<sup>102</sup> S Shaikh 'Morality, justice and gender: reading Muslim tradition on reproductive choices' in S Tamale (ed) *African sexualities: A reader* (n 101) 345.

<sup>103</sup> S Shaikh 'Morality, justice and gender: reading Muslim tradition on reproductive choices' in S Tamale (ed) *African sexualities: A reader* (n 101) 346.

<sup>104</sup> Tamale (n 16) 177.

<sup>105</sup> Tamale (n 16) 177.

<sup>106</sup> Brekke (n 99) 239.

<sup>107</sup> Brekke (n 99) 239.

beliefs, in this way religious standards are used to draw boundaries and determine who can reproduce and when.<sup>108</sup>

Sexuality and reproduction are therefore reserved for heterosexual couples who are living in a union blessed by God (read marriage), this standard has been codified into law within Uganda, and this has had the tragic effect of disenfranchising people who do not live up to this standard from enjoying reproductive rights like single people, young people, sexual and gender minorities, sex workers and so many others, these are often stigmatised for exercising their sexual and reproductive rights and are usually overlooked for the provision of information and services.<sup>109</sup> Equally the burdening of women with the role of reproduction and child-rearing, has reduced the value of women to their reproductive capacities and stigmatised those who suffer from infertility or choose to live childfree.<sup>110</sup>

This patriarchal construction of family by religious fundamentalists where relationships are heterosexual, the men are the head and women are subservient has led to women having very limited autonomy over their reproductive choices and being relegated to the private sphere of life, this means they have limited access to information about their reproductive health including family planning, contraceptives, and sexuality education.<sup>111</sup> Also failing to participate in the economic sphere of life has made the women financially dependent on their male counterparts which affects their access to reproductive health services and makes their decision-making dependent on the person who finances their healthcare.<sup>112</sup> This patriarchal and religious construction of reproduction and sexuality ultimately means that men who have been cast as decision-makers will dominate the political and public discourse on sexuality and reproduction ultimately enacting laws that preserve their power under the patriarchy and keep women subservient and tied to their reproductive and nurturing roles in society.<sup>113</sup>

### **3.3 Colonisation and religious fundamentalisms**

Sylvia Tamale argues that the introduction of colonisation in Africa came with the colonisation of gender, where strict gender roles for women and men were set according to the purviews of religion, she further states that the introduction of religion was used as a tool during the

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<sup>108</sup> Brekke (n 99) 260.

<sup>109</sup> Tamale (n 16) 178.

<sup>110</sup> Perritt and Eugene (n 6) 2.

<sup>111</sup> M Natarajan 'Decolonizing purity culture: Gendered racism and white idealization in evangelical Christianity' (2022) 46 *Psychology of Women Quarterly* at 317.

<sup>112</sup> S Shaikh 'Morality, justice and gender: reading Muslim tradition on reproductive choices' in S Tamale (ed) *African sexualities: A reader* (n 101) 346.

<sup>113</sup> S Tamale 'Exploring the contours of African sexualities: religion, law and power' (2014) 14 *African Human Rights Law Journal* at 159.

scramble and partition of Africa to further the colonisation project of the Europeans, with religion being used to justify colonisation and disconnect Africans from their cultures and identities touting the spread of Christianity as civilisation and modernisation, in this way the colonisers demonised African traditions and made them a contraindication of religion, saying you can only be one or the other but not both.<sup>114</sup> Traditional African religious practices were declared witchcraft in most colonised African states and criminalized, for instance in Uganda, the Witchcraft Act was adopted criminalising the practice of witchcraft, which often targets traditional African religious practices, with offenses which attract up to 5 years in prison.<sup>115</sup>

Uganda is no different than most of Africa when it comes to colonisation, between the years of 1894 and 1962,<sup>116</sup> Uganda fell under British colonial rule calling it a 'protectorate' which in essence meant Uganda was subjected to indirect rule by the British where local authorities were used to apply and entrench British governance systems through law and education.<sup>117</sup> Colonisation was a project that greatly impacted the economic, political, and cultural fabric of the Ugandan society, effects that are still being faced to date, even after obtaining independence in 1962.<sup>118</sup> It did not stop at this but there was an introduction of formal education and modern medicine that demanded one convert to some form of religion to gain access to these services, especially since the missionaries were the ones in charge of schools and hospitals.<sup>119</sup>

The missionary schools were run by people of the cloth and the education they provided 'civilised' the natives entrenching within them religious values while demonising and deconstructing traditional African religions as sinful and abominable in the eyes of God.<sup>120</sup> Missionaries took it upon themselves to spread and entrench this belief system within African societies through the schools and hospitals that they founded and run and by default entrench religious fundamentalisms too.<sup>121</sup> To go to their schools one needed to convert to either Christianity or Islam depending on who runs the school and indeed many converted to gain access to learning how to read and write and speak the language of those in power, this education increased one's proximity to resources and power thus bettering their position in society.<sup>122</sup>

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<sup>114</sup> Tamale (n 16) 19.

<sup>115</sup> The Witchcraft Act cap 108, this act remains in force up to date albeit with limited enforcement.

<sup>116</sup> S Tusasiirwe 'Is it indigenisation or decolonisation of social work in Africa? A focus on Uganda' (2022) 12 *African Journal of Social Work* at 11.

<sup>117</sup> A Okoth *A History of Africa: African Nationalism and the de-Colonisation Process* (2006) 65.

<sup>118</sup> Tusasiirwe (n 116) 12.

<sup>119</sup> Tamale (n 16) 177.

<sup>120</sup> Tamale (n 16) 177.

<sup>121</sup> Brekke (n 99) 45.

<sup>122</sup> Tamale (n 16) 179.

Many scholars argue that, unlike African traditional religions which do not prioritise conversion and believe one is born into a religion, Christianity and Islam intrinsically believe in the universality of their message and that believers are therefore called to spread the message to all mankind through evangelism and convert as many people as possible,<sup>123</sup> this duty to evangelise and convert others is what drove the missionaries to come to Africa to spread the word of God, a phenomenon which continues to exist to this date where we see missionaries continuing to come to Africa. Part of the religious norms that were entrenched through the colonisation project were those on reproduction and sexuality, deconstructing the way Africans understood it and replacing it with heteronormative often monogamous religious views.<sup>124</sup>

### **3.4 Religious fundamentalisms in post-colonial times**

Within post-colonial Africa, religious fundamentalisms continue to reign strong with religion spreading rapidly, now over 56% of Africans identify as Christian and 34% identify as Muslim,<sup>125</sup> although many of these Africans continue to practice their African traditional religions alongside their newly acquired faith.<sup>126</sup> This popular support for religion has created a huge support base for religious leaders whose words are often considered unquestionable since they are 'words from God' and many of the believers implicitly trust the words of the religious leaders over and above their political leaders or science or facts, regularly consulting them before making decisions on their lives.<sup>127</sup> Most religious leaders are usually African elite, largely trained for years since childhood in missionary schools on religious dogma, they seek to further entrench these beliefs and disassociate themselves from African traditional practices which they view as backward.<sup>128</sup>

Scholars argue that religion is now being used as a tool to establish social control, due to the economic disenfranchisement of Africa largely driven by capitalism and the racial hierarchy that has seen Africa economically marginalised, many Africans find themselves living in abject poverty with no real opportunity of escaping the position they find themselves in, religion offers solace in the face of this, offering a promise of blessings and good fortune as long as one abides by the word of God, this promise has served to drive religious fundamentalisms and make religion spread like wildfire.<sup>129</sup> This massive support base has made religious leaders

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<sup>123</sup> Brekke (n 99) 45.

<sup>124</sup> Horn (n 10) 3.

<sup>125</sup> B Howard 'Religion in Africa: Tolerance and trust in leaders are high, but many would allow regulation of religious speech' (2020) 339 *Afrobarometer Dispatch* at 2

<sup>126</sup> Tamale (n 113) 153.

<sup>127</sup> Howard (n 125) 3.

<sup>128</sup> Horn (n 10) 3.

<sup>129</sup> Feldman and Clark (n 20) 13.

wield a lot of power which they in turn use to solicit social control and entrench fundamentalist ideals, the support base is also often exploited by politicians to get voted into public office, which is why when it is voting period we often see politicians visiting places of worship to identify with the believers, this creates a codependent relationship between the religious fundamentalists and politicians who often promise to further their agenda in exchange for votes.<sup>130</sup>

Post-colonial times have also seen the rapid spread of Pentecostalism within Africa with over 17% of the total population in Africa identifying as Pentecostals,<sup>131</sup> introduced on the continent in the late 1800s, pentecostalism saw a boost from the 1970s to date, driven by its ability to contextualise and Africanise Christianity by including traditional African practices within the religious celebrations, pentecostalism also dispensed with the elitist hierarchies that are common in the traditional Christian denominations of catholicism and anglicanism, so that in it anyone regardless of their social status and education can hear from God and act on his behalf, this has led to the growth of mega churches often led by someone who claims to have had an encounter with God.<sup>132</sup> Pentecostalism is slowly emerging as a key player in influencing the political landscape of several African countries as they seek not just to convert others but to also establish empires for God, run according to his word.<sup>133</sup>

Jessica Horn argues that these Pentecostal churches are often characterised by; a) a massive grassroots support base, b) a focus on the prosperity gospel, c) a lack of regulation and oversight, and d) a stance that scripture cannot be questioned.<sup>134</sup> The poverty that most Africans find themselves in has made the prosperity gospel compelling with its promises of fortune as long as one follows scripture, also these religious institutions often offer social services like food, education, healthcare, and orphanages which are very much needed within the communities where they operate thus attracting even more followers.<sup>135</sup> This is exacerbated by the limited education and ignorance of the followers and with the little to no regulation which has allowed for all and asunder to become 'pastors' since the only criteria to become one and run a church is for one to be called by God and the only person who can establish this call is the person making the claim, further the inability to question scripture makes people dependant on the pastor for interpretation.<sup>136</sup> These circumstances create a

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<sup>130</sup> Feldman and Clark (n 20) 14.

<sup>131</sup> N Wariboko 'Pentecostalism in Africa' (2017) *Oxford Research Encyclopaedia of African History* at 5.

<sup>132</sup> Wariboko (n 131) 7.

<sup>133</sup> Wariboko (n 131) 10.

<sup>134</sup> Horn (n 10) 2.

<sup>135</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 51.

<sup>136</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 52.

good foundation for religious leaders to wield a lot of power over their followers, power that is often used to drive political discourse especially concerning sexuality and reproduction.<sup>137</sup>

These religious institutions are not just local but often maintain close ties with regional and global institutions wielding similar beliefs but with huge global influence,<sup>138</sup> for example, the Anglicans in Africa often act through the Council of Anglican Provinces of Africa (CAPA),<sup>139</sup> the Catholics act through the Vatican and cardinalate,<sup>140</sup> the Pentecostals work with several churches in the United States of America and Western Europe like the Pentecostal Assemblies of God, Full Gospel Church of God and Redeemed Christian Church and the Muslims collaborate through the Organisation of Islamic Cooperation and Organisation of Islamic Countries of which most African countries including Uganda are part of.<sup>141</sup> These regional and global institutions fund the local institutions and set the narrative when it comes to different issues like sexuality and reproduction, the links also create close networks that allow these fundamentalists to exercise political clout at a national, regional, and global level often forming lobbying or pressure blocks to spread the same message to preserve the religious understanding of sexuality and reproduction.<sup>142</sup>

### 3.5 Conclusion

In conclusion, we can deduce from the above discussions that religion has taken a chokehold of Africa, and with it, we see a significant rise in religious fundamentalisms which universalise scripture as the only true way to live life and seek to entrench religious values as the standard upon which countries legislate and govern themselves. Unfortunately, the norms on sexuality and reproduction that these fundamentalists seek to entrench often marginalise certain groups of people who are often denied autonomy and reduced to their reproductive capacities.

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<sup>137</sup> Brekke (n 99) 239.

<sup>138</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 46.

<sup>139</sup> <https://capa-hq.org/> (accessed 20 October 2023).

<sup>140</sup> <https://www.vatican.va/content/vatican/en.html> (accessed 20 October 2023).

<sup>141</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 47.

<sup>142</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 46.



## **CHAPTER 4: ACCESS TO ASSISTED REPRODUCTIVE TECHNOLOGIES AND RELIGIOUS FUNDAMENTALISMS IN UGANDA.**

### **4.1 Introduction**

This chapter will focus on the place of religious fundamentalisms in Uganda and how religion, which is the launchpad of religious fundamentalisms, was introduced through colonisation. The chapter shall trace Uganda's international commitments towards achieving reproductive justice while showing the footprint of religious fundamentalisms on the legal and policy direction derailing the same. It shall finally unpack the proposed Human Assisted Reproductive Technologies (HART) bill of 2023 showing the influence of religious fundamentalisms affecting the rights of those who do not conform to the strict religious standards of sexuality and reproduction.

### **4.2 Statistical context of reproductive health in Uganda**

Uganda has seen steady improvement in some of its reproductive health indicators while others remain stagnant due to a failure to address contested reproductive health issues like access to safe abortion and provision of reproductive health services for adolescents, a failure that arises from the deeply entrenched values that people have on reproduction and sexuality, values that are often guided by religion.<sup>143</sup> Currently, Uganda's fertility rate remains high at an average of 5.2 children for every woman of reproductive age with 3% of them infertile and 10% of all couples struggling with infertility.<sup>144</sup> From this, we can deduce that Uganda is a pronatalist country that encourages childbirth while still grappling with infertility which has received little to no attention in terms of prioritisation for programming. This inaction is further exacerbated by the adoption of laws, policies, and practices that diminish individual autonomy.<sup>145</sup>

### **4.3 National legal context of reproductive rights in Uganda**

Uganda boasts of a plural legal system to enforce law and order and to guide behaviour, there is a formal justice system that is guided by the legislature and the judiciary and an informal justice system that is guided by both hard and soft law.<sup>146</sup> Religion plays a huge role in these legal systems often defining who is deserving of protection and human rights by influencing both soft and hard law, this can be seen in the different legislations passed which reflect

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<sup>143</sup> Horn (n 10) 18.

<sup>144</sup> Uganda Bureau of Statistics (UBOS) 'Uganda demographic and health survey (UDHS) 2022: Key findings' (8 September 2023) <https://www.health.go.ug/cause/uganda-demographic-and-health-survey-udhs-2022-key-findings/> (accessed 2 November 2023).

<sup>145</sup> Ipas 'False Pretenses: The Anti-Comprehensive Sexuality Education Agenda Weaponizing Human Rights' (2023) <https://www.ipas.org/wp-content/uploads/2023/03/False-Pretenses-The-Anti-Comprehensive-Sexuality-Education-Agenda-Weaponizing-Human-Rights-OPPCSEE23b.pdf> (accessed 2 November 2023) at 2..

<sup>146</sup> Tamale (n 113) 157.

religious values like the Anti-homosexuality acts of 2014 and 2023 and the ban of comprehensive sexuality education, these are then upheld by the court system to further entrench these religious norms, it can also be seen when religious leaders use their clout to frustrate government policies and laws simply because they do not align with their values thus rendering them unenforceable.<sup>147</sup>

The Constitution of Uganda establishes the governance structure for Uganda creating 3 arms of government including the executive, the legislature, and the judiciary all of which have specific roles but also act as accountability mechanisms for each other, it is also the focal law upon which parliament formulates new laws.<sup>148</sup> The Constitution although silent on express recognition of reproductive rights, contains several provisions recognising human rights that affect reproduction albeit sometimes restricting. Key among the reproductive rights recognised is the right to equality and freedom from discrimination, the right to dignity, the right to privacy, and the right to found a family for heterosexual couples.<sup>149</sup> The Constitution equally recognises the historic marginalisation of women within society and specifically calls for their protection considering the maternal function that they play in society.<sup>150</sup> It also protects foetal life under the right to life and restricts access to abortion.<sup>151</sup> The Constitution also permits the limitation of rights, as long as the limitation is in public interest and is acceptable in a free and democratic society, this provision is often used to limit the rights of people who do not conform to religious standards of sexuality and reproduction.<sup>152</sup>

While the Constitution asserts Uganda as a country that shall have no state religion,<sup>153</sup> its drafters could not hide their religious biases while discussing the constitutional provisions on reproductive rights specifically Article 22(2) limiting access to safe abortion for women, here the members of the Constituent Assembly pointed to the fact that Uganda is a pronatalist country and proposed to constitutionally protect foetal life with exceptions, this led to a heated debate on what these exceptions should be with no resolution save for where the life of a pregnant person is at risk, the determination of other grounds was pushed to parliament to enact a law, something that has never been done to date and this inaction is now a subject of litigation before the Constitutional Court of Uganda.<sup>154</sup> Key among the contestations and fears

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<sup>147</sup> Tamale (n 113) 157.

<sup>148</sup> Chapters 6, 7 & 8.

<sup>149</sup> Arts 21, 24, 27 & 3.

<sup>150</sup> Art 33

<sup>151</sup> Art 22(2)

<sup>152</sup> Art 43

<sup>153</sup> Art 7

<sup>154</sup> Monitor 'Law scholars sue government over abortion law' (22 March 2017) <https://www.monitor.co.ug/uganda/news/national/law-scholars-sue-government-over-abortion-law-1693298> (accessed 3 November 2023).

of the members of the Constituent Assembly was that life begins at conception and children are a gift from God with an exceptional purpose that no one can interfere with.<sup>155</sup> The Constituent Assembly also played into stereotypes when they proclaimed that women who seek abortions are selfish and therefore the foetus must be protected from such 'selfish' women with one of them making a comparison that Mary the mother of Jesus was a teenage mother and had she been allowed to abort she would have killed the saviour of the world.<sup>156</sup>

This discussion reflects the influence of individual religious biases on the provisions that made it into the Constitution, also nowhere within this discussion did the Constituent Assembly discuss reproductive rights despite having already signed onto the International Conference on Population and Development (ICPD), Beijing Platform of Action, and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) where some members of the Constituent Assembly participated.<sup>157</sup> The Constituent Assembly here missed an opportunity to legislate based on human rights standards instead allowing their individual religious biases to inform constitutional provisions denying women access to safe abortion. This set the trajectory for future legislation and decisions on reproductive rights where religious values trounce human rights standards at every turn.

#### **4.4 The origins of religious fundamentalisms in Uganda**

The religious sects of Christianity and Islam are not indigenous to Uganda, rather we first see Islam introduced to Uganda in 1854 when Arab traders first contacted the Buganda Kingdom Court, shortly after in 1862 Christian missionaries of both Catholic and Anglican faiths arrived in Uganda and started evangelising, with the sole purpose of winning souls as per the mandated mission to convert people and gain power,<sup>158</sup> following this was a fierce battle amongst the Christians and Muslims for dominance within the Buganda Kingdom Court, this battle led to the overthrow of kings,<sup>159</sup> the massacre of the Uganda martyrs<sup>160</sup> and culminated in the 1900 Buganda Agreement between the Buganda kingdom and the British empire which signalled the win of Christianity over Islam and ushered in the era of colonisation.<sup>161</sup> The era

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<sup>155</sup> The Constituent Assembly 'Consideration of the draft Constitution' (12 September 1994) *Parliament of Uganda Hansards* 2030.

<sup>156</sup> The Constituent Assembly (n 155) 2031

<sup>157</sup> Uganda ratified CEDAW in 1985 without reservation.

<sup>158</sup> DM Mudoola *Religion, ethnicity and politics in Uganda* (1996) 22.

<sup>159</sup> Mudoola (n 158) 24.

<sup>160</sup> R Kassimir 'Complex Martyrs: Symbols of Catholic Church Formation and Political Differentiation in Uganda' (1991) 90 *African Affairs* at 359. The massacre of the Uganda martyrs occurred between 1885 to 1887 under Kabaka Mwanga II and saw the execution of hundreds of new Christian converts culminating in the burning of 45 converts on 3<sup>rd</sup> June 1886 at Namugongo, this day is still celebrated today as a public holiday dubbed Martyrs' Day.

<sup>161</sup> JS Ssentongo 'Religion and democracy in Uganda: A historical perspective' 20 September 2022 Keynote presentation delivered to mark the International Day of Democracy

of colonisation saw religion, mostly Christianity, play a vital role in the building of governance structures for what we now know as Uganda through establishing schools, hospitals, and churches, divesting Ugandans of their 'uncivilised' traditional beliefs and arming them with Christian values as a way of modernising them.<sup>162</sup> Since its introduction, religion has become part of everyday life shaping what is acceptable within society.

Within post-colonial Uganda, religion remains deeply rooted and is heavily embedded in everyday life, influencing daily choices including those on reproduction and sexuality.<sup>163</sup> We see that 96% of Ugandans subscribe to some sort of religion broken down as follows; 39% identify as Catholic, 32% identify as Anglican, 11% identify as Pentecostal, and 14% identify as Muslim.<sup>164</sup> This has created a huge support base for religious institutions to wield power to shape national laws, policies, and practices pushing for alignment with religious values not just as an evangelical pursuit, but also as a way of consolidating power, in turn politicians take advantage of this critical support base to get votes creating a co-dependency between religion and politics in a cycle intended to amalgamate power and influence.<sup>165</sup> To further their influence, we now often see an 'unholy' alliance amongst Christians and Muslims organising under the Inter-religious Council of Uganda to form a collective voice to promote religious values in governance spaces at the expense of reproductive rights.<sup>166</sup> This became very evident when they joined hands to push for the ban of comprehensive sexuality education in 2016<sup>167</sup> and the passing of the Anti-homosexuality Act in 2014 and 2023.<sup>168</sup>

The influence of religious fundamentalisms on politics is further entrenched by decision-makers who are trained in religious schools and affiliate themselves with a religious institution and thus carry such biases to decision-making spaces contributing to the discriminatory laws and policies that we now see.<sup>169</sup> Some people have tried unsuccessfully to push back against the influence of religious fundamentalisms through public interest litigation in the case of

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<https://www.eeas.europa.eu/sites/default/files/documents/Keynote%20address%20by%20Dr%20Jimmy%20Spire%20Ssentongo--Religion%20and%20democracy%20in%20Uganda.pdf> (accessed 1 November 2023) at 3.

<sup>162</sup> Mudoola (n 158) 35.

<sup>163</sup> Ssentongo (n 161) 1.

<sup>164</sup> UBOS (n 2) 22.

<sup>165</sup> Horn (n 10) 2.

<sup>166</sup> Horn (n 10) 8.

<sup>167</sup> *Center for Health, Human Rights and Development (CEHURD) v Attorney General and Family Life Network* Miscellaneous Application No. 309 of 2016 paras 5 & 6 <https://www.cehurd.org/publications/download-info/court-ruling-in-the-comprehensive-sexuality-education-cse-case/> (accessed 1 November 2023). Here a religious based organisation named Family Life Network was admitted by court as an interested party to support the Attorney General defend the ban of comprehensive sexuality education because it allegedly 'promotes' homosexuality, pre-marital sex, masturbation, and abortion.

<sup>168</sup> NTV Uganda 'Religious leaders welcome signing of Anti-homosexuality act into law' 30 May 2023 <https://www.youtube.com/watch?v=ZaUDnps-djc> (accessed 1 November 2023).

<sup>169</sup> Ssentongo (n 161) 4.

*Aboneka Micheal v Watoto Church Ltd & another*,<sup>170</sup> where the Constitutional Court of Uganda interrogated the question of whether the mandatory marriage requirements by Watoto Church, one of the biggest Pentecostal churches in Uganda, violated the right to consent to marry, the right to privacy, the right to autonomy and freedom from discrimination. The mandatory marriage requirements in this case included a consent letter from the bride's parents, an HIV test, and a letter confirming fitness to marry from the pastor. In a lead judgement written by Justice Christopher Gashirabake JCC, the court dismissed the petition and found that marriage is protected by freedom of worship which recognises the diverse religious sects within Uganda and the different practices that their followers have, noting that every religious sect enjoys a degree of independence under the law, they have the discretion to determine their practices. The court while recognising that the guidelines of the church requiring a letter of parental consent for the bride and not the groom are discriminatory, justified this by saying it aligns with societal values with the judge concluding by stating,<sup>171</sup>

‘I would prefer to protect the broader objective of an institution of worship more than an individual's freedom to manifest religion.’

This judgement squarely goes against the intention of Article 31(3) of the Constitution which mandates individual consent for the parties intending to marry and not for their parents, this further reflects the sentiments of decision-makers when it comes to upholding the autonomy of women not just within a religious setting but also within the public domain, suddenly religious practices take precedence over individual rights and freedoms with the court labouring to explain away discriminatory practices as justified because they form part of religious practices. This is something that happens time and again within the legislative and judicial spheres in Uganda, where we see the reproductive rights of people being ignored, explained away, or denied on grounds of religion.

#### **4.5 Global influence of religious fundamentalisms in Uganda**

There is a global push against reproductive rights relying on misconceptions around abortion, contraception, gender equality, and sexual and gender minority rights as a threat to the family.<sup>172</sup> Anti-rights organisations, pressure groups, and governments are working across the board to ultimately delegitimise the UN and Human Rights frameworks as acceptable norms and values specifically targeting reproductive rights as ‘evil’ and positioning them as against family, against culture, against parental rights, and against health to maintain the power

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<sup>170</sup> (2023) UGCC 17.

<sup>171</sup> *Aboneka* (n 170) 14.

<sup>172</sup> *Ipas* (n 145) 2.

dynamics of patriarchy and advance religious values.<sup>173</sup> These religious fundamentalist groups have a basis in the USA and Europe where most of the churches and anti-rights organisations are found, in turn, they fund local organisations to advocate against reproductive rights and also use political clout and funds to chip back on reproductive rights leveraging on international, regional and national law and policy-making spaces to lobby against reproductive rights and promote the 'natural' family, they do this through training for law and policymakers, young people, religious leaders, and other stakeholders by spreading disinformation.<sup>174</sup>

The 'natural' family here is a universalised concept meant to represent the Christian patriarchal nuclear heteronormative monogamous family where the man is the head, and the woman and children are subordinate in this way men are put in charge of the reproductive choices of women and heterosexuality is made compulsory.<sup>175</sup> This type of family has been privileged by religious fundamentalists as the ultimate way to ensure development and success in society and raise upstanding citizens who will positively contribute to the country.<sup>176</sup> To universalise this type of family religious fundamentalists have joined forces to oppose reproductive rights while promoting the 'natural' family and parental rights.<sup>177</sup> This narrow definition of a family privileges Christian norms and the Eurocentric understanding of a family while ignoring the meaning of families as understood by many Africans who value community, the narrow definition also serves to privilege a certain type of family while othering those that do not conform to these standards.<sup>178</sup>

Religious fundamentalists have found success in limiting reproductive rights in Uganda, with Uganda enthusiastically joining in the push for the application of religious values at a global level but also aligning her legal framework to reflect the ideological religious understanding of reproduction and sexuality. Key examples of Uganda's participation in these global spaces include with; a) the UN family rights caucus, where Ugandan clergy and politicians are members, which while claiming to adopt no religion advocates for the protection of the patriarchal 'natural' family,<sup>179</sup> b) the Group of the friends of the family a UN lobby group pushing still for the protection of the 'natural' family,<sup>180</sup> c) co-sponsorship of the Geneva Consensus

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<sup>173</sup> Ipas (n 145) 5.

<sup>174</sup> Ipas (n 145) 7.

<sup>175</sup> Ipas (n 145) 7.

<sup>176</sup> H McEwen 'Nuclear power: The family in decolonial perspective and "pro-family" politics in Africa' (2017) 34 *Development Southern Africa* 738.

<sup>177</sup> McEwen (n 176) 735.

<sup>178</sup> Ipas (n 145) 14.

<sup>179</sup> UN family rights caucus 'About us' <https://unfamilyrightscaucus.org/about/> (accessed 10 November 2023)

<sup>180</sup> UN 'Group of friends of the family' <https://sdgs.un.org/statements/group-friends-family-13013> (accessed 10 November 2023).

Declaration, which is a group of countries that assert themselves as pro-life and vow to push back against legislation and funding for abortion,<sup>181</sup> d) the African group at UN often voting against progressive reproductive rights stances,<sup>182</sup> e) Anglican church joining with other African bishops to distance itself from the decision of the British Anglican church to solemnise same sex relationships saying this goes against biblical principles which is ironic because Britain exported this very same religion to Uganda through colonisation and now Uganda's religious leaders claim to know the bible better than its authors.<sup>183</sup>

This positioning as an anti-reproductive rights country is further reflected at the regional level in the reservation that the country placed on Article 14(2)(e) of the Maputo protocol limiting access to safe abortion for Ugandan women.<sup>184</sup> It is also seen in the backlash towards the Eastern and Southern Africa ministerial commitments (ESA commitments) on sexuality education and sexual and reproductive health services for adolescents and young people and the subsequent hesitancy to recommit to it,<sup>185</sup> it can also be seen in the move to reject the East Africa Community Sexual and Reproductive Health bill of 2021 for fear that this instrument promotes promiscuity, premarital sex, abortion, and homosexuality.<sup>186</sup> This has greatly influenced the way people enjoy their reproductive rights and attain reproductive justice since to qualify for reproductive rights you have to legally fit within the strict criteria of what constitutes the 'natural' family, if you do not fit this criterion these rights are stripped from you.

## 4.6 The move to regulate the use of ARTs in Uganda

### 4.6.1 Context of ARTs in Uganda

One of the critical aspects of reproductive justice is the right to have a child which includes the ability to use Assisted Reproductive Technologies (ARTs) to have a child regardless of marital

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<sup>181</sup> Geneva Consensus Declaration on promoting women's health and strengthening the family <https://www.theiwh.org/wp-content/uploads/2024/01/GCD-Updated-2024-Digital.pdf> (accessed 10 November 2023).

<sup>182</sup> African Union 'The African Group' <https://www.africanunion.org/africangroup#:~:text=The%20Africa%20Group%20at%20the,issues%20of%20peace%20and%20security>. (accessed 10 November 2023).

<sup>183</sup> Statement by the Most Rev Dr Stephen Samuel Kaziimba 'Church of Uganda responds to church of England's decision to bless same sex unions' (10 February 2023) <https://churchofuganda.org/blog/2023/02/10/response-to-church-of-englands-decision-to-bless-same-sex-unions/> and <https://churchofuganda.org/blog/2023/06/09/archbishop-kaziimba-responds-to-archbishop-of-canterbury-on-anti-homosexuality-act-2023/> (accessed 10 November 2023) where the archbishop emphasises that the 'natural' design for a family by God is marriage between one man and one woman.

<sup>184</sup> RD Nanima 'Mainstreaming the 'abortion question' into the right to health in Uganda' in E Durojaye and others (eds) *Advancing sexual and reproductive health and rights in Africa: constraints and opportunities* (2021) at 55.

<sup>185</sup> K Watson and others 'The East and Southern Africa Ministerial Commitment: a review of progress toward fulfilling young people's sexual and reproductive health and rights (2013–2018)' (2021) 29(1) *Sexual and Reproductive Health Matters* at 279.

<sup>186</sup> Monitor 'Legislators reject EAC sexuality bill' (5 August 2022) <https://www.monitor.co.ug/uganda/news/national/legislators-reject-eac-sexuality-bill-3903858> (accessed 10 November 2023).

status, economic status, sexual orientation, and gender identity.<sup>187</sup> Unfortunately, the use of ARTs remains unregulated within Uganda allowing for gross abuse and exploitation due to wide contractual liberty, and the cost of using ARTs is so high that many people cannot afford it.<sup>188</sup> Currently, the going cost for one invitro-fertilization cycle averages \$7,500, putting it out of reach for many Ugandans who might otherwise wish to make use of such services especially given that Uganda has a poverty rate of 20.3% with 56% of the population being food insecure, this means that most of the population is struggling to meet their daily necessities thus making ARTs a luxury instead of an entitlement provided for under Articles 31 and 33 of the Constitution.<sup>189</sup>

Uganda has a heavy burden of infertility with over 3 of all women of reproductive age and 30% of all couples struggling with primary or secondary infertility, the major causes of which stem from unsafe abortion and poor postpartum health management,<sup>190</sup> to manage infertility many Ugandans have resorted to using ARTs to have children especially since childlessness is stigmatised and women are under heavy societal pressure to reproduce when a woman does not reproduce she is often shunned by society and shamed for being childless.<sup>191</sup> This has led to the mushrooming of several fertility clinics providing ARTs to individuals, both domestic and international, seeking to benefit from these services, but with the lack of regulation and exorbitant cost involved, the services have remained largely inaccessible to ordinary people, and have been the scene of exploitation and abuse, especially for those who play the role of donor or surrogate.<sup>192</sup>

#### **4.6.2 The Human Assisted Reproductive Technology (HART) bill of 2023**

To cure some of the ills presented by the non-regulation of ARTs, the Parliament of Uganda on 21 July 2022 granted leave to Honourable Opendi Sarah Achieng, to table a private member's bill addressing the regulatory gaps of ARTs, on 5 March 2024 she introduced the HART bill on the floor of parliament for debate and the same was referred to the Health Committee for consideration and public consultation.<sup>193</sup> The bill in its objectives seeks to

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<sup>187</sup> In our own voice: National black women's reproductive justice agenda 'Reimagining policy: In pursuit of black reproductive justice' (2023) <https://blackrj.org/blackripolicyagenda/> (accessed 3 January 2024) at 30.

<sup>188</sup> Z Nampewo 'Assisted reproductive technologies in Uganda: Law and practice' in CO Neill & others (n 8) 88.

<sup>189</sup> R Kudesia and others 'Infertility in Uganda: A missed opportunity to improve reproductive knowledge and health' (2018) 3(4) *Global Reproductive Health* at 4.

<sup>190</sup> Kudesia (n 189) 3

<sup>191</sup> BCC 'Seventy-year-old Ugandan woman gives birth to twins – hospital' (1 December 2023) <https://www.bbc.com/news/world-africa-67577038> (accessed 3 January 2024)

<sup>192</sup> Z Nampewo 'Assisted reproductive technologies in Uganda: Law and practice' in CO Neill & others (n 8) 88.

<sup>193</sup> Parliament of the Republic of Uganda 'Parliament to consider bill on human assisted reproductive technology' (5 March 2024) <https://www.parliament.go.ug/news/7190/parliament-consider-bill-human-assisted-reproductive-technology> (accessed 10 March 2024)



regulate the use of ARTs in Uganda and provide for the protection of the rights and duties of the individuals using these services and the children born through ARTs.<sup>194</sup>

In its provisions the bill limits the use of ARTs to heterosexual couples who have been diagnosed with a medical challenge affecting their ability to reproduce, it also establishes fertility centres to provide ARTs and designates the Minister of Health and Uganda Medical and Dental Practitioners' Council (UMDPC) as the supervisors of these centres, it goes on to provide for the handling and access to data from the use of ARTs, sets the requirements for surrogacy, donation, and storage of gametes or embryos, determines the parentage and rights of children born through ARTs, prohibits the use of non-human DNA and advertising of ARTs services. It is clear from the onset that the HART bill contravenes reproductive rights and instead seeks to entrench the religious values of a 'natural' family as seen in the way that it; provides a very limited scope of who can access ARTs; and fails to address the commercialisation of ART.

#### **4.6.3 Eligibility criteria for accessing ARTs**

One of the key tenets of reproductive justice is the right of everyone to have a child regardless of their marital status, sexual orientation, and economic status.<sup>195</sup> ARTs seek to expand reproductive choices by going against the traditional way of having children through sexual intercourse,<sup>196</sup> this makes it possible for people suffering with infertility and those existing outside the parameters of the 'natural' family like single people and sexual and gender minorities to exercise their right to reproduce and since Uganda has ratified human rights instruments that recognise core reproductive rights like the right to equality and non-discrimination, the right to liberty and autonomy and the right to health, the expectation is that all legislation passed will align with these standards.<sup>197</sup>

Unfortunately, the tabling of the HART bill comes at a time when Uganda has adopted an anti-reproductive rights stance and is focused on upholding the religious fundamentalist definition of a 'natural' family as the conduit for reproduction.<sup>198</sup> To maintain this position the HART bill sets very limited criteria of who can access ARTs within clauses 1 and 21 which provide for

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<sup>194</sup> The human assisted reproductive technology bill of 2023 <https://parliamentwatch.ug/wp-content/uploads/2024/03/The-Human-Assisted-Reproductive-Technology-Bill2023.pdf> (accessed 10 March 2024) preamble.

<sup>195</sup> Ross and Solinger (n 13) 195.

<sup>196</sup> P Kotiswaran and S Banerjee 'Counterproductive regulation of assisted reproductive technologies: A review of the assisted reproductive technologies bill, 2020' (2021) 33 *National Law School of India Review* at 374.

<sup>197</sup> See Maputo Protocol Art 14(1) which has no reservation by Uganda and the Constitution of the Republic of Uganda, 1995 Arts 21, 24 and 33.

<sup>198</sup> Horn (n 10) 18.

the use of ARTs by only heterosexual couples with diagnosed medical challenges that affect their ability to reproduce naturally this automatically cuts out single people, those who are fertile but still wish to use ARTs and sexual and gender minorities from benefiting from the use of ARTs. This essentially goes against the tenets of reproductive justice and violates the reproductive rights of Ugandans who do not meet the criteria of the 'natural' family by closing them out of accessing ARTs to reproduce, in this way the HART bill universalises the 'natural' family creating hierarchies of what a good family is and what a bad family is by denying parenthood to certain categories of people through applying the standard of religion to reproduction instead of human rights standards.<sup>199</sup>

#### **4.6.4 Addressing the commercialisation of ARTs**

Zahara Nampewo notes that one of the biggest barriers to accessing ARTs in Uganda is the commercialisation of ARTs which is controlled by the financial interests of private service providers leading to excessive costs and making it only accessible to the rich while closing the poor out of receiving such services.<sup>200</sup> This position is emphasised by Viola Hörbst who notes that in Uganda infertility is heavily stigmatised and couples will sell land and other assets to overcome this stigma by using ARTs especially since the government does not subsidise ARTs for those who cannot afford it.<sup>201</sup> As discussed above Uganda is a predominantly poor country with a heavy burden of infertility which means that most people cannot afford ARTs, the expectation is that the HART bill will address the issue of the exorbitant costs of ARTs but the bill right from its preamble does not mention this hurdle or how the country expects to address it. A key tenet of reproductive justice is the recognition of intersectionality and how poverty can act as a barrier to the realisation of reproductive rights, unfortunately, the bill pays no heed to this.<sup>202</sup>

In setting the black reproductive justice agenda activists were keen to call for the passing of legislation that reduces economic disparities in accessing ARTs, therefore by failing to address the cost of ARTs, the HART bill fails to advance reproductive justice for women in Uganda.<sup>203</sup> Further Ibrahim Obadina notes that all legislation on reproductive rights must inquire into how it will impact the lived realities of the people it affects, the biggest issue for users of ARTs is

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<sup>199</sup> MW Tam 'Queering reproductive access: Reproductive justice in assisted reproductive technologies' (2021) 18 *Reproductive Health* at 3

<sup>200</sup> Z Nampewo 'Assisted reproductive technologies in Uganda: Law and practice' in CO Neill & others (eds) *Routledge Handbook of Global Health Rights* (n 8) 87.

<sup>201</sup> V Hörbst 'You cannot do IVF in Africa as in Europe: The making of IVF in Mali and Uganda' (2016) 2 *Reproductive BioMedicine and Society Online* at 110

<sup>202</sup> Ross and Solinger (n 13) 196

<sup>203</sup> Black reproductive justice policy agenda *Reimagining policy: In pursuit of black reproductive justice* (2023) 32

the cost which forces many to use up all their life savings to have a child, the bill therefore fails to address the biggest concern of ARTs users.<sup>204</sup>

Further, the commercialisation of ARTs is fraught with the exploitation of poor people for their reproductive capacity especially when dealing with commercial surrogacy,<sup>205</sup> when dealing with the question of commercial surrogacy, clause 25 of the HART bill only guarantees the provision of medical care for surrogates failing to consider compensation for loss of time, loss of wages and for carrying the pregnancy. As Viola Hörbst notes many women in Uganda who become surrogates do so because of the attractive economic reward involved which helps them to improve their economic status more so in a country that has very limited economic opportunities, unfortunately despite the exorbitant cost of ARTs most surrogates find themselves earning peanuts with the bulk of the funds going to the service providers.<sup>206</sup>

Prabha Kotiswaran also uses the concept of reproductive labour to advocate for commercial surrogacy where she argues that childbirth is a form of labour that should attract compensation, further stating that financial compensation acts as an incentive for donors and surrogates to provide ARTs services.<sup>207</sup> The commercialisation of surrogacy is a reality that the HART bill is expected to reckon with and provide parameters to avoid exploitation of the poor since it is clear that most donors and surrogates provide the service because of the financial reward involved, instead the bill glosses over the issue leaving it open to interpretation which will only perpetuate the exploitation of surrogates and donors who often come from poor backgrounds and are vulnerable to exploitation.

#### **4.7 Conclusion**

In conclusion, Uganda has been burdened with the overarching influence of religious fundamentalists since 1854 and is currently still suffering under the chokehold of the same at the expense of reproductive rights, this is reflected in the proposed HART bill of 2023 which seeks to limit the use of ARTs to heterosexual couples who have been diagnosed with a medical challenge that hinders their ability to reproduce naturally. This position fails to protect reproductive freedom and violates the constitutionally recognised right to have a child, it instead manages to entrench the essentialisation of the 'natural' family.

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<sup>204</sup> I Obadina 'Addressing maternal mortality through decriminalising abortion in Nigeria: Asking the 'woman question'' in E Durojaye and others (eds) *Advancing sexual and reproductive health and rights in Africa* (n 68) 32.

<sup>205</sup> Tam (199) 3

<sup>206</sup> Hörbst (n 201) 114

<sup>207</sup> Kotiswaran and Banerjee (n 196) 378.

## CHAPTER 5: THE USE OF ASSISTED REPRODUCTIVE TECHNOLOGIES IN OTHER JURISDICTIONS

### 5.1 Introduction

This chapter will discuss the different models adopted when legislating the use of Assisted Reproductive Technologies (ARTs) globally and the consideration of reproductive justice while applying these models. The chapter will go on to analyse legislation on ARTs from South Africa and India which are both using the restrictive surrogacy legislative model to see how they include reproductive justice in the face of deeply seated values about founding a family. I chose these 2 countries because both their legislations closely resemble Uganda's proposed bill, also South Africa just like Uganda, is an African country governed by the African Human Rights System, India, on the other hand, has one of the biggest ARTs industry in the world and shares a similar colonial history to Uganda having both suffered under British colonial rule.

### 5.2 Models used when legislating ART

ARTs seek to expand the definition of founding a family by going against the traditional way of defining reproduction, extending reproduction outside of sexual intercourse.<sup>208</sup> The right to reproduce for all is recognised in human rights instruments that provide for the rights to life, dignity, privacy, equality, information, health, and found a family.<sup>209</sup> Suffice it to say these freedoms mean nothing when not supported by a robust domestic legislative framework to give them force.<sup>210</sup> In light of the fast-developing scientific technology that allows for reproduction outside sexual intercourse, it has become imperative that laws are made that define legal protections for users and providers of ARTs cognisant of the social, ethical, and legal hurdles that may exist especially those aligned with traditional family values that may not necessarily support the use of ARTs.<sup>211</sup>

In seeking to learn from other jurisdictions on how ARTs have been legislated, what stands out is how little legislation exists, this is especially true for Africa where out of 54 countries only South Africa has put in place legislation to govern the use of ARTs, other countries like Nigeria, Kenya and Uganda are only now proposing legislation to cover this gap.<sup>212</sup> The reason

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<sup>208</sup> Kotiswaran and Banerjee (n 196) 374.

<sup>209</sup> C Van Nierkerk 'Assisted reproductive technologies and the right to reproduce under South African law' (2017) 20 *PER/PELJ* at 2.

<sup>210</sup> Van Nierkerk (n 209) 3.

<sup>211</sup> JH Olobo-Lalobo 'Surrogacy Legislation and Kenya's ART Bill 2019: Reproductive Uhuru (Freedom) A Myth or a Reality for Infertile Citizens?' (2022) 30 *African Journal of International and Comparative Law* at 107.

<sup>212</sup> KO Fayokun 'Need for regulation of assisted reproductive techniques in Africa' (2010) 3 *Journal of Science & Sustainable Development* at 166.

why enacting legislation has been slow is because many still uphold 'natural' family values which presume that reproduction should only be through sexual intercourse between a heterosexual married couple to maintain the stability of the family, they therefore look at the use of ARTs as 'man taking on the role of God' which is unacceptable and where it is allowed for reasons of infertility it should only be through a 'natural' family setting.<sup>213</sup> These sentiments are often reflected through legislation both adopted and proposed.

The lack of specific regulation on the use of ARTs has forced providers and users of ARTs to use contract law as the mechanism under which such services are utilised especially since ARTs services are not expressly prohibited in most African countries, this has led to wide contractual liberty which has resulted in abuse and exploitation with those who have money and power dictating the rules of engagement, contractual liberty refers to the boundaries within which people form contracts without government restrictions, the use of contract law to regulate ARTs disregards human rights standards on reproductive rights only focusing on the terms and conditions set by the parties.<sup>214</sup>

When legislating ARTs countries worldwide have largely concerned themselves with surrogacy and in this, they have adopted two models; the first is the permissive surrogacy legislative model which allows for commercial surrogacy as seen in countries like Georgia and USA and the second is the restrictive surrogacy legislative model which only allows surrogacy services on altruistic grounds, such is the model adopted by the United Kingdom, South Africa and is now proposed by Kenya and Uganda.<sup>215</sup> The first model looks at the reality of what is already happening where ARTs are heavily commercialised and merely seeks to balance the scales of power within such contracts and ensure that all persons are equally protected even in terms of monetary compensation.<sup>216</sup> The second model presumes that the uterus cannot be used for profit which is considered tantamount to selling babies and is therefore an abomination.<sup>217</sup> Both of these models are ultimately not focused on protecting reproductive rights but rather on the economics of ARTs and legal barriers presented by already existing laws on the presumption of parentage, succession rights, use of non-human DNA, and use of surrogates, they also struggle to articulate the issue of genetics and parentage outside the 'traditional' understanding of reproduction.<sup>218</sup>

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<sup>213</sup> Fayokun (n 212) 166.

<sup>214</sup> Van Nierkerk (n 209) 12.

<sup>215</sup> Olobo-Lalobo (n 211) 116.

<sup>216</sup> Olobo-Lalobo (n 211) 117.

<sup>217</sup> Olobo-Lalobo (n 211) 118.

<sup>218</sup> Van Nierkerk (n 209) 13.

### 5.3 South Africa

When it comes to legislating ARTs in Africa, South Africa is the only country that has existing legislation that gives with one hand and takes away with another. The Constitution of the Republic of South Africa protects reproductive rights through sections 12(2)(a) and 27; section 12(2)(a) recognises the right to bodily and psychological integrity which includes the right to make decisions concerning reproduction while section 27(1)(a) recognises the right to access health care services including reproductive health care, section 27(2) goes further to place an obligation on the state to put in place legislative measures to ensure the realisation of the right to health. To deal with the use of ARTs, the Minister of Health of South Africa through powers granted under section 68 of the National Health Act<sup>219</sup> adopted the Regulations Relating to Artificial Fertilisation of Persons which among others provides for the donation and storage of gametes and embryos and access to information about users of ARTs, the regulations go on to prohibit sex selection and limit the use of gametes and embryos.<sup>220</sup>

ARTs through the use of surrogacy is regulated through chapter 9 of the Children's Act,<sup>221</sup> which provides for the registration and enforcement of surrogacy agreements, establishing parameters within which such services can be used, it also limits the use of surrogacy services to people who have been diagnosed with a medical condition that makes them unable to have children and limits the use of ARTs to only the gametes of both or either of the commissioning parents, the law goes on to prohibit commercial surrogacy only allowing the surrogate to recover expenses directly related to the pregnancy, any loss of income and insurance for disability arising from the pregnancy. This of course leaves out people who wish to use ARTs even while fertile and those wishing to conceive using ARTs without using their gametes.<sup>222</sup>

In applying reproductive rights towards the use of ARTs, the Constitutional Court of South Africa in the case of *AB and another v Minister of Social Development*,<sup>223</sup> adopted a narrow view of what constitutes reproductive autonomy choosing instead to uphold the limitations on the use of gametes as provided for under the Children's Act with court in a majority decision opining that the decision making on reproduction envisaged under section 12(2)(a) of the Constitution only extends to your own body and not the body of others, concluding that the use of surrogacy entails making reproductive decisions over the body of another which does not fall within the ambit of section 12(2)(a).<sup>224</sup> In this decision the court struggled to understand

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<sup>219</sup> No 61 of 2003.

<sup>220</sup> No R 175.

<sup>221</sup> No 38 of 2005.

<sup>222</sup> Van Nierkerk (n 209) 14.

<sup>223</sup> (2016) ZACC 43.

<sup>224</sup> *AB and another v Minister of Social development* (n 223) para 316.

the concept of the use of surrogacy within the broader discourse of reproductive rights instead aligning itself with arguments on 'natural' reproduction where a person is required to carry a pregnancy rather than have another person carry the pregnancy for them, it also failed to comprehend the idea of having a child with no genetic ties.<sup>225</sup> In this way the court only recognised the use of ARTs for those who can use their gametes thus excluding many who would have otherwise benefitted from such services.<sup>226</sup>

The courts in South Africa have also upheld reproductive autonomy when dealing with ARTs as seen in the case of *Surrogacy Advisory Group v Minister of Health*,<sup>227</sup> here the High Court of South Africa considered the question of sex selection while using ARTs not to be a violation of reproductive autonomy as espoused under the Choice of Termination of Pregnancy Act of 1996 which allows for access to abortion without giving a reason during the first 12 weeks of a pregnancy, here Justice Du Plessis found that even where sex selection may reinforce patriarchal norms by facilitating the preference for boy children thus skewing the sex ratio in society, all this is superseded by the priority given to a woman to exercise reproductive autonomy by choosing whether or not to have a child. Specifically on the issue of motivations and their repugnancy to society, the judge noted below,<sup>228</sup>

'It is possible to say that aborting a child due to its sex attaches greater moral repugnancy in a similar way that assaults motivated by sexism do: it is the motivations that are not regulated, rather than the act itself.'

Donrich Thaldar agrees with the direction taken in this case that ARTs are part of reproductive freedom arguing that the law should not be used to impose private morality on people, they further use the concept of reproductive freedom, which espouses the right to have or not to have children, to demonstrate that reproduction goes beyond natural reproduction and extends towards the use of ARTs and therefore ARTs legislation should work towards expanding the reproductive choices of individuals despite the controversies it stokes in as long as it observes the principle of the best interest of the child.<sup>229</sup>

## 5.4 India

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<sup>225</sup> B Shoji 'Something old, something new: applying reproductive rights to new reproductive technologies in South Africa' (2020) 36 *South African Journal on Human Rights* at 14.

<sup>226</sup> Shoji (n 225) 19.

<sup>227</sup> (2022) ZAGPPHC 558

<sup>228</sup> SAG (n 227) 712

<sup>229</sup> D Thaldar 'Building a Progressive Reproductive Law in South Africa' (2023) 25 *Health and Human Rights* at 49.

The first documented case of ARTs in India was in 1978 through IVF but it was only in 1986 that the Indian Council of Medical Research (ICMR) started to accept and document ARTs cases, even issuing guidelines to service providers on the same in 2005 dubbed the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India.<sup>230</sup> Before this ARTs were looked at as immoral, unnatural, and unethical, these biases led to ARTs remaining unregulated until 2021 when the Assisted Reproductive Technology (Regulation) Act and the Surrogacy (Regulation) Act were adopted, even where ARTs were unregulated, they were not expressly forbidden, which led to a large growth in ARTs clinics mostly within the heavily commercialised private sector attracting many international couples from the global north suffering from infertility and seeking to use ARTs to have children, something which was banned in their countries, this has since created a multi-billion dollar industry focused on maximising profits but caring little about the economic access of ARTs to the ordinary Indian person.<sup>231</sup>

The India Assisted Reproductive Technology (Regulation) Act of 2021 establishes the National Assisted Reproductive Technology and Surrogacy Board to oversee ARTs in India supported by State Boards, it also establishes a national registry and authority to manage data from ARTs, the act also lays down the procedure for registering an ARTs clinic and bank through which they mandate counselling, obtaining written consent from users and maintaining confidentiality, it also bestows immediate parental rights on commissioning parents upon birth and forbids sex selection and mandates screening for diseases placing penalties for breach of any of the sections. The India Surrogacy (Regulation) Act of 2021 regulates surrogacy placing oversight for the provision of these services in the hands of the National Assisted Reproductive Technology and Surrogacy Board, the Act is very strong in protecting the rights of surrogate mothers by maintaining their autonomy to make medical decisions during the pregnancy, insisting on obtaining written consent, providing an insurance cover and determining parental right albeit through a court process where the presumption is that the commissioning parents have parental rights. The Act also prohibits sex selection, commercial surrogacy, and limits the use of surrogacy to Indian, married, heterosexual couples who have been diagnosed as infertile.

Prabha Kotiswaran while criticising the two Acts for reinforcing patriarchal norms and recentring the role of the 'traditional' heteronormative marriage notes that while these two Acts move towards protecting the rights of users of ARTs they also perpetuate moralistic

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<sup>230</sup> V Jamwal and A Yadav 'The Assisted Reproductive Technology (Regulation) Act, 2021: A Step in the Right Direction' (2022) 48 *Indian Journal of Community Medicine* at 4.

<sup>231</sup> Jamwal (n 230) 5.



undertones on reproduction by limiting the use of ARTs to married heterosexual couples and women between 21 and 50 years of age who have been diagnosed as infertile; single men, homosexual couples, elderly women and young people are not eligible to access ARTs since they do not fall within the scope and this limits their reproductive choices.<sup>232</sup> She goes on to note that before these two Acts were introduced, ARTs while heavily commercialised, were open to all and the regulation was expected to improve access and protections for those who may not have the power to negotiate better terms while engaging in using or providing ARTs, instead the legislations are being used to privilege reproduction and create more barriers towards accessing ARTs by introducing a restrictive eligibility criterion that speaks to the intention of limiting reproduction to the traditional understanding of a family.<sup>233</sup>

Kotiswaran also goes ahead to criticise the prohibition of commercial surrogacy and gamete donation within the two Acts where compensation for the loss of time, wages, and a claim for expenses related to the procedure is strictly forbidden, she views this as paternalistic and a form of forced labour where surrogates and donors are only allowed to claim medical insurance and go through the rest of the ARTs procedure(s) on a purely voluntary basis merely because the parliament of India did not want to put a price tag on motherhood.<sup>234</sup> She discusses the concept of reproductive labour where childbirth and child-rearing are considered a form of labour that should, in turn, attract compensation, something the two Acts do not address instead falling into the stereotype that motherhood is priceless and an instinct for women while also failing to consider that such compensation may act as an incentive for donors and surrogates to provide ARTs services to infertile couples.<sup>235</sup> They lastly note that the two Acts failed to address the issue of the economic accessibility of ARTs which is heavily commercialised, highly expensive, and available only to the rich.<sup>236</sup>

### **5.5 Lessons for Uganda from South Africa and India**

Uganda can learn a lot from the countries of South Africa and India on legislating ARTs more so from the direction South Africa is taking when dealing with enforcing reproductive justice by guaranteeing reproductive autonomy even in the face of moral reservations which speaks to the country's commitment to reproductive rights.<sup>237</sup> At the heart of reproductive rights as recognised in the Maputo protocol article 14(1) is the ability of one to control their fertility by deciding whether to have children, as seen in the case of *Surrogacy Advisory Group v Minister*

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<sup>232</sup> Kotiswaran (n 196) 375.

<sup>233</sup> Kotiswaran (n 196) 376.

<sup>234</sup> Kotiswaran (n 196) 377.

<sup>235</sup> Kotiswaran (n 196) 378.

<sup>236</sup> Kotiswaran (n 196) 380.

<sup>237</sup> Thaldar (n 229) 47.

*of Health* when legislating on reproductive rights the reasons for exercising choice should not be the crux of the legislation rather enabling access to services is paramount. When Uganda in the HART bill legislates to lock certain categories of people out of accessing ARTs, this goes against the reproductive autonomy of her citizens. South Africa in its legislation allows single people and sexual and gender minorities to use ARTs which makes it more inclusive in its approach guaranteeing the right of all to reproduce, unlike Uganda which explicitly closes certain categories of people out of using ARTs and is instead used to uphold religious fundamentalist ideals.

Similarly, the legislation of India comes after decades of ARTs being provided in an environment that is heavily commercialised though not regulated, from this Uganda can draw lessons on legislating to limit contractual liberty which can ultimately be used for exploitation and abuse. Clauses 15 and 23 of the HART bill provide for donor and surrogacy contracts but do not establish safeguards or bare minimum clauses that should exist in such a contract such as guaranteeing the autonomy of the donor or surrogate over medical decisions, obtaining informed written consent, establishing the fate of the child in case of disability or where the intending parents pull out of the agreement and prohibiting sex selection. Such safeguards would go a long way in protecting donors and surrogates who often find themselves trapped in contracts that are not favourable for them.

On the flip side, both South Africa and India's legislations fail to address the exorbitant cost of ARTs and prohibit commercial surrogacy which fails to acknowledge the lived realities of the users and providers of ARTs. Most donors and surrogates only offer such services because of the financial reward involved and failing to acknowledge this crucial fact will be followed by a decline in providing ARTs services. It also fails to acknowledge the autonomy of the donors and surrogates involved and the labour extended while providing these services which must be compensated. Both countries also limit the use of ARTs to infertile people and India goes a step further to limit ARTs to married heterosexual couples, this violates the reproductive rights of those who do not fit within this criteria by taking away their choices.

## **5.6 Conclusion**

In conclusion, the two countries' legislations show two approaches towards addressing reproductive rights within ARTs with South Africa adopting a more progressive stance while India adopts a more restrictive stance. Uganda's proposed HART bill carries similar prohibitions as the legislation in India pushing moralistic views on reproduction by limiting access to ARTs through narrow eligibility criteria, similarly, the legislation does not address

the issue of economic access to ART services and seeks to outlaw commercialised surrogacy thus violating the reproductive rights of Ugandans.

## CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

### 6.1 Summary of the research

In conclusion, chapter 1 of this research sets the basis of the research which sets out to reflect on the influence of religious fundamentalisms on the regulation of reproductive rights in Uganda specifically through the context of the proposed HART bill of 2023. Chapter 2 explores the international and regional legal framework that Uganda has ratified on reproductive rights discussing the link between reproductive justice and reproductive rights. Chapter 3 considers the rise of religious fundamentalisms through the colonial and post-colonial times in Africa and how this has created a massive social support base to legislate and govern according to religious norms, discussing what informs religious fundamentalist beliefs and how they target reproductive rights.

Chapter 4 focuses on the place of religious fundamentalisms in Uganda and how religion, was introduced through British colonisation and unpacks the proposed HART bill showing the influence of religious fundamentalisms on this legislation when it creates narrow criteria of who can access ARTs to entrench the 'natural' family. Chapter 5 discusses the different models adopted when legislating the use of ARTs and the consideration of reproductive justice while applying these models, it goes on to analyse legislation on ARTs from South Africa and India which are both using the restrictive surrogacy legislative model to draw lessons for Uganda.

### 6.2 Findings of the research

#### 6.2.1 Religious fundamentalisms is on the rise and gaining political influence.

Christianity and Islam were introduced in Uganda through colonialism in 1854 and have since been on a steady rise with over 96% of Ugandans subscribing to either.<sup>238</sup> As Jessica Horn contends, this has created a huge support base for religious institutions to wield power to shape national laws, policies, and practices to align with religious values as a way of consolidating power, in turn, politicians take advantage of this critical support base to get votes thus creating a co-dependent relationship.<sup>239</sup> This is not unique to Uganda but we also see religious fundamentalisms taking centre stage in regional and global politics where they affect decision-making.<sup>240</sup>

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<sup>238</sup> UBOS (n 2) 22.

<sup>239</sup> Horn (n 10) 3.

<sup>240</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 46.

This massive support base and increased influence in political decision-making spaces has been used to limit reproductive rights all in a bid to entrench the religious idea of the patriarchal 'natural' family often marginalising women, sexual and gender minorities, and young people.<sup>241</sup> This can be seen in the restriction of access to safe abortion, the passing of the Anti-homosexuality Act of 2023, the banning of comprehensive sexuality education, and limiting reproductive health services for adolescents. In this way the state has taken on the role of deciding who can have sex and reproduce, imposing private morality on all her citizens despite being a secular state.

### **6.2.2 Uganda has adopted the ideological stance of being an anti-reproductive rights country.**

Uganda has ratified several international and regional human rights instruments that uphold the rights of individuals to dignity, privacy, equality, autonomy, and health. Uganda has gone on to domesticate human rights by including them in chapter 4 of the Constitution. As expounded within the concept of reproductive justice at the core of advancing reproductive rights is ensuring all people have; a) the right to have a child, b) the right not to have a child, and c) the right to raise these child(ren) and a safe and healthy environment. These are the standards the country is expected to follow when legislating on reproductive rights. Unfortunately, religion has been cast as the supervisor of sexuality and reproduction and religious norms are currently being used as the yardstick to determine who can enjoy reproductive rights.<sup>242</sup>

Uganda has joined the global alliance of anti-reproductive rights countries pushing for the application of religious values within global and regional legal frameworks with states now determining who can have sex and reproduce.<sup>243</sup> This ideological stand of being anti-reproductive rights is reflected in Uganda's global alliances and the laws and policies adopted that seek to entrench the religious patriarchal 'natural' family, with all arms of government working together to uphold this position.

### **6.2.3 ARTs form part of reproductive rights but remain largely unregulated.**

ARTs expand reproductive freedom by extending it outside of sexual intercourse.<sup>244</sup> The right to reproduce for all is recognised in several regional and international human rights instruments that provide for the rights to life, dignity, privacy, equality, information, health, and

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<sup>241</sup> Horn (n 10) 2

<sup>242</sup> Horn (n 10) 2

<sup>243</sup> M C Iwuchukwu 'Pentecostalism, Islam, and religious fundamentalisms in Africa' in A Afolayan and others (eds) *Pentecostalism and politics in Africa* (n 19) 46.

<sup>244</sup> Kotiswaran and Banerjee (n 196) 374.

found a family.<sup>245</sup> Article 14(1) of the Maputo protocol specifically recognises women's reproductive rights with a key tenet being deciding whether to have children but because of the presumed hyperfertility of African women,<sup>246</sup> addressing infertility has never been an area of priority for most states in Africa with only South Africa having legislation to regulate ARTs, leaving the sector unregulated and its users vulnerable to abuse and exploitation.<sup>247</sup>

#### **6.2.4 The proposed HART bill of Uganda seeks to entrench the religious 'natural' family.**

Uganda has a heavy burden of infertility with over 30% of all couples and 3% of all women of reproductive age struggling with primary or secondary infertility, this has led many to turn to ARTs as a solution, unfortunately ARTs remain unregulated in Uganda, and this has led to the abuse and exploitation of users. The Parliament is proposing the HART bill to regulate the use of ARTs in Uganda and provide for the protection of the rights and duties of the individuals using these services and the children born through ARTs, in its provisions instead of addressing the cost of ARTs and rights of users, the bill seeks to entrench the religious patriarchal 'natural' family by limiting the use of ARTs to heterosexual couples who have been diagnosed to have a medical challenge affecting their ability to reproduce, deliberately leaving out single people, fertile people and sexual and gender minorities.<sup>248</sup>

### **6.3 Recommendations**

Uganda has turned itself into the morality police by prescribing who can have sex, who can found a family and who can reproduce all in a bid to entrench the religious 'natural' family. The country needs to align its laws, policies, and practices on reproductive health with international and regional human rights standards that recognise the rights to reproductive autonomy, dignity, equality, and health. They can do this by amending Article 31 of the Constitution which limits marriage to heterosexual couples to make it inclusive of all people regardless of their sexual orientation and gender identity. This will pave the way for same-sex couples and individuals to enforce their right to marry and reproduce in Uganda.

Similarly, Olobo-Lalobo while critiquing Kenya's proposed ARTs bill argues that when considering legislation on ARTs the primary focus should be based on the value of a child to African communities and therefore the aim should be to support people who want to have

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<sup>245</sup> Van Nierkerk (n 209) 2.

<sup>246</sup> Perritt and Eugene (n 6) 2.

<sup>247</sup> Van Nierkerk (n 209) 3.

<sup>248</sup> The human assisted reproductive technology bill of 2023 <https://parliamentwatch.ug/wp-content/uploads/2024/03/The-Human-Assisted-Reproductive-Technology-Bill2023.pdf> (accessed 10 March 2024) preamble & clause 21.

children to fully access scientific technological advancements that allow them to do so regardless of marital status, economic status and sexual orientation, the law should therefore be as comprehensive and as permissible as possible.<sup>249</sup> Similarly this study recommends that since Uganda is a pronatalist country that values reproduction, rather than focusing on prescribing morals and overcoming legal barriers for users and providers of ARTs, the HART bill should be reviewed to be more inclusive and focus on protecting the reproductive rights of all ARTs users to ensure that they can access these services with no hindrance.

It is clear from this study that religious fundamentalisms have infiltrated decision making spaces influencing laws, policies, and practices at the expense of reproductive rights. To reign this, this study recommends that Uganda regulate religious institutions to create boundaries between state and church and reinforce the rule of law. In the past parliament proposed the Religious Organisations Bill of 2019<sup>250</sup> and currently the Directorate for Ethics and Integrity in the office of the president is proposing to adopt the National Religious and Faith Organisations Policy<sup>251</sup> to regulate religious institutions and prevent their excesses but both processes have been met with heavy push back from religious institutions, the state needs to adopt these legislations to curtail the excesses of fundamentalists.

One of the biggest barriers to accessing ARTs is the exorbitant cost involved. Jamila Perritt argues that critical in the realisation of reproductive justice is the need for countries to prioritise infertility as a public health issue within programming and ensure everyone has access to ARTs services regardless of cost.<sup>252</sup> Uganda therefore needs to incorporate infertility within the programming on reproductive health and make direct investments towards addressing the issue by among others subsidising the cost of ARTs for users as a way of realising reproductive justice for all.

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<sup>249</sup> Olobo-Lalobo (n 211) 99.

<sup>250</sup> Parliament watch 'Religion in Uganda should be regulated' <https://parliamentwatch.ug/blogs/religion-in-uganda-should-be-regulated/> (accessed 11 June 2024).

<sup>251</sup> Monitor 'Religious leaders to account for offertory under new policy' (7 March 2024) <https://www.monitor.co.ug/uganda/news/national/religious-leaders-to-account-for-offertory-under-new-policy-4546996> (accessed 11 June 2024).

<sup>252</sup> Perritt and Eugene (n 6) 2.

## **BIBLIOGRAPHY**

### **Books**

1. Brekke, T *Fundamentalisms: Prophecy and Protest in an Age of Globalization* (Cambridge University Press 2011)
2. Cense, M; De Neef, M & Visscher, W *Culture, Religion and Sexual and Reproductive Health & Rights* (Rutgers 2018)
3. Durojaye, E; Mirugi-Mukundi G & Ngwena, *Advancing Sexual and Reproductive Health and Rights in Africa: Constraints and opportunities* (Routledge Contemporary Africa Series 2021)
4. Mudoola, DM *Religion, Ethnicity and Politics in Uganda* (Fountain Publishers 1996)
5. Ngwena, C *What is Africanness? Contesting nativism in race, culture and sexualities* (Pretoria University Law Press 2020)
6. Okoth, A *A History of Africa: African Nationalism and the de-Colonisation Process* (East African Publishers 2006)
7. Ross, L & Solinger, R *Reproductive Justice: An Introduction* (University of California Press 2017)
8. Tamale, S *African Sexualities: A reader* (Fahamu/Pambazuka 2011)
9. Tamale, S *Decolonization and Afro-Feminism* (Daraja Press 2020)

### **Book chapters**

10. Durojaye, E 'Article 14: Health and reproductive rights' in Rudman, A; Musembi, CN & Makunya, TM (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Pretoria University Law Press 2023)
11. Iwuchukwu, MC 'Pentecostalism, Islam, and Religious Fundamentalisms in Africa' in Adeshina, A; Yacob-Haliso, O & Toyin Falola (eds) *Pentecostalism and Politics in Africa* (Springer International Publishing 2018)
12. Nampewo, Z 'Assisted reproductive technologies in Uganda: Law and practice' in Néill, CÓ; Foster, F; Herring, J & Tingle, J (eds) *Routledge Handbook of Global Health Rights* (2021)

### **Journal articles**

13. Balogun, V & Durojaye, E 'The African Commission on Human and Peoples' Rights and the promotion and protection of sexual and reproductive rights' (2011) 11 *African Human Rights Law Journal* 368
14. Berro Pizzarossa, L 'Here to Stay: The Evolution of Sexual and Reproductive Health and Rights in International Human Rights Law' (2018) 7 *Laws* 1



15. Eaton, AA & Stephens, DP 'Reproductive Justice Special Issue Introduction "Reproductive Justice: Moving the Margins to the Center in Social Issues Research" (2020) 76 *Journal of Social Issues* 1.
16. Fayokun, KO 'Need for regulation of assisted reproductive techniques in Africa' (2010) 3 *Journal of Science & Sustainable Development* 165
17. Feldman, R & Clark, K 'Women, Religious Fundamentalisms and Reproductive Rights' (1996) 4 *Reproductive Health Matters* 12
18. Hörbst, V 'You cannot do IVF in Africa as in Europe: The making of IVF in Mali and Uganda' (2016) 2 *Reproductive BioMedicine and Society Online* 108
19. Horn, J 'Christian Fundamentalisms and Women's Rights in the African Context: Mapping the Terrain' [2011] *AWID women's rights* 1
20. Howard, B 'Religion in Africa: Tolerance and trust in leaders are high, but many would allow regulation of religious speech' (2020) 339 *Afrobarometer Dispatch* 1
21. Jamwal, V & Yadav, A 'The Assisted Reproductive Technology (Regulation) Act, 2021: A Step in the Right Direction' (2022) 48 *Indian Journal of Community Medicine* 1
22. Kassimir, R 'Complex Martyrs: Symbols of Catholic Church Formation and Political Differentiation in Uganda' (1991) 90 *African Affairs* 357
23. Kotiswaran, P & Banerjee, S 'Counterproductive regulation of assisted reproductive technologies: A review of the assisted reproductive technologies bill, 2020' (2021) 33 *National Law School of India Review* 371
24. Kudesia, R; Muyingo, M; Tran, N; Shah, M; Merkatz, I & Klatsky, P 'Infertility in Uganda: A missed opportunity to improve reproductive knowledge and health' (2018) 3(4) *Global Reproductive Health* 1
25. Maziwisa, MR & Durojaye, E 'Engendering Legal and Institutional Reforms to Ensure Access to Reproductive Justice for Women in Zimbabwe: A Case Study of the Mappingure Case' (2022) 30 *African Journal of International and Comparative Law* 80
26. McEwen, H 'Nuclear power: The family in decolonial perspective and "pro-family" politics in Africa' (2017) 34 *Development Southern Africa* 738
27. Natarajan, M 'Decolonizing purity culture: Gendered racism and white idealization in evangelical christianity' (2022) 46 *Psychology of Women Quarterly* 316.
28. Olobo-Lalobo, JH 'Surrogacy Legislation and Kenya's ART Bill 2019: Reproductive Uhuru (Freedom) A Myth or a Reality for Infertile Citizens?' (2022) 30 *African Journal of International and Comparative Law* 99
29. Peels, R 'On defining "fundamentalisms"' [2022] 59 *Religious Studies* 729
30. Peels, R & N Kindermann 'What are fundamentalist beliefs?' (2022) *Journal of Political Ideologies* 1

31. Perritt, J & Eugene, N 'Inequity and injustice: recognizing infertility as a reproductive justice issue' (2022) 3 *Fertility and Sterility Reports* 1
32. Rebouché, R 'Reproducing Rights: The Intersection of Reproductive Justice and Human Rights' (2017) 7 *UC Irvine Law Review* 579
33. Ross, L 'Reproductive justice briefing book: A primer on reproductive justice and social change' (2007) *Reproductive Technologies* 1
34. Shози, B 'Something old, something new: applying reproductive rights to new reproductive technologies in South Africa' (2020) 36 *South African Journal on Human Rights* 1
35. Tamale, S 'Controlling women's fertility in Uganda' (2016) 13 *International Journal on Human Rights* 117
36. Tamale, S 'Exploring the contours of African sexualities: religion, law and power' (2024) 14 *African Human Rights Law Journal* 150
37. Tam, MW 'Queering reproductive access: Reproductive justice in assisted reproductive technologies' (2021) 18 *Reproductive Health* 1
38. Thaldar, D 'Building a progressive reproductive law in South Africa' (2023) 25 *Health and Human Rights* 43
39. Tusasiirwe, S 'Is it indigenisation or decolonisation of social work in Africa? A focus on Uganda' (2022) 12 *African Journal of Social Work* 11
40. Van Nierkerk, C 'Assisted reproductive technologies and the right to reproduce under South African law' (2017) 20 *PER/PELJ* 1
41. Wariboko, N 'Pentecostalism in Africa' (2017) *Oxford Research Encyclopedia of African History* 1.
42. Watson, K; Akwara, R; Machawira, P; Bakaroudis, M; Tallarico, R and Chandra-Mouli, V 'The East and Southern Africa Ministerial Commitment: a review of progress toward fulfilling young people's sexual and reproductive health and rights (2013–2018)' (2021) 29(1) *Sexual and Reproductive Health Matters* 279.

### **Published reports**

43. In our own voice: National black women's reproductive justice agenda 'Reimagining policy: In pursuit of black reproductive justice' (2023) <https://blackrj.org/blackripolicyagenda/>
44. Ipas 'False Pretenses: The Anti-Comprehensive Sexuality Education Agenda Weaponizing Human Rights' (2023) <https://www.ipas.org/wp-content/uploads/2023/03/False-Pretenses-The-Anti-Comprehensive-Sexuality-Education-Agenda-Weaponizing-Human-Rights-OPPCSEE23b.pdf>.

45. Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Making a difference: An introduction to human rights' (2018)
46. Strategic Response Team 'A report on documented human rights violations and abused of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Plus Persons (LGBIQ+) in Uganda' (2023) <https://www.kuchutimes.com/2023/09/strategic-response-team-report-on-human-rights-violations-towards-lgbtiq-persons-since-the-passing-of-the-anti-homosexuality-act-2023/>
47. Uganda Bureau of Statistics (UBOS) 'The National Population and Housing Census 2014 – Main Report' (2016) [https://www.ubos.org/wp-content/uploads/publications/03\\_20182014\\_National\\_Census\\_Main\\_Report.pdf](https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf).
48. Uganda Bureau of Statistics (UBOS) 'Uganda demographic and health survey (UDHS) 2022: Key findings' (2023) <https://www.health.go.ug/cause/uganda-demographic-and-health-survey-udhs-2022-key-findings/>
49. United Nations Population Fund (UNFPA) 'International Conference on Population and Development Programme of Action' (2014) [https://unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](https://unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf)
50. United Nations Women 'Beijing Declaration and Platform for Action' (2015) <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>

## **Laws and policies**

51. The Constitution of the Republic of Uganda, 1995
52. Constitution of the Republic of South Africa
53. Uganda's Anti-homosexuality Act of 2023
54. South Africa's Children's Act No. 38 of 2005
55. South Africa's Choice of Termination of Pregnancy Act of 1996
56. India's Assisted Reproductive Technology (Regulation) Act of 2021
57. India's Surrogacy (Regulation) Act of 2021
58. Universal Declaration of Human Rights
59. The International Covenant on Civil and Political Rights
60. The International Covenant on Economic, Social and Cultural Rights
61. Convention on the Elimination of All forms of Discrimination Against Women
62. The African Charter on Human and Peoples' Rights
63. The African Charter on Human and Peoples' Rights on the Rights of Women in Africa
64. The 1999 Treaty for the Establishment of the East Africa Community
65. Uganda's Human Assisted Reproductive Technology bill of 2023
66. East Africa Community Sexual and Reproductive Health bill of 2021
67. East Africa Community gender policy

68. South Africa's Regulations Relating to Artificial Fertilisation of Persons
69. Eastern and Southern Africa ministerial commitment (ESA commitment) on sexuality education and sexual and reproductive health services for adolescents and young people.

#### **Case Law**

70. Aboneka Micheal v Watoto Church Ltd & another (2023) UGCC 17
71. AB and anor v Minister of Social Development (2016) ZACC 43
72. Center for Health, Human Rights and Development (CEHURD) v Attorney General and Family Life Network Miscellaneous Application No. 309 of 2016
73. Legal and Human Rights Centre and another v Tanzania Communication No. 0012/Com/001/2019
74. Sharon Dimanche and others v Makerere University (2006) UGSC 210
75. Surrogacy Advisory Group v Minister of Health (2022) ZAGPPHC 558