

**A RIGHTS-BASED ANALYSIS OF THE IMPACT OF PATRIARCHAL
NORMS ON WOMEN'S REPRODUCTIVE AUTONOMY IN UGANDA**

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

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30TH SEPTEMBER 2019

PLAGIARISM DECLARATION

I, KWAGALA PRIMAH NAMUDIBA, declare that the work presented in this dissertation is original. It has not been presented to any other University or Institution. Where the work of other people has been used, it has been duly acknowledged.

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ACKNOWLEDGEMENT

I wish to thank my supervisor, Dr. Nkatha Murungi for her support and guidance to bring this to light. Thank you.

ABSTRACT

This research studies the influence of social cultural norms reflected through societal beliefs, laws, policy and regulation of feminine behaviour in the Ugandan Society and how that impacts on their power to make decisions on how, when and if at all they should have children. The author argues that the state ought to address traditional belief systems because failure to do so results in violation of women's right to reproductive autonomy. The study is divided into five chapters with the first chapter giving a background to social cultural norms in Uganda that make it impossible for women to make independent decisions free from coercion on whether to have children. Chapter two looks at the normative and conceptual framework of reproductive autonomy in Uganda drawing from documented cases and comparative studies. In the third chapter the study makes a rights based analysis of patriarchal norms and their impact on women's reproductive autonomy. It explores the extent to which culture and traditional patriarchal norms such as polygamy and hetero-normativity have manifested in laws and policies to limit women from exercising their reproductive autonomy in Uganda. The fourth chapter explores a comparative review of jurisdictions that have better dealt with the question of RA, what progress that has made in empowering women to better manage their reproductive freedom and the fifth and final chapter makes proposals for measures to address limitations on women's reproductive choices.

List of abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CEDAW	Convention on Elimination of all forms of Discrimination Against Women
CEHURD	Center for Health, Human Rights and Development
CRC	Convention on Rights of the Child
CRPD	Convention on Rights of Persons with Disability
CSE	Comprehensive Sexuality Education
EAC	East African Community
EALA	East African Legislative Assembly
ECHR	European Convention on Human Rights
FGM	Female Genital Mutilation
FIDA	Federation for Women Lawyers
ICESCR	International Convention on Economic Social and Cultural Rights
ICPD	International Conference on Population and Development
MoH	Ministry of Health
NDP	National Development Plan
RA	Reproductive Autonomy
SRHR	Sexual Reproductive Health Rights
UBOS	Uganda Bureau of Statistics
UDHS	Uganda Demographic Health Survey
WHO	World Health Organisation

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Chapter 1

Introduction

1.1 Background and statement of the problem

In many African countries, Uganda inclusive, a woman's worth to society is measured by her ability to reproduce.¹ At wedding ceremonies, the priest will pray for increase, many will speak the blessing of twins and even after the wedding keep demanding for children. In the event that the woman succumbs to 'societal pressure' to bear a child, the 'community police' will thereafter start asking for a male child (son). A son to carry forward a husband's posterity. This societal pressure impacts on the woman's reproductive autonomy.

Reproductive autonomy (RA) refers to a woman's right to make a verdict regarding her fertility and sexuality without being coerced by any one.² Patriarchal organization of society is in such a way that men hold power and decide what women can and cannot do. It infers scenarios where ability to participate for women is relegated to the spiritual, aesthetic and as a consequence excluded from hands-on and governance domains of society. These domains are regarded as unconnected and mutually exclusive.³ Patriarchal norms in this study refer to manifestations of patriarchy in regulation of conduct that is regarded as good or bad by law, policy or society in relation to women's reproduction in Uganda. The decision to have or not to have a child for a woman is affected by the way society views and polices her body. Policing of women's bodies to deny them reproductive autonomy in the context of this research refers to situations of society denying women an opportunity to choose whether to have or not to have children. This includes situations where the state restricts abortion and penalises women who go ahead to obtain them, denying women access to contraceptives and any

¹ M Narasimhan & M Loutfy 'Sexual and Reproductive Health and Human rights of Women living with HIV' (2015) 18(6S5) *Journal of the International AIDS Society*. <https://onlinelibrary.wiley.com/doi/full/10.7448/IAS.18.6.20834> (accessed 9 September 2019)

² C Shalev 'Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women' (1998) Available at <http://www.un.org/womenwatch/daw/csw/shalev.htm> (accessed on 14 March 2019)

³ J Rifkin 'Towards a theory of law and patriarchy' (1980) 3(83) *Harvard women's Law Journal* at 83

modern family planning method for girls in need. These norms and standards are manifestations of patriarchal norms that regard women as incapable of making independent decisions concerning their bodies.

The inability to have choice regarding how many children a woman can have can to some extent be attributed to patriarchy and the gendered roles allotted to men and women in a society.⁴ If a man is head of a household, it is assumed that such a position includes the entitlement to decide how many children that household can accommodate.⁵

These norms and unequal distribution of power between men and women prevent women from making decisions concerning their sexual reproductive health.⁶ It is noteworthy that a community's belief system plays a critical role in influencing a woman's reproductive autonomy.⁷ If a nation therefore omits to address belief and legal systems, the state denies women their right to make decisions concerning their bodies.⁸

The other way women's reproductive autonomy has been denied in Uganda is through restrictions on access to abortion that is safe and legal. The Guttmacher Institute in February 2017 released a report which showed that more than 1 in 10 pregnancies in Uganda ends in an abortion.⁹ The report elaborates that in 2013 almost 314,300 women carried out abortions, resulting into 14/100 of all pregnancies—or a rate of 39 abortions for every 1,000 women in the age bracket of 15–49.¹⁰ From a regional perspective, the Guttmacher report indicated that abortion statistics in Uganda vary widely by

⁴ S Tamale 'Eroticism, Sensuality and 'Women's Secrets' Among the Baganda' (2006) 37(5) *Institute of Development Studies Bulletin* 89-97 available at <https://opendocs.ids.ac.uk/opendocs/ds2/stream/?#/documents/35015/page/1> (accessed on 26 March 2019)

⁵ S Tamale 'Controlling women's fertility in Uganda: Perspectives on religion, law and medicine' (2016) 24 *International Journal on human rights* at Pg1 -3. <https://sur.conectas.org/en/controlling-womens-fertility-uganda/> (accessed on 16 March 2019)

⁶ M Narasimhan (n1)

⁷ L Purdy 'Women's reproductive autonomy: medicalisation and beyond' (2006) 32(2) *Journal of Medical Ethics* 287 - 291

⁸ L Purdy (7)

⁹ Guttmacher Institute 'Abortion and Post abortion Care in Uganda' (2017) Available at <https://www.guttmacher.org/sites/default/files/factsheet/abortion-and-postabortion-care-uganda.pdf> (accessed on 14 March 2019)

¹⁰ S Tamale (n4)

region, from 18 per 1,000 women in the Western region to 77 per 1,000 in Kampala.¹¹ On an annual basis at least 297,000 women forcefully abort in Uganda, almost 85,000 are provided treatment for complications resulting out of unsafe abortion and approximately 65,000 women suffer complications arising from unsafe abortion but do not receive any treatment.¹² The Uganda government has come to terms with the fact that unsafe abortions cause as much as 26% of maternal deaths.¹³ One of the reasons given for the prevalence of unsafe abortions in Uganda is the restrictive law on abortion. Uganda's constitution restricts abortions only in exceptional situations provided for by law.¹⁴ The only law providing for these exceptional circumstances is Uganda's Penal Code Act that criminalizes procurement of an abortion and only permits it for therapeutic reasons when the life of a mother is in danger.¹⁵ People perceive this law to mean that no abortion can be carried out in Uganda.¹⁶ The resultant effect is unsafe abortions performed in bushes and unsafe places leading to preventable deaths of women.¹⁷

Further, patriarchal traditions such as payment of bride-price at the inception of marriage in many Uganda cultures and legal recognition of the same, exaltation of virginity on the part of the girl child at marriage, initiation rites performed by women to appease men in marriage such as visiting the bush to elongate the labia, female genital cutting and societal –religious expectations of a woman to be subservient to a man contribute to the belief that women are

¹¹ S Tamale (n4)

¹² S Singh et al., 'The Incidence of Induced Abortion in Uganda' (2005), 31(4) *int'l fam. Plan. PersPs.* 183, 188

¹³ S Malinga & A Mbonye 'Maternal Morbidity and Mortality in Uganda' (2008) (submission to all-Party Parl. group on PoP., dev. & rePro. HltH.–U.K.).

¹⁴ Constitution of the Republic of Uganda 1995, Article 22(2)

¹⁵ Penal Code Act (1950), Chapter 120 of the Laws of Uganda as amended in 2007, Sections 142 and 143 penalise procurement of a miscarriage and supply of drugs to procure an abortion with 7 and 3years imprisonment respectively and Section 224 permits an abortion where it is done in good faith to save the life of a mother.

¹⁶ Center for Reproductive Right 'The stakes are high: the tragic impact of unsafe abortion and inadequate access to contraception in Uganda' (2013) Available at <https://www.reproductiverights.org/press-room/new-report-unsafe-abortion-and-inadequate-access-to-contraception-in-uganda> (accessed on 14 March 2019)

¹⁷ Center for Reproductive Rights, (n16)

groomed for domesticity and child rearing and therefore can not be left to decide whether to have or not to have children.¹⁸

It is important to note that 40% of women in Uganda are involved in marital relationships by the age of 18 and at least 10% of girls are married by the age of 15.¹⁹ Further, national statistics indicate that women in Uganda bear two more children than expected²⁰; 25% of teens aged 15-19 in Uganda have begun childbearing; and 19 percent of teenage girls in the age range of 15-19 have given birth.²¹ The percentage of teenage girls unable to access family planning is 30.4%.²² Part of the reason, teenagers are unable to access family planning is because of the patriarchal culture and religions that makes the decision of how many children a woman can have to men and a restrictive legal and policy framework that makes it impossible for teenagers to access contraceptives.

The Ugandan legislature passed a resolution in August 2016 to ban sexuality education in and out of schools for young people, the Ministry for Gender followed up the resolution with a press release to emphasize the ban.²³ In 2017 the Uganda ministry of health withdrew guidelines on Sexual Reproductive Health and Rights (SRHRs) that recommended for adolescents to be availed contraceptives.²⁴

¹⁸ S Tamale 'Gender trauma in Africa: enhancing women's links to resources' (2004) 48 (1) *Journal of African Law* 50-61 at 2 - 3 Available at [http://www.jurisafrica.org/docs/ald-mcm/3-law-justice-dev/3\(ii\)%20Tamale.%20Gender+Trauma.pdf](http://www.jurisafrica.org/docs/ald-mcm/3-law-justice-dev/3(ii)%20Tamale.%20Gender+Trauma.pdf) (accessed on 13 November 2019)

¹⁹ Uganda Demographic Health Survey (2012) Available at <https://mail.google.com/mail/u/0/?tab=wm&ogbl#inbox> accessed on 6 September 2019

²⁰ Uganda Bureau of Statistics (UBOS) and ICF International 'Uganda Demographic and Health Survey' (2011)

²¹ Uganda Bureau of Statistics (UBOS) 'Uganda Demographic and Health Survey' (2016), at 14

²² UBOS, (n19) at 18

²³ A Wesaka 'Government sued over delayed policy on sex education' *Daily Monitor* (Kampala) 15 January, 2017 Available at <https://www.monitor.co.ug/News/National/Government--policy---sex-education-Parliament-Uganda/688334-3517264-ayke0j/index.html> (accessed on 15 March 2019)

²⁴ Advance Family Planning 'Uganda Government Suspends Launch of Sexual and Reproductive Health and Rights National Guidelines and Service Standards' 27 September 2017 Available at <https://www.advancefamilyplanning.org/uganda-government-suspends-launch-sexual-and-reproductive-health-and-rights-national-guidelines-and> (accessed on 14 March 2019)

It has been noted severally that access to contraceptives is a woman's right that is key in enabling to realise her right to health.²⁵ This is illustrated in a 2009 Guttmacher Institute study that found that if all women of reproductive age in Uganda were to be availed contraceptives, an estimated 490,000 unplanned pregnancies and 150,000 induced abortions each year would be averted.²⁶ These figures would account for 40% decline in maternal mortality and 85% decline in induced abortions in Uganda that year.²⁷

Uganda, however, guarantees women their reproductive rights in Article 33(3) of its Constitution to the effect that 'the State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.'²⁸ Uganda is party to regional and international human rights instruments such as the Convention on Elimination of All forms of Discrimination against women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) which guarantee women in Uganda the right to reproductive autonomy.

The human right to reproductive autonomy is not expressly provided for in any instrument but is often derived from rights including the right to equality and nondiscrimination, health, liberty, dignity, privacy and security of the person.²⁹ Under the Maputo Protocol, women are guaranteed reproductive autonomy under article 14 (a) and (b) which provide for their right to control their fertility and the right to a decision as to whether to have or not to have children, and spacing of children respectively.³⁰ Further article 16(e) of the CEDAW

²⁵ C Shalev 'C Shalev 'Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women' 1998 <http://www.un.org/womenwatch/daw/csw/shalev.htm> (accessed 30 November 2018)

²⁶ Guttmacher Institute 'Benefits of meeting the contraceptive needs of Ugandan women' (2009) 4 In Brief, New York. Available at <https://www.guttmacher.org/fact-sheet/contraception-and-unintended-pregnancy-uganda> (accessed on 14 March 2019)

²⁷ Guttmacher Institute (n26)

²⁸ Constitution of the Republic of Uganda, 1995 under Article 33 (3)

²⁹ C Shalev 'Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women' 1998 <http://www.un.org/womenwatch/daw/csw/shalev.htm> (accessed 30 November 2018)

³⁰ Protocol to the African Charter on Human and Peoples' Rights On The Rights Of Women In Africa (2003) <http://www.achpr.org/instruments/women-protocol/> (accessed 30 November 2018)

guarantees same rights of men and women to decide freely and responsibly on the number and spacing of their children.³¹

Uganda placed a reservation on Article 14 (2) (c) of the Maputo Protocol that guarantees access to abortion,³² maintains a patriarchal cultural belief system, and continues to implement policies that bar girls from accessing contraceptives before the age of eighteen (18)³³. Moreover, there are heavy criminal sanctions; a custodial sentence of seven years for procurement of a miscarriage and 3 years for supply of drugs to procure an abortion prescribed in sections 142 and 143 of the Penal Code respectively.

1.2 Significance of the research

There is no express provision for the right to reproductive autonomy in Ugandan laws. Women are not at liberty to choose to be childless because childlessness is treated with stigma, discrimination and ostracism.³⁴ Abortion is restricted, stigmatised and not acceptable traditionally.³⁵ The societal pressure, patriarchal laws and policies used to punish and control women's reproduction call for an investigation onto their implications on women's reproductive autonomy in Uganda.

This research is significant because it presents the interplay between laws, policies and social norms and how these may positively or negatively influence a woman's reproductive choices. It provides a legal and human rights perspective on the impact of patriarchal norms on women's

³¹ Convention on the Elimination of all forms of Discrimination Against Women 3 September 1981 <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> accessed on (30 November 2018)

³² Newvision 'African MPs want laws on abortion harmonised' (Kampala) 19 October 2017 available at https://www.newvision.co.ug/new_vision/news/1463993/african-mps-laws-abortion-harmonised (accessed 16 March 2019)

³³ n 19 above

³⁴ World Health Organisation (WHO) 'Mother or nothing: the agony of infertility' (2010) 88(12) *Bulletin of the World Health Organization* available at <https://www.who.int/bulletin/volumes/88/12/10-011210/en/> (accessed on 16 March 2019)

³⁵ A Cleeve, E Fazelid, et al 'Abortion as agentive action: reproductive agency among young women seeking post-abortion care in Uganda' (2017) 19(11) *Culture, Health & Sexuality: An International Journal for Research, Intervention and Care* available at <https://tandfonline.com/doi/full/10.1080/13691058.2017.1310297> accessed on 16 March 2019

reproductive autonomy in Uganda. This research will investigate the basis for denial of women's RA in Uganda and suggest interventions for how the same could be mitigated to enable women take charge of their reproductive autonomy.

1.3 Literature Review

The concept that women in Uganda can make decisions regarding their reproductive autonomy, free from coercion is challenged by the environment they live in. The attitudes towards pregnancy in Uganda are interwoven with the way people view sex, and fertility among women.³⁶ It is argued that women in Uganda are viewed as being subordinate to men and as such Ugandan culture and religion views men as the heads of the family, with the authority to decide when and how many children they should have.³⁷ Even though there are pockets of liberated urban women who in defiance of their husbands can go out of their way to get injectable contraceptives, there are thousands of rural based women (up to 30% of women in Uganda) who cannot access these liberating contraceptives as they are often met with domestic violence.³⁸ Indeed a 2018 study found a correlation between intimate partner violence (including sexual, emotional and psychological violence towards women) amidst poor married women in rural areas to have an impact on whether married women in Uganda, in the lower wealth quintile could or couldn't use modern contraceptives.³⁹

Further, the lack of empirical data to illustrate the effect of patriarchal norms on women's reproductive autonomy in Uganda has made it difficult for activists to advocate for women's reproductive autonomy. This lack of a statistical basis has reinforced traditional values that are abusive of women's

³⁶ B Hewson 'Reproductive autonomy and the ethics of abortion' (2001) 47(2) *Journal of Medical Ethics* Available online at https://jme.bmj.com/content/27/suppl_2/ii10 accessed 15 March 2019

³⁷ S Tamale 'Controlling women's fertility in Uganda: *Perspectives on religion, law and medicine*' (2016) 13(24) SUR 24 Pgs117 - 128 available at <https://sur.conectas.org/wp-content/uploads/2017/02/11-sur-24-ing-sylvia-tamale.pdf> accessed 28 March 2019

³⁸ S Tamale (n34)

³⁹ SO Wandera, B Kwagala and C Odimegwu 'Intimate partner violence and current modern contraceptive use among married women in Uganda: a cross-sectional study' (2018) 30(85) *Pan African Medical Journal* available on line. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6191265/> (accessed 8 August 2019)

autonomy in the familial setting. An example is the culture of bride-price which involves exchange of material and monetary possessions for women at the inception of a marriage and yet nothing is paid in return for men. Adjetey argues that by virtue of the bride-price culture, a husband may prohibit his spouse from getting family planning advice as he becomes the ultimate person to be consulted.⁴⁰ In 2013 the Supreme Court of Uganda upheld the culture of bride price because they opined that it was a way to appreciate the bride's family for raising a wife.⁴¹ Maintenance of this culture compromises women's reproductive autonomy as no similar appreciation is given in exchange for the man getting married.

Restricting women from the exercise of their right to reproductive autonomy is to look at them as 'beings' without agency. It relegates women to be viewed as 'means to an end' as opposed to independent humans with the human right to decide freely when and how to have children. On the basis of this argument, Hewson argues that denying women abortion is inhumane and therefore unethical because it subjects women to a reproductive end.⁴²

It is very unsettling to note that there is a dearth of literature on the legal and human rights analysis of the impact of state regulation of women's reproductive autonomy in Uganda. In 2006 Tamale tackled '*Eroticism, Sensuality and 'Women's Secrets' Among the Baganda*' in an article that discusses the role of women in Ugandan society thereby giving context of the social strata to this study. In 2016 she authored an article on controlling women's fertility in Uganda with perspectives on law and religion. In it she discusses the import of religion, law, medicine and how the same are used to control women's sexual reproductive rights in Uganda. Tamale however does

⁴⁰ FN Adjetey 'Reclaiming the African woman's individuality: the struggle between women's reproductive autonomy and African society and culture' 44(135) *American University Law Review* Pgs1358-1359 also available at <http://www.awdflibrary.org/bitstream/handle/123456789/3/RECLAIMING%20THE%20AFRICAN%20WOMAN%27S.pdf?sequence=1&isAllowed=y> (accessed on 28 March 2019)

⁴¹ *Mifumi (U) Ltd & 12 Others v Attorney General, Kenneth Kakuru* (Constitutional Appeal No. 02 of 2014) [2015] UGSC 13 available at <https://ulii.org/ug/judgment/supreme-court/2015/13> (accessed on 28 March 2019)

⁴² B Hewson (n36)

not discuss the rights analysis and implications of such patriarchal norms on the reproductive autonomy of women in Uganda as this study intends to do.

Second wave feminists focused on the right to abortion, as a result we saw a wave of States and courts uphold the right to abortion and access to contraception on grounds of privacy and dignity of the person through cases including *Roe v Wade*.⁴³ Further, we learn that poverty and belief systems undermine a woman's reproductive autonomy.⁴⁴ In 2006 Purdy argued that exclusion of external obstacles that limit women from exercising reproductive autonomy will create opportunities for women to exercise genuine autonomy. The same sentiments are echoed in Jan Brunson's paper 'Son preference in the context of fertility decline: limits to new constructions of gender and kinship in Nepal' (2010). These case study scenarios from the west and South Africa that has liberalised access to SRHR services will be utilised to compare the scenarios in Uganda to arrive to a discussion of how best women can be equipped to make better choices regarding their sexuality in Uganda.

1.4 Research Questions

The study inquires into whether patriarchy, as manifested in social norms, laws and policies restricting reproductive freedom, has an impact on RA of women in Uganda?

This research will investigate the following specific questions;

- a) To what extent do Ugandan social norms, laws and policies influence a woman's reproductive choice(s)?
- b) What are the human rights implications of social norms, laws and policies that restrict women's reproductive choices?
- c) How can social norms, laws and policies be reformed to support women to take charge of their reproductive choices?

⁴³ T Sue, R Lisa et al 'The Meaning, Status, and Future of Reproductive Autonomy: The Case of Alcohol Use during Pregnancy' (2006) 15(1) *UCLA Women's Law Journal* also available at <https://escholarship.org/content/qt5zx2s003/qt5zx2s003.pdf> (accessed on 15 March 2019)

⁴⁴ C Shalev (n 2)

1.5 Objectives of the Study

This study will examine the impact of social norms, laws and policies on a woman's reproductive autonomy in Uganda and provide proposals to fill gaps in the laws and policies undermining women's reproductive autonomy.

Specifically, it will;

- a) Identify and examine Uganda's social norms, laws and policies which influence a woman's productive choices
- b) Investigate the human rights implications of Uganda's restrictive social norms, laws and policies on women's reproductive choices
- c) Examine and propose possible reforms to restrictive social norms, laws and policies to support women to take charge of their reproductive choices

1.6 Limitations

There is no validated scale to measure how women can achieve reproductive autonomy. Further, there is no statistical research on what influences women's choices in reproduction in Uganda. Quantitative statistics would be very relevant in bringing to light what is otherwise a gap that ought to be studied and addressed by policy makers. Due to resource and time constraints to collect and analyse quantitative data, this research will not give a statistical impression of the impact of patriarchal norms on women's reproductive autonomy in Uganda. Consequently, the study will analyse literature on reproductive autonomy as available on the internet, in journal articles and text books. The above methodology will be applied to arrive to conclusions on the impact of patriarchal norms on RA of women in Uganda.

1.7 Methodology

The research will apply a qualitative approach to answer the research questions. An analytical overview of primary sources including national laws, treaties Uganda has signed and ratified, protocols to the AU, National and international case law with a bearing to the Uganda context will be applied. In

addition, secondary sources such as textbooks, journal articles case studies drawn from the internet will also be used. Since there is no empirical data on implications of patriarchal norms on women's reproductive autonomy, reliance will be made to the Uganda Demographic Health Survey (UDHS) statistics and the Guttmacher Institute's data surveys on women's reproductive health to give context and justify the need to liberalise laws and do away with patriarchal norms so women can genuinely exercise their reproductive autonomy in Uganda. Case studies of cultural norms practiced in Uganda and which have a bearing on women's reproductive autonomy will also be utilized.

This study will in its methodological approach utilize the legal theory to understand the legality of the patriarchal norms imposed on women and feminist ideologies to draw best practices for how to equip women with the ability to make reproductive choices.

Further, the author will make proposals for measures to address limitations to women's reproductive autonomy by addressing patriarchal norms. Best practices and norms will be drawn from international human rights norms and principles such as from concluding observations of treaty bodies such as the Committee on Elimination of all forms of Discrimination Against women (CEDAW), general comments of treaty bodies, jurisprudence from national, regional and international courts having a bearing to women's reproductive autonomy in Uganda.

1.8 Scope of the study

This study is focused on a rights-based analysis of the impact of patriarchal norms on the reproductive rights of married women in Uganda on the greater part, and to a very limited extent to women and girls who are sexually active and in need of contraceptives to regulate child birth but not necessarily in any legally recognized union. Further the study to a very small extent delves into sexual rights of individuals. The Ugandan society only recognizes hetero-normative relationships as being the only relationships where an individual can have children. This is largely due to the legal environment that bans same

sex marriages, penalizes homosexuality and barely accepts adoption of children by same sex couples or single parents.⁴⁵

1.9 Chapter Outline

This study will be divided into five chapters. Chapter two will look at the normative and conceptual framework of reproductive autonomy in Uganda drawing from documented cases and comparative studies in countries of similar social set ups. The chapter will thereafter delve into the national, regional and international norms and standards that have an influence on a woman's reproductive choices. In the third chapter the study will make a rights-based analysis of patriarchal norms and their impact on women's reproductive autonomy. It will explore the extent to which culture and traditional patriarchal norms have manifested in laws and policies to limit women from exercising their reproductive autonomy in Uganda. For instance, the culture of polygamy is backed by the customary and Mohammedan marriage laws, abortion and policies denying contraceptives to girls of reproductive age informed by cultural-religious beliefs that girls cannot have sexual intercourse outside wedlock, abolition of same sex relations informed by religion among others. Ultimately, the fourth chapter looks at a comparative review of jurisdictions that have better dealt with the question of RA, what progress that has made in empowering women to better manage their reproductive freedom and the fifth and final chapter makes proposals for measures to address limitations on women's reproductive choices.

⁴⁵ Constitution of the Republic of Uganda, 1995 (n 13) Article 31(2a); Penal Code Act, Cap 120, Section 145 and 146; Children's Act, Cap 59, Section 45 (2) & (3); HRAPF 'A guide to the normative legal framework on the human rights of LGBTI persons in Uganda' (2015) at Pg. 35 available at [https://hrapf.org/images/legalanalyses/15_10_21_hrapf_compilation_on_lgbti_rights_final_de sign_.pdf](https://hrapf.org/images/legalanalyses/15_10_21_hrapf_compilation_on_lgbti_rights_final_design_.pdf) (accessed on 6 September 2019)

Chapter 2

Normative and conceptual framework of women's reproductive autonomy in Uganda

2.1 Introduction

Reproductive Autonomy (RA) of women in Uganda is not expressly recognized by any law or policy but is rather implied from several human rights laws, policies and provisions in Uganda's bill of human rights under the 1995 Constitution. It is noteworthy that from a social cultural perspective, the society has an impact on women's decisions regarding their reproductive autonomy. In low-income countries such as Uganda, women's RA is influenced by how they are perceived by society.⁴⁶ Societies with religious, tribal and traditional inclinations that define the roles of men and women limit women's decisions regarding RA.⁴⁷ Therefore, social structures that define what a woman can and cannot do concerning her body without engaging the people around her in the decision have a profound impact on use of contraceptives by women in Uganda.⁴⁸ Communal decision making means a woman involves a husband and or members of the community that could be relatives or elders in her familial setting to make a decision as to whether to have or not to have children. Communal or joint decision-making is common in polygamous unions and is also based on factors such as age, education and level of income of the woman.⁴⁹ This section will tackle normative and conceptual frameworks that influence women's RA in Uganda.

⁴⁶ P E Osamor and C Grady 'Women's autonomy in health care decision-making in developing countries: a synthesis of the literature' (2016) 8 International Journal of Women's Health Pp 191-202

⁴⁷ P E Osamor (n46)

⁴⁸ LF DeRose, EC Ezeh 'Decision-Making Patterns and Contraceptive Use: Evidence from Uganda' (2010) 29(3) Population Research and Policy Review pp 423-439

⁴⁹ LF DeRose (n48)

2.2 Normative and conceptual framework

1) Social-normative framework

Social norms are specifications of good and bad behavior by a given society that can be socially enforced.⁵⁰ Social norms it is argued vary from one society to another but for the purposes of this study we look at those norms that have been codified by a piece of legislation, policy or practice that is generally applicable to women's reproductive autonomy across the Ugandan society as a whole. The social structure of the Ugandan community is patriarchal.⁵¹ The rules that govern RA in society are thus made by male-dominated policy makers, health workers and most definitely husbands.⁵² As heads of households, men have a key role in determining how many children a woman can have.⁵³ Further, when making decisions regarding a woman's access to contraceptives, money is involved. It is often said poverty has a woman's face, therefore if contraceptives are to be bought, a woman will need to get the money from her husband to buy these.⁵⁴ If a woman needs money to get a safe abortion, the same wouldn't be availed by men and therefore many women will either bear the pregnancy or resort to an unsafe mechanism to rid themselves of the pregnancy.⁵⁵ Men will only avail the money for selfish

⁵⁰ M Kandori 'Social Norms and Community Enforcement' (1992) 59(1) *The Review of Economic Studies* PP. 63-80 at P.63 also available at <https://pdfs.semanticscholar.org/f98e/69f9cefeb8eb7998ea5fcad3ea211018b39d.pdf> accessed on 30 July 2019

⁵¹ Uganda Bureau of Statistics 'Gender issues in Uganda: an analysis of gender based violence, asset ownership and employment' (2019) https://www.ubos.org/wp-content/uploads/publications/03_2019UBOS_Gender_Issues_Report_2019.pdf accessed on 30 July, 2019

⁵² A.M. Moore, G. Jagwe-Wadda, et al 'Men's Attitudes about Abortion in Uganda' (2011) 43 *Journal of Biomedical Sciences* PP. 31-45 also available at <https://pdfs.semanticscholar.org/0263/be928ef7319626e16a1127dadd25d039b234.pdf> accessed on 19 May 2019

⁵³ A.M. Moore (n52) at 32

⁵⁴ A.M. Moore (n52) at 32

⁵⁵ A.M. Moore (n52) at 32

reasons such as to cover up an infidelity or to get rid of evidence for a defilement case.⁵⁶

This patriarchal social-cultural set-up also manifests in the laws that restrict access to abortions. The Ugandan Constitution restricts abortion to cases where a woman's health is under threat.⁵⁷ Further, the very same patriarchy manifests in policies restricting adolescents under the age of 18 from accessing contraceptives as they are considered minors who shouldn't be having sex in the first place.⁵⁸ A 2019 Guttmacher study shows that 60% of an estimated 648,000 women aged 15-19 are sexually active but have an unmet need for contraceptives in Uganda.⁵⁹ This unmet need for contraceptives amidst adolescents accounts for the high prevalence of abortions and teenage pregnancies in Uganda. As a matter of fact, the Guttmacher Institute notes that if all sexually active adolescents were to be availed contraceptives, unintended pregnancies amidst the adolescent population will decline by 72%, from 214,000 per year to 60,000 per year, consequently a general decline in unintended deliveries will be realised (from 117,000 to 33,000) and abortions (from 67,000 to 19,000).⁶⁰ If modern birth control methods are made available to all adolescents who need them, then Uganda will control adolescent maternal deaths by 35% (from 620 per year to 400 per year).⁶¹ Birth control is important for women to regulate when and at what point they can have children. The absence of modern birth control thus results in dire consequences such as preventable deaths arising from unsafe abortions as noted by Guttmacher above.

⁵⁶ A.M. Moore (n52) at 32

⁵⁷ Constitution of the Republic of Uganda, 1995, Article 22(2) and Uganda's Penal Code Act, Cap 120 Sections 224

⁵⁸ J Lukwago 'Archbishop Lwanga fumes over proposal to give teenagers contraceptives' New Vision (Kampala) 27 October 2017 at https://www.newvision.co.ug/new_vision/news/1464567/archbishop-lwanga-fumes-proposal-teenagers-contraceptives (accessed on 9 September 2019); Newvision 'Contraceptives are not for children, says Museveni' (Kampala) 7 July 2017 available at https://www.newvision.co.ug/new_vision/news/1457221/contraceptives-children-museveni (accessed on 19 May 2019)

⁵⁹ Guttmacher Institute 'Adding It Up: Investing in Contraception and Maternal and Newborn Health for Adolescents in Uganda, 2018' (2018) available at <https://www.guttmacher.org/fact-sheet/adding-it-up-contraception-mnh-adolescents-uganda> (accessed 19 May 2019)

⁶⁰ Guttmacher Institute (n58)

⁶¹ Guttmacher Institute (n58)

Culture and religion

Religion and culture are the other social factors that have a tremendous effect on women's RA. Tamale has noted that Uganda is socially divided into two spheres. The private sphere that relegates women to unpaid domestic care work and the public sphere dominated by men who take charge of the economy, legal and policy processes.⁶² This social set up that places men as heads of families also implies that they decide how many children the women in those families can bear.⁶³

Religion further buttresses the patriarchal ideology that women were created to bear children – this ideology which over 80% of Ugandans subscribe to naturalizes women's subordination as instruments for reproduction.⁶⁴ By so doing, Tamale argues that religion legitimizes and institutionalizes control of women's fertility in Uganda.⁶⁵ Over 84% of Ugandans profess Christianity and at least 14% profess Islam as per the 2014 census results.⁶⁶

Popular cultural practices such as bride-price, 'visiting the bush' (initiation into puberty/adulthood), and polygamy which are still legal and widely practiced in Uganda also contribute to instill it in women that they are inferior to men and consequently contributes to women's inability to make responsible decisions regarding their very own reproductive lives.⁶⁷

⁶² S Tamale (n4)

⁶³ S Tamale (n4)

⁶⁴ Uganda Bureau of Statistic(UBOS) 'National Population and Housing Census 2014' available at <http://www.ubos.org/onlinefiles/uploads/ubos/NPHC/2014%20National%20Census%20Main%20Report.pdf> (accessed on 20 May 2019)

⁶⁵ S Tamale (n4) at 120

⁶⁶ S Tamale (n4) at 120

⁶⁷ FN Adjetey (n39) at 1352; Uganda Bureau of Statistic (UBOS) 'Uganda Demographic Health Survey (UDHS)' (2011) indicates that 17% of men aged 15-54 had more than one wife. Report is available at <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf> (accessed 6 September 2019); Newvision 'Honouring bride-price in Uganda' (Kampala) 11 September 2009 available at https://www.newvision.co.ug/new_vision/news/1236688/honouring-bride-price-uganda (accessed 6 September 2019); H Namulondo, et al 'Elongation of labia minora in Uganda: including Baganda men in a risk reduction education programme.' (2011) 13(1) *Journal on Culture, Health & Sexuality*, PP 45-57 available at <https://www.tandfonline.com/doi/abs/10.1080/13691058.2010.518772> (accessed 6 September 2019)

Stigma

There is social stigma around use of modern contraceptives and abortion for unmarried women and girls in Uganda.⁶⁸ Moore notes in her study on men's attitudes about abortion that a woman in a marriage will often not tell her husband about getting an abortion.⁶⁹ Women's inability to speak about abortion with their spouses is an illustration of how women's agency/RA may be undermined by male domination.⁷⁰

2) Legal framework

i. International human rights instruments

Uganda has agreed to be bound by the International Conference on Population and Development Programme of Action (ICPD PoA) which places emphasis on States giving individuals ability to have satisfying and safe sex lives, power to reproduce and have the autonomy to decide if to have children, when and how to do so.⁷¹ Uganda also participated in the 4th UN World conference on women in Beijing, China whose outcome was the Beijing Declaration and Platform for Action (BFPA) which buttressed women's rights to control their fertility.⁷²

Uganda has in addition signed and ratified the International Convention on Economic Social and Cultural Rights (ICESCR) which in its Article 12 provides for the right to health that in the interpretation of the Committee on Economic Social and Cultural rights (ESCR Committee) in General Comment No. 14

⁶⁸ CEHURD & CRR, 'Facing Uganda's Law on Abortion: Experiences from women and service providers' (2016) <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Uganda-Abortion-Law-Experiences.pdf> (accessed on 19 May 2019)

⁶⁹ A.M Moore (n52) at 15

⁷⁰ A.M Moore (n52) at 119

⁷¹ International Conference on Population and Development Programme of Action (1994), Para 7.2 available at https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf (accessed 19 May 2019)

⁷² Beijing Declaration and Platform for Action (1995), Paras 96 & 223 <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (accessed 20 May 2019); Report of Uganda on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty Third Special Session of the UN General Assembly (2000) https://sustainabledevelopment.un.org/content/documents/13217Uganda_review_Beijing20.pdf (accessed 20 May 2019)

includes sexual and reproductive freedom as well as choice of family planning methods.⁷³

Women's RA is further expounded in the Convention on Rights of Persons with Disabilities (CRPD), the Convention on Rights of the Child (CRC) and the Convention on Elimination of all Forms of Discrimination Against women (CEDAW) all of which Uganda is party. The CRPD guarantees reproductive choice and autonomous control of fertility by persons with disability on an equal basis with others in article 23 (1) (b) and (c) respectively.⁷⁴ Statistics indicate that up to 40% of women in Uganda are married by the age of 18 and 1 in 10 are married off by the age of 15.⁷⁵ This implies that children's conventions ought to be applied to protect and promote these young girls' right to reproductive autonomy. In this regard, the CRC affirms children's rights to appropriate medical care, maternal health services and family planning education and services.⁷⁶ Adolescent girls have a right to access information to enable them delay sexual intercourse and consequently services such as contraceptives to prevent teenage pregnancies.⁷⁷ Further the CEDAW guarantees RA of women in Article 16 (1) (e) and calls on State parties to put in place appropriate measures to ensure equality of men and women in access to information, education and means to exercise this right.

⁷³ UN Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (art 12 of the Covenant), 11 August 2000, E/C.12/2000/4 (2000), Paras 8 & 14

⁷⁴ Convention on the Rights of Persons with Disabilities (CRPD), New York, 13 December 2006, A/RES/61/106 <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> accessed on 20 May 2019

⁷⁴ Convention on the Rights of the Child (CRC), New York, 20 November 1989, G.A. Res. 44/25; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), New York, 18 December 1979 <http://www2.ohchr.org/english/law/cedaw.htm> (accessed 20 May 2019); L.N. Murungi and E. Durojaye 'The sexual and reproductive health rights of women with disabilities in Africa: Linkages between the CRPD and the African Women's Protocol' (2015) 3 African Disability Rights Yearbook 1-30 <http://dx.doi.org/10.17159/2413-7138/2015/v3n1a1> (accessed 20 May 2019)

⁷⁵ UDHS 2011, (n66)

⁷⁶ CRC, Art. 26; CRC, Art. 24 (2) (d); CRC, Art.24 (2) (f)

⁷⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR) 'Reproductive Rights are Human Rights: A handbook for Human rights Institutions' (2014) <https://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf> (accessed on 30 July 2019); Committee on the Rights of the Child, General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20 Para 59 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/20&Lang=en (accessed 6 September 2019)

General Recommendation 24 on women and health of the CEDAW Committee notes that State parties have an obligation to provide health services consistent with the human rights of women, including the rights to RA, leading a private life, confidentiality, informed consent and choice.⁷⁸ Indeed the CEDAW Committee noted with concern in 2010, In its concluding observations to Uganda high maternal mortality rates due to unsafe abortions, high prevalence of teenage pregnancies and inadequate access to SRHR services by women in Uganda and called upon the Ugandan government to strengthen, and broaden efforts to improve knowledge of and access to affordable contraceptive methods all over the country and put in place measures for women in rural areas to access family planning information and services.⁷⁹

The resultant effect of the above conference resolutions, declarations, conventions, General Comment, recommendations and concluding observations by CEDAW is that women in Uganda have a right to decide freely and responsibly whether to have or not to have children as and when they choose to.⁸⁰ The 1995 Constitution of the Republic of Uganda gives legitimacy to international and regional human rights instruments signed and ratified by the government of Uganda by virtue of Article 287. In the case of *Uganda v Thomas Kwoyelo, Constitutional Appeal No. 1 of 2012*, it was held that by Article 287 of the 1995 Constitution, Uganda expressly upheld and expressly recognised all treaties that were in existence at the time of its coming into force. The authors of Uganda's Constitution ought to have

⁷⁸ United Nations Committee on the Elimination of All Forms of Discrimination against Women 'CEDAW General Recommendation 24: article 12 of the convention (Women and Health)' 1999 A/54/38/Rev1 para 31 (e)

⁷⁹ UN CEDAW Committee, 47th session, 4 - 22 October 2010 'Concluding observations of the Committee on the Elimination of Discrimination against Women, Uganda' Doc CEDAW/C/UGA/CO/7 para 35 & 36 <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/CEDAW%20Uganda%20COs%202010.pdf> (accessed 20 May 2019)

⁸⁰ L.P Freedman and S.L Isaacs 'Human Rights and Reproductive Choice' (1993) 24(1) *Studies in Family Planning* PP18-30 at 23 <https://pdfs.semanticscholar.org/5415/97ad9a1c757e1ff304184f4bcb435114aa31.pdf> (accessed on 20 May 2019)

believed that these International instruments are in the best interests of Uganda.

ii. Regional legal instruments

Uganda is legally bound by the African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child in light of married adolescent girls which provide for the right to health, life, dignity, security of the person and freedom from discrimination that are key for women and sexually active adolescents to realize their RA in Uganda.⁸¹ The status of women in society cannot be derived from merely the ability to make decisions regarding how many children they can bear, rather their life is determined by the ability to make a living to facilitate good health and wellbeing of their lives and that of their families, to own and take charge of property, to enjoy a clean and health environment among other human rights.⁸² A woman's life would have no meaning if she were allowed entitlement to make autonomous decisions concerning her body but deprived of some human rights that are relevant to exercise that decision.⁸³ Reproductive Autonomy is only meaningful if all human rights are guaranteed.⁸⁴ These Charters are therefore pertinent in realization of rights of women in Uganda because they legally obligate the state to fulfill, respect and promote RA as a key human right.

Further in 2010 Uganda ratified the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa (Maputo Protocol). This Protocol is the first instrument to legally recognize RA of women on the African continent.⁸⁵ In Article 14 (1) the Protocol emphasizes that States shall ensure the right to health of women, which includes sexual reproductive

⁸¹ African Charter on Human and Peoples' Rights (The Charter), Articles 4, 5, 6, 16, & 18(3)

⁸² LP. Freedman and SL. Isaacs 'Human Rights and Reproductive Choice' (1993) 24(1) *Studies in Family Planning* 18-30 at 19-20 <https://www.jstor.org/stable/pdf/2939211.pdf> (accessed on 30 July 2019)

⁸³ LP Freedman (n82)

⁸⁴ LP Freedman (n82)

⁸⁵ Center for Reproductive Rights 'The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights' (2006) available at https://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/pub_bp_africa.pdf (accessed on 20 May 2019)

health and rights are respected and promoted including the right to control their fertility, the right to choose whether to have or not to have children and the right to choose any method of contraception.

In its General Comment No.2, the African Commission on Human and Peoples' Rights (the Commission) has defined the normative content of African Women's RA in Article 14(1) (a), (b) and (c) to entail the fact that the entitlement to control one's fertility, choice of contraception, maternity, spacing of children and when to have a child are interlinked, indivisible and dependent on each other.⁸⁶ The Commission explains that the right to dignity of an African woman in light of RA entails making decisions free from interference by the state or non-state actors; that the right to health care free from discrimination means that the State ought to remove barriers including ideology and belief barriers to access to health services only reserved for women; the right to be free from discrimination on the basis of sex or gender means that health care providers are barred from denying women access to family planning or contraceptive services on grounds of conscientious objection and that these services in an emergency situation are a necessity that must be provided without excuses of conscientious objection; further that any legal, policy or social cultural framework that serves to deprive a woman of her ability to decide on her RA is in violation of her right to life, health and non-discrimination as they force her into an unwanted pregnancy the resultant effect of which may be an unsafe abortion putting her life and health at risk.⁸⁷

It is however, important to note that in ratifying the Maputo Protocol, Uganda set a reservation on Article 14(2) (c) that provides for abortion in instances of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the

⁸⁶ General Comment No.2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. <https://www.achpr.org/legalinstruments/detail?id=13> (accessed 31 July 2019)

⁸⁷ General Comment No.2 (n82)

foetus.⁸⁸ The act of reserving applicability of this clause to Uganda is a deliberate move to control women's RA by a patriarchal state.⁸⁹

iii. National laws

Uganda's 1995 Constitution provides for the obligation to respect and promote human rights under article 20 and a bill of rights that specifically provides for women's rights including an obligation for the state to protect and promote women's natural maternal functions in society.⁹⁰ Article 33(2) of Uganda's Constitution further provides that 'the state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement.' In a case that involved a mother bleeding to death due to delays by a doctor to provide emergency obstetric care, the High Court of Uganda affirmed that maternal health rights under Article 33 were violated.⁹¹ Emergency obstetric care is a key component of reproductive autonomy for women.⁹² Failure of agents of the State to avail it when it is needed by mothers, results in death or permanent maternal injuries such as fistulas or ruptured uterus making it impossible for women to exercise any reproduction at all.⁹³

The Ugandan Constitution further provides for the right to be free from discrimination on the basis of sex, dignity, freedom from torture, cruel, inhuman and degrading treatment, right to found a family, freedom of conscience and expression, the right to access (reproductive) information and the right to health, all of which have direct implications on RA of women in Uganda.⁹⁴ There is no statute in Uganda that regulates RA save for policies

⁸⁸ B Twinomugisha *Fundamentals of Health Law in Uganda* (2015) 50

⁸⁹ S Tamale (n4) at 123

⁹⁰ Constitution of the Republic of Uganda, 1995, Article 33(3)

⁹¹ CEHURD & 4 others v Nakaseke District Local Government, High Court Civil Suit No.111 of 2012 at Page 13

⁹² LT Mselle & TW Kohi 'Healthcare access and quality of birth care: narratives of women living with obstetric fistula in rural Tanzania' (2016) 13(87) *Reproductive Health* available at <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-016-0189-x> (accessed 7 September 2019)

⁹³ CEHURD (n91)

⁹⁴ Constitution of Uganda (n90), Article 21; Article 24; Article 31; Article 29; Article 41 and National Objective and Directive Principles of State Policy, Objective XIV (b) and XX

and guidelines developed by ministries and departments of government in Uganda. These are discussed in a later part of this chapter.

iv. Legal precedents

The Supreme Court of Uganda in 2013 upheld maternal health rights under Article 33 of the Constitution including RA for women as being constitutional.⁹⁵ In a case brought against the Uganda government, activists argued that non provision of basic maternal health commodities in public health facilities such as razorblades, sutures and gloves to be used in case of provision of emergency obstetric care services which is a key benchmark of women's RA was a violation of women's rights including freedom from non-discrimination on the basis of sex, freedom from inhuman and degrading treatment, health and life.⁹⁶ This same position was enforced by the High Court of Uganda in the case of *CEHURD & 2Others v the Executive Director of Mulago National Referral Hospital and Attorney General* where a mother who was admitted to Uganda's national referral hospital gave birth to twins by cesarean section but was discharged with one baby.⁹⁷ The High Court of Uganda sitting at Kampala held that sexual reproductive health services such emergency obstetric care services that are of quality are a paramount obligation of government to provide as espoused in international human rights instruments that Uganda is party to.⁹⁸

International legal precedents are also persuasive in the Uganda Jurisdiction. Of paramount importance to this study is the case of *Roe v Wade* where the Supreme Court of the United States in 1973 struck down a law criminalising abortion in Texas because upholding the same would interfere with a woman's right to privacy thereby legitimizing intrusion to a woman's right to

⁹⁵ Center for Health, Human Rights and Development (CEHURD) & Others v Attorney General, Constitutional Appeal NO.1 of 2013 https://www.escri-net.org/sites/default/files/caselaw/cehurd_and_others_v_attorney_general.pdf (accessed on 20 May 2019)

⁹⁶ CEHURD (n95)

⁹⁷ High Court of Uganda Civil Suit 212 of 2013 <https://www.womenslinkworldwide.org/en/files/2944/ogj-urganda-judgmentcivilsuit212-eng-pdf.pdf> (accessed 20 May 2019)

⁹⁸ High Court of Uganda Civil Suit 212 of 2013 <https://www.womenslinkworldwide.org/en/files/2944/ogj-urganda-judgmentcivilsuit212-eng-pdf.pdf> (accessed 20 May 2019)

RA.⁹⁹ Uganda can also draw lessons from the Colombian case of C which challenged the constitutionality of Colombia's Criminal Code that banned abortion with no exceptions.¹⁰⁰ The Petitioners in this case argued among others that that law was unconstitutional because it violated a woman's right to RA contrary to article 42 of the Constitution of Colombia.¹⁰¹ The Court held that women cannot be treated merely as instruments for reproduction of the human race as they, too have constitutional agency.¹⁰² Further to this discussion is the *South African case of Christian Lawyers' Association of South Africa v Minister of Health*¹⁰³ that challenged the validity of the Choice on Termination of Pregnancy Act of 1996 for reasons that it violated foetal rights. The Court held that the law was valid because a foetus is not a bearer of constitutional rights. In other words that a woman's rights to RA were to be held paramount in making a decision as to termination of Pregnancy.

Recently the CEDAW Committee released a report to the effect that denying women the opportunity to exercise RA amounted to torture.¹⁰⁴ The CEDAW Committee asserts that denying women a service that is specific to their gender was a deliberate move to force women to carry pregnancies to full term, thereby subjecting them to cruel, inhuman and degrading treatment.¹⁰⁵

3) Policy framework

Uganda has put in place policies and guidelines to regulate RA for women in Uganda in line with the international human rights instruments they have signed and assented to. These include the National Population Policy of 1995 which is under review, Sexuality Education Framework which lays emphasis on access to age appropriate sexual reproductive health information, the

⁹⁹ Roe v. Wade, 410 U.S. 113 (1973)

¹⁰⁰ Case C-355/2006 (2006) Constitutional Court of Colombia; C. Ngwena 'Human Rights and African Abortion Laws: A handbook for Judges'

¹⁰¹ C Ngwena (n100) at 47-48

¹⁰² Case C (n100)

¹⁰³ Christian Lawyers Association of South Africa and Others v Minister of Health and Others 1998 (4) SA 1113

¹⁰⁴ CEDAW Committee Report 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women' (2018) CEDAW/C/OP.8/GBR/1 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fGBR%2f1&Lang=en (accessed on 20 May 2019)

¹⁰⁵ CEDAW Committee Report (n104)

National Policy Guidelines for Sexual and Reproductive Health Services of 2012 that outline information, education and communication materials on SRHR for priority groups, Adolescent Health Policy and Service Standards, 2012 to mention but a few.¹⁰⁶

It should be noted that policy guidance in Uganda has focused more on provision of information and services but ignored the science and statistics that point to liberalizing law and policy for women to control their fertility. In Uganda's vision 2040, the government plans to control fertility rates among women by providing reproductive health services, and in its second National Development Plan (NDPII) Uganda has a target in-line with the Sustainable Development Goals (SDG) to ensure that all women have access to SRHR services including family planning and contraceptives and integrate reproductive health into its national strategies and programs by 2030.¹⁰⁷ Uganda has however slagged in ensuring access to SRHR services to adolescents through rejection of science manifested in government's actions. In 2015 the then acting Director General of Health services in Uganda's Ministry of Health (MoH) withdrew Standards and guidelines to prevent maternal mortality and morbidity due to unsafe abortions and in 2016 banned comprehensive sexuality education in and out of school as well as SRHR guidelines of 2016 on grounds that adolescents shouldn't be given contraceptives as to do so would be to legitimize defilement.¹⁰⁸

4. Conceptual Framework

¹⁰⁶ National Sexuality Education Framework, 2018 <https://www.education.go.ug/files/downloads/NATIONAL%20SEXUALITY%20EDUCATION%20FRAMEWORK.pdf> (accessed 20 May 2019); Adolescent Health Policy and Service Standards (2012) <https://eprcug.org/children/publications/health/health/adolescent-health-policy-guidelines-and-service-standards> (accessed 20 May 2019)

¹⁰⁷ Second National Development Plan (NDP II), Para 352 at page 97 available at <https://www.ugandainvest.go.ug/wp-content/uploads/2016/03/National-Development-Plan-2015-16-to-2019-20.pdf> (accessed 7 September 2019); Uganda vision 2040, Para 250 available at <http://npa.go.ug/wp-content/themes/npatheme/documents/vision2040.pdf> accessed 7 September 2019.

¹⁰⁸ Daily monitor, 'Health experts, government disagree over teenage contraceptive guidelines' *DailyMonitor* (Kampala) 12 October, 2017 <https://mobile.monitor.co.ug/News/Health-experts-government-teenage-contraceptive-guidelines/2466686-4136094-format-xhtml-irof9a/index.html> (accessed 20 May 2019)

The concept of Reproductive Autonomy (RA) evolved during the early 1914 days when women were advancing their rights to vote, to be involved in political and public policy discourse and eventually the ability to be able to control their own reproduction.¹⁰⁹ The women's movement at that point advocated for the right to control their own bodies thus campaigns for access to contraceptives came to life, the right to safe abortions, the right to decide not to have sex and whether to have or not to have children.¹¹⁰

In the second half of the 20th century the RA discussion evolved through United States of America's Supreme Court decisions in *Grisworld v Connecticut* and *Roe v Wade* where Justices affirmed that women's right to privacy included the right to make free and independent choices without coercion concerning whether to have or not to have children.¹¹¹ In the 21st century RA has been incorporated in more legal and binding documents such as the ICPD, the Maputo protocol and in Uganda's Constitution.

In his inaugural professorial lecture on maternal health rights, politics and the law, Twinomugisha argues that reproductive commodities such as modern contraceptives are a basic human right that women can utilize to manage their fertility and exercise RA.¹¹² Twinomugisha argues that at the core of a woman's right to make autonomous decisions regarding her body is the ability to access affordable quality contraception including emergency obstetric care services when needed.¹¹³ These benchmarks for RA have been affirmed and promoted by the working group on elimination of discrimination against women in law and practice.¹¹⁴

¹⁰⁹ J Johnstone, RL Zacharias 'The future of Reproductive Autonomy' (2017) 47(S3) *Hastings Center Report*, <https://onlinelibrary.wiley.com/doi/full/10.1002/hast.789> (accessed 7 September 2019)

¹¹⁰ J Johnstone (n109)

¹¹¹ M Goldsammler, A Jotkowitz 'The Ethics of PGD: What about the Physician?' (2012) 12(4) *American Journal of Bioethics*, <https://www.tandfonline.com/doi/abs/10.1080/15265161.2012.656806> (accessed 7 September 2019)

¹¹² BT Twinomugisha 'Maternal Health Rights, Politics and the Law' (2017) at 14 <https://www.mnh.musph.ac.ug/wp-content/uploads/2017/05/Prof.-Ben-Lecture-final-1.pdf> (accessed on 31 July 2019)

¹¹³ BT Twinomugisha (n112)

¹¹⁴ OHCHR 'Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends' (2017)

5. Conclusion

This chapter has discussed the social-normative, legal and conceptual framework of RA as is in Uganda. In this chapter I made a specific focus on the legal theory to situate Uganda's programming and status in promoting women's reproductive autonomy. The law as applicable in Uganda will be very relevant in making a critique of whether women's right to reproductive is an ideal Uganda aspires for or one that can actually be implemented in local laws and policies.

In the next chapter I will tackle the human rights implications of government's failure to protect and promote RA as a human right for women in Uganda.

Chapter 3

A rights-based analysis of patriarchal norms and its impact on women's reproductive autonomy

3.1 Introduction

Patriarchal norms manifesting through punitive laws, policies, culture, and religious constructs have had a tremendous impact on women's reproductive rights for so long. It is unfortunate that the State, women's groups and activists for women's rights to autonomy in Uganda have placed minimal attention to some of these norms thus far. This chapter will look at these manifestations and make an analysis of the human rights impact on women's reproductive autonomy in Uganda.

3.2 Rights-based analysis of patriarchal norms

Human rights are entitlements that are inherent to a human being for basically being human. Human rights recognized by States are provided for in international instruments that have been negotiated by countries as a basis for how society ought to operate.¹¹⁵ This section will therefore review the implication of patriarchal norms on human rights of women in Uganda.

3.2.1 Laws and Policies

In many cases, laws that ought to promote women's autonomy to decide when to have a baby and when not to are instead used to curtail women's reproductive autonomy. Feminists have argued that laws are used by patriarchal societies to view women's experiences through masculine lenses.¹¹⁶ Feminist theorist Mackinnon states that women are measured according to men's standards and equality or gender neutrality is simply

¹¹⁵ LP Freedman 'Averting maternal death and disability using human rights in maternal mortality programs: from analysis to strategy' (2001) 75 *International Journal of Gynecology & Obstetrics* PP51-60 at 53

¹¹⁶ C.A. Mackinnon, 'Feminism Unmodified: Discourses on Life and Law' (1987) *Harvard University Press* PP 32-34 <https://www.feministes-radicales.org/wp-content/uploads/2010/11/Catharine-MacKinnon-Feminism-Unmodified.-Discourses-on-life-and-law.pdf> accessed 3 June 2019

looked at as the 'male standard' and special female protections the 'female standard'.¹¹⁷

Indeed, a close look at Uganda's Constitution that is by and large accredited for protecting women's rights upholds this argument. In Article 31 the Constitution promotes equality at, in and upon dissolution of a marriage for both men and women and emphasises this equality between sexes in the provision on women's rights under Article 33(1).¹¹⁸ However, Uganda legitimizes polygamy in its Customary Marriage (Registration) Act of 1973 and the Marriage and Divorce of Mohammedans Act of 1906.¹¹⁹ It is important to note that Polyandry (a woman marrying several husbands) or a woman with multiple sexual partners is unacceptable and penalized as 'prostitution'.¹²⁰ It has been argued that because polyandry contradicts 'domesticity' and 'mothering' associated with women's role and subservient positioning in the Ugandan society, it represents a threat to patriarchy and the relative definition of a 'moral society'.¹²¹ To this end, the penalty for prostitution only affects those that sell sex – women, as opposed to those that buy sex– men.

Polygamy as legitimized by the Uganda government reinforces unequal power relations between men and women in a marriage, thereby violating women's right to equality with men. Ross argues that in a polygynous situation for instance where a man has four wives, a woman only has one fourth of a husband, and therefore one fourth of the spousal rights and responsibilities.¹²² Indeed a woman cannot have the ability to give an opinion as to the size of her family in a scenario where her decision is subject to three other co-wives.

¹¹⁷ C.A. Mackinnon, (n116) at 34

¹¹⁸ Constitution of the Republic of Uganda, (n13 above) Article 31(1)

¹¹⁹ Customary Marriage (Registration) Act 1973, Cap 248, Section 4(2); Marriage and Divorce of Mohammedans Act, 1906, Section 2 <https://ulii.org/ug/legislation/consolidated-act/252> (accessed on 3 June 2019)

¹²⁰ Penal Code Act, Cap 120, Sections 131-139, Section 139 prescribes a 7year jail term for anyone living off proceeds of prostitution.

¹²¹ S. Tamale 'Women's Sexuality as a Site of Control & Resistance: Views on the African Context' (2004) <https://mifumi.org/wp-content/uploads/2017/02/MIFUMI-Bride-Price-Conference-2004-Women's-Sexuality-as-a-Site-of-Control-Resistance-Views-on-the-African-Context-Sylvia-Tamale.pdf> (accessed 4 June 2019)

¹²² S.D. Ross 'Polygyny as a violation of women's right to equality in marriage: An Historical, Comparative and International Human Rights Overview' (2002) 24 *Delhi Law Review*, 21-40 at 32

The consent she would give has been defined as 'imperfect consent'.¹²³ The woman's consent is questionable in scenarios where social-cultural pressures have an influence on a woman's autonomy.¹²⁴

Polygyny even though legitimate in Uganda has been held to be a violation of women's rights to equality with men, an abuse of their dignity and inadmissible discrimination by both the Human Rights Committee and CEDAW Committee.¹²⁵ The CEDAW has thus recommended prohibition of polygyny by all States as it compromises women's right to equality with men in marriage and their right to be free from cultural practices that place women in an inferior position to men.¹²⁶ In sum, laws that promote polygyny undermine reproductive autonomy of women in Uganda.

Further, when it comes to special protections concerning reproduction, a woman's decision to have an abortion is subjected to legislation as is envisaged by Article 22(2) of Uganda's Constitution where the state asserts that 'no one may take the life of an unborn child except as provided for by law'. The only legal exception being where 'a doctor in good faith' considers the abortion a necessity for the woman on therapeutic grounds.¹²⁷ This law projects women in Uganda as child caretakers as opposed to individuals with agency to make choice as to whether they want to become mothers or not. Tamale argues that this law in essence forces women into motherhood against their will.¹²⁸

The inability to make a decision on whether or not to keep a pregnancy by women in Uganda is buttressed by punitive sanctions. Sections 142 and 143 of Uganda's Penal Code penalises 'procurement of a miscarriage' and supply

¹²³ J Richards 'Autonomy, Imperfect Consent, and Polygamist Sex Rights Claims' (2010) 98 *California Law Review*, 197 at 200

¹²⁴ J Richards 'Autonomy, Imperfect Consent, and Polygamist Sex Rights Claims' (2010) 98 *California Law Review*, 197 at 200

¹²⁵ Human Rights Committee, General Comment 28, Equality of Rights between men and Women (article 3), U.N. Doc. CCPR/C21/Rev.1/Add.10 (2000) at Para 24

¹²⁶ CEDAW Committee, General Recommendation 21, Equality in Marriage and Family Relations (13th Session, 1992), at Para 14, U.N. Doc. HRI/GEN/1/Rev.1 at 90 (1994)

¹²⁷ Penal Code Act, (n120), Section 224

¹²⁸ S Tamale, n4 above

of drugs to procure an abortion with 7 and 3 years imprisonment respectively.¹²⁹In adopting laws to criminalise abortions, Cook cautions that a State must also ensure that they're complying with constitutional and human rights standards because failure to do so places a State in violation of rights including the right to a private life, the right to be free from torture, inhuman and degrading treatment, and to non-discrimination on the basis of sex.¹³⁰By deliberately refusing to adopt legal precedents set by international and regional human rights instruments¹³¹ (such as widening exceptions to include instances of rape, incest, foetal anomalies and where a woman's life is in danger), Uganda is in violation of women's right to a private life, freedom from torture, inhuman and degrading treatment and discrimination on the basis of sex.

It is noteworthy that Uganda has adopted policies to prevent adolescent girls from accessing contraceptives to help them decide when they can have children. In 2016, the Minister in charge of health withdrew guidelines on sexual reproductive health and rights that recommended sex education in schools and availability of family planning services to sexually active teenagers as a measure to curb teenage pregnancies.¹³² Prior to this action in 2015 the government also banned guidelines developed by the very same ministry to stop maternal mortality due to unsafe abortions.¹³³The act of withdrawing family planning information and services to women violates women's human rights to equality and non-discrimination under the law, health, life, privacy, physical integrity, information, liberty, freedom of religion and conscience, equal enjoyment of rights, and the right to make decisions

¹²⁹ Penal Code Act, (n120)

¹³⁰ RJ Cook, 'Stigmatised meanings of Criminal Abortion Law' (2014), *Abortion Law in Transnational Perspective: Cases and Controversies* / edited by R J. Cook, (Pennsylvania University Press) at 348

¹³¹ Uganda placed a reservation of Article 14(2)(c) of the Maputo Protocol that enjoins States to provide medical abortions.

¹³² The Guardian 'Uganda condemns sex education for 10-year-olds as 'morally wrong'' <https://www.theguardian.com/global-development/2017/oct/20/uganda-condemns-sex-education-for-10-year-olds-as-morally-wrong> (accessed 4 June 2019)

¹³³ The Guardian(n132)

about the number and spacing of children.¹³⁴ Feminists have argued that to deny women modern contraceptives is to violate their right to reproductive autonomy.¹³⁵

3.2.2 Culture

At the root of a patriarchal culture is control of women's fertility and resources alike. Male domination ensures that men are at the helm of a household and at a familial level that makes everyone – women and children- his property.¹³⁶ It therefore becomes crucial to control women's fertility to ascertain paternity of the off springs of the family when it comes to passing on of property to a male heir upon his (father's) death.¹³⁷ The below examples of culture practiced in Uganda reinforce this argument.

(a) Son preference

Traditions in Uganda dictate that a son or male member of the family be the heir of a man's wealth even though there are inheritance laws that provide for widows and female children to take charge of property of a deceased person.¹³⁸ The Uganda Constitution in Article 26 provides for the right for every person (including women) to own property individually or in consortium with others. The right for women to own and or inherit property is further buttressed in article 21 of the Maputo Protocol and Uganda's Succession Act.¹³⁹ It is unfortunate to however note that in spite of the legal provisions,

¹³⁴ Human Rights Watch 'Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina' (2005) <https://www.hrw.org/report/2005/06/14/decisions-denied/womens-access-contraceptives-and-abortion-argentina> (accessed on 4 June 2019)

¹³⁵ D Uberoi and M de Bruyn 'Human rights versus legal control over women's reproductive self-determination' (2013) 15(1) *Health and Human Rights Journal*, <https://www.hhrjournal.org/2013/10/human-rights-versus-legal-control-over-womens-reproductive-self-determination/> (accessed 7 September 2019)

¹³⁶ S. Tamale 'Women's Sexuality as a Site of Control & Resistance: Views on the African Context' (2004) <https://mifumi.org/wp-content/uploads/2017/02/MIFUMI-Bride-Price-Conference-2004-Women's-Sexuality-as-a-Site-of-Control-Resistance-Views-on-the-African-Context-Sylvia-Tamale.pdf> (accessed 4 June 2019)

¹³⁷ S Tamale, (n136)

¹³⁸ F.A. Asimwe & O.Crankshaw, 'The impact of customary laws on inheritance: A case study of widows in Urban Uganda' (2011) 3(1) *Journal of Law and Conflict Resolution*, pp. 7-13 https://www.researchgate.net/publication/266008986_The_Impact_of_Customary_Laws_on_Inheritance_A_case_study_of_widows_in_urban_Uganda (accessed 5 June 2019)

¹³⁹ Succession Act, Cap 162 of Laws of Uganda, Section 24, 25, 26 & 27 <https://ulii.org/node/24057> (accessed 7 September 2019)

cultural inclinations dictate that women may not inherit properties such as lands.¹⁴⁰ This has an impact on women's RA not just in Uganda but for so many parts of Sub-Saharan Africa. In Nigeria for example, studies indicate that in societies where sons are preferred to daughters, women who bear sons for a first born are more likely to have fewer children compared to women whose first child is a daughter.¹⁴¹ Women with firstborn daughters will have more children, short birth intervals and are less likely to use contraceptives.¹⁴²

Short birth intervals and failure to use contraceptives to space children has adverse effects on a woman's health.¹⁴³ This culture of son preference has the effect of violating women's rights to health, to property, dignity, freedom from torture, inhuman and degrading treatment. A woman who constantly feels like she is not whole until she has a son to carry forward her husband's lineage has no autonomy over her reproduction.

(b) Bride price

'Bride price' or 'bride wealth' infers gifts exchanged between a man's family and his preferred bride's family to connote appreciation for raising the bride. These gifts in many Ugandan cultures originate from the groom's family to the bride's family. Even though women groups have challenged this culture as being abusive to women's dignity, the Supreme Court of Uganda has upheld it as being great and therefore not repugnant.¹⁴⁴ It is noteworthy that the spirit behind this cultural practice is commodification of women's sexuality as the exchange of property makes women look like chattels that can be exchanged for a currency. On many occasions it also implies that a man has purchased consensual sexual rights of the woman. He decides when to have children and if to have them at all. In a study conducted in Nigeria, a country which

¹⁴⁰ F.A Asimwe(n138)

¹⁴¹ A. Milazzo 'Son Preference, Fertility and Family Structure: Evidence from Reproductive Behavior among Nigerian Women.' (2014) *Policy Research Working Paper*; No.6869. World Bank, Washington, DC <https://openknowledge.worldbank.org/handle/10986/18805> (accessed 5 June 2019)

¹⁴² A. Milazzo (n141)

¹⁴³ A. Milazzo (n141)

¹⁴⁴ FN Adjety (n40)

cherishes bride price as much as Uganda, it was found that the patriarchal culture of exchange of bride price was the breeding ground for absolute respect for men in society, and because of this absolute respect, women were absolved of any autonomy to make decisions concerning their health and fertility.¹⁴⁵

Further, anthropological studies have affirmed that in societies where women whose bride price has been paid and where those women are economically dependent on their husbands, reproductive autonomy is barely existent.¹⁴⁶

Radical feminists have argued that payment of bride-price is equated to women giving away their consent to sexual intercourse in a marriage.¹⁴⁷ Tong argues that this explains society's failure to acknowledge marital sexual violence as rape.¹⁴⁸ The culture of bride-price reduces women to subjugation, viewed as mere chattels who cannot have a say in their reproduction, consequently violating their right to health, life, liberty, security of the person, equality at initiation of the marriage, in the marriage and upon dissolution of the marriage, right to be protected from harmful cultural practices and freedom from discrimination on the basis of sex.¹⁴⁹

(c) Initiation rites

Cultural initiation rites such as visiting the bush or '*okukyalira ensiko*' to elongate the labia minora with paternal aunties is a cultural right practiced in central Uganda and by some western Uganda tribes to prepare teenage girls to sexually please their husbands upon marriage.¹⁵⁰ This practice has been termed 'type IV Female Genital Mutilation' by the World Health Organisation

¹⁴⁵ CW Princewill, T Wangmo, et al, 'Bride price payment and women's autonomy: Findings from qualitative interviews from Nigeria.' (2019) *Journal of Public Medicine (Women Health)*, 1-14

¹⁴⁶ LM Mbaye & N Wagner 'Bride Price and Fertility Decisions: Evidence from Rural Senegal' (2017) 53(6) *Journal of Development Studies*, PP 891-910 <https://www.tandfonline.com/doi/full/10.1080/00220388.2016.1208178> (accessed 4 June 2019)

¹⁴⁷ S Nkosi 'Lobola: Black students' perceptions of its role on gender power dynamics' (2011) <https://core.ac.uk/download/pdf/39669242.pdf> (accessed 7 September 2019)

¹⁴⁸ PR Tong *Feminist Thought: A More Comprehensive Introduction* (1998)

¹⁴⁹ FN Adjety (n40)

¹⁵⁰ A Milazzo (n141)

(WHO), alongside other forms of Female Genital Mutilation (FGM) also performed by eastern Uganda tribes involving a complete excision of the clitoris from the vagina. The rationale for FGM is to deny women sexual pleasure, thereby asserting control over a woman's fertility by the patriarchal culture.¹⁵¹

FGM affirms the traditional notion that girls must be kept chaste until they are married. Therefore, the rationale behind this cultural practice is to promote the idea that girls need societal help to make such a basic decision concerning their bodies.¹⁵² FGM however, can cause permanent infertility, painful menstrual cycles, fistula formation and has been found to have a correlation to obstructed labour amidst child bearing mothers in eastern Uganda.¹⁵³

FGM undermines women's health because it has long-term implications on mental health, physical integrity and violates women's rights to the highest attainable standard of health, freedom from inhuman and degrading treatment and the right to exercise sexual reproductive autonomy free from coercion and societal pressures.¹⁵⁴

Feminist theorists have argued that FGM suppresses women's sexuality, denies women the ability to have a say in their reproduction and places them in a subordinate position to men.¹⁵⁵ These initiation rites illustrate the point that women in societies where such cultural values are impressed upon them have no power to determine when they can have sexual intercourse. This is because if one has not undergone the cultural rite, they're ostracized from the

¹⁵¹ FN Adjety (n40)

¹⁵² FN Adjety (n40) at 1377

¹⁵³ Center for Health, Human Rights and Development (CEHURD), 'A rapid assessment of stakeholder interventions in Kapchorwa district, Eastern Uganda' <https://www.cehurd.org/wp-content/uploads/2015/11/FGM-response-and-R2H-1.pdf> (accessed 4 June 2019)

¹⁵⁴ UNFPA 'Take action to eliminate female genital mutilation by 2030' (2019) <https://uganda.unfpa.org/en/news/take-action-eliminate-female-genital-mutilation-2030-0> (Accessed on 4 June 2019)

¹⁵⁵ MK Diop 'A Black African Feminist Theory To Examine Female Genital Mutilation (FGM) Within African Immigrant Families In The United States' (2017) <https://www.ncfr.org/sites/default/files/2017-08/TCRM%204%20-%20A%20Black%20African%20Feminist%20Theory.pdf> (accessed 7 September 2019)

community completely.¹⁵⁶ To this end, women's ability to make decisions regarding their fertility is undermined and therefore their rights to sexual and reproductive rights are violated too.

3.2.1 Religion

African feminists such as Tamale have argued that religion just like colonialism is a tool to keep women subordinate to men. The Uganda Constitution in Article 7 states to the effect that Uganda is a secular State and as such shall not adopt a state religion. It is noteworthy however that due to its colonial history, Ugandans embraced foreign religion that has played a crucial role in shaping law, policy, culture and tradition that is influencing control of women's reproductive autonomy. The 2014 national census noted 84% of Ugandans subscribe to Christianity and 14% of Ugandans profess Islam.¹⁵⁷

Religion, specifically Christianity and Islam emphasise subjugation of women.¹⁵⁸ The bible refers to women as 'helpers' of men and calls out to wives to submit to their husbands because husbands are the heads of the wives.¹⁵⁹ These accounts of women being subservient to men have been interpreted to mean that women have no rationality and as such their RA should be subjected to men's approval.¹⁶⁰

The Koran on the other-hand, it is said, promotes gender equity but men (patriarchy) deny women the equality.¹⁶¹ Children it is believed are to be had in the confines of marriage and abortion not tolerated except in extreme

¹⁵⁶ CEHURD (n153) and FN Adjety (n40) at 1363

¹⁵⁷ UBOS(n66)

¹⁵⁸ C Malhotra 'Women in World Religions : Feminist Perspectives' (2002) 32(1/2) *Indian Anthropologist* PP 97-104 at 97 available at https://www.jstor.org/stable/41919912?seq=1#metadata_info_tab_contents accessed on 12 August 2019

¹⁵⁹ Genesis 2:18, New King James Version Bible and Ephesians 5:22-23, New King James Version Bible

¹⁶⁰ S Tamale (n4)

¹⁶¹ C Kahn, et al 'Family planning and reproductive autonomy among highly religious women: a qualitative study' (2014) 90(3) *Contraception Journal* Page 295 [https://www.contraceptionjournal.org/article/S0010-7824\(14\)00551-4/fulltext](https://www.contraceptionjournal.org/article/S0010-7824(14)00551-4/fulltext) (accessed 7 September 2019)

circumstances where the life of a mother is in danger.¹⁶² Islam just like Christianity promotes the idea that God is the author of life and therefore that women have no right whatsoever to take the life of an unborn foetus.¹⁶³ This belief has empowered religious fundamentalists (usually men) to police women's fertility in Uganda.¹⁶⁴

Religious leaders in Uganda have led the fight against provision of sexuality education and contraceptives to teenagers, abolition of guidelines to stop maternal mortality due to unsafe abortions and the Ministry of Health guidance on SRHRs.¹⁶⁵ It should be noted that Religious institutions have founded 73% of educational institutions, 30-35% of all health facilities and at least 60% of the health workforce in Uganda has been trained by religious founded health institutions.¹⁶⁶

The influence of religion on women's fertility choices and RA is significant given the above background. As a learned behavior, sexuality and how we (women in Uganda) express it is learned through these religious institutions.¹⁶⁷ Women find it exceedingly difficult to seek safe abortions from hospitals due to stigma associated with abortion.¹⁶⁸ The resultant effect has been unsafe abortions, high rate of teenage pregnancies and a very high

¹⁶² P.E. Ekmekci 'Abortion in Islamic Ethics, and How it is Perceived in Turkey: A Secular, Muslim Country' (2017) 56(3) *Journal of Religion and Health*, 884–895 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5215975/> (accessed 5 June 2019)

¹⁶³ Jeremiah 1:5, New King James Bible Version, 'Before I formed you in your mother's womb, I knew you'

¹⁶⁴ J Asasira 'COMMENT: Safe abortion, religion, culture' *The Independent* (Kampala) 11 October 2016 <https://www.independent.co.ug/comment-safe-abortion-religion-culture/> (accessed 5 June 2019)

¹⁶⁵ A Ssenyonga 'Churches reject sexuality education in school' *The New Vision* (Kampala) 4 June 2018 https://www.newvision.co.ug/new_vision/news/1479030/churches-reject-sexuality-education-school (accessed 5 June 2019); P Ahimbisibwe 'Church's protest delays bid for sexuality education in schools' *Daily Monitor* (Kampala) 1 January 2019, <https://www.monitor.co.ug/News/National/Church-s-protest-halts-sex-education-schools/688334-4917238-4h28lf/index.html> (accessed 5 June 2019)

¹⁶⁵ FS Mwesigwa 'Give the church more recognition for its contribution to education' *Daily Monitor* (Kampala) 27 October 2019, <https://www.monitor.co.ug/OpEd/Commentary/Give-the-church-more-recognition-for-its/689364-2500096-y6191yz/index.html> (accessed 5 June 2019)

¹⁶⁶ FS Mwesigwa 'Give the church more recognition for its contribution to education' *Daily Monitor* (Kampala) 27 October 2019, <https://www.monitor.co.ug/OpEd/Commentary/Give-the-church-more-recognition-for-its/689364-2500096-y6191yz/index.html> (accessed 5 June 2019)

¹⁶⁷ S Tamale 'African sexualities, religion, law and society' (2014) 14 *African Human Rights Law Journal* 150-177 at 155

¹⁶⁸ S Tamale (n167) at 156

unmet need for contraceptives in Uganda.¹⁶⁹ These consequences that can otherwise be prevented are in themselves violations of women's sexual reproductive health and rights.

3.3 Conclusion

This chapter has advanced the idea that patriarchal social norms manifested through laws, policies, culture and religion adversely affect women's reproductive autonomy. The effect of women's RA being denied has not stopped women from mundanely exercising their autonomy through unsafe abortions leading to avoidable deaths. Human rights violations including the violation of the right to equality under the law, the right to equality at, in and upon dissolution of marriage, the right to dignity, liberty, security of the person, right to access information to manage sexuality, privacy and ultimately life have been recorded.

In the next chapter I will discuss some best practices from countries with similar cultural, political and resource settings to identify how Uganda can deal with equipping women with the requisite information and services to enable them deal with making autonomous decisions regarding reproduction.

¹⁶⁹ E. Prada, L.M. Atuyambe, et al 'Incidence of Induced Abortion in Uganda, 2013: New Estimates Since 2003' (2016) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0165812> (accessed 5 June 2019)

Chapter 4

A Comparative review of good practices on Reproductive Autonomy

4.1 Introduction

In spite of the discussed flaws in promoting RA for women in Uganda, there are good practices Uganda can learn from comparative jurisdictions that are making an effort to promote women's autonomy in making reproductive choices. From East Africa through to countries in Sub Saharan and North Africa, Latin America and the Caribbean as well as Europe and North America there are lessons to learn. The lessons and best practices are discussed as below.

4.2 East African Community

In all countries in the East African Community (EAC) region (Rwanda, Uganda, Kenya, Tanzania and Burundi), the right to reproductive autonomy is not expressly provided for in any law at a country level. Access to safe abortion is only limited for therapeutic purposes where the life of a mother is at risk in Uganda and Tanzania.¹⁷⁰ Kenya and Burundi have an additional exception for necessity for emergency treatment.¹⁷¹ Rwanda in its 2012 Penal Code expanded the grounds for access to safe abortion services to include rape, incest in the second degree, forced marriage and when continuation of the pregnancy causes health risks to the unborn baby or the life of the pregnant woman.¹⁷² The grounds for safe abortion are quite difficult to apply because the penal laws necessitate that only a doctor in consultation and approval with another doctor can carry out the abortion under article 166 of Section 5 of the Rwandese Penal Code.¹⁷³

¹⁷⁰ Guttmacher 'Abortion in Africa: Incidence And Trends' (2018) Available at <https://www.guttmacher.org/fact-sheet/abortion-africa> (accessed on 12 August 2019)

¹⁷¹ Guttmacher 'Abortion in Africa: Incidence And Trends' (2018) Available at <https://www.guttmacher.org/fact-sheet/abortion-africa> (accessed on 12 August 2019)

¹⁷² Organic Law Instituting the Penal Code, N° 01/2012/OL of 02/05/2012, Section 5, Article 165 Available at https://www.unodc.org/res/cld/document/rwa/1999/penal-code-of-rwanda_html/Penal_Code_of_Rwanda.pdf (accessed on 13 November 2019)

¹⁷³ Penal Code of Rwanda (n172), Section 5, Article 166

It is important to however note that the Treaty establishing the East African Community (the EAC Treaty) has a key objective to develop policies and programs aimed at widening cooperation amidst member States in areas including social and cultural affairs as well as legal and judicial affairs.¹⁷⁴ The EAC Treaty further emphasizes protection and promotion of human and peoples' rights as a fundamental principle of the Community.¹⁷⁵

Further, the EAC Treaty upholds the principle of subsidiarity in its operations with member States and as a general undertaking in implementation of its operations, laws made at the EAC level take precedence over similar national ones in matters regarding implementation of this Treaty.¹⁷⁶

It is noteworthy that the East African Community (EAC) has put in place an EAC Sexual Reproductive Health and Rights Bill of 2017 to give guidance and harmony to the EAC member States' laws and policies on SRHR.¹⁷⁷ In this bill, the East African Legislative Assembly (EALA) proposes a specific section 12 that provides details specific to individuals having the right to make decisions regarding whether to have or not to have children, ensuring access to family planning services, family planning methods, access to SRHR services including contraceptives and access to safe abortion services.¹⁷⁸ If passed into law, Uganda will have a blue print for express provisions on RA of women. This bill if passed into law will supersede Ugandan penal laws restricting exercise of RA of women.

4.3 Other African Jurisdictions

a) Kenya

Kenyan civil society groups have taken some noticeable steps in involving the courts of law to enlarge the exceptions for which women may make decisions

¹⁷⁴ The Treaty for the establishment of the East African Community (hereafter EAC Treaty), Article 5(1)<https://www.eac.int/documents/category/key-documents> (accessed on 9 September 2019)

¹⁷⁵ EAC Treaty (n174) Article 6(d)

¹⁷⁶ EAC Treaty, (n174), Article 7(1) (d) and Article 8(4)

¹⁷⁷ The East African Legislative Assembly 'East African Community Sexual Reproductive Health and Rights Bill, 2017' (2017) Available on <http://www.eala.org/documents/view/the-eac-sexual-and-reproductive-health-rights-bill2017> (accessed on 12 August 2019)

¹⁷⁸ EAC SRHR Bill, (n177), Sections 12, 13, & 15

regarding their reproduction. In a recent landmark decision involving the *Federation of Women Lawyers (FIDA Kenya) and three others v. Attorney General and two others*, the Constitutional Court of Kenya held that abortion ought to be availed to women that have suffered sexual violence and in addition declared that when government banned trainings on safe abortion being provided to health workers, they violated women's right to health.¹⁷⁹ This Judgment came at a time when Kenyan health workers were faced with uncertainty as to the legality of abortion in Kenya. Prior to this petition brought before the Constitutional and Human Rights Division, the government of Kenya had banned trainings for health workers on abortion and had withdrawn standards and guidelines for prevention of morbidities and mortalities that were a result of unsafe abortions in Kenya.¹⁸⁰ In their Judgment the Justices opined that withdrawal of the 2012 guidelines and training curriculum violated rights of adolescent girls and women in Kenya who were entitled to safe abortion services as provided for by law.¹⁸¹

Courts of law can therefore be useful tools in interpreting and expanding the margins of defining the law in relation to reproductive autonomy of women in Uganda as illustrated above. Although Kenya has an active reservation of Article 14(2) (c) as is the case in Uganda, the court took judicial notice of studies and expert evidence to the effect that sexual violence causes immense trauma that affects a woman's health.¹⁸² In that regard if a trained health professional deems it fit to offer an abortion, then the right to access a safe and legal abortion by the woman should be given.¹⁸³

This case is therefore instructive and can be persuasive to present arguments for change in Ugandan law. It should be noted that just like Kenya prior to this case, the Ugandan government has withheld standards and guidelines to

¹⁷⁹ Federation of Women Lawyers (FIDA – Kenya) & three others v. Attorney General & two others, Petition No.266 of 2015

¹⁸⁰ Center for Reproductive Rights, 'Kenya's High Court issues a landmark ruling on access to safe abortion in a case against Ministry of Health' (2019) Available at <https://reproductiverights.org/press-room/kenyas-constitutional-court-issues-landmark-ruling-access-safe-abortion-case-against> (accessed on 12 August 2019)

¹⁸¹ FIDA (n179) at Para 402.

¹⁸² FIDA (n179) para 372

¹⁸³ EAC SRHR Bill (n177), Section 15

prevent morbidity and mortality of women from unsafe abortions and no clarity has been availed to health workers and the public for when abortions may be provided to Ugandan women as a matter of right.

b) Cape Verde

There's a selection of other countries in Sub Saharan Africa that have made tremendous progress in empowering women to take charge of their bodies and therefore the ability to make independent decisions concerning whether to have or not have children. An example is Cape Verde where fertility rate is 1.6 and over 90% of births are attended to by skilled health professionals, under 17% of women have an un met need for contraceptives and safe and legal abortion services are available to all upon request before twelve weeks gestation period.¹⁸⁴

Cape Verde has signed and ratified the Maputo protocol without reservation, provides sexuality education and sexual reproductive health services including to young women of reproductive age, put in place local legislation to empower women with the right to make autonomous decisions whether to have or not to have children. Such policies include the National Reproductive Health policy and a law and regulation on voluntary interruption of Pregnancy of 1987. Consequently, the maternal mortality indices of Cape Verde are quite low in comparison to Uganda.¹⁸⁵ Despite being a community with deeply entrenched patriarchal norms similar to those in Uganda, the Cape Verde policies aimed at empowering women to make decisions free from coercion are good lessons for Uganda to apply.

c) Tunisia

Northern Africa has Tunisia as a best practice that Uganda can learn from. Tunisia has liberalized abortion services where a woman can demand safe termination of a pregnancy for any reason up to 12 weeks of a pregnancy, access to reproductive health services such as contraceptives and information

¹⁸⁴ World Health Organisation 'human reproductive program' (2018) available at <https://abortion-policies.srhr.org/country/cabo-verde/> (accessed 12 August 2019)

¹⁸⁵ WHO (n184)

is provided for by policy, the unmet need for contraceptives is just about 7%, total fertility rate is 2.2 and percentage of women aged 20-24 that gave birth before the age of 18 is just 1%.¹⁸⁶

In spite of Tunisia being an Islamic nation, with a patriarchal culture that denies women the right to own property, the government abolished polygamy in 1956 in Article 18 and 23 of the Personal Status Code. The human right to access contraceptives and abortion services have been legalized since 1961 and 1973 respectively and incorporated in the country's national reproductive policy and programs, the right to sexual reproductive health is incorporated in a multiplicity of government health programs, moreover contraceptives are given free of charge to all, safe abortion is free of charge and in 1998 the Tunisian government through its 1998 strategy to curb maternal and neonatal mortality guaranteed the entitlement of at least five prenatal and two post-natal consultations free of charge.¹⁸⁷ It is also noteworthy that in 1994 Tunisia was named a remarkable country of excellence for population programs by the United Nations Population Fund.¹⁸⁸

Contrary to popular opinion in Uganda that liberalizing abortion laws and providing contraceptives to all that need them will promote abortions and lead to immorality amidst the Uganda population, the reverse has been proven true for Tunisia for so many decades.¹⁸⁹ The Tunisian government has maintained low levels of maternal deaths, unsafe abortions are also low and manageable.¹⁹⁰

d) South Africa

¹⁸⁶ World Health Organisation 'human reproductive program' (2018) available at <https://abortion-policies.srhr.org/country/tunisia/> (accessed on 13 August 2019)

¹⁸⁷ N Amroussia, I Goicolea, and A Hernandez 'Reproductive Health Policy in Tunisia: Women's Right to Reproductive Health and Gender Empowerment' (2016) *Health and Human Rights Journal* available at <https://www.hhrjournal.org/2016/09/reproductive-health-policy-in-tunisia-womens-right-to-reproductive-health-and-gender-empowerment/> (accessed on 13 August 2019)

¹⁸⁸ N Amroussia (n187)

¹⁸⁹ P Ahimbisibwe(n165)

¹⁹⁰ N Amroussia (n187)

There is a lot of controversy surrounding legislation liberalizing women's choices regarding termination of pregnancy in South Africa but in comparison to Uganda, the situation is once again one that Uganda can learn from.¹⁹¹ The South African Constitution unlike the Ugandan Constitution expressly provides for the right to health that is a determinant of reproductive autonomy.¹⁹² Further unlike Uganda which has no specific statute to provide for specifics of reproductive health, the government of South Africa has taken extra steps to put in place a National Health Act, a statute which expressly provides that women are entitled to free reproductive health services in all public health facilities and a Choice on Termination of Pregnancy Act, which entitles all women and adolescent girls above the age of fifteen to safe abortion services upon request in the first trimester of a pregnancy.¹⁹³

It has been severally reported that the legal landscape that liberalized reproductive autonomy in South Africa has not had much impact on reduction of unsafe abortions as criminal abortions still ensue and stigma, social cultural norms, lack of knowledge on where safe and legal abortions can be accessed still bars women from accessing adequate services to prevent maternal deaths.¹⁹⁴ It is nonetheless noteworthy that over the past decade, South Africa has been reported to have reduced its maternal mortality ratio from 189 per 100,000 live births in 2009 to 134 per 100,000 live births.¹⁹⁵ Uganda's Maternal mortality ratio is one of the highest in the world at 336 for every 100,000 live births, skilled birth attendance is under 60% compared to South Africa's which is at 97%, unmet need for family planning in South Africa is

¹⁹¹ M Favier, et al 'Safe abortion in South Africa: "We have wonderful laws but we don't have people to implement those laws".' (2018) 143(S4) *International Journal of Gynecology & Obstetrics* <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1002/ijgo.12676> (accessed 9 September 2019)

¹⁹² Constitution of the Republic of South Africa, Section 27(1)

¹⁹³ JN Lomelin 'Reproductive autonomy and choice: a reality for women in South Africa?' (2013)

https://open.uct.ac.za/bitstream/handle/11427/4714/thesis_law_2013_lomelin_jn.pdf?sequence=1&isAllowed=y (accessed on 13 August 2019)

¹⁹⁴ B L. Meel and R P. Kaswa 'The impact of the Choice on Termination of Pregnancy Act of 1996 (Act 92 of 1996) on criminal abortions in the Mthatha area of South Africa' (2009) 1(1) *African Journal of Primary Health Care and Family Medicine* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4565924/> (accessed 13 August 2019)

¹⁹⁵ Bhekhisisa 'Giving birth has become less dangerous in South Africa' (2018) <https://bhekhisisa.org/article/2018-03-28-00-maternal-mortality-ratio-south-africa-decreased-by-29/> (accessed on 13 August 2019)

under 14% compared to Uganda's over 30% and total fertility rate is 2.4 in South Africa compared to Uganda's 5.5.¹⁹⁶ Liberalising laws on reproductive autonomy, providing free sexual reproductive health services and information to all women are lessons South Africa has employed that can equally apply in Uganda.

4.3 Latin America and the Caribbean

There are countries in Latin America that have performed exceedingly well in promoting women's reproductive choices and the Cuban government has some good practices that have promoted women's reproductive autonomy.¹⁹⁷ So well, that even though categorized as a developing country with limited resources, it's reproductive health indices are far better than those of most rich developed countries such as Canada and the United States of America.¹⁹⁸

The Cuban government has recognized the right to health in Article 50 of its 1967 constitution and enumerated that health care is the responsibility of the state.¹⁹⁹ Cuba has a law and policy for women to access safe and legal abortion upon request, a child and maternal health program that provides a package of care that includes sexuality education and access to contraceptives by all free of charge irrespective of age, race or social status.²⁰⁰ Cuba put in place an extensive primary health care system that targets non-institutional education of citizens from the age of 6 months through to the age of 5 years.²⁰¹ It prepares children to be prospective parents with information on sexuality, counseling and support programs by

¹⁹⁶ UNICEF 'Maternal and Newborn Health Disparities: Uganda ' (2019); WHO 'Human Reproduction Program' (2017) <https://abortion-policies.srhr.org/country/south-africa/> (accessed on 13 August 2019)

¹⁹⁷ M Bragg, T R. Salke, et al 'No Child or Mother Left Behind; Implications for the US from Cuba's Maternity Homes' (2012) 2(1) *Health Promotion Perspectives* PP 9-15 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3963654/> (accessed 15 August 2019)

¹⁹⁸ RD Libby 'A Rights-Based Analysis of Reproductive Health in Cuba' (2011) https://scholarlyrepository.miami.edu/cgi/viewcontent.cgi?article=1305&context=oa_theses (accessed 15 August 2019)

¹⁹⁹ RD Libby (n198)

²⁰⁰ WJ Keon 'Cuba's system of maternal health and early childhood development: lessons for Canada' (2009) 180(3) *CMAJ* PP 314-316 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2630353/> (accessed 15 August 2019)

²⁰¹ RD Libby (n198)

professional health workers in hospitals, visiting families and community health workers visiting families to provide preventive care programs at the cost of the Cuban government.²⁰²

The key benchmarks for reproductive autonomy are availability and accessible information and services such as contraceptives and safe abortion services to women that need them. Cuba has put that in place unlike Uganda which at the moment is providing contraceptives to just a portion of women (35%), leaving hundreds of thousands in dire need of these life saving commodities.²⁰³ Uganda can learn from the Cuban liberal policies by liberalizing abortion, extending free maternity care to its female population, investing in comprehensive sexuality education of all children and ensuring free access to contraceptives to all that need it. Once again, contrary to popular beliefs that providing contraceptives to all, including adolescents will escalate immorality and sexual activity, Cuba seems to be achieving better health outcomes out of its population. Cuba is comparable to Uganda because it has patriarchal cultural norms that place women in subordinate positions of society, promotes hetero-normativity as is done in Uganda but has managed to promote women's reproductive autonomy nonetheless.²⁰⁴ The Ugandan Government should thus reconsider its very restrictive policy environment on limiting reproductive choices for women.

Indeed the WHO commission on social determinants of health has recognized Cuba as a 'good example of good health at a low cost' because of its reliance on policies that promote equity, universality and government control.²⁰⁵ It is no doubt that in 2013 Cuba scored a record lowest MMR of 20.7 deaths per

²⁰² WJ Keon (n200)

²⁰³ United Nations Population Fund (UNFPA) 'Family planning: the right investment to drive Uganda's socio-economic transformation' (2017) 3 *Population Matters Brief* https://uganda.unfpa.org/sites/default/files/pub-pdf/familyPlanning_BriefEdit%20%284%29.pdf (accessed on 16 August 2019)

²⁰⁴ B E Hernández-Truyol 'The Culture of Gender/The Gender of Culture: Cuban Women, Culture, and Change—The Island and the Diaspora' (2017) 29(1) *Florida Journal of International Law* <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1002&context=fjil> (accessed 9 September 2019)

²⁰⁵ B E Hernández-Truyol (n204)

100,000 live births and Infant Mortality Rate (IMR) of 4.2 deaths per 1000 live births in the year 2013.²⁰⁶

Many more Latin American countries are moving towards decriminalizing abortion and positively investing in safe termination of pregnancies for all women who want to within the first trimester.²⁰⁷ Uganda can grow in the same move alongside countries such as Guyana, Uruguay and Puerto Rico.²⁰⁸

4.4 North America

North America can be credited for developing progressive jurisprudence on women's reproductive autonomy that is persuasive to Ugandan jurisprudence. The locus classicus case being *Roe v Wade*, a Supreme Court case that legalised abortion service provision across the United States of America in 1973.²⁰⁹ In *Roe v Wade* the Supreme Court interpreted the right to privacy to include women's right to decide whether or not to terminate a pregnancy.²¹⁰ The case opened discourse for legal reform not just in the United States but across the globe. Very recently it was applied in the Kenyan FIDA case, in Botswana, South Africa, at the United Nations' CEDAW Committee's concluding observations to several countries to mention but a few.²¹¹ The case is similarly applicable and persuasive to Ugandan jurisprudence where

²⁰⁶ International Federation of Gynecology and Obstetrics (FIGO) 'Cuba achieves 'lowest ever' MMR rate' (2014) <https://www.figo.org/news/cuba-achieves-lowest-ever-mmr-rate-0013829> (accessed on 15 August 2019)

²⁰⁷ S Wood et al 'Reform of abortion law in Uruguay: context, process and lessons learned' (2016) 24(48) *Reproductive Health Matters* PP 102-110 <https://www.tandfonline.com/doi/full/10.1016/j.rhm.2016.11.006> (accessed 15 August 2019)

²⁰⁸ Guttmacher 'Abortion in Latin America and the Caribbean' (2018) <https://www.guttmacher.org/fact-sheet/abortion-latin-america-and-caribbean> (access 15 August 2019)

²⁰⁹ Amnesty International 'Abortion laws in the US – 10 things you need to know' (2019) <https://www.amnesty.org/en/latest/news/2019/06/abortion-laws-in-the-us-10-things-you-need-to-know/> (accessed on 15 August 2019)

²¹⁰ P Ahimbisibwe(n165)

²¹¹ <https://www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf> (accessed 15 August 2019); *Christian Lawyers Association of SA and Others v Minister of Health and Others* 1998 (11) BCLR 1434 (T) https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/south_africa_1998_christian_lawyers.pdf (accessed on 15 August 2019)

abortion is criminalized and only permitted in circumstances where the life and health of a mother is at risk.²¹²

It should be noted that for women to be able to exercise reproductive autonomy, access to information regarding their reproduction and contraceptives to control their fertility is key.²¹³ North American countries including Canada have been at the forefront of ensuring that contraceptives are available and accessible to all women of reproductive age.²¹⁴

Availing contraceptives, providing comprehensive sexuality education and reliance on scientific evidence to equip women with information and services to make autonomous decisions regarding whether to conceive or not to conceive results in better health outcomes for women as evidenced from studies in North America. Uganda can therefore learn from those good practices to prevent high maternal mortality rates its currently recording.²¹⁵

4.5 Europe

Europe is a source of jurisprudence on law and public policy in Uganda as most of the laws applied in Uganda are sourced from colonial days of British rule in Uganda. Most of these have since been repealed in England and many surrounding countries in Europe. It is therefore pertinent to look at the cause for the change and comparatively review if Uganda for similar reasons would consider reviewing its legislation and policies in light of the prevailing development trends.

From a regional perspective, the Council of Europe, a body that coordinates European countries and responsible for promoting democracy and human rights recognizes protection of sexual and reproductive health and rights

²¹² Uganda Penal Code Act, Chapter 120 of the Laws of Uganda, Section 224

²¹³ P Ahimbisibwe(n165)

²¹⁴ Planned Parenthood Federation 'What's the State of Sex Education In the U.S.?' <https://www.plannedparenthood.org/learn/for-educators/whats-state-sex-education-us> (accessed 15 August 2019)

²¹⁵ S Ahmed, Q Li, et al 'Maternal deaths averted by contraceptive use: an analysis of 172 countries' (2012) 380(9837) *Lancet* Pages 111-25 <https://www.ncbi.nlm.nih.gov/pubmed/22784531> (accessed 16 August 2019)

through instruments such as the European Convention on Human Rights (and its jurisprudence), the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).²¹⁶ Key values of the EU include dignity for human beings, equality, freedom, respect for human rights and all of these are enshrined in the Charter of Fundamental Rights of the European Union which provides for the right to respect a person's physical and mental integrity, entitlements for every individual's private and family life as well as home and communications.²¹⁷

Although the European Charter on human rights does not explicitly provide for the right to reproductive autonomy for women in Europe, the right has been implied in several fundamental human rights through the evolving jurisprudence of the European Court on Human Rights. A key example is the case of *R.R v Poland* which involved a 29-year-old lady who had been denied an abortion upon request at a government facility. The European Court of Human Rights (ECHR) held the denial to be a violation of the lady's right to private life.²¹⁸ The court affirmed that the right to private life applies to a woman's autonomous decision to choose to have or not to have a child or become a parent.²¹⁹

Further, under common law, which is binding and applicable to Uganda, jurisprudence has affirmed that a 'foetus' is not a 'person' and therefore it cannot enjoy human rights accorded to human beings.²²⁰ Women in England deal with decisions regarding their pregnancies as independent autonomous human beings that have the ability to decide whether to keep or not to keep a pregnancy. Indeed in the case of *St George's Healthcare NHS Trust v S*, a

²¹⁶ European Parliament 'Sexual and reproductive health rights and the implication of conscientious objection' 2018
[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604969/IPOL_STU\(2018\)604969_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604969/IPOL_STU(2018)604969_EN.pdf) (accessed on 16 August 2019)

²¹⁷ Guttmacher (n205)

²¹⁸ *R.R v Poland*, ECHR, Application no. 27617/04 (2011) para 180
[https://hudoc.echr.coe.int/eng#{"itemid":\["001-104911"\]}](https://hudoc.echr.coe.int/eng#{) (accessed on 16 August 2019)

²¹⁹ *R.R v Poland* (n217)

²²⁰ Judicature Act, Chapter 13 of the Laws of Uganda, Section 14 provides for applicable laws in Uganda to include Common Law and doctrines of Equity.
<https://ulii.org/ug/legislation/consolidated-act/13> (accessed on 16 August 2019)

woman refused a cesarean section merely because she thought it invasive.²²¹ The hospital decided to proceed with the surgical operation by court order and the woman sued.²²² The court awarded her damages on grounds that the right to be autonomous must be protected even where other persons find it morally legitimate not to do so.²²³

It is also notable that most women in Europe use contraceptives and as such are able to manage their fertility rates. Uganda can pick lessons on the legal and policy frameworks regarding reproductive autonomy. Despite the fact that the cultural, social-economic and development context is different, the legal landscape in commonwealth countries in Europe is quite similar to Uganda and can therefore be persuasive to make a case for change in Ugandan laws restricting women's right to reproductive autonomy.

4.6 Conclusion

The East African Legislative Assembly (EALA) has proposed a model law which if passed by EALA will have the force of law of in Uganda in as far as promoting reproductive autonomy as human right for women in Uganda is concerned. Further, Uganda can expand parameters under which women may access safe and legal abortion just like Kenya, Cape Verde, Tunisia and South Africa have done. From the above case studies it is evident that countries that have legalized abortions in the first trimester for all women and provided access to contraceptives and SRHR services for all, have realized improved health outcomes for women in their society.

In the final chapter I will recall the research questions in this study and reiterate how they have been addressed. The study will provide recommendations and a conclusion to the research findings.

²²¹ St George's Healthcare NHS Trust v S [1999] Fam; 26:46-7

²²² n220

²²³ B Hewson 'Reproductive autonomy and the ethics of abortion' (2001) 27(2) *Journal of Medical Ethics* available on line at https://jme.bmj.com/content/27/suppl_2/ii10#ref-14 (accessed 16 August 2019)

Chapter 5

Conclusion and Recommendations

5.1 Brief Summary

This study introduced the challenges women in Uganda face in making autonomous decisions regarding whether or not to have children. It adduced literature to the effect that cultural practices including polygamy, payment of bride price at the inception of marriage on the part of the girl child by men, rites of passage such as ‘visiting the bush’ by women to prepare for marriage, Female Genital Mutilation (FGM) and general patriarchal norms that place men at the helm of decision making at a family level and subsequently in positions of authority in society tremendously impact on whether a woman can make autonomous decisions regarding whether to have or not have children free from coercion by her surrounding circumstances. In Chapter two the study delved into the normative framework for the right to reproductive autonomy in Ugandan legislation. Even though there is no statute providing for the right to reproductive autonomy expressly, we learned that Uganda’s 1995 constitution provides for rights such as the right to health, privacy, non-discrimination, equality and commitments by the State to promote women’s rights including their unique maternal functions to society. To this end, through Treaties, Uganda has made commitments that in effect recognize that Ugandan women have an entitlement to reproductive autonomy.

Having established the right for Ugandan women to exercise reproductive autonomy, the study made a rights-based analysis of the normative framework as against what is on ground in terms of reproductive autonomy for Ugandan women. The study argues that patriarchal norms manifested in cultural practices, laws and policies have played a significant role in deterring Ugandan women from exercising reproductive autonomy as many are barred from making independent decisions regarding whether to have or not to have a child. It is an abuse of the human right to health, and at the core of laws and policies deterring women in Uganda to access contraceptives to regulate child bearing, denial of safe abortions upon request and limitations on access to

comprehensive sexuality education have resulted in unacceptable and preventable maternal mortalities, unsafe abortions that lead to poor health outcomes, high rates of teenage pregnancies and therefore high fertility rates compared to jurisdictions with liberal policies in place.

Chapter four reviewed countries with better reproductive health indices, what is being done to achieve the same and how Uganda could learn lessons on how to empower its female population to take charge of their reproduction free from coercion. It is important to note that in all countries reviewed, the State had a big role to play in liberalizing the legal landscape for women to access free and safe abortions upon request in the first trimester of a pregnancy, provision of free and open access to contraception and sexual reproductive health information for all that need it free of charge as well as ensuring that there are family support programs to the population as a whole. It is therefore noteworthy that restrictions to who can and who cannot access sexual reproductive health information and services as is the case in Uganda has not been helpful and more needs to be done in that regard.

5.2 Findings

5.2.1 Culture

Uganda's patriarchal cultural norms have played a role in keeping women subordinate to men and therefore making the men the determinants of whether their wives or partners can or cannot bear children.²²⁴ The author has found that the culture of bride price is equated to wife purchasing and therefore makes the concept of equality at the inception of a marriage in Uganda an illusion.²²⁵ Tamale argues that with this practice men assume that when they pay bride price, they have purchased women as they would any

²²⁴ S Tamale 'Women's Sexuality as a Site of Control & Resistance: Views on the African Context' (2004) <https://mifumi.org/wp-content/uploads/2017/02/MIFUMI-Bride-Price-Conference-2004-Women's-Sexuality-as-a-Site-of-Control-Resistance-Views-on-the-African-Context-Sylvia-Tamale.pdf> (accessed 17 August 2019)

²²⁵ DK Kaye, F Mirembe 'Implications of bride price on domestic violence and reproductive health in Wakiso District, Uganda' (2005) 5(4) *Journal of African Health science* 300-305 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831942/> (accessed 16 August 2019)

other property in a home.²²⁶ This mindset places women in such relationships in a position that makes it impossible for them to exercise reproductive autonomy.²²⁷

Customary laws in Uganda that legitimize polygamy also infer women to be considered as less than in society.²²⁸ Where a man is able to marry a limitless number of wives, the wives in those marriages are unable to decide the number or whether or not to have children as their decisions would in essence be subjected to other women in the marital relationship.²²⁹

Further, reliance on religion has buttressed women's subjugation to men thereby reinforcing men's dominance over reproductive choices for women in Uganda.²³⁰ Although Uganda is constitutionally regarded a secular state, many policies and laws are guided by religious forces as many religious bodies have a significant stake in the education and health ministries in Uganda.²³¹

Rites of passage such 'visiting the bush' that has of late been classified as type iv Female Genital Mutilation (FGM) that are practiced in many parts of Uganda are also classified as practices that women involve in to prepare to pleasure husbands.²³² FGM disempowers a woman to the extent that she ceases to own her body but rather considers it to belong to a man who decides whatever he wishes to it.²³³ These practices take away women's rights to make autonomous decisions regarding their reproduction and become breeding grounds for abuse by men who subject them to sexual abuse such as intimate partner violence.²³⁴

²²⁶ S Tamale (n224)

²²⁷ S Tamale (n224)

²²⁸ CH Bledsoe, B Cohen 'Social Dynamics of Adolescent Fertility in Sub-Saharan Africa.' (1993) <https://www.ncbi.nlm.nih.gov/books/NBK236794/> (accessed 16 August 2019)

²²⁹ CH Bledsoe (n229)

²³⁰ A Sultana 'Patriarchy and Women's Subordination: A Theoretical Analysis' (2010-2011) 4 *Bangladesh Journals online* <https://www.banglajol.info/index.php/AFJ/article/view/12929> (accessed on 16 August 2019)

²³¹ Article 7 Uganda's 1995 Constitution states that Uganda shall not adopt a state religion

²³² S Tamale (n224)

²³³ S Tamale (n224)

²³⁴ S Tamale (n224)

The foregoing findings led the author to the conclusion that culture as an instrument of patriarchy has to a big extent taken away women's right to exercise reproductive autonomy in Uganda. It is important to note that even though educated, rich urbanized women may not succumb to the dictates of these cultural norms, hundreds of thousands of women in Uganda are still influenced by these cultural practices. The government should therefore take very keen interest in liberalizing, regulating and empowering women with knowledge and information on their sexual reproductive health to enable them learn to exercise their reproductive autonomy.

5.2.2 Laws and Policies

Uganda has in place very restrictive colonial laws on abortion. In Uganda abortion is restricted to only when a woman's life is at risk.²³⁵ Even though the 1995 Constitution has alluded to the fact that parliament will put in place a law that provides for exceptional grounds for when abortion may be legitimized in Uganda, that law has not been tabled by parliamentarians in all two decades since the promulgation of the Ugandan constitution.²³⁶ What remains is a very unclear legal and policy environment that is largely interpreted by health workers as a complete ban on abortions in Uganda.²³⁷ The result has been avoidable deaths of women due to unsafe abortion done clandestinely.²³⁸

Further, the government through ministry of health made attempts at the end of 2015 to put in place standards and guidelines to stop morbidities and mortalities due to unsafe abortion but the same was recalled through a circular to the effect that there were stakeholders (largely religious bodies) that complained that the document would lead to reckless termination of pregnancies by women in Uganda.²³⁹ This guidance from technical officials

²³⁵ Section 224 of Uganda's Penal Code Act, Cap 120

²³⁶ Article 22(2) of Uganda's Constitution

²³⁷ CEHURD 'Proposals for abortion law reform in Uganda' (2017) <https://www.cehurd.org/wp-content/uploads/downloads/2017/07/proposals-for-abortion-law-reform.pdf> (accessed 16 August 2019)

²³⁸ CEHURD (n237)

²³⁹ Center for Reproductive Rights 'Center for Reproductive Rights and Centre for Health, Human Rights and Development (CEHURD) Convenes Discussion on Key Reproductive Laws and Policies in Uganda' (2012) Press release <https://reproductiverights.org/press->

that used science and statistical impressions of the issue of unsafe abortion were shelved indefinitely.²⁴⁰

It is also noteworthy that Uganda maintains a reservation without explanation on article 14(2) (c) of the Maputo protocol.²⁴¹ This article calls on states to liberalise abortion laws and policies by allowing for provision of medical services to avail abortion in situations of sexual violence and upon request by women.²⁴²

Restrictive laws and policies on abortion as discussed in this study facilitate clandestine unsafe abortions consequently leading to maternal deaths that can be prevented by known scientific devices and procedures. As observed in chapter four of this study, of all countries that have liberalized access to safe and legal abortion, women have enjoyed better health outcomes, fertility rates are low and maternal deaths are significantly low.²⁴³

A woman's right to exercise reproductive freedom is affected by how she is viewed in society.²⁴⁴ Uganda has criminalised women that engage in prostitution and homosexual activities because these behaviours are not approved by the majority of community members that ascribe to heteronormativity or sexual intercourse within the confines of a marriage relationship.²⁴⁵ As a result of criminalization of sex work and lesbian relationships, women who are affected do not get access to sexual reproductive health information and services specific to their needs that would

room/center-for-reproductive-rights-and-centre-for-health-human-rights-and-development-cehurd- (accessed 16 August 2019)

²⁴⁰ CRR and CEHURD (n239)

²⁴¹ B Kombo, R Sow, FJ Mohamed 'Journey to equality: 10 years of the protocol on the rights of women in Africa' (2013) <http://www.soawr.org/images/JourneytoEquality.pdf> (accessed 16 August 2019)

²⁴² Maputo Protocol, Article 14(2) (c)

²⁴³ WHO 'Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008' http://whqlibdoc.who.int/publications/2011/9789241501118_eng.pdf accessed 16 August 2019

²⁴⁴ A L Cherry 'The rise of the reproductive brothel in the global economy: some thoughts on reproductive tourism, autonomy, and justice' (2014) <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1170&context=jlasc> (accessed on 16 August 2019)

²⁴⁵ S Tamale (n224)

otherwise enable them make meaningful informed and autonomous decisions regarding whether to have or not to have children.²⁴⁶

The government of Uganda has fallen short in providing guidance in provision of Comprehensive Sexuality Education (CSE) to adolescent girls as is required in the international commitments it has made.²⁴⁷ This is evidenced in the double standards the government has taken. While one ministry was launching policy standards with proposals to provide contraceptives to teenage girls, another ministry and government arm was issuing statements to ban sexuality education in schools and out of school for until government develops a framework to guide the nation.²⁴⁸ When the framework was launched, the same was rejected by religious institutions who have a stake in at least 70% of Uganda's educational institutions.²⁴⁹ The effect has been early age of debut for sexual intercourse and a rising rate of teenage pregnancies and child marriages.²⁵⁰

The unmet need for contraceptives that is a benchmark for women to exercise reproductive autonomy is 34% and the government of Uganda maintains a restrictive policy for contraceptives to only be availed to women above the age of 18.²⁵¹ This has left out many sexually active young women and girls who are sexually active and not in a position to purchase these life-saving commodities to enable them exercise control of their reproduction.²⁵²

²⁴⁶ S Tamale (n224)

²⁴⁷ C Panchaud, et al 'Towards comprehensive sexuality education: a comparative analysis of the policy environment surrounding school-based sexuality education in Ghana, Peru, Kenya and Guatemala' (2019) 19(3) *Journal on sex education, sexuality, society and learning* 277-296 <https://www.tandfonline.com/doi/full/10.1080/14681811.2018.1533460> (accessed on 16 August 2019)

²⁴⁸ H Nabimanya 'Young people losing out with back and forth sex education 'bans'' *Newvision* (Kampala) 21 July 2018 https://www.newvision.co.ug/new_vision/news/1481820/people-losing-forth-sex-education-bans (accessed 16 August 2019)

²⁴⁹ A Ssenyonga 'Churches reject sexuality education in school' *Newvision* (Kampala) 4 June 2018 https://www.newvision.co.ug/new_vision/news/1479030/churches-reject-sexuality-education-school (accessed 16 August 2019)

²⁵⁰ H Nabimanya (n248)

²⁵¹ Guttmacher Institute 'Contraception and Unintended Pregnancy in Uganda' (2017) Fact sheet <https://www.guttmacher.org/fact-sheet/contraception-and-unintended-pregnancy-uganda> (accessed 16 August 2019)

²⁵² Guttmacher (n251)

5.3 Conclusion

a. Extent to which social norms, laws and policies influence women's reproductive choices

The study has illustrated that to a big extent, the right for women in Uganda to exercise reproductive autonomy is influenced by patriarchal norms characterized in cultural practices, religion, laws and policies. The study found that the right to RA is an ideal for many Ugandan women since up to 35% have no access to live saving contraceptives. Through government actions and omissions to police women's bodies, the study affirmed that laws such as the restrictive abortion provisions in the Constitution, provisions promoting culture of polygyny and hetero-normativity, penalties for prostitution and supply of abortion drugs have greatly hindered women's ability to exercise reproductive autonomy in Uganda.

b. Human rights implications of social norms, laws and policies that restrict women's reproductive choices.

In light of the second research question as to whether there were human rights implications for patriarchal norms that limited RA of women in Uganda, the study answered in the affirmative. Denying women the right to make decisions regarding their bodies more so when it relates to whether or not to carry a pregnancy is a violation of human rights. Dworkin has argued that the right to reproductive autonomy for women is related to the right to privacy.²⁵³ If a country guarantees the right to privacy as is the case for Uganda in its constitutional bill of rights, interfering with that right through state regulation is invasive on a woman's autonomy and the same amounts to a violation of the right to privacy.²⁵⁴

Courts around the world have also affirmed the right to reproductive autonomy by women as being rooted in the right to equality and freedom from discrimination on the basis of sex and gender. The CEDAW Committee in its

²⁵³ JA Robertson 'Review: Autonomy's Dominion: Dworkin on Abortion and Euthanasia' (1994) 19(2) *Journal on Law and Society* at 457-487 https://www.jstor.org/stable/828630?seq=1#metadata_info_tab_contents (accessed 16 August 2019)

²⁵⁴ n31 above

report on Northern Ireland affirmed that position when it stated to the effect that for Northern Ireland to deny abortion services that are only needed by women, the state was guilty of violating women's right to equality and to be free from discrimination on the basis of sex and gender.²⁵⁵

Further, denying sexual reproductive health and rights information and services which includes free access to contraceptives, sexuality education and abortion services is to subject women to abuse of their rights to health, dignity and freedom from inhuman and degrading treatment.²⁵⁶ In the case of L.C, a young 13-year-old girl who demanded for an abortion from agents of the Peruvian government and was denied, the CEDAW Committee has held in respect of L.C, that failure to put in place legal and policy mechanisms for women to access abortion is an abuse of their rights to health, to dignity, to non-discrimination and to be free from inhuman and degrading treatment.²⁵⁷

c. How social norms, laws and policies may be reformed to support women to take charge of their reproductive choices

This research question was addressed in chapter four that looked at a comparative study of jurisdictions that fared relatively well and were scoring good indices in promoting maternal health rights and reproductive freedom for women. The study drew lessons on liberalizing access to safe abortion, providing free access for all to contraceptives, ensuring access to SRHR services including information on family planning and family planning methods among others.

5.3 Recommendations

Liberalisation of laws and policies on access to safe abortion services for women in Uganda should be a priority. This study has illustrated that liberal abortion laws that permit access to safe abortions upon request by women

²⁵⁵ CEDAW Committee, CEDAW/C/OP.8/GBR/1 available on https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fGBR%2f1&Lang=en (accessed on 16 August 2019)

²⁵⁶ CEDAW Committee (n255)

²⁵⁷ CEDAW Committee, CEDAW/C/50/D/22/2009 https://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf (accessed on 16 August 2019)

result in good health outcomes and empower women to take charge of their reproductive autonomy.²⁵⁸ Through deliberate enactment of laws and policies that promote access to SRHR services such as access to contraceptives and family planning methods and services, women will be equipped with the knowledge to manage their reproduction.

Provision of sexual reproductive health services such as contraceptives, sexuality education and information to all women of reproductive age empowers women to make safe and autonomous decisions regarding whether to have or not to have children, when to have them, it contributes to averting teenage pregnancies, reduces child marriages, lowers fertility rates and improves women's economic dividends there by contributing to growth of a country's economy.²⁵⁹ This is because as opposed to spending time nurturing babies, women can meaningfully engage in development activities that contribute to economic growth of a nation. The government of Uganda should therefore invest in providing free and ensure universal access to sexual reproductive health and rights services in all of Uganda.

Remove the reservation on article 14(2) (c) of the Maputo protocol and renew commitment to promote women's right to reproductive autonomy as per commitments made in international human rights instruments Uganda has signed and assented to. The Committee on ESCR has affirmed the right to health to include the entitlement for women to reproductive health services including safe abortion upon request by women.²⁶⁰

²⁵⁸ OHCHR 'Information series on sexual and reproductive health and rights' https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf (accessed 16 August 2019)

²⁵⁹ n33; WHO 'Contraception'(2014) Evidence brief https://apps.who.int/iris/bitstream/handle/10665/112319/WHO_RHR_14.07_eng.pdf accessed 16 August 2019; Committee on ESCR, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) <https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health> (accessed 16 August 2019)

²⁶⁰ Committee on ESCR, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) <https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health> (accessed 16 August 2019)

Direct investments in education of the public on women's right to reproductive autonomy to ensure that women are aware of their exclusive entitlement to decide if, when and whether to have children or not.²⁶¹ This can be done through mass media, social media, in partnership with cultural, religious, development partners and civil society at large.

Finally, civil society and the academia in Uganda should through strategic impact litigation, challenge oppressive cultural practices that are repugnant to women's reproductive autonomy and constitutional standards. The traditional practice of polygamy, criminalization of sex work and homosexuality should be challenged to pave way for growth in jurisprudence and meaningful gender equality discussions in Uganda.

²⁶¹ CW Princewill, et al 'Autonomy and Reproductive Rights of Married Ikwerre Women in Rivers State, Nigeria' (2017) 14(2) *Journal on bioethics* 205 -215 at 215 <https://www.ncbi.nlm.nih.gov/pubmed/28247201> (accessed on 16 August 2019)

No. of words: 19,313 (with footnotes, minus bibliography and table of contents).

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