

# A WALK *through the* CEHURD GARDEN

Situating Ourselves in the SRHR  
Movement in Uganda



**Editors**

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# List of Acronyms

ACODE	Advocates Coalition for Development and Environment
ACHPR	African Charter on Human and Peoples' Rights
AIDs	Acquired immunodeficiency syndrome
AIJ	African Institute for Investigative Journalism
AGHA	Action Group for Health Human Rights & HIV/AIDS
AJWS	American World Jewish Society
AMwA	Akina Mama wa Afrika
ANC	Antenatal Care
AOGU	Association of Obstetricians and Gynaecologists in Uganda
A-PODD	African Policy on Disability and Development
ARUWE	Action for Rural Women's Empowerment
AWAC	Alliance of Women Advocating for Change
AWDF	African Women's Development Fund
CBOs	Community Based Organisations
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CEHURD	Centre for Health Rights and Development
CESCR	Committee on Economic, Social and Cultural Rights
CHAI	Clinton Health Access Initiative
CIFF	Children's Investment Fund Foundation
COBAMS	College of Business and Management Science
COVID-19	Coronavirus Disease 2019
CPR	Contraceptive Prevalence Rate
CPRs	Civil and Political Rights
CRPD	Convention on the Rights of Persons with Disabilities
CSCHRCL	Civil Society Coalition on Human Rights and Constitutional Law

CSE	Comprehensive Sexuality Education
CSMMUA	Coalition on Maternal Mortality in Uganda
CSOs	Civil Society Organisations
EAC	East African Community
EC	European Commission
EHAMROP	East and Horn of Africa Human Rights Defenders Project
EJAF	Elton John AIDS Foundation
Emic	Emergency Obstetric Care
EQUINET	Regional Network for Equity in Health in East and Southern Africa
ESCRs	Economic, Social and Cultural Rights
FOWODE	Forum of Women in Democracy
GAP	Global Access Project
GFTAM	Global Fund to fight AIDS, Tuberculosis and Malaria
GFW	Global Fund for Women
GGR	Global Gag Rule
GLISS	Great Lakes Institute for Strategic Studies
HC	Hope Chigudu
HEPS	Health Promotion and Social Development
HIV	Human Immunodeficiency Viruses
Hivos	Humanist Institute for Development Cooperation
HRAPF	Human Rights Awareness and Promotion Forum
HURIPEC	Human Rights and Peace Center
ICPD	International Conference on Population and Development
IDI	Infectious Diseases Institute
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPPF	International Planned Parenthood Federation
JAS Programme	Joint Advocacy for Sexual Reproductive Health and Rights in Uganda
JCC	Justice of the Constitutional Court
JSC	Justice of the Supreme Court

LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, And Asexual.
LLB	Bachelor of Laws
LSN	Legal Support Network
Maputo Protocol	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
MDGs	Millennium Development Goals
MENPROW	Mentoring and Empowerment Programme for Young Women
MMR	Maternal Mortality Ratio
MoH	Ministry of Health
NAFOPHANU	National Forum for People Living with HIV/AIDS Networks in Uganda
NAWOU	National Association of Women Organisations in Uganda
NGEN	Network of People Living with Aids
NGO	Non-Government Organisation
NUDIPU	National Union of Persons with Disability
NUWODU	National Union of Women with Disabilities
OAU	Organisation of African Unity
OHCHR	Office of the High commissioner for human Rights
OSF	Open Society Foundations
OSIEA	Open Society Initiative for Eastern Africa
PEPFAR	President's Emergency Plan for AIDS Relief
PLA	Platform for Labour Action
PLHIV	People Living with HIV/AIDSs
RAHU	Reach a Hand Uganda
RBA	Rights-Based Approach
RMNCAH	Reproductive Maternal, New-born, Child and Adolescent Health
SAP	Structural Adjustment Programme
SGBV	Sexual and Gender-Based Violence
SH	Sexual Health
SIDA	Swedish International Development Corporation Agency
SMC	Safe Male Circumcision

SMUG	Sexual Minorities Uganda
SOB	Sexual Offences Bill
SRHR	Sexual Reproductive Health and Rights
TICAH	Trust for Indigenous Culture and Health
UAF-A	Urgent Action Fund Africa
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights
UHC	Universal Health Coverage
UHSPA	Uganda Health Press and Science Association
ULS	Uganda Law Society
UMDPC	Uganda Medical and Dental Practitioners Council
UMU	Uganda Medical Union
UN	United Nations
UNDP	United Nations Development Programme
UNESO	Uganda Network for Sex Worker Organisations
UNFPA	United Nations Population Fund
UNHCO	Uganda National Health Consumer's Organisation
UNPD	United Nations Population Division
UPMWA	Uganda Private Midwives Association
UPR	Universal Periodic Review
URN	Uganda Radio Network
USDC	Uganda Society for Children with Disabilities
UWONET	Uganda Women's Network
UWOPA	Uganda Women Parliamentary Forum
VAW	Violence Against Women
WHO	World Health Organisation
WM	Women's Movement Member
WFP	Wellspring Philanthropic Fund
WONETHA	Women Organisations and Networks for Human Rights Advocacy
WPPA	World Population Plan of Action

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# Preface

*A Walk Through The CEHURD Garden* presents the story of the Centre for Health Rights and Development (CEHURD) through the lens of various authors who had the opportunity to analyse the organisation from both an internal and external perspective. The in-depth viewpoints present the various facets for considering CEHURD as a mainstream human rights organisation that has impacted a spectrum of Sexual Reproductive Health and Rights (SRHR) in an environment that is also saturated by gender and women rights focused organisations.

As a founding Executive Director of CEHURD, I must confess that it takes tremendous courage to commit time and invest resources to document a story about building an organisation. And yet the failure to document one's story and lessons learnt erodes the opportunities to learn from one's history as well as deprives others willing to venture into institutional founding of experiential learning to chart their own trajectory

Although the writing of this book emerged from the desire to document the work of CEHURD, the participatory reflection process revealed that CEHURD's work spans across a number of areas in the field of SRHR. The participatory writing process involved various meetings with comrades who had worked and tremendously contributed to women rights work to brainstorm on the direction and the focus of the book. Expectedly, a cocktail of ideas was generated, which rendered the immediate common understanding an uphill task. While we all agreed that it was important to document the work of CEHURD, the scope and style of documentation could not precisely be decided on. Due to sheer commitment and in a spirit of collegiality at a subsequent two-day residential intimate conversation, the story line for the book became more crystallised. It became apparent that CEHURD had been impacted by the work of others while it concurrently impacted and charted more paths in the SRHRs arena.

The daunting task however was around the legitimacy of CEHURD to write a story about SRHRs work: Who is CEHURD to write about the story of SRHRs – a story contributed to by many organisations and individuals years before CEHURD was founded? Could a male-led organisation be the appropriate one to venture into documenting the story of SRHRs movement building?

As we debated the above, I had a personal “Aha” moment and realised that since the founding of CEHURD I had evolved from a being a mere lawyer to becoming a passionate activist for health, human rights and SRHRs. Put differently and frankly at the formation of CEHURD, we had not envisioned working on SRHRs. Rather it was the desire to have lawyers contribute towards practicing the theory around the right to health which we had learnt at law school. As the name Center for Health, Human Rights and Development connotes, we were willing to extend our spectrum of work to human rights and general development issues. The last issue on our mind was SRHRs. The reality and practice demonstrated otherwise. SRHRs offered the obvious space in which we could focus and tackle the most contested aspects including access to safe and legal abortion and comprehensive sexuality education.

Being part of the SRHR “family”, I felt proud that I had a story to tell. Most importantly, my colleagues and I were delighted that we had invested our youthful efforts to build an institution which we looked up to with contentment. Hence, I felt the strong desire to not just support the process of writing the book but to also to tell CEHURD’s story as an advocacy organisation working on SRHRs. The process of sharing my personal account of the birthing of CEHURD and my experiences as the founding Executive Director, afforded me the prized opportunity of self-reflection on how my own personality contributed and influenced the story of CEHURD and how I was able to navigate through the masculinity space. To paraphrase Denzel Washington: “It is not easy, but it can be done.”

I strongly believe that documenting empirical experiences will contribute towards the discourse on building African institutions that are professional, credible, accountable and sustainable. I encourage others to do the same, however challenging it is so that we create a repository for these lessons for continuous learning and improvements. In so doing, we would change the narrative to profile civil society organisation as professionals, creating and sustaining institutions that undertake important work that impacts society. It also would contribute to shifting the colonial mind-set that addresses rights as charitable work, towards building mutually respectful, accountable and empowering relationships with those we work with to enable them exercise their voice and agency in realising their rights.

In writing this book, I have been privileged to work with all the authors. Each of the authors provides a unique insight about the SRHR in general and CEHURD in particular. Let me use this space to share my deep appreciations to the team of authors that have contributed to making

this book a reality. These are people that I have not just worked with over the years but are people I profoundly admire and appreciate for allowing me into their spaces. Dr Maria Nassali, thank you so much for accepting to be the lead editor for this book. Your comments have always been deep, you are considered in very high regards but also pushed me harder to realise my own ability in my work and in telling the story of CEHURD. Ms Solome Nakaweesi, you have not only walked with me, but you have also always reminded me of how much opportunity I have to do things that you desire to do. The connections and steam you have provided to me have always been extremely reinvigorating for me. Prof. Ben Twinomugisha, you have not only been a teacher, but one person that believed in me and the capacity I have to make things happen. Thinking about you gives me no option but to push harder and bring results home even in the most trying moments. Ms Hope Chigudu, your assertive style gets me out of the confront zone and has kept the writing team and I on tenterhooks to deliver on a book that is not just about CEHURD, but one that benefits the movement. Noah Mirembe, the writing of this book introduced me to you. You are such an analytical person, a passionate advocate and deep writer. You added the salt to the sauce in all aspects of the book writing.

I would also like to acknowledge and share our sincere gratitude to the teams at CEHURD and Afya na Haki led by Mr Christopher Baguma and Ms Doris Kwesiga for putting the entire process together and coordinating this book project. You have worked extremely hard. Our gratitude also goes to Fountain Publishers for accepting to have our book published and for the vigorous review process. Last but not least, we appreciate the financial support towards this project from the Joint Advocacy for Sexual and Reproductive Health and Rights in Uganda (JAS Programme) funded by the Embassy of Sweden in Uganda. We continue the walk...

In solidarity and gratitude!

Moses Mulumba  
**CEO AHAKI**

# Prologue

## Unfinished Revolution: A Conversation Between Hope Chigudu (HC) and The SRHR Women’s Movement (WM)

*Hope Chigudu*

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CEHURD’s story distils insights from its work and produces a resource for the SRHR movement. The story covers the ideas that drove the organisation’s conception, birth and foundation, the strategies chosen to bring about change, financial support, its niche in the SRHR movement and the beauty and dilemmas that have emerged from CEHURD’s evolving growth. It is a story of creating, exploring and blazing new trails, fighting for justice, working with a sense of adventure, increasing visible impacts on society and ultimately making a difference. It is also a story of the lessons that come with rising, falling and rising again.

CEHURD, a mainstream organisation, does not exist in a vacuum. It is part of a big family (individuals, networks, and organisations – the core or infrastructure of the SRHR movement) that shares a political agenda. CEHURD works alongside others, and together, they reach out to wider social fields that engage thousands of people, hence creating a bigger ‘We’. It is for this reason that during the process of writing its story, CEHURD invited 15 extraordinarily talented, leading practitioners and activists to an intensive two-day conversation that focused on the state of SRHR movement in Uganda. They gathered in a beautiful, serene, lush and wonderful sanctuary, in Mukono. This was not a workshop but rather an intimate conversation in which those invited were encouraged to share openly of themselves, their experiences and their observations primarily in understanding, at a deeper level, what is happening in the movement. Using intersectional and cross-movement lenses, they reflected, debated, analysed, and critically thought about the SRHR movement in Uganda.

The conversation had a quality of absolute equality. Everything was drawn out of everyone – equal and different. The process was guided by questions as well as a deep listening and responsiveness: not to the obvious. The conversation was intense and yet soft and thoughtful. At the end, many ideas were woven together. There was a richer, more current understanding and analysis of the state of the sector.

The story of CEHURD would not be complete without a conversation among activists sharing their insight. This Prologue and the adjoining Epilogue mirror aspects of the conversations to the extent that it is able. The two pieces bring together some of the key pieces that form the foundation of the SRHR movement in Uganda; a movement in which CEHURD is one of the activists.

This section does not conform to the familiar parameters of an academically directed piece. It does not separate the dancer from the dance, the act of writing from the act of conversations. It is a conversational walk through CEHURD GARDEN between HC and WM the SRHR Feminists Movement representative.

Join me on this memorable walk – Let's go!

# The Book

## HC

CEHURD, a bubbling, unstoppable and uncontainable young organisation has written a book about itself. Where is yours? You, the feminist/women's movement who was instrumental in putting SRHR issues on the development agenda.

## WM

Writing a book requires immense confidence. To believe that you have something extraordinary to offer and enough humility to bring your ideas into the world with the deep belief that others can benefit from what you have experienced and should be celebrated. Congratulations to CEHURD!

I am reflecting. Is it only when a story is documented in the form of a book that it becomes legitimate? If so, then there are some critical issues regarding the politics of knowledge; who writes, who researches, who publishes on what terms, and in whose interests but let me respond to your question.

Our own stories might not be written in a structured manner (though some are) but are scattered in different places all over Uganda, and include the voices, and perspectives of those whom society has rendered invisible. They are stories that unravel our dreams. They are written with a deep sense of inspiration, dedication and commitment towards what really matters for people, mostly women and transgender people; their enlargement, expansion and enthusiasm, stories that enable them to fall in love with the world the way they were meant to. Our stories respond to what our constituencies' demand of us. They are clear that they do not want charity, nor presents, but the right to live with dignity that every human being deserves. Therefore, our political task is to end misogyny, sexism, social and economic exclusion based on sexual orientation, and to eliminate patriarchal systems that ignore SRHR. This is a huge task that requires us to work collaboratively by co-creating movements that contribute to lasting solutions to the injustices, holding open spaces for the new and creative to emerge.

Are there any technical limitations in our ability to coalesce this knowledge?

**HC**

Could you comment on SRHR movement and what makes it feminist?

**WM**

Well, well, you have challenged me about your CEHURD book and aroused my curiosity. Let us first explore it and I will come back to your question afterwards!



## CHAPTER 1

# A Sexual and Reproductive Health and Rights Movement Story: By Whom?

*Maria Nassali*

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### **Legitimacy Question**

There are so many social movements as the issues of structural marginalisation that drive them. In the words of Castells, “social movement are what they say they are” (Horn, 2013, p. 19). They are dynamic and context-specific, with their strategies evolving or dissipating in response to the context within which they are situated (Horn, 2013; Egan & Wafer, 2004; Khan & Pieterse, 2004; Desai & Pithouse, 2004; Greenberg, 2004; Adeleye Fayemi, 2000). Borrowing the definition of Bridge Development Centre:

Social movements are forms of collective action that emerge in response to situations of inequality, oppression and an unmet social, political, economic or cultural demand. They comprise of an organised set of constituents pushing a common political agenda through collective action (Horn 2013, pp. 1 & 19).

Sexual and reproductive health rights (SRHR) is a recent phenomenon emanating from the International Conference on Population and Development (ICPD 1994, para 4), albeit social movement of independent aspects of it, such as maternal mortality, family planning, population control, women’s rights, pre-existed its current formulation. Significantly, the ICPD framed SRHR as a human right of both men and women. In its current form, the term SRHR is a compound term including ‘sexual’ and ‘reproductive’ and ‘health’ and ‘rights’. Yet, the very nature of each of these components is yet to be definitively mapped and is a subject of ongoing controversy. The SRHR as a concept is like an amoeba constantly changing form, nature and scope. Its meaning is fast evolving with different perspectives among the different stakeholders, such as health care providers, lawyers and the policy makers and academia to mention but a few (Nyanzi, 2011; Horn,

2013; Schaaf, 2021; Cook, Dickens, & Fathalla, 2003). Moreover, different combinations of the components, such as “sexual health” and “reproductive health” are accorded different interpretations. While reproductive health centres on motherhood, sexual health is about choice and pleasure (Cook, Dickens, & Fathalla, 2003).

Reproductive health places women at the centre of the process, and recognises, respects, and responds to the needs of women and not only to those of mothers .....

[S]exual health should include the following components:

1. The ability to enjoy mutually fulfilling sexual relationships;
2. Freedom from sexual abuse, coercion or harassment;
3. Safety from sexually transmitted diseases; and
4. Success in achieving or preventing pregnancy.

A feminist conceptualisation of SRHR encompasses:

... three critical areas: *health*- the complete, mental, physical and spiritual well-being; *sexuality* - sexual orientation and sexual pleasure and the extent to which one can enjoy both without fear, guilt or shame; and *rights* – the extent to which one can exercise choice on all matters of sexual and reproductive life and well-being” (Mukasa, 2009, p. 112, quoting McFadden, 2003, p. 8).

Given the amorphous nature of the term, there is also a tendency of choosing to work on selected aspects of the acronym of SRHR. Furthermore, as is characteristic of social movements, it is difficult to define the SRHR movement contours because they are so porous that one can simultaneously belong to many of them. For example, CEHURD is part of the human rights movement, the health movement, the civil society movement, the NGO movement, the HIV movement, to mention but a few, and is currently at the helm of nurturing the SRHR movement. Mindful that within the SRHR movement there are diverse interests which at times converge or conflict, CEHURD has fostered a multiplicity of sub-movements or coalitions or networks to independently evolve while concurrently feeding the same SRHR stream. Current coalitions and networks include: Coalition on Petition 16 - Coalition on Maternal Mortality in Uganda (CSMMU); CSMMUA - a coalition of 45 members working on abortion issues; The JAS Programme (Joint Advocacy Program on SRHR Movement Building in Uganda); The Legal Support Network (LSN) that provides legal services to healthcare service providers in conflict with abortion laws; Health and Law Cluster under the Uganda Law Society (ULS) and the Convener for

the Health Cluster under the National stakeholder Forum on Universal Periodic Review (UPR).

In view of the above, attempting to write the SRHR journey in Uganda is an almost impossible feat. Moreover, cognisant of the fact that the quest for justice and equity is never complete, until the weakest is free to live just and dignified life, the journey of SRHR movement is in its nascent stages. Besides, often, social movements happen spontaneously as a result of a pressing need (Egan & Wafer, 2004; Khan & Pieterse, 2004; Desai & Pithouse, 2004; Greenberg, 2004). While it may be expected that a social movement must have a leader who would ordinarily tell the story, this is not automatically the case. Often, organisations find themselves sprung in the middle of a social movement that they did not originally envisage in their work. For example, CEHURD began its work as a health rights organisation using legal strategies only to end up as a key mobiliser in the SRHR movement. Likewise, Human Rights Awareness and Promotion Forum (HRAPF) was initially working on Economic, Social and Cultural Rights (ESCRs) when it found itself leading the coalition against the Anti-Homosexuality Act (AHA) Bill, which eventually progressed into what is known as the sexuality movement. It is noteworthy that the two sub-movements spearheaded by HRAPF and CEHURD closely work together. Additionally, a social movement thrives best when the diverse stakeholders collaborate in a relationship of equal peers akin to siblings rather than parent and child (Nassali, 2015). Indeed, the contestation of equal rights and shared successes within the social movement, coalitions and networks is one of the thorns that make them flounder only to survive in name with a few usurping its role and status. Pointedly, the SRHR journey is too diverse, complex and intertwined to be told by a single actor or movement.

Although CEHURD was initially desirous of documenting the SRHR story, it quickly realised this raised the legitimacy question. In other words, on whose behalf was CEHURD speaking? Who gave it the mandate to tell others' stories? As aptly warned by Chimamanda, the danger of a single narrative is that it dispossesses a people.

The single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. ... The consequence of the single story is this: It robs people of dignity. It makes our recognition of our single humanity difficult. It emphasises how we are different rather than similar. ... Stories matter. Many stories matter (Chimamanda, 2009, pp. 4-5).

Consequently, CEHURD made both a cautious and conscious decision to map its own contribution to the SRHR movement journey. Yet, rarely do civil society organisations particularly in Africa document and theorise their work for public scrutiny and ideological leadership (Adeleye Fayemi, 2000; Ahikire, 2005; Msimang, 2002). The bulk of what is written is part of their organisational narrative report and largely geared towards financial accountability. CEHURD, therefore, took the leap to tell its story at the risk of sounding self-celebratory. Again, it is mindful that, “to insist on only negative stories is to flatten experience” (Chimamanda, 2009, p. 4). It is up to the other actors to tell their own. CEHURD has been candid that its niche and entry point in the SRHR movement journey is health rights. CEHURD’s constitutional petition on maternal health, *Centre of Health Human Rights and Development (CEHURD) & 3 others vs A.G*, Constitutional Petition No. 16 of 2011) (hereinafter referred to as Petition 16) enabled it to catapult to the forefront of the SRHR arena by bringing in the analytical rigour of litigating maternal mortality as a human right and state obligation – the first of its kind in Africa. This book is meant to support ongoing learning, both within CEHURD and perhaps the broader SRHR movements. The different chapters raise more dilemmas, issues and questions than could be comprehensively resolved in this book but need to form part of an ongoing conversation. In a bid to provide a more balanced analysis, most of the authors are drawn from outside CEHURD, to provide an external view, albeit some have had greater interaction in building CEHURD’s capacities. The different chapters adopt a multi-disciplinary approach across the feminist, legal, human rights, organisational development discourses.

The following discussion provides a bird’s eye’s view of the context that precipitated the relevance of CEHURD as a new actor in the SRHR movement. It is an articulation of CEHURD’s unique contribution to the human rights discourse by refocussing maternal health, a hitherto predominantly development issue, as a human rights issue with states’ international obligations and by demonstrating the African communitarian approach to human rights that addressed health as a societal and public issue. The term community is applied both as a human rights concept as well as sphere or site. The chapter ends with the structure of the book, providing an abstract and relevance of each chapter.

## **Context**

As far back as colonialism, education and health were part of the government’s priorities (Mulumba, 2021). However, health was essentially conceptualised

as a development project and undertaken as a good gesture of government rather than a right. Government efforts were complemented by missionary hospitals which constitute 20 per cent of Uganda's health system, enabling them to wield a moralist influence over the provision of health service (Mulumba, 2021). The state of the health sector worsened during the implementation of the Structural Adjustment Programme (SAP) in the 1990s, which decreased government's investment in health and introduced user fees, which reduced health to a commercial commodity (Ahlberg & Kulane, 2011). Progressively, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) became the first international instrument to overtly provide for SRHR under Article 14. Retrogressively, Uganda made reservations on Articles 14(1)(a) and 14(2)(c) on women's control of their fertility and abortion, respectively (Special Rapporteur on the Rights of Women in Africa 2016: 2-3). Worse still, although four of the Millennium Development Goals (MDGs), namely: gender equality and empowering women, reducing child mortality, improving maternal health, and combating HIV/AIDS, malaria and other diseases were related to SRHR, the MDGs were human rights blind and applied an instrumentalist approach to rights that mainly focused on measuring change and hardly addressed the deeper structural causes of poverty (Ahlberg & Kulane, 2011). Rarely did measurement critique the power inequalities and conflicting gender interests at the societal and domestic level that impact on reproductive health rights (Naidoo, 2006). As contended by Naidoo (2006):

The shift of women to control their fertility does not appear to be a simple case of ideological change but grounded defensive reaction of women to survive in a social environment in which they endure inequality, sexual abuse, desertion and poverty (p. 104).

Furthermore, the bio-medicalised approach to health addressed both health and sexuality as technical issues (Ahlberg & Kulane, 2011). Generally in Africa, the status of SRHR largely deteriorated, with complications of labour, unsafe abortions, and HIV and other sexually-transmitted diseases being the leading cause of illness and death amongst women aged 15-49 (Ahlberg & Kulane, 2011). In Uganda, maternal mortality and morbidity has persisted because of lack of political will to erase the neo-liberal policies and criminal laws which prioritise private and class interests to the detriment of maternal health issues (Twinomugisha, 2017).

At the time of founding CEHURD, there was more government focus on family planning and population control, rather than maternal health

rights. This is in itself a manifestation of gender inequality because in a hetero-patriarchal society, reproductive health is viewed as the role of women (Tamale, 2011). Did CEHURD find a clean slate on which it transcribed its contribution? The answer is definitely “no.” SRHR is indeed predominantly a women’s issue. Paradoxically, it was both the women’s movement’s successes and limitations that carved a niche and space for CEHURD, an issue that is explored in Hope Chigudu’s epilogue and in Nassali’s chapter on the Tango of the Sexes. At the time of CEHURD Petition 16 challenging maternal mortality, I was serving as Chief Executive Officer at FIDA-Uganda and the organisation was pleasurably relieved that action had been taken. A number of donors had challenged us to work on reproductive health rights but we were still grappling with what it meant to redefine ourselves as a feminist organisation that we were apprehensive of embarking on new territory. As such, CEHURD was a welcome entrant in the women’s terrain. We neither felt frightened nor threatened by CEHURD because it filled a gaping hole.

The following discussion centres on CEHURD’s unique contribution to the human rights discourse in Uganda.

### **CEHURD and the Human Rights Discourse: Stepping onto the Stage**

This discussion encompasses the contribution of a rights-based approach and the illustration of an African communitarian approach to rights.

#### **Linking Development and Human Rights Discourses**

Every parent fantasises about finding the right name of the baby. Indeed, initially the organisation was meant to be called “Centre for Health Rights Uganda.” With the benefit of hindsight, the word “development” was added in order to be in sync with the then in-vogue, MDG agenda. Albeit inadvertently, adding the word “development” to the name innovatively re-affirmed the inter-dependent and indivisible nature of civil and political rights (CPRs) and economic, social and cultural rights (ESCRs) espoused under the Vienna Declaration on Human Rights 1994 and popularised by the rights-based approach (RBA) to development (Robinson, 2005; Alston, 2005). The rights-based approach obliges all actors and stakeholders to mainstream the human rights norms and principles into their work (Robinson, 2005). Prior to the rights-based approach, development and rights were applied in parallel to each other, a process that Alston likens to “two ships passing in the dark, each with little if any sustained engagement

with one another” (Alston, 2005 : 799). Hence, traditionally, health was addressed as a development issue, while rights were deemed as political engagement with the state. What is more, CPRs are characterised as first-generation rights which are immediately justiciable, while ESCR are classified as second-generation rights, deemed as inspirational in nature and subject to the progressive realisations which is dependent on the economic development of a given state (Sepulveda et al., 2004; Oloka-Onyango, 2007). Consequently, health as a development issue was treated as a benevolent gesture of government rather than a legal entitlement. The RBA framework underscores that SRHR which are predominantly ESCRs cannot be holistically realised devoid of also addressing CPRs, including the right to life, the right to freedom of expression and association, the right to privacy, respect of bodily integrity, protection from violence, equal protection of the law, to mention but a few. In effect, CEHURD demonstrated the utility of the RBA to health. In other words, it uniquely and symbolically made a connection between health as a development issue and health as a human rights issue. In so doing, CEHURD’s petition on maternal health upgraded maternal health to a legal entitlement, justiciable in the courts of law.

Furthermore, in addressing health rights, CEHURD adopted a comprehensive strategy that interrogated both the root causes and the general context of maternal health. The overwhelming public support of Petition 16 is a reflection of the African communitarian concept of rights.

### **Broadening Responsibility: A Communitarian Approach to Human Rights**

This book addresses the concept of community from two different dimensions: as a human rights concept and as a sphere or site. First, human rights are generally understood as the entitlements that accrue to one by virtue of being a human being. The traditional conception of human rights narrowly focused on the rights of an individual against the state having an obligation of enabling the citizen to exercise their individual autonomy to enjoy their liberties and freedoms within the equal protection of the law (Mutua, 2011). The state enjoined a passive role of refraining from the interference of the rights of the individual. However, the traditional understanding of human rights is premised on the false dichotomy of the private and public spheres of society: the private being the informal sphere including family and the community and the public sphere addressing the relationship between the state and citizens (Charlesworth & Chinkin, 1993). Hence, the human right corpus ignored the private sphere where

the majority of ordinary people and particularly women are located, with minimal interface with the state. In addition, for the majority of the population, their rights are mainly violated by private individuals within the community and the family (Tamale, 2020).

From an African conceptualisation, human rights are communitarian. Communitarianism goes beyond the mere aggregate of isolated individuals but rather individuals as social beings have both rights and duties towards each other (Mutua, 2002; Tamale, 2020; Gutto, 1993; An’Naim, 1990). In effect, human beings are not solely autonomous individuals that exercise their rights in isolation of the community, but are also part and parcel of a community and often make their choices in respect of the community they live in. Consequently, the full development and enjoyment of rights of an individual’s action impacts on the rights and collective survival of others, strengthen community cohesiveness and promote reciprocal social safeguards (Mutua, 2002; Cobbah, 1987; Cornell & van Marle, 2005). Petition 16, therefore, resonated with the public and endeared its support due to the reverence of the concept of motherhood amongst Africans in general. In the words of Makau (2011):

[H]uman rights are the bulwark that sits between people and tyranny—whether that tyranny is vertical for the state, or horizontal, from individual citizens and private entities. But fundamentally, human rights are a set of entitlements that come out of struggles for material resources and human identities. That is, human rights sit at the intersection of power and powerlessness in a location that allows them to check the arbitrary and capricious use of power and the domination of the weak by the strong, the oppression of the minority, the subordination of the unpopular by the popular (p. 456)

Second, conceptualised as a site, the community level is the most contested sphere where the majority of people live, where a majority of health rights violations manifest themselves and where access to health services is least available. For example, 42 per cent of women deliver from home (Twinomugisha, 2017). As articulated by Nyamu-Musembi (2002):

It is at the personal or micro-level relations that abstract ideas of rights and justice are given meaning and content and translated into different outcomes for different people. They play a primary role in facilitating or constraining people’s ability to claim or exercise whatever rights are available to them under local normative orders, national laws or international human rights principle (p. 128).

Perplexingly, despite the critical role of community participation in reflecting local needs, fostering trust in the health system and mobilising collective action, colonialism destroyed it and equated local practices to witchcraft as encapsulated under the Witchcraft Act of 1957 (Mulumba, 2021). Moreover, using the power of language and discourse, colonial intellectualism deliberately denigrated indigenous oral traditions and wisdom as illegitimate methodologies and tools of storing records (Tamale, 2020). Hence, hardly are community voices nor their critical needs reflected in the researches and policy decision making processes. To a large extent, the community is treated as objects of research analysed through the lenses and assumptions of the researchers which ignores or erases their realities (Ahlberg & Kulane, 2011; Tamale, 2020; Mulumba, 2021; Schaaf, 2021). Yet, empowering communities with knowledge and enabling them to amplify their voices and sit at the decision-making table can contribute to a fair and just SRHR agenda because they are often more directly impacted (Schaaf, 2021). Nonetheless, it is simultaneously important to safeguard against romanticising community work because it is also imbedded with invisible power of the elite, including the health workers against the poor or historically marginalised (Schaaf, 2021). Consequently, CEHURD initiated the engagement of the District Health Committees to improve their governance as well as established the Community Health Advocates (CHAs) in order to best serve the health rights and needs of the most vulnerable groups.

## Structure of the Book

The unique structure of this book is that it depicts a walk in the garden, as the title suggests. Hope Chigudu's contribution, *Unfinished Revolution: A Conversation Between Hope Chigudu (HC) and the SRHR Women's Movement (WM)* has been split into two parts. The first part is the prologue where the walk starts. The subsequent chapters, as outlined below form the body of the walk. The second part of Hope's piece is the epilogue – bring the walk to the end. Besides, there are other five chapters.

Cognisant that CEHURD does not exist in a vacuum, the book begins with a Prologue by Hope Chigudu to contextualise the placement of CEHURD's story within the current ecosystem of the SRHR movement.

Following this Chapter 1, Introduction, the next three chapters focus on CEHURD's story. It begins with a reflection of the founder, followed by an analysis of CEHURD's approach to movement building and vexed issue of funding the SRHR movement and thirdly, the judicial evolution of Sexual and Reproductive Health and Rights.

Chapters five and six provide the broad conceptual framework for understanding SRHR work. Chapter five maps the contours of the current SRHR movement, highlighting actors and emerging trends and retraces the origin of the SRHR movement and lessons learned over the years.

In Chapter 2, *The Birthing of CEHURD: Insights from the Founding Executive Director*, Moses Mulumba answers the question: How did it happen? Mulumba lays himself bare by connecting how his personal life experiences shaped his activism agenda, making true of the idiom that the personal is political. Raised by a single mother, a nurse, health rights is his personal conviction, having literally lived within the realm of hospitals and clinics, with memories of sick and dead people, people crying for their loved ones and agonising over their inability to meet medical bills. He also physically escorted patients to the places of referral. Consequently, in his prime youth years, Mulumba deliberately founded an organisation working on the right to health with a focus on maternal health as a core issue, an arena predominantly perceived as a woman's terrain.

Mulumba recalls the sheer euphoria of birthing and nurturing an organisation to maturity, where its niche of health rights is publicly recognisable and sought after. Like most civil society actors, his organisational management and governance skills were honed through hands-on learning and mentoring, with the inaugural Board of Directors supplementing the skills base. Typical of most founders, he and his colleagues – Nassuna Viola and David Kabanda – invested their personal resources and utilities to jumpstart their initial idea of establishing a law firm, with CEHURD as a public interest department mainly working with volunteers who were equally bewildered by the opportunity to contribute.

Petition 16 was the game changer for CEHURD. The success of Petition 16 was largely due to thorough academic and legal preparation augmented by technical and moral support of the national, regional and global civil society; empirical documentation of the complex reality of the law enforcement mechanisms and public health systems at the local level; securing the joint United Nations (UN) technical opinion as part of the Petition; the physical presence of multi-disciplinary stakeholders, including the grassroots communities at each court hearing and lastly, the timely public updates of the status, which sustained its relevance. Petition 16 culminated into versatile ripple effects. First, it showered CEHURD with national, regional and global visibility, outstanding of which was *Al Jazeera* and *The New York Times* front page coverage. Maternal health became a topical issue of public debate. Second, it led to donor traction, prominent

of which was the consultancy fee of US 8,500 (*US Dollars, Eight thousand five hundred*) by Open Society Foundations (OSF). Mulumba transferred the total consultancy fee from his personal account to the institutional account, which served as the first major funding that grounded its growth. This was strategic because most funders prefer to support organisations with a track record of success, established systems and secure financial base. Subsequently, the institutional support by Open Society Initiative for Eastern Africa (OSIEA) in 2012 enabled CEHURD to build its strategic programming and its institutional structures as a regional actor on two major strands of work: Maternal health and intellectual property with a focus on access to medicines. Having full-time staff enabled the executive director to shift from programme implementation to visioning and resource mobilisation. Third, it thrust CEHURD into the arena of coalition building as various stakeholders sought to use Petition 16 as a kingpin for a paradigm shift for the broader issues of SRHR, which widened both its ownership and catalytic effect. Fourth, CEHURD was nationally recognised as an expert invited by the Ministry of Health to improve its processes in order to proactively prevent violation of rights.

Personal connections drive movement. Mulumba vividly describes how he harvested each encounter with a partner to develop new channels of work. Key outstanding partnerships being with the Regional Network on Equity in Health in East and Southern Africa (EQUINET) and the Institute of Tropical Medicine in Antwerp, Belgium that secured a grant from the European Commission (EC) with fourteen global partners, majority of whom were university-based. Being responsible for the African research acclimatised CEHURD of the complex and varied interpretation of global health and inducted it into its first sub-granting role. This partnership provided CEHURD the opportunity to publish numerous publications with leading international researchers.

Mulumba offers individual insights into the skirmishes of navigating the terrain of masculinity stereotypes within the SRHR arena. One feels the agony caused by episodic questioning of men's role in SRHR work and of being perceived as a privileged man usurping women's voice and agency. Although SRHR was not on the radar of Mulumba's priority on founding CEHURD, he was forced to anchor the Coalition to Stop Maternal Mortality due to Unsafe Abortion (CSSMUA) having realised in 2011 that most women's organisations were hesitant to address abortion as a human rights issue or priority concern, despite it being a major root cause of maternal mortality. He articulates the constant daily struggle

of ensuring a gendered and equitable space within the organisation and particularly as it moves towards chaperoning the SRHR movement. Simultaneously, he acknowledges the feminists' leaders' guidance in deepening his understanding of how work on SRHR can be advanced in a manner that concurrently addresses the marginalisation of women as a sex. He wonders whether or not manhood or masculinity is a facilitator or inhibitor to SRHRs.

Moving forward, Mulumba intends to invest the accumulated expertise of pioneering of progressive Afrocentric response to health rights and SRHRs issues, by building a multi-sectoral and regional hub and repository for innovative knowledge transfer. This book is one of the critical first steps for CEHURD to document its story, relearn from its experience as well as open itself to others for scrutiny.

In chapter 3, *Sustainability and the Funding the SRHR Movement: Emerging Issues and Cautionary Reflections*, Solome Nakaweesi dissects the complex issues around SRHR funding trends and geopolitics, movement building and masculinity, CEHURD's organisational dynamics, the NGO-isation of the SRHR movement and lastly forecasts the SRHR future.

She observes that although Ugandans invest personal resources in health, the bulk of SRHR funding is from the global north partners. While at inception CEHURD struggled with funding from consultancies and sub-letting, the broadening of its work beyond maternal mortality to embrace the broader SRHR issues expanded its financial base. Concurrently, the funding terrain of SRHR is shaped by the geopolitics. Hence although in 2017, the USA defunded approximately 8.8 billion dollars under the revival of the Global Gag Rule (GGR), concurrently, there was stimulation of alternative funding to counter its impact, resulting in exponential growth of both CEHURD's programmatic and institutional budget as well as its deepening itself as a key SRHR actor. Additionally, CEHURD intentionally developed global partnerships which enabled it to directly participate in the global geopolitical conversations and policy setting, cascading these conversations at national level further enhancing its visibility. As a result, it became a conduit of resources for its global partner's engagement at the national levels which buttressed its sub-granting role and global convening power.

The above success notwithstanding, this dramatic growth and evolution compounded by the ambivalence of CEHURD's identity is a source of tension: Is CEHURD an enabler or catalyser in its capacity as a funder/sub-granter or is it an active implementer of programmes on the ground

or is it both? Consequently, some partners have withdrawn funding because CEHURD has outgrown the categories of organisations that they fund. Besides there is growing contestations amongst by CEHURD's peer partners within the SRHR movements of what roles it should lead and what roles it should cede to others to lead.

Moreover, around 2010, SRHR funding shifted from hitherto actors at the frontline of SRHR movement such as women organisation, feminist movements, community-based groups, sexual and gender minority groups to support mainstream public health and human rights organisations. However, Nakaweesi notes that CEHURD has neither claimed to be a feminist organisation nor does it apply feminist principles albeit, it pursues issues of mutual interests such as challenging power and fostering women's bodily integrity and choice. She is also sceptical of CEHURD's strategy on masculinity which targets men as the 'super-heroes' for entrenching male power privilege and reducing women to victims to be rescued by celebrated male champions. Hence the rising questioning around legitimacy? Who owns the SRHR Space? Who has convening power? Where is the headquarters of the SRHR movement? The answers to these questions remain fluid: Is it CEHURD? Is it the Women's and Feminist Movement? Is it yes? no? not sure? Is it both? And how do the two sub-movements interact? Where are the parallels? Where are the contestations? How can male engagement be effectively done without depoliticizing issues of gender equality and women's empowerment nor replicating patriarchal power relationships? How can men be held accountable when their engagement is used as a vehicle to push forward men's rights and privileges against the unprecedented suffering of women and girls? And how can men within the SRHR movement be held accountable to gender equity and justice? And when do they stay silent?

Nakaweesi observes that the world is increasingly becoming so retrogressive and anti-rights to such an extent that there is infiltration of fundamentalism within CEHURD's governance and staffing ranks, manifesting itself in self-censorship, marginalization of sexual rights, weak intersectional rights approach and personal ostracising of staff working on sexual rights issues. It is therefore imperative that CEHURD ensured that its quest for skills, expertise and systems does not compromise its legitimacy to engage in the SRHR movement. It is also important that as CEHURD engages with SRHR opposition mapping, mitigation and management in its programming externally, to mitigate and manage its internal opposition. In effect none should be pursued at the cost of the other. It cannot be

an either-or agenda but both: A strongly managed organisation that believes in its core mandate and has the right politics. Moreover, currently CEHURD's sub-granting role is scattered under the different programmes. Hence the urgent necessity of CEHURD registering itself as a granting mechanism coupled with the establishment of a fully-functional Grant Management Unit, with dedicated qualified staff in grants management, central data-base and better monitoring and evaluation frameworks as well as capacity to enable SRHR frontline activists promptly take advantage of emerging unanticipated opportunities and manage the backlash, safety and security risks that comes with this.

The NGO-isation of SRHR movements infers that the SRHR movement organising is determined by donor agendas and convenience from the global north. While there is increased SRHR funding, it utilises a silos approach that tends to target safe issues of health to the exclusion of sexual issues. Neither does funding holistically address the underlying issues of poverty, food security, social norms and values, SGBV, education and media to mention but a few. Nor does it allow to expand the horizons well far and beyond those that are outside the confines of NGO-ised reach. Moreover, there is potential of funding to objectify persons as information sources as is the integration of sex work and LGBTIQ+ actors which compromised their voices and agency to comprehensively address issues of rights, choices and access to opportunities and service. Paradoxically, the highly visible donor interest in sexuality issues has heightened homophobia and its misconception as non-African. Thus, the questions to mull over include: How can constituencies outside the NGO model be reached and effectively mobilised to promote norms, values and cultures for the progressive realisation of SRHR? What funding mechanisms works best for non-NGOised models of movement building?

The COVID-19 pandemic has exacerbated down rolling of Reproductive Maternal, Newborn, Child And Adolescent Health (RMNCAH) indicators through rising unsafe abortions, teenage pregnancy, gender based violence as well as disrupted contraceptive programming and HIV prevention for women, with an overall deterioration of health, wellbeing, safety and security of the most discriminated groups, further entrenching their marginalisation.

She concludes that the future of SRHR remains unpredictable amidst right-wing extremism, more organised anti-rights groups, growing power of the market fused with the political leadership. Hence its survival is heavily dependent on mass movement building across Africa, developing

local philanthropy, and re-politicising the SRHR struggle for a holistic and interdependent approach. No actor, including CEHURD can afford to be complacent but renew its struggles with valour: It is a continuous struggle – fight, achieve, consolidate, lose, go back and fight all over again?

In Chapter 4, *Juridical Evolution of Sexual and Reproductive Health Rights*, Ben Twinomugisha interrogates the juridical evolution of SRHRs at the international, regional and national levels. He observes that prior to 1994, all international instruments prioritised motherhood to the exclusion of other aspects of SRHR. Thus, the 1994 Cairo ICPD marked a radical shift that explicitly provided for SRHR. Subsequently, the Committee on Economic, Social and Cultural Rights (CESCR) mapped out the normative content of the right to the highest attainable standard of physical and mental health, including women's right to health, under General Comment No 14, and SRHR under General Comment No 22.

At the continental level, not only does the Maputo Protocol explicitly recognise SRHR (article 14(1)), but also in 2014 the African Commission on Human and Peoples' Rights articulated that SRHR is a cross cutting issue relevant to all women's human rights under its General Comment No 2. Further, it also clarified the state's obligations to respect, protect and fulfil women's SRHR by, among others, developing a national public health plan with comprehensive SRHR services, guidelines, standards and awareness raising. However, the government of Uganda entered a reservation to article 14(1)(a) on control of women's fertility and article 14(2)(c) on abortion, subject to its domestic legislation. At the East African Community (EAC) level, the focus is on health research and training.

Although in pre-colonial Africa women managed their sexual and reproductive health, colonial policy derided such practices as inferior and dangerous. It is the entrenchment of the equality of sexes (art 21) and women's rights including their unique maternal function (art 33) that ignited women and marginalised groups to advance the enjoyment of SRHR, at least in the legal terrain. Ground breaking decisions include *Uganda Association of Women Lawyers and others v. Attorney General* (Constitutional Petition No. 2 of 2002) that challenge the divorce law; *Law and Advocacy for Women in Uganda v. Attorney General* (Constitutional Petition No. 08 of 2007) challenging criminal adultery; *Mifumi (U) Ltd and others v. Attorney General* Constitutional Petition 2007/12) challenging the payment of bride-price; *Adrian Jjuuko v. Attorney General* (Constitutional Petition No. 001 of 2009) challenging discrimination under the Equal Opportunity Act. Nonetheless, the courts generally evaded discussing

sexual rights. Again, the continued criminalisation of abortion, sex work, same sex practices and spreading of HIV and AIDs forces these practices underground, compounding marginalisation and abuse.

Twinomugisha elucidates CEHURD's lead role in developing ground-breaking jurisprudence in reproductive health rights in Uganda: *CEHURD & Others v. Attorney General* (Supreme Court Appeal No. 1 of 2013) was ground-breaking because the Supreme Court regurgitated the Constitutional Court's mandate to hear any dispute where private citizens allege that action or inaction by the executive or parliament contravenes or is inconsistent with the constitution as well as whether or not government had taken all practical measures to ensure basic medical services. Moreover, in *CEHURD & Others vs AG* (Constitutional Petition No 64 of 2011), the Constitutional Court held that the government's omission to adequately provide basic public maternal health care services violates the right to health, right to life, women's rights and amounted to inhuman and degrading treatment. The court also ordered the government to provide sufficient funds, facilities and trained personnel for maternal health care. In *CEHURD & Others v. Nakaseke Local Government*, (Civil Suit No. 111 of 2012) court ruled that the doctor's negligence and failure to provide emergency obstetric care resulting in death of Irene Nanteza violated the rights of the children and the spouse. In *CEHURD v. Executive Director, Mulago Hospital & Another* (Civil Suit No. 212 of 2013) involving a stolen twin baby, court applied the interdependent and interrelated rights approach to link the right to health to numerous CPRs. Innovatively, the court issued orders to Mulago Hospital to investigate the disappearance of the baby, submit a report to CEHURD every four months and offer it access to oversee the implementation of the measures. Also, CEHURD was requested to enable the parents access psychological care. In 2017, *CEHURD and others v. Attorney General* (Constitutional Petition 10 of 2017) challenged parliament's failure to make a law for the termination of pregnancy. Cumulatively, the framing of health in the language of human rights placed ESCRs on the agendas of courts, public opinion and media, as well as fostered the parliamentary resolution on maternal health.

Twinomugisha observes that SRHR are so fluid, complex, sensitive and controversial due to moral, religious, ethical, cultural, philosophical, political and economic resistance. Indeed, the 2019 Nairobi Summit Statement on ICPD25 "Accelerating the Promise" acknowledged that SRHRs are still elusive. He concludes that the root cause of maternal mortality and morbidity in Uganda is neoliberalism, whose policies

promote privatisation of basic services necessitating diverse strategies to tackle the systemic issues such as poverty and inequalities. He equally recommends the explicit constitutional recognition of the right to health as is the case with Article 43 of the 2010 Kenya Constitution and Article 27 of the South African Constitution as well as the development of a specific legislation on SRHRs. He calls upon civil society to advocate for lifting the reservation on Article 14 of the Maputo Protocol and the repeal of the obnoxious criminal law that undermines the realisation of SRHRs.

In Chapter 5, *A Movements' Journey: The Sexual and Reproductive Health Rights Movement in Uganda*, Noah Mirembe premises the conceptual framework of SRHR in the triple interdependent theories of social movements, feminist analysis of power and sexuality and human rights. First, social movements are collective actions that challenge inequalities and exclusions in society, proposing new models and visions for more just social, economic and political power relations (Batliwala 2012: 3). What needs to change (political agenda) and why (political analysis), who should change them (leadership, membership and representation) and how (actions and strategies) are the core questions of movements (Horn 2013: 22; McAdam, McCarthy & Zald (1996). Second, the feminist theory challenges patriarchy as a system of power in which the economic, socio-cultural and political structures disadvantage women. Mirembe posits that the asymmetries of power, wealth, social status, gender, age, knowledge about the issue, and self-confidence affect the individual's enjoyment of their rights and access to resources, health outcomes, and ultimately freedom to make informed decisions about their sexual or reproductive options. He contends that social control over SRHR manifests itself through the heteronormative norms based on patriarchy and capitalism and buttressed by religious and cultural fundamentalism, which consider same sex eroticism, sex work and sex outside wedlock morally reprehensible. Hence, feminism provides a framework for collective action — 'power with', to challenge the existing unequal power and unfairness. Third, framing SRHR as a human rights issue reaffirms the centrality of bodily integrity and autonomy to control one's sexuality and reproductive capacities. The human rights framework legitimizes social movements' struggles as entitlements with clear government's international human rights obligations. However, while public interest litigation (PIL) is one of the most effective strategies of addressing the root causes of rights violations, on its own it cannot serve as a vehicle of social mobilisation for collective action to promote social justice.

Relying on the image of the river, Mirembe illustrates the unpredictability of the SRHR movement as it “ebbs and flows, dies and resurrects, pursues different tracks depending on interests and is thus prone to contestations and disagreements over the most suitable strategies and prioritisation of goals.” The diversity of the SRHR movement in Uganda, contends with various conceptual concerns including building a shared political agenda, issues of legitimacy, representation, leadership, marginalization, accountability and inclusivity and wider civil society participation. The May 2020 mapping of the SRHR movement under the theme *SRHR Movement: The Unfinished Business of Liberation* revealed that: While the SRHR movement is primarily driven by women and sexual and gender minorities, the majority of CSO work on safe issues such as HIV/AIDS, child sexual abuse, child marriages, sexual and gender-based violence, safe male circumcision (SMC). The contested issues include: comprehensive sexuality education (CSE), elderly sexuality, menopause and andropause, female sex-work and the least addressed at the periphery of the map include issues considered immoral or repugnant to local norms, such as pleasure, same sexual harassment, trans and . Yet, ‘sexual rights’ being a plural term suggests diverse and fluid physical or social sexual conducts, behaviours, and identities without forcing individuals to claim a fixed, ‘naturalized’ identity or sexual orientation (Miller 2000: 74-76).

Cognisant of the simultaneous existence of multiple, competing, complementary and/or overlapping movements, individual actors have to negotiate the different, at times complementing and at times competing allegiances in determining whether or not they belong to a given movement. Consequently, unless there is respect of diversity in identities, interests and issues in all processes, relationships and interaction, a just and equitable SRHR movement is a mirage. In sum, there is no conclusive agreement of who is part of the SRHR movement and who is not. Hence the critical question: What internal evolution needs to happen to ensure an equitable and diverse SRHR movement?

In Chapter 6, *On Sexuality And The Tango of The SRHR Movement*, Maria Nassali begins with an explanation of its choice of the metaphor of the Tango. The Tango was originally a dance of sorrow that was captured by the affluent to display their status and subsequently, it slipped unto the streets of slum areas and eventually became a symbol of national social interaction. Likewise, ideally, the SRHR movement should not be a struggle but an intimate interaction of sexes – akin to a tango. Part two catechises why despite the fact that the word “sexual” appears first under SRHR,

it is the most contested and least addressed in the SRHR movement. It begins with unpacking the terms of sexual rights, highlighting the multiple connotations to different stakeholders and contexts. Further, it provides a theoretical review of the inter-sectionality of the sexuality movement with the women's rights movement. Ironically, by attempting to address sexuality head-on, the *Vagina Monologues* caused a social stir that both blunted women's organisation from overtly engaging the sexuality discourse. Concurrently, the onslaught of the state's authoritarian laws, bolstered a new breed of fearless, activism on sexual rights around HIV & AIDs, sex work and LGBTQI movements supported by an African continental drive that nurtured collective understanding of African Feminism.

The chapter documents the organising of the sexual rights coalition including the choice of the name: Uganda Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), which entrenched sexual rights within the constitutional and human rights discourse, the academic thought leadership that provided a counter narrative to dispel the notion of sexual rights as un-African and grounded debate in the African concept of *ubuntu*, commonly translated as humanness or humanity to others, encapsulated in the adage "I am because you are," in making a case for protection of human beings as equal beings in all spheres of society, including the sexuality one.

Subsequently, while founded in the women's movement, the sexuality movement became male-led. The chapter highlights the advocacy around the Sexual Offences Bill (SOB) to expose the fragile nature of the SRHR movement around positive sexual rights, its being led by the male activists notwithstanding. Although the president declined to promulgate the SOB in August 2021, the legislative situation of sexual offences remains as it was at the beginning of its campaign in 2000. The chapter also illuminates the progress ushered in by the judiciary and other tribunals in upholding sexual rights. It concludes by making a case for mass movement of men and women to support sexual rights. Just like the Tango social justice struggle sway and depend on each individual's commitment to keep moving and improvise in manner that adds value to the cause.

In the *Epilogue: Unfinished Revolution: A Conversation Between Hope Chigudu (HC) and the SRHR Women's Movement (WM)*, Hope Chigudu returns with the tail-end of the walk and centres the untold women and transgender stories – stories not written in books but inscribed on their bodies while positively impacting the SRHR movement and challenging misogyny, homophobia, sexism and exclusion at all levels. Chigudu is an

exceptionally passionate, caring and consistent feminist popularly known as the Inspector General of the women's movement. She has probably held the hands of the different sub-movements at critical challenging moments. Typical of Chigudu, she bluntly asks the uncomfortable questions to combat the truth, hence the conversational approach. She likens the women's movement to a talented musician whose contribution is necessary for an orchestra or band and whose power is augmented by the collective action, without diminishing the important role played by each musician. Hence, feminist spaces are diverse with actors, experts, issues, and strategies that nourish collective efforts and enable women and inter-sex to access and control resources, reclaim their dignity and generally advance equity, diversity and social justice. Feminism is not only located within individuals but is a foundation for collective action and gains. Cognisant of the stigma and social penalties associated with SRHR activism, organisations present a safety haven for mobilisation, funding of community issues and the strengthening of the SRHR movement in general.

Both SRHR and the feminist movement share the common agenda of challenging hetero-sexualised and patriarchal power and socio-cultural norms in the public, private and intimate spaces to surface issues of SGBV, lack of choice and bodily integrity, discrimination, violence, as well as social stigma and taboos that entrench women's marginalisation. Furthermore, feminism, human rights and sexuality are intricately linked because norms around masculinity and femininity affect one's access to opportunities, public spaces and livelihood. Ironically, promoting women's sexuality as a human right is misconceived as promoting indecency, unnatural, evil, un-religious, un-African and as a threat to the nation-building efforts. Even within the women's movement, issues of sexual-intimate norms that govern behaviour, such as the norm of marriage, the family and gender norms of sexuality are the most contested. The false binary between sexual majority and sexual minorities itself connotes normalising heterosexual stereotypes with the different categories having separate but unique set of human needs and human rights. Despite the importance of analysis, women are often too busy to examine their work and generate shared understanding of the ever-changing contexts. Inadvertently, the women's movement at times reproduces the patriarchal power dynamics within its own spaces. Movement building is yet to be deliberately pursued in terms of resources, infrastructure, appropriate language and framing to mobilise mass support and consolidate gains.

The above limitations notwithstanding, Chigudu concludes that the women's movement remains resilient in spitting its empowerment seeds into a patriarchal wind in an abiding effort to ensure vibrant freedom, justice and wholesome flowering of rights in order to unleash the potential of all humans. She therefore urges the nurturing of political consciousness of why feminism is a critical tool to build women's social capital and solidarity. Conversely, ignoring power analysis out of the equation not only obscures the realities of women's lives but undermines its ability to construct effective strategies for resistance, survival and change. It is imperative to breed new thinking grounded in the empirical experience of the activists. Describing CEHURD as a bubbling, unstoppable and uncontainable young organisation working with a sense of adventure, she commends the organisation's work in making reproductive rights a societal issue.

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## CHAPTER 2

# The Birthing of CEHURD: Insights from the Founding Executive Director

*Moses Mulumba*

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### **Connecting the Personal to the Political: Who Am I?**

Individuals have complex and multi-identities. My own journey as a man working in the Sexual and Reproductive Health Rights (SRHR) Movement epitomised by the birthing of the Centre for Health, human Rights and Development (CEHURD), was seeded from my childhood days and experiences. Growing up in a home headed by a single mum who was a nurse enriched with many insights and experiences that would later shape my personal motivation into a career of advocacy for SRHRs. My mother, whom I call “mum” for endearment, Ms. Mayi Nalwanga – now retired nurse – is a dominant pillar and influence for my interest in SRHRs work. After completing her nursing course, my mum got a job at St Francis Hospital Naggalama where I was born in 1981. In 1984, Prince Badru Kakungulu started a small clinic to offer out-patient services to the Kibuli Community, which has since blossomed into the Kibuli Moslem Hospital. My mum was one of the inaugural seven founding staff for Kibuli Moslem Hospital. She carried me along with my other siblings to her new job and we joyfully resided in the staff quarters of the hospital.

I literally grew up in the hospital because our home was very close to the hospital wards, the hospital’s public kitchen, and the mortuary. As a young boy, I witnessed the operations of a hospital. Most importantly, I recall the stories of seeing sick and dead people, people crying for their loved ones. Simultaneously, I also still have visual memories of happy mothers and their families when they had babies. Although Kibuli Hospital is essentially a non-profit hospital and offered subsidised health costs, it was striking that many patients – especially mothers bringing children for treatment – still found it difficult to pay the hospital bills. It was also very striking that it

was always the mothers that flocked that hospital either to seek treatment themselves or carried along children for treatment. As I reflect back – even as a young boy – these experiences unconsciously inspired me to think about health systems as a part and parcel of life.

I did my primary and secondary education largely in the same hospital or medical environment. Although my mum moved into private practice and started her small drug shop business which later grew into a nursing home, she continued to focus on mothers and children. As I think about it, I got inducted into the workings of the health system at an early age. I played several roles including going to town to buy the medicines for my mum's drug shop while armed with the list of the needed items and the money. I interacted with many wholesale pharmacies to the point of mastering those that had the best rates in town. On a number of occasions, when faced with cases that required doctors, I escorted patients to the places of referral.

Joining the Faculty of Law of Makerere University to pursue a Bachelor of Laws (LLB) degree was another turning point in the shaping of my career. I do recall that while pursuing the law degree, I still maintained my interest in contributing towards the health systems, albeit I was unsure of how this would manifest itself. I chose interesting courses such as: human rights, environmental law and policy, which covered the right to a clean and healthy environment; the law of torts, which covered medical negligence; and later health law and policy. In my third year of study, I got introduced to Prof. Emmanuel Kasimbazi whom I asked to make me his research assistant. In response to my request, Prof. Kasimbazi asked me: "Do you understand what you are asking for? By third year, you have not covered substantive subjects to qualify for an offer as a research assistant." I assured him that I was a "special human being" and pleaded that he offers me the opportunity to prove myself. True to form, we worked together for four years.

While much of the work I did with Prof. Kasimbazi was about environmental law and policy, it was a springboard for my career in the Non-Governmental Organisations (NGO) field. Indeed, working with Prof. Kasimbazi was the greatest school I ever attended in life. I gained hands-on experience of writing bids, making presentations, documenting stories, making grant applications for research, and writing abstracts for conference presentations. Outstandingly, I appreciated the general applications or disconnect of legal principles to social justice issues. Being placed in Prof. Kasimbazi's office also provided me with the rare opportunities of

attending strategic meetings and getting to know a host of people who further inspired and motivated me. I habitually made lead presentations of our consultancy and research reports, facilitated the training of trainers, and reviewed publications authored by influential academics and practitioners. All these opportunities bolstered my confidence.

Many people shaped my career growth. However, a few stand out. At a meeting with Counsel Philip Karugaba, he described his motivation for taking on public interest cases, particularly the matter of the late Joyce Nakacwa who had been denied maternity care and subjected to torture, inhuman and degrading treatment. I also had an opportunity to listen to the reasoning behind the judgements of then Justice Tabaro. His citing of Kenyan cases in clarifying what actually public interest case means stimulated my interest in reviewing Kenyan and Indian judgments on public interest cases. From then on, I resolved to pursue public interest matters.

At the time, the Faculty of Law at Makerere University began running a course on health law and policy. This was a major motivation for me as a young lawyer to test the lessons from this course, with the reality I was familiar with. I did my course work on an analysis of the mental health legislation (Mulumba 2007) which also exposed me to the works of Professors Micheal Perlin and Seggane Musisi that I became more resolved to think about a practice focused on mental health law and policy. Subsequently, this experience honed my skills to venture into litigation challenging the mental health legislation and criminal laws impacting on health.

After about four years of working together with Prof. Kasimbazi, he got a Fulbright fellowship and flew out of the country with his family. I had to rethink how to actualise my dream. I reached out to Prof. Ben Twinomugisha (a.k.a Shokoro) who had taught me health, law and policy, and in which I had performed well. I recalled that Prof. Twinomugisha had appealed to the class of young lawyers to establish specialised practices in areas of health law and policy. During my interaction with Prof. Twinomugisha, I shared with him the dream of starting an organisation that focuses on health law and policy. In précis, Professors Kasimbazi, Musisi and Twinomugisha fueled my inspiration and zeal to practice health law and policy and the founding of Center for Health, Human Rights and Development (CEHURD).

To sharpen my intellectual grounding, I enrolled for the Master's in Law program at the School of Law, Makerere University, majoring in

health law and policy, international human rights law and international law. These courses were invaluable to the foundational work at CEHURD. Subsequently, I competed for a fellowship for a second master's degree in health sciences at the Faculty of Health Sciences, University of Stellenbosch. As part of the fellowship, I was required to provide legal support to the National Union of Persons with Disability (NUDIPU) at least two days in a week, which was an amazing experience. Concurrently, I started lecturing human rights as part of the community-based rehabilitation program at Kyambogo University.

### **The Conception of CEHURD**

CEHURD is an acronym for a long name. This name is long because in the beginning we were very clear that we wanted to do work around health and human rights. Our clear intentions notwithstanding, we were mindful of the funding challenges and therefore included the word “development” to cushion ourselves against missing opportunities availed by the then trendy Millennium Development Goals (MDGs). We also had a flimsy hope that CEHURD could provide a bridge to the work on law, health and broader development sphere.

Although several civil society organisations (CSOs) such as Coalition for Health Promotion and Social Development (HEPS-Uganda), the Uganda National Health Consumer's Organisation (UNHCO) and Action Group for Health Human Rights & HIV/AIDS (AGHA-Uganda) among others, were already doing work on patient rights and access to medicine, none focused on the right to health and the intersections between the law and health systems. This was a golden opportunity!

Initially, my two colleagues, David Kabanda and Nassuna Viola, had toyed with the idea of starting a private law firm as partners. The two had been working under law firms for about two years after our graduation and were enthusiastic about beginning their own law firm. While I found the idea intriguing, I neither had the experience nor interest in doing private legal practice. Rather, having served as a research assistant with Prof. Kasimbazi, I had developed interest in research, consultancy, and NGO support work. While my work with Prof. Kasimbazi had been in environmental law and policy, and many NGOs such as Greenwich were doing tremendous work to advance environmental law and policy through research and litigation, I sought to use the same experience to pave a path for health law and policy.

Kabanda, Nassuna and I agreed to found a law firm with an independent department that I would lead and run as a non-profit organisation on health law and policy. CEHURD was registered on 31st December 2009. Simultaneously, we applied to register the law firm under the name Kabanda and Company Advocates, which would be managed by Kabanda. Both offices were located on Plot 614 Tufnell drive in Kamwokya. On inspection of the law firm by the team from the Law Council led by Prof. Sempebwa, he remarked: "I am glad to find such a smart team of young lawyers well organised." The practice would be different a few months down the road. Each of us equally contributed to the first six months' rent and administration fees. I remember carrying my books from home, an electric kettle, personal computer and carpet as part of furnishing the office. We received a few instructions within the first six months, but these instructions did not materialise into sufficient resources to cover the costs of running the office. The clientele base was not building up fast enough and yet we had daily expenses to meet. At the end of the six months' rent period, my colleagues concluded that the venture of the desired law firm would not work. I don't remember us holding a joint meeting to discuss the difficult times and the way forward. I simply realised a few weeks down the road that my colleagues had in fact gotten back into employment in private legal practice. It was a tough time!

After some time, at an impromptu meeting with Mr Kabanda to generally catch-up on how the abandoned law firm office was doing, I informed him of my decision to turn the health law and policy department into a fully-fledged NGO. I remember using the following words:

David, in life I have never started a thing and it failed. I cannot be the person who brought people here to show them the office and then they ask me for the office, and it is closed'. I feel that my passion for doing social justice work is boiling even though I do not have the funding to do this work. I will do a subletting agreement with other people to be able to afford the office rent and cover other running costs.

Kabanda found the passion infectious. We made a renewed commitment in which we would keep the law firm, with Kabanda serving as the Managing Partner as I continued with plans to transition CEHURD into a fully-fledged NGO.

This would later be a blessing in disguise as we realised that the law firm would support the public interest litigation work of CEHURD. Later, we rebranded the law firm from Kabanda and Company Advocates to

DALUMBA Advocates – a generic name drawn from our names David and Mulumba.

The office space was divided into three parts: One for CEHURD and the law firm, another for a start-up NGO called SOLAK, and the last for a construction company working in West Nile and South Sudan. All these offices shared a reception area, a boardroom, and toilets. The rent recovered from the sub renting was sufficient to cover the landlord's monthly rent and office utilities which created mental relief necessary to focus on the NGO work.

Having sorted out the issue of office space, the next hurdle was to define the work and brand of CEHURD. I had limited experience of running an NGO, having worked as a part-time legal advisor with Coalition for Health Promotion and Social Development (HEPS-Uganda), a local NGO. I had met Ms Rosette Mutambi, the Executive Director of HEPS-Uganda, at a regional training workshop for advocacy on trade and health in East and Southern Africa in August 2007, organised by Regional Network for Equity in Health in East and Southern Africa (EQUINET) under the leadership of Dr Rene Loewenson. Both HEPS-Uganda and EQUINET were instrumental in shaping the work of CEHURD, as will be demonstrated later in the chapter.

Around that time, Margaret Courtney Jordan, a then second-year law student at the University of Miami, applied for a summer legal internship with CEHURD. In her application, Jordan indicated that her professional goal was to work in the field of international human rights and development. Her curriculum vitae demonstrated that she had gained considerable level of experience working abroad on various legal and non-legal issues. She had interned with Timap for Justice, a human rights organisation in Sierra Leone, where she had gained invaluable insight into the challenges of access to justice and the rule of law in a society where customary law dominates the rural areas. She had also indicated her exposure to the importance of high impact litigation in order to set valuable precedent in the area of human rights. On the arrival of Jordan, we embarked on developing CEHURD's first strategic plan. The process involved holding numerous meetings, many of which took place at my apartment, with my colleagues, Richard Hasunira and Patricia Bako. In July 2010, CEHURD launched its first strategic plan, as well as the putting in place the first formal board comprising Prof. Ben Twinomugisha, Prof. Ssegane Musisi and Ms Ginamia Melody.

In nominating the board, due consideration was placed on both their interest and potential to trust us and believe in the ideas we were espousing in CEHURD as an organisation. Prof. Twinomugisha had introduced us to the subject of health law and policy in law school, Prof. Musisi had encouraged me to pursue social justice work in mental health, and Ms Ginamia was working as a legal officer at the Uganda Human Rights Commission on patient rights issues of torture victims. However, we did not at the time have clear terms of reference. The board simply provided support to CEHURD whenever management sought their guidance. Eventually, we set up the internal processes, largely learning from the experience we were garnering.

Once the strategic plan had been developed, Jordan and I tirelessly worked to develop and submit expressions of interest and proposals to various donor groups, including: the Open Society Foundations; the National Endowment for Democracy, the American Bar Association, the Ford Foundation, to mention but a few. Although initially we did not receive positive feedback, our resolve did not waiver. Simultaneously, we applied for consultancies to raise funds for the organisation's administrative support. For example, capitalising on our relationships with SOLAK development agency, we bid for an evaluation assignment for the Uganda Society for Children with Disabilities (USDC) in the districts of Jinja and Soroti. This assignment enabled us to gain empirical evidence of the interconnectedness of mental health and rights. Subsequently, we successfully competed for an open call consultancy advertised in the *Daily Monitor* newspaper by National Union of Disabled Persons of Uganda (NUDIPU), to lead a process of information generation, analysis and documentation. This consultancy provided CEHURD with an opportunity to author Uganda's first alternative report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons with Disabilities (CRPD).

In a way, undertaking this consultancy felt like a paying back a debt to NUDIPU. I had previously worked with NUDIPU as a research fellow under a research project on the African Policy on Disability and Development (A-PODD). It is through this fellowship that I was able to receive a scholarship to undertake a master's degree in health sciences which focused on disability, rehabilitation, and human rights, at Stellenbosch University. At a technical level, this assignment was my "cup of tea," as it essentially addressed issues that I had interrogated in my master's thesis. Incredibly, CEHURD accumulated a wealth of knowledge of the functions

of the districts on disability work. It also expanded our networks as we engaged with the UN agencies and key ministries like the Ministry of Gender, Labour and Social Development and the Uganda Human Rights Commission.

As the consultancy work grew, we brought on board Ms. Nakibuuka Noor Musisi and Ms. Primah Kwagala as interns. Primah walked into my office one late afternoon in February 2011 and indicated that she was a fresh law graduate looking for a work opportunity. I was sincere with her in that I informed her that “while I had work for her, I did not have a job. If she was interested, she had to come the next day early in the morning and begin to do the work.” To my bewilderment, the next day, shortly before 7 am, I found Nakibuuka at CEHURD’s doorstep ready to start work. That is how Nakibuuka joined CEHURD and we worked closely together for about eight years.

In the initial years, CEHURD relied on young interns and volunteers. These included two lawyers, Mr Ibrahim Nsereko and Mr. Denis Bukonya. Later, Ms Joselyn Nakyeyune joined the team to support the field research work. We invested in capacity and team building particularly because the work of CEHURD on the right to health was new and it required the building of staff capacity. We essentially built the organisation while learning with it.

Through my legal support to HEPS-Uganda, I had predominantly worked on legal reviews of intellectual property laws and policies and how these impacted on access to generic medicines. Further, I had also led processes for monitoring the reporting role of the Uganda Human Rights Commission which was funded by Open Society Foundation (OSF). Therefore, I became familiar with OSF’s funding processes. Similarly, relying on the connections derived from working with EQUINET and Loewenson, I executed a consultancy for a comparative review of the impact of the of the public health laws in Kenya, Uganda and Tanzania on equity in health, mindful of the different country-specific contexts (Kasimbazi E, Mulumba M, Loewenson R 2008). This assignment revealed the limitation of working as an individual consultant without institutional backing. While I had made a convincing case for securing funding to undertake this assignment, it was difficult for me to lead the assignment as an individual. I therefore approached Prof. Kasimbazi to anchor the assignment within his docket at the Faculty of Law, Makerere University. The report was used as part of the tools to convince OSF to fund CEHURD’s processes.

## **The Search for Funding**

The year 2010 was a landmark year for CEHURD. Having CEHURD as a registered entity in a way enabled it to become eligible for direct donor support. The direct funding of CEHURD by EQUINET to undertake an assignment that reviewed the effect of the constitutional provisions on the right to health (Mulumba, Kabanda and Nassuna 2010) was one of its groundbreaking assignments that provided hope for CEHURD's potential. The funding from this assignment alleviated the stress of uncertainty of an organisational survival. In addition to covering the running costs for the office, we were able to offer a stipend to the volunteers. The review underscored that central to the recognition of health rights is the incorporation of the right to health in the national constitutions in order to provide a benchmark for the government obligations to respect, protect, fulfil and promote it.

On 25 August 2010, I submitted a concept note and profile to Ms. Christine Munduru, under the public health program at the Open Society Initiative for Eastern Africa (OSIEA). This concept note relied on two EQUINET comprehensive researches to make a case for the development of a strong program of work including research, policy analysis and advocacy with a network of CSOs at across East and Southern African countries. This regional intervention also included in-depth country specific work to assess the implementation or violations of the constitutional provisions and the development of regional jurisprudence. The concept note also highlighted the importance of legislation in ensuring health equity, assisting advocates of health rights in the region while concurrently revealing areas of critical attention.

On 23 September 2010, I received feedback from Munduru on the concept note I had submitted to OSIEA. She needed answers to a number of questions including: When the organisation was started? What had it done so far? Whether it had ever gotten some funding, and if so from whom? What was its annual budget? What CEHURD would specifically do in respect to access to medicines which had been its previous immediate focus? How did CEHURD see itself fitting in the broader access to medicines work in Uganda? How CEHURD's consultancy work with HEPS-Uganda would co-exist with the proposed funding request? I responded to the queries on 27 September 2010. I proudly cited CEHURD's experience of support work from EQUINET and the consultancies for USDC and NUDIPU. I also highlighted CEHURD's comparative advantage of filling the gap by providing legal support to all other organisations working on

access to medicines issues in Uganda. Therefore, CEHURD would be a reference center for the legal and policy related issues on health. I was bluntly honest that the funding would support to transform myself, from a consultant to a leader of a partner organisation, thus making the work more sustainable and adopt a more holistic approach to health rights issues. Additionally, the organisation would mentor young people thus widening the scope of expertise.

Further negotiations with the OSIEA team culminated into an agreement to include litigation against the government's failures in the health system. At the time, the OSIEA team felt uncomfortable with directly funding CEHURD because its systems were yet to be tested. Nonetheless, given my personal past work on supporting OSIEA grantees, I was offered a direct consultancy to undertake some of the processes indicated in the proposal. On 18th November 2010, I received a consultancy agreement of USD 8,560 to undertake the assignment. Upon receiving the initial partial payment, I transferred the whole sum from my personal account to that of CEHURD. This was CEHURD's first major funding upon which we grew in leaps and bounds.

### **Thinking Petition 16 (*CEHURD & Others v. Attorney General, Constitutional Petition 16 of 2011*): The Game Changer**

This OSEIA grant led to two important results. First, for the first time, we hired a full-time staff at CEHURD. I had met Ms. Gertrude Nakanwagi during my work as an external advisor at HEPS-Uganda. Nakanwagi was seeking a job change, particularly to work with a young dynamic organisation. She enthusiastically accepted to work with CEHURD to handle all operational processes including financial management. Importantly, she agreed to serve under very modest terms to be revised as and when resources were available.

Second, CEHURD embarked on the groundbreaking litigation on maternal deaths. I instructed the law firm DALUMBA Advocates to begin looking into the litigation issues around the rampant maternal deaths that kept appearing in Uganda's newspapers. We specifically began looking into the death of Sylvia Nalubowa which had occurred on 10th August 2009 in Mityana Hospital. Nalubowa died from complications of obstructed labour. She was carrying twins but had delivered one of them at Manyi Health Centre III, a local health facility serving the population of two sub-counties of Mityana District. Her delivery had been supervised by a midwife who realised that Nalubowa actually had a second baby on

the way, a situation which she could not handle. The midwife referred Nalubowa to the district hospital where a doctor could handle the second delivery. Upon arrival at the Mityana District Hospital in central Uganda, the nurses asked for her maternity kit, commonly known as a “mama kit”, containing a plastic sheet, razor blades, cotton wool or gauze pad, soap, gloves, cord ties, and a child health card. All mothers delivering babies in Ugandan hospitals and clinics are expected to bring their own “mama kits” when they go into labour. While Nalubowa had prepared the kit, she had used it at the first health facility while delivering her first child. The nurses insisted that Nalubowa provides the money to purchase the kit before they could attend to her. Despite her desperate promise that she would pay after she was out of labour and able to sell her animals, she did not receive the much-needed medical attention. Nalubowa died with her second baby inside her.

As part of building Nalubowa’s case, I drove the team that visited Mityana District to meet and interview a number of people including the deceased’s family members, particularly her husband and mother-in-law Rhoda Kukiriza, a seventy-five-year-old lady who had been attending to her prior to her death. We also interacted with the in-charge of personnel at Mityana District hospital who explained what actually transpired on the fateful night Nalubowa died. He shared with us a number of documents including Nalubowa’s death report, book used for antenatal visits, reports of investigations in the cause of death, and the status of the case filed against the nurses.

We also made a follow-up on the criminal case that had been filed against the health personnel in Mityana. We were informed that the nurses on duty had been charged with a case of manslaughter. However, prosecution witnesses had defaulted in their appearance in court that the case was thrown out on the basis of no case to answer on the part of the nurses. This case clearly demonstrated the challenges of receiving justice by the aggrieved families even when their rights are violated. It also illuminated the necessity of setting a precedent on government obligations on maternal health. Rhoda Kukiriza swore an affidavit in support of the constitutional petition.

The second case followed up was the maternal death of Jennifer Anguko at Arua Regional Referral Hospital. Anguko had died under circumstances similar to those of Nalubowa. She had arrived at Arua hospital at 8.30am on 10th December 2010 but was not attended to for over fifteen hours, resulting into the rapturing of her uterus causing her death. The then

Woman Member of Parliament (MP) Hon. Christine Abia Bako presented Anguko's death on the floor of parliament. A subsequent meeting with the staff at OSIEA agreed that CEHURD would undertake a field visit to document this case, which was done on 12th December 2010. The procedural pattern was established: meet with the family to get the intimate details that would enhance the human touch; meet with the medical superintendent of the hospital to discuss the operational challenges that affected maternal health within the hospital; secure expressed willingness to swear affidavits to support the constitutional case and the relevant documentation such as antenatal visits, the maternal audit report of death and correspondences on the death; and lastly engage the local leadership in the process.

The third maternal death case of Mercy Ayiru occurred in October 2010. It involved a private hospital, Women's Hospital International and Fertility Centre in Kampala. Ayiru died during a laparoscopic surgical procedure to remove her uterine myoma (fibroids). The deceased's family informed us that the anesthetist had negligently and repeatedly inserted the endotracheal tube into the esophagus instead of the trachea and as a direct result, Ayiru suffered a cardiac arrest. The surgery was carried out by Professor Dr Rafique Parker, a visiting Doctor from Kenya, who was not registered by the Uganda Medical and Dental Practitioners Council (UMDPC). Ayiru's family argued that her death was a result of criminal negligence by the health professionals at the facility. This particular case raised different issues of state responsibility over private practice and the necessity of strengthening the regulatory framework of the medical professional's ethical standards. While we were desirous of demonstrating the government's failure in protecting third party violation of rights, Ayiru's family had hired a private law firm and instructed it to file a civil suit against the health facility and the government had also opened up a criminal case. CEHURD opted to provide a watching brief on the court procedures for Ayiru's case (*Atcero v Women's Hospital International And Fertility Centre Ltd & 2 Ors* (Civil Suit 298 of 2012), including attending the ethical hearing by the Uganda Medical and Dental Practitioners Council (UMDPC). Eventually, the court gave a judgment in the civil matter on March 3rd 2022 in which it faulted the Women's Hospital and directed the health facility to compensate the family (ibid).

In preparation for the court cases, several meetings were held with legal experts to lend their unique expertise. Prof. Christopher Mbazira provided technical legal and human rights dimensions of the litigation strategy.

Prof Ben Twinomugisha, in his capacity as an expert on health law and policy and a board member of CEHURD, served as one of the petitioners. Prof. Oloka-Onyango, an internationally recognised human rights expert with previous experience as a petitioner of Constitutional Court case challenging the Divorce Act in (*Uganda Association of Women Lawyers and Ors v. Attorney General*, Constitutional Petition 2 of 2003) advised on the litigation strategy and also swore an affidavit spelling out the international human rights legal regime creating obligations on the government of Uganda to provide for basic maternal health facilities. Mr. Anand Grover, the then UN Special Rapporteur on the Right to Health, connected us to his group, Lawyers Collective, who provided technical guidance including sharing of important precedents on maternal health cases from India.

Having framed the case, we embarked on the strategy of assembling the legal team that would argue it before court. Mr. David Kabanda was tasked with working with the internal lawyers at CEHURD. However, we realised that our internal teams were mostly junior lawyers without much experience in litigating constitutional petitions. Consequently, we solicited the direct participation of Mr Ambrose Tebyasa's law firm as one of the firms representing CEHURD. Not only was Tebyasa a prominent litigation lawyer in Uganda, we had also previously worked together on a petition representing NUDIPU in *Kasozi & Ors v. Attorney General & Ors*, (Constitutional Petition 37 of 2010). Following several interactions with other private law firms, we finally chose Counsel Peter Walubiri to spearhead the legal representation of the case, and retained him for the appeal to the Supreme Court.

As part of the litigation preparatory process, I solicited the support of the Health and Human Rights Officer at the World Health Organisation (WHO) Country Office in Uganda, Ms Ewa Spasowski, to provide an affidavit supporting the human rights-based approach to reductions of maternal mortality. At the time, WHO was supporting the Ministry of Health (MoH) to operationalise the human rights and gender desk. Spasowski guided us to formally apply to the United Nations Development Programme (UNDP), which has the coordinating role for the United Nations (UN) agencies in the country, to seek the participation of WHO and the United Nations Population Fund (UNFPA) in order to provide a consolidated UN Joint Technical Opinion. On 13th April 2011, we made a joint request to UNDP, WHO, United Nations Office of the High Commissioner for Human Rights (OHCHR) and UNFPA for a technical opinion on areas of maternal mortality and the right to health. As a result,

we secured a joint UN Technical Opinion that formed part of constitutional petition.

The petition was filed in the Constitutional Court on 3rd March 2011 under registration, constitutional petition No. 16 of 2011 (Petition 16). The petition argued that by not providing essential medical commodities and services to pregnant women, the government of Uganda was violating a host of constitutional rights of Ugandans. These included the right to health, the right to life, the rights of women and the right to be free from torture, cruel, inhuman and degrading treatment or punishment. More specifically, we contended that the government's failure to provide basic maternal health services and adequate budget for maternal health as well as failure to enforce ethical behavior of health workers led to the preventable deaths of expectant mothers during childbirth. Accordingly, we sought declarations to the effect that the acts and or omissions of the government's agents were in violation of the stated constitutional rights. We also sought an order that the families of the deceased mothers who had died during childbirth receive compensation.

With a benefit of hindsight, as lawyers, we thought that our biggest task had been done. We had filed the petition. We had anticipated court appearances and a judgment on the important issues we had raised within a few months. We were wrong! The filing of this case marked a 10-year long journey with various episodes critical for CEHURD's growth and development as an indigenous health and human rights advocacy organisation. We had begun a journey not just for CEHURD but one that would create a paradigm shift for health and human rights advocacy in Uganda. Along the way, the path of CEHURD would be curved out in the area of maternal health and eventually in sexual reproductive health and rights (SRHR).

### **Thrust into Visibility and Proactive Agenda Setting**

Petition 16 had positive ripple effects. At the ministerial level, it opened space for CEHURD to be invited to the technical working group (TWG) in the MoH on human rights and gender. Through the TWG, CEHURD led a process of developing a Human Rights and Gender Mainstreaming Manual for the Ministry of Health. Within the period 2012 to 2014, CEHURD used a combination of advocacy and capacity building approaches to enable Uganda's MoH adapt human rights-based approaches in policy planning and development. With the support from WHO, we also worked with the MoH to develop a trainee manual focusing on *Mainstreaming Human Rights*

*and Gender in the Health Sector* to, among others, adapt to gender responsive budgeting. This manual was triggered by the litigation as a proactive action to prevent the violation of rights by ensuring the human rights and gender responsiveness of the government programs.

Further, Petition 16 threw CEHURD into public visibility. A few days after filing the case, a number of media houses made the constitutional case a headline. Outstandingly, *Al Jazeera* reported: “Uganda sued over maternal deaths” (Al Jazeera 2011). In their reporting, *Al Jazeera* acclaimed the fact that this was the first time the government of Uganda was being held accountable over maternal deaths through the courts of law. *The New York Times* also profiled the constitutional petition on the front page of its issue on July 29, 2011 (Dugger 2011). These developments opened up a number of opportunities for CEHURD to demonstrate its worth. I remember one of the program officers at OSF who initially had raised a number of questions about CEHURD’s capabilities carrying a copy of this *New York Times* paper to our office with a lot of pride. She remarked that Constitutional Petition 16 had been a subject of discussion at all levels within OSF.

At the national level, the petition reportage dominated both the print media as well as radio and television stations. Maternal health became a topical issue of public debate. We at CEHURD were extremely surprised by this media coverage, particularly because we had ignored or failed to issue any press releases nor make any advocacy efforts about the petition.

There was a lot of feedback from the major CSO leaders on Petition 16 and the need for a joint effort to finally hold the government to account. I vividly remember an email from Canon Gideon Byamugisha sent to the group on 28th March 2011, remarking: “*Let our government leaders and health officials sweat with these petitions as a wakeup call to remind them that you can’t just ignore (or do less than is adequate and affordable for) people’s health and well-being for ever. I wish there can be more petitions to the Constitutional Court also for malaria, jiggers and measles – diseases long defeated and unheard of elsewhere on our common globe*’.

Significantly, Petition 16 cast the spotlight on CEHURD as an expert on health rights amongst its peers. On 5th April 2011, we hosted Ms Sandra Kiapi, the Executive Director of The Action Group for Health, Human Rights and HIV/AIDS (AGHA), and Ms. Asia Russel, an activist working for Health GAP (Global Access Project). Both Kiapi and Russel confirmed that they had learned about the case from the media reporting

and that they were desirous of collaborating on advocacy around the budget processes for health. In effect, Petition 16 provided a rallying point for the ongoing advocacy in the health sector. We agreed that we would have two teams. The first team would focus on advocacy in the areas of budgetary allocations on health priorities, essential medicines, health workers and equipping lower-level health facilities. The second team would work closely with CEHURD to literally fight for a successful court outcome. We mutually agreed to build formidable civil society networks to amplify the voices about the petition in order to foster victory for all actors.

A number of collective actions which were led by different organisations identified individuals for different tasks. Ms Mable Kukunda of the Uganda National Health Consumer's Organisation (UNHCO) was tasked to develop a press release and organising a press conference on the World Health Day (7th April 2011), where different organisations and individual activists would voice their support for the petition. Ms. Asia Russel of Health Gap was tasked to serve as the liaison with the OHCHR, UNAIDS, UNFPA, UNICEF and WHO, by continuously updating them on the status of the case and seek both their technical support and funding. Ms Sandra Kiapi of AGHA was tasked to prepare a write-up on budgetary allocation for CSOs. Lastly, CEHURD and I were tasked to share relevant materials with the team, including the summaries of the petition, the state response to it, and the draft rejoinder.

We explored the idea of holding a peaceful public protest about the issue of maternal deaths to exert pressure on government. The public protest was designed to demonstrate a strong coalition including grassroots activists, academics, religious leaders, the media and other key stakeholders. We had proposed to march from State House to the Constitutional Court. We had intended to use the images of the fighter jets versus the equivalent of what the cost would provide for maternal health. In preparation for the public protest, we reached out to the Treatment Action Campaign in South Africa for experiential learning. Unfortunately, the public protest did not materialise because we could not secure security clearance.

The overwhelming CSO willingness to be associated with Petition 16 bolstered the realisation that what we had started was not a mere court process to secure a judgment. Rather it was a major process of proactive action to transform the health sector. Consequently, it was imperative to connect with groups that we had not hitherto worked with before. We also appreciated the necessity of having wider ownership of the petition beyond the narrowly defined constituency of the CEHURD team. We therefore

embarked on the process of nurturing a mobilisation of the Coalition to Stop Maternal Mortality in Uganda (CSMMU). On 18th May 2011, a communication platform for strategising and information-sharing dubbed “Petition 16” was created as a group of health care advocates to improve access to essential health services. The creation of the group provided the first communication google group for health rights related advocacy in Uganda. To date, the group is still active and has grown to almost three hundred and fifty civil society leaders and actors. It has also evolved beyond Petition 16 to serve as an information conduit for many other rights to health campaigns in Uganda.

The filing of the petition and the visibility it attracted provided donor traction for CEHURD’s work. OSF provided resources through UNHCO, who played a convening role for the joint activities related to Petition 16. Strategically, UNHCO organised and mobilised CSOs, including grassroots communities, to be visibly present at each court hearing. Further, UNHCO and Health Gap coordinated the development of campaign materials such as placards, t-shirts and press releases that carried the key messages and actions expected of government in fulfilling its human rights obligations, which enhanced the visibility of the petition and sustained its relevance, the ten-year gap hearing period notwithstanding.

On 15th July 2011, CEHURD was invited for a meeting with Gerald Kato and Leonard Okello at the International HIV/AIDS Alliance in the Kampala Office. The Alliance expressed interest in supporting the work of CEHURD on access to medicines including petition 16. As a result, the HIV/AIDS Alliance mobilised its international community partnerships to orchestrate the public momentum for the petition at the global level. In the short term, the HIV/AIDS Alliance supported research to monitor the availability and stock-outs of selected essential maternal health commodities (CEHURD 2012) as well as direct support to the court processes.

At a regional level, Section 27 from South Africa reached out to CEHURD for a working relationship. We jointly developed a public statement in support of Petition 16 which was widely disseminated. In addition, the Executive Director for Section 27, Mark Heywood wrote an official letter to the Ambassador of Uganda in South Africa, Ambassador Kweronda Ruhemba, urging him to alert the government of Uganda of South Africa’s CSOs’ support for Petition 16. The letter also urged the Ugandan government to announce measures to reduce maternal and child mortality.

Likewise, Center for Reproductive Rights (CRR) office in Nairobi connected us to Elisa Slattery, the Regional Director and Legal Adviser to the CRR, Africa Program. CRR brought with it enormous experience and expertise in support of CEHURD's effort in Petition 16. It supported CEHURD's institutional growth, including the development of its litigation and advocacy processes on the broader SRHR.

In September 2011, the Uganda Association of Women Lawyers (FIDA Uganda) organised a dialogue on innovative ways to undertake advocacy for progressive laws to mitigate the rampant challenge of unsafe abortions in Uganda. I was contacted by long term university colleague, Ms. Dorothy Amuron to share CEHURD's experience of strategising and organising Petition 16. I reached out to Asia Russel with whom I co-presented a joint session on the preparation for the case and the advocacy aspects. Our joint presentations sparked a debate in the meeting on the potential of a court case around the unsafe abortions. I clearly remember the participants struggling with the language to use in advocacy when it came to the contestations surrounding abortion especially on the interpretation of the law on abortion in Uganda.

At this meeting, I met a group from Women's Link Worldwide, the Guttmacher Institute, and also had a lunch discussion with Ms. Manisha Mehta of Wellspring Advisors. I instantly made a case for funding CEHURD's work. During our lunch time meeting, Manisha asked a lot of questions about CEHURD: Our mission, the work we were doing, the motivation for the work. I contended that it was not sufficient to focus on targeting judges and policy makers on contested issues like abortion. Rather, it was equally important to build an advocacy movement of CSO groups as a base for building a social movement on human rights and public health contested issues like abortion. Manisha asked if CEHURD was able and willing to join groups that were doing work on advocacy around dealing with unsafe abortions in Uganda and the region. Without any hesitation, I responded with an emphatic yes. The biggest lesson I learnt in this meeting was that unsafe abortions were contributing about 26 per cent percent to the maternal mortality cases in Uganda. Hence, the failure to address the thorny issue of unsafe abortions would leave a big component of maternal mortality unaddressed. This meeting would be the start of CEHURD's work on coalition-building and the unsafe abortions.

A few days after this meeting, I wrote a follow-up email to Manisha asking for a skype call to take our lunch meeting conversations further. We defined some work for CEHURD which included working with Women's

Link Worldwide on carrying out the mapping for the alliance-building component of the project. We also agreed that CEHURD would work with Health Gap on the strategic plan. Manisha also offered CEHURD the opportunity to have its staff participate in the litigation training undertaken by CRR. Collectively, the above opportunities augmented CEHURD's work and programing in SRHR. On 2nd March 2012, Wellspring Advisors provided CEHURD with a one-year grant focusing on building a coalition to advance advocacy addressing unsafe abortions in Uganda, thus culminating in the Coalition to Stop Maternal Mortality due to Unsafe Abortion (CSSMUA). CSSMUA provided a safe place for CSO actors interested in tackling the issues of unsafe abortion. A number of sub processes emerged within the coalition, namely: The development of the Legal Defense of the Harm Reduction Model, the Legal Support Network (LSN), support to the Community Health Advocates, and the Strategic Communications Work to mention but a few.

### **Institutional Growth and Building Partnerships**

On securing funding from Wellspring, Ms Joy Asasira was recruited to coordinate the work of CSSMUA. I had met Asasira as one of the candidates who interviewed for a position of legal officer at HEPS-Uganda. She had performed well in the interview and the panel was split between either taking her on or another candidate who was equally good. I indicated to the panel that I was keen to take either of the candidates to support the coordination of a new project we were starting at CEHURD. The other candidate was recruited at HEPS-Uganda. I organised a meeting with Asasira at CEHURD and we interrogated Asasira's readiness to start a career path on the contentious areas of unsafe abortions. She comfortably affirmed so. Asasira built CSSMUA with an active membership of over thirty indigenous CSOs advancing issues of unsafe abortion and maternal health. Additionally, CEHURD strengthened the advocacy capacity of the member organisations.

Concurrently, CEHURD devoted efforts to strengthen its institutional capacity. We hired Mr. Serunjogi Francis, a teacher by profession who had also done post-graduate qualification in mass communications, to support the community engagements. Also recruited were two young men, Mr James Kibirige and Mr Adrian Ddungu, to buttress the Accounts and Finance Department. Another lawyer, Mr Denis Bukonya, was also brought on board. CEHURD deliberately recruited young people.

Alongside the SRHR development, CEHURD's other stream of work on access to medicines, which was supported by OSE, was equally

progressing. Together with Ms Prima Kwagala, we continuously built expertise on analysing intellectual property laws and recommending best practices that would promote access to generic medicines. Uganda was at the time in the process of revising its patent legislation and parliament was debating the Industrial Properties Act as the law that would replace the Patent Act. CEHURD's role included developing model provisions that would be included into the Industrial Property Act to enable Uganda take full benefit of the flexibilities under the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The work on intellectual property attracted many stakeholders at the national, regional and global level. Through the linkages with EQUINET, we met colleagues from Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI), Zimbabwe. At the time, we were working closely with Percy Makombe, the late Thomas Dave, and later Ranga Machedzwe, who were leading the health trade cluster within EQUINET. When Ranga visited Uganda, he connected us to the SEATINI office in Uganda and we met with Ms. Jane Nalunga and Ambassador Nathan Irumba. This meeting resulted in collaborations on trade and health between SEATINI and CEHURD. Nalunga later become a board member and subsequently a Trustee of CEHURD.

The intellectual property work also extended to working with the UNDP office in supporting the Ministry of Trade and Industry to provide policy leadership on intellectual property policy and legal regime in Uganda. CEHURD had interacted with several policy makers including the Uganda Registration Services Bureau (URSB), Uganda Law Reform Commission (ULRC) and the inter-ministerial coordination group on trade issues convened by the Ministry of Trade and Industry. We used the experience of policy engagement to persuade the UNDP New York Office, through Tenu Avafia—the Policy Adviser on HIV, Health and Development Practice Unit of UNDP—to support CEHURD as a CSO actor in Uganda's intellectual property discussions. At the time, UNDP was convening the Global Commission on HIV and the Law and one of the Commission's focus was the impact of intellectual property laws on access to HIV medication and diagnostics. With connections with UNDP Uganda office through Mr Charles Birungi and Sarah Kibuuka Nakku, UNDP was able to fund CEHURD to ground our work on intellectual property further and also expose us to several spaces with a focus on intellectual property and access to medicines.

Concurrently, the global agenda on intellectual property shifted focus towards the anti-counterfeiting legislation which was threatening the policy space that had been provided for under the intellectual property legislation. CEHURD provided leadership in explaining the technicalities and dangers of the broad anti-counterfeiting legislation and why Uganda and the East African Community (EAC) region had to approach this move very cautiously. We produced several technical documents and also engaged in numerous policy spaces at the national, regional and global levels. We also organised a regional meeting at Entebbe that brought together several experts, including: Ms. Sangeeta Shashikant from the Third World Network; Mr Sisule Musungu, the Managing Director of IQsensato; Viviana Munon, the Coordinator of Innovation and Intellectual Property Programme at the South Centre; and Christa Cepuch, Patrick Mubangizi and Peter Munyi from HAI-Africa.

At the time, Kenya had lodged a Constitutional Court case, *Patricia Asero Ochieng and 2 Others v. Attorney General & Another* against the Anti-Counterfeit Act, 2008 (Petition 409 of 2009). One of the lawyers involved in the petition was Mr Allan Maleche of Kenya Legal & Ethical Issues Network on HIV/AIDS (KELIN). At the regional meeting, Maleche made a presentation about the petition, a very striking moment which spoke to both the intellectual property work we were doing and also the pending constitutional petition on maternal health which we had filed. Since then, Maleche as an individual, together with KELIN, have remained one of the biggest regional collaborators of CEHURD, given the similarity of our work.

Our work on intellectual property also introduced us to advocacy engagements with the East Africa Community (EAC). During this time, the EAC had proposed a TRIPS Protocol which was focused on guiding the partner states on the utilisation of TRIPS flexibilities. The community was also battling with the proposed EAC Anti-Counterfeit legislation. We learnt that doing national level advocacy to push back on bad legislation was not sufficient because the laws proposed at the EAC level superseded the legalisation at the national level. With support from UNDP, the German International Cooperation Agency (GIZ) through the support of the Germany Federal Ministry of Economic Cooperation and Development (BMZ), and the United Nations Conference on Trade and Development (UNCTAD), I received a lot of training on public health and intellectual property. These trainings sharpened my expertise on technical issues that

we needed to fight back at the EAC level if our policy gains at the national level were to be reserved.

During the trainings, I associated with several regional experts including Mboievans Misati, a Kenyan patent examiner, Walter, Thomas and Ronor Wesley of the GIZ team in Arusha, and Dr Stanley Sonoiya of the EAC Health Division. These experts created a long-lasting network that has been very instrumental in CEHURD's engagements at the EAC regional forums and processes. CEHURD became visible in the EAC spaces not just for intellectual property issues but also for the health and human rights advocacy overall. CEHURD actively participated in regional SRHR processes like the EAC SRHR Bill, engagements with the East African Legislative Assembly (EALA) and other important policy aspects.

Another important regional partner was HAI-Africa. I had met Mr Patrick Mubangizi during the EQUINET organised meeting in Bagamoyo and we discussed issues of access to medicines in the region, including barriers brought about by intellectual property but also the challenges of local pharmaceutical manufacturing. Through him and his other colleagues at HAI-Africa including Mr Gichinga Ndirangu and Christa Cepuch, we had several opportunities to participate in regional processes such as the regional meeting organised to discuss the regional approaches to the actualisation of the principles under Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (IGWG). We also collaborated on the review of the laws on the status of the right to health in the East and Southern Africa region in light of the primary requirements of the right to health as provided for under General Comment 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The study analysed the key strengths and limitations across the different countries' laws and policies with regard to protecting, promoting and advancing the right to health.

Around this time, the Finnish NGO, Foundation for Human Rights (KIOS) issued a call for proposals from local NGOs that focused on promoting and protection of human rights in their own countries and regions. CEHURD submitted a project proposal titled 'Intellectual Property Rights for Access Project' (IP4A) to build the capacity of journalists in IP rights on access to medicines, plant varieties and educational materials. We made a case that the media is a critical partner in shaping the debate on intellectual property, social welfare and human rights but lacks sufficient information and knowledge on IP which detracts from its ability to sharpen public debate. Our proposed work envisaged creating a network

of journalists professionally reporting on intellectual property rights and development. We were able to secure funding from KIOS to implement the project.

We had envisaged working collaboratively with a media training entity. However, Dr Peter Mwesige, the Executive Director of the African Centre for Media Excellence (ACME), found the proposed idea of training the media on intellectual property issues not novel, in addition to ACME's budget being beyond our reach. Our total grant was about nine thousand eight hundred eighty-three euros (9,883) and yet the professional fees and costs for running the proposed one-year fellowship in collaboration with ACME would be more than twice the budget. We resorted to forming an internal team that was supported by Mr Richard Hasunira, a media practitioner. We ran a public advert inviting applications from media practitioners and the response was high both in terms of volume and quality of the fellows. Renown media practitioners, such as Mr Solomon Sserwanja, Mr Charles Odongotho, and Ms Zahara Namuli, all formed part of the first cohort of this media fellowship. As a result of this fellowship, CEHURD fostered a good media network. This flagship program would later be replicated into other areas like the now famous media fellowship on SRHR that we host every year.

## **Second Strategic Plan: 2012-2016: Taking Stock and Rethinking Our Direction**

In order to consolidate the work of CEHURD, we developed a framework to anchor our two major strands of work, namely: maternal health work on one hand and intellectual property and access to medicines on the other. OSIEA connected us to the OSF New York office, through the auspices of Roxana Bonnell. Bonnell expressed readiness to work with CEHURD to develop both its programming and its institutional structures. In early February 2012, Bonnell visited CEHURD during its strategy development retreat which mapped its four-year work. We also developed our four external objectives and three internal objectives. The external objectives included: promoting access to medicines through advocacy for enabling legislation at domestic and regional levels; strengthening the recognition, protection and fulfilment of health and human rights in Uganda and building the field and legacy of health and human rights in East Africa; and ensuring policy change on intellectual property and human rights at national, regional and international levels. Each of these objectives had clearly defined sub objectives, strategies and activities.

On the other hand, the internal objectives included: strengthening the institutional capacity of the organisation; building and strengthening leadership at all levels of the organisation; and promoting the sustainability of the organisation. Again, under these objectives, we set targets, strategies and activities that would help us reach these objectives. We divided ourselves internally into three program teams, with one team focusing on institutional strengthening. Finally, the board approved what we named the “The CEHURD Strategic Plan: 2012-2016”.

To support the implementation of this strategic plan, OSF provided our first major grant (CEHURD Grant Number - 40020447) of United States Dollars Ninety-five thousand, six hundred and thirty (USD 95,630) for a period of one year. This was such a huge milestone compared to the original United States Dollars Eight thousand, five hundred and sixty (USD 8,560) it had provided to me as an individual consultant. With this grant, we were able to build internal systems which propelled us into a formidable organisation in the field of health and human rights advocacy. It was a pivotal point of rebranding. First, we transformed the volunteers and interns into programme officers with clearly defined roles and more accountability. Second, we recruited more staff to coordinate the growing programming, headed by a manager for each of the programmes. Third, my own role moved from merely being a program implementation Executive Director, towards aggressively fundraising to sustain the vision of CEHURD.

Prof. Leslie London of the Learning Network for Health and Human Rights based at the University of Cape Town, was an instrumental partner in this fundraising and rebranding drive. He was a champion of community participation in health systems. Previously while working with HEPS-Uganda in 2010, we had worked together to host a regional meeting on best practices of community participation in East and Southern Africa, funded by the Commonwealth Foundation. London and I developed a joint concept proposal on health system governance and community participation as a key strategy for realising the right to health under the Governance for Equity in Health Systems (GEHS) programme at the International Development Research Center (IDRC) in Canada under the leadership of Dr Qamar Mahmood. The programme was located in both South Africa and Uganda. It sought to have comparative learning of the Network on Equity in Health in East and Southern Africa (EQUINET) and the Learning Network for Health and Human Rights (LN) in South

Africa. The learning from this project shaped CEHURD's programmes and major funding stream.

Further, CEHURD worked with the Joint Action and Learning Initiative (JALI), hosted by the O'Neill Institute at the University of Georgetown on a programme answering fundamental questions about the countries' responsibilities to improve the health of especially the disadvantaged individuals and communities. Thus, CEHURD was introduced to other international intellectuals on global health law and human rights, such as Larry Gostin, Mark Heywood, Anand Grover, Gorik Ooms, Thomas Gebauer, David Sander, Eric A. Friedman, and Alicia Yamin. Furthermore, I negotiated a sub-grant from the O'Neil Institute to undertake research on the Framework Convention on Global Health and what this meant for individual countries. Significantly, one of our staff was granted a scholarship for a Masters in Global Health at Georgetown.

Through the work of JALI, I met Gorik Ooms, based at the Institute of Tropical Medicine in Antwerp, Belgium. Ooms was working on Global health governance. At the time of our meeting, he already had connections with EQUINET and was taking lead on working on a European Commission application. This proposal was for a 'coordination action' to the European Commission (EC) to help clarify the global health targets after 2015 (the MDGs). I had been requested by Loewenson at EQUINET to take lead on this application on the side of EQUINET through CEHURD. CEHURD's role was to contribute towards work package two (WP2) of the application which also had BRAC (from Bangladesh leading on Asia) and CEGSS (from Guatemala leading on Latin America). Each of the three implementers of WP 2 was to consult communities in three different countries (if possible), rural and urban, with at least two rounds and was expected to prepare and digest these consultations in a way that is useful for the other work packages.

Ooms spearheaded one of the toughest grant application titled Goals and Governance for Health (Go4Health) funded by the European Commission. It involved fourteen global partners including: Institute of Tropical Medicine (ITM); University of Heidelberg; Section 27; The O'Neill Institute for National and Global Health Law; University of Oxford/Edinburgh; Medico International; University of Nairobi; BRAC University; Center for the Study of Equity and Governance in Health Systems; London School of Hygiene and Tropical Medicine (LSHTM); University of Queensland; University of Toronto; University of Oslo; and CEHURD. The challenge lay with the varying interpretation of global

health and expectations amongst this diverse group of researchers. As an implementing partner, CEHURD was in charge of all the research processes and issues emerging from Africa. We chose three countries of focus, that is, Uganda, South Africa and Zimbabwe, and worked with the People's Health Movement and the Community Working Group on Health respectively. CEHURD also hosted the first partner meeting in Uganda, and it was responsible for all the logistical issues including hotel and travel bookings for all the partners. This project inducted us into our first sub-granting role for regional partners in Africa. We built our capacity to meet the reporting requirements of the European Commission.

This project also put to test our community empowerment program which was still under formation. We recruited Juliana Nantaba for this task. I had met Nantaba as my undergraduate student when she was doing her LLB Degree and I had supervised her as she wrote her dissertation. BRAC and CEGSS which led the research process undertook a series of trainings in research methodologies and data collection including many international and regional experiential sharing meetings. By the end of the project, CEHURD had many publications and peer reviewed articles co-authored with leading international researchers in global health and human rights. The connection with Georgetown also earned Nantaba a scholarship to pursue her Masters in Global Health Law at Georgetown Law School. The work on this research project built a lot on the community empowerment interventions our team had been working on using the Participation, Reflection and Action (PRA) that EQUINET umbrella had been using since 2008 (EQUINET 2006)

Similarly, our advocacy and policy influence work solidified our working relationship with parliament. Working with Hon Betty Namboze, a Member of Parliament, we developed a motion on maternal health, spelling out the concrete steps government had to take to tackle the challenge of maternal deaths, which was discussed at the floor of Parliament. Furthermore, through the office of the speaker, we got linked up to the process of Commonwealth parliamentarians who were to host a meeting in Uganda to discuss a number of issues including maternal health. Working with Hon Namboze Betty, we drafted a motion on maternal health which she presented and had discussed on the floor of Parliament. Many of the issues covered in the motion were similar to those made before the Constitutional Court. As a result, we appreciated the technicalities of working with parliament and its committees, which further leveraged our advocacy on maternal health.

This direct advocacy with parliament attracted the relationship with IPAS Alliance, Africa Office, based in Nairobi. IPAS had been operating in Uganda supporting a network of service delivery for reproductive health services. However, the network of service providers was grappling with the complexity of the legal and policy environment. In collaboration with IPAS and the Association of Obstetricians and Gynecologists of Uganda (AOGU), we organised a national conference on unsafe abortions in Uganda. At the time, the late Dr. Charles Kiggundu was the President of AOGU. He provided very valuable input in the process and also brought in the leadership of the Ministry of Health, which was represented by the Late Dr. Collins, Dr. Wannyanana and Prof. Mbonye, who was then the Director of Clinical Services.

### **Navigating Through the Masculinity Space**

The most challenging and yet most exciting part of my journey as a founding executive director of an organisation that does SRHRs work has been being a person of a male gender. This is because SRHR is an area that is traditionally defined as a women's space. Hence the SRHR movement or environment has a number of women-led and feminist focused organisations. Some could argue that I have been the privileged man that was brought up in circumstances that made it easy for me, but this could certainly not be the case. There have been moments of tension with a number of daunting questions being asked concerning the basis of my legitimacy to work on and talk about women's issues.

To be honest, on founding CEHURD, SRHR was not one of the key issues that I was critically mindful of. I passionately addressed maternal health issues largely because of my childhood socialisation. SRHR was a term that was yet to be in vogue. Addressing SRHR by CEHURD was a gradual evolution as one of the root causes to maternal mortality. I acknowledge that addressing SRHR could not be sufficiently addressed by a single or group of organisations but required a broad multi-disciplinary actor. While CEHURD associated itself with being a mainstream human rights organisation, we often found ourselves having to find space in the gendered, feminist and women rights organisations to be able to understand and contribute towards work on SRHRs. There are a number of moments in my recent years with CEHURD which have shaped my thinking and approach as a man working on SRHRs.

As already discussed, the meeting hosted by FIDA-Uganda in September 2011 was a trigger on working on access to safe and legal abortion would be

handled in Uganda. During that meeting which convened major actors on women rights, it was striking that the participants struggled with tackling abortion as a human rights issue. There were divided opinions on the issue and the mood in the room indicated that most of the participants found it safer to handle abortions as a service delivery issue but not an advocacy issue which is as part and parcel of the women's rights discourse. I shared our work on campaigns for maternal health and how it was possible to begin an advocacy agenda grounded in unsafe abortions being a root cause of maternal mortality. I was challenged by some participants who indicated that as a man I may not understand the complexity of handling abortion issues and the stigma women face around it. I clearly remember a group that presented an idea for a campaign that centered on normalising menstruation as the best option for an advocacy campaign on access to safe and legal abortion. It was very perplexing to me that seemingly radical women groups were actually taking a more cautious approach to tackling abortion issues. Hence, I seized the opportunity to take the face of an advocacy campaign for access to safe and legal abortions.

On getting the advocacy work on tackling abortion moving at CEHURD, we reached out to some women-led and focused organisations to join the advocacy and the coalition efforts. Having mapped the potential women's organisations, we visited them to explore areas of collaboration. Yet, another chilling experience was when we presented the agenda of abortion advocacy to the head of a women focused and led organisation. The executive director of this organisation immediately cut the discussion short and asked us if tackling unsafe abortions was the most pressing issue that we thought we would focus on. It was clear that she was not ready to continue a conversation on advocacy for legal and safe abortion because in her opinion, women had more urgent issues. As a man that had led a delegation with two other women, I was left speechless. I was in fact forced to ask the two women if what we were doing was valuable to them as women. They were equally shocked at the experience we had gone through. I therefore became more steadfast in my belief to engage the unsafe abortion as one of the controversial issues of the time. My being a man became irrelevant. Emphatically, I equally believed that probably more men needed to attend to contested SRHRs issues as social justice issues.

When the Mexico Policy popularly known as the Global Gag Rule (GGR) was reintroduced by President Donald Trump in the United States of America, I invested a lot of time in understanding this policy and its

implications for SRHRs. As a result of my personal interest in the subject, I found myself in many national, regional and global spaces, not just as a participant but also as a technical person on the subject and as a head of an organisation that had lost funding due to this policy. Consequently, PAI and PPG in Washington invited me to speak about the implications of the Global Gag Rule on organisations like CEHURD and what this ultimately meant for women's health. The title of the session was *Unique Challenges Women Face in Global Health*. I accepted this invite as the topic for discussion naturally fell within the scope of work in which I had expertise. In sharing the posters about the event on many of the list serves, I witnessed a lot of mixed feedback on why a man was going to Congress to speak about women issues. I was caught totally off-guard! No matter the explanations of appearing in Congress by virtue of my expertise and leadership position of an organisation which had staked itself to champion a controversial issue, I was made to feel guilty of usurping the woman's voice or space. I am still pondering whether or not manhood or masculinity is a facilitator or inhibitor to SRHRs. Was I doing wrong, or was I doing right?

In yet another incident when the National Social Security Fund (NSSF) constituted an all-men panel for its Money Talk Symposium, CEHURD was outraged about the gender insensitivity of the Fund, yet it receives contributions from both men and women. We decided to make a formal complaint to NSSF. When I received the final letter to NSSF for my signing as the executive director, I very consciously asked the Director Programs (a woman) to sign the letter off not just in her capacity as the Director of Programs but also as a woman. The team challenged my decision not to sign the letter arguing that it was proper for the head of the organisation to sign the letter. While deep inside I found value in the argument, I was getting constantly cautious of my position as a man working on SRHRs and where my leadership should start and stop.

I concede that a man leading work on SRHRs especially on the contested issues of SRHRs that seem to focus on womanhood is not an easy task. Making a choice to take lead or a back seat and let a woman lead is an everyday tough decision for many of the work processes. I am constantly learning to adapt and navigate both in my individual capacity as well as in the systems of the institution to intentionally ensure that there is ample room for women's agency as one of the critical beneficiaries of our work. As the first important lesson, CEHURD has deliberately empowered young women to take lead on the work on SRHRs as part of the institutional policy. This decision has alleviated the unnecessary tension

accruing from the contentious issue of whether or not a man should lead an organisation working on SRHRs. It is also gratifying to feel supported by the CEHURD team. Likewise, for many years, I have worked with mostly women leaders mentored across all the programmes of CEHURD. Some of these young women have grown into the organisational and sector leaders. Having strong voices from feminists, gender and human rights activists is very instrumental in guiding male leadership in an organisation doing work on SRHRs.

I have also found it very useful to work with seasoned feminists and gender activists as mentors not simply in the work but also in understanding the practical aspects on factors that drive the sector. The historical and sectoral memories shared by the seasoned feminists and gender activists have been very useful in helping me to understand the value a social justice organisation like CEHURD could add to the issues pressing women. I have had an intergenerational understanding of activism for women issues that are part of SRHRs, and this continues to be a guiding factor for my work as a person of male gender heading an organisation working on women issues. Walking the leadership journey with this group has been very useful for my work as a leader. Nonetheless, the question that lingers on in my mind: Is SRHR a woman's issue or social issue?

It has also been evident that a deliberate integration of gender and feminism infusion into the institutional internal policies and external process is very helpful. It has become a standard practice for donors to assess how an organisation espouses gender and feminism principles in particular and diversity in general. As part of this process, I found it best to dedicate staff to keep track of our gender and feminist integration, infusion and observation which has helped my leadership to continuously learn, understand, keep track and improve equitable processes and outcomes.

Another way that has helped me deal with being a male institutional leader doing work on SRHRs has been purposely doing joint fundraising with women-lead organisations. Additionally, CEHURD has structured its grants to include sub-grants to women-led and feminist-focused organisations, including district-based women-led organisations, mindful that together we can achieve more. Through sub-granting, we have had serious and at times vexed conversation that advances gender transformative approaches amidst the continuously changing concept of SRHR. These partnerships have been extremely valuable in bridging some of the gaps that CEHURD and I as a leader would have in understanding and authoritatively tackling SRHRs through a women's rights and feminist lens.

Building extraordinary expertise in emerging areas has lent credibility to legitimacy question of being a male leader working on SRHRs issues. Some of the emerging areas I have demonstrated leadership based on sound technical expertise have included: the global gag rule; comprehensive sexuality education; the national, regional and global trends of abortion law reforms and self-care advocacy. I have not only led teams to develop program interventions in these areas, but I have also offered technical opinions on the subjects. The sum effect of the above is the ensuring confidence and personal satisfaction of working on SRHR in a manner that also addressed the marginalisation of women as a sex.

### **Moving Forward**

Over the last 12 years, CEHURD has been a pioneer in fostering a progressive Afrocentric response to health and human rights and SRHRs issues in Uganda, regionally and globally. During this period of unprecedented threats to those rights in the region and across the continent, the lessons derived from CEHURD's experiences are more necessary than ever. Even at the tail end of my leadership of CEHURD as a founding executive director, I continue to note that health, human rights and SRHRs advocacy remains largely misunderstood and poorly implemented. There is not enough work done to build the capacity for this work or to contextualise it. The art and methodology of this activism is undocumented and untaught, leaving future advocates to learn on the job – if at all. Neither is there is a repository for these lessons for future generations. Hence, the transfer of knowledge and the opportunities for innovation within this space remains inadequate to respond to the challenges of the moment, putting the freedoms of people across the region and around the world at risk.

To fill this void, I have strongly challenged my colleagues at CEHURD—both in management and at the governance level—to develop a hub for multi-sectoral and regional coordination in health, human rights and SRHRs advocacy as a crucible for innovation in this field. This hub would be a center for collaborating, innovating, teaching, documenting and sustaining health, human rights and SRHRs. This hub should be a collaborating place for allied organisations and institutions of higher learning and ultimately accredited to offer advanced education. I strongly view this center as an incubator of new models of activism and of the next generation of advocates. Further, by attracting a diversity of new and experienced health, human rights and SRHRs advocates from Uganda, East Africa and across the continent to learn from, engage with, and build on

CEHURD's knowledge, this centre should chart a new, Afrocentric future for health and human rights advocacy. Given CEHURD's track record, it now has the practical leadership experience in health, human rights and SRHRs advocacy and the capacity to coordinate, network and facilitate this endeavor. Now is the time to build the capacity of civil society and other social actors to protect and nurture health, human rights and SRHRs. CEHURD owes its success as much to its inventive partners as it does to its own vision and determination. The Center of Excellence (COE) will build on these mutually beneficial collaborations that CEHURD has fostered, while building new partnerships across Uganda, the region and the world.

Within Uganda, there are a number of organisations operating in the health, human rights and SRHRs space. Although none have followed CEHURD's path into the desired advocacy, there are synergies that it has already tapped into and will continue to develop within the Centre of Excellence, with a particular focus on capacity building and research. CEHURD should begin the process of mapping opportunities for collaboration and of soliciting input from these concordant organisations in the process of conceptualising the regional hub.

Its current programme work on Joint Advocacy for Sexual Reproductive Health and Rights (JAS-Programme) offers such a huge opportunity for advancing this idea. The models that CEHURD has developed over the years including the Harm-Reduction Model (HRM), the Community Health Advocates (CHAs), Legal Empowerment and Social Accountability (LESA), Legal Support Network (LSN) and movement building based on its current coalition coordination potential all provided a basis for consolidating on these good practices.

My wish for CEHURD remains to be the centre that will expand the footprint of health, human rights and SRHRs advocacy across East Africa by engaging regional systems and institutions, including the East African Community, the African Union, and other pan-African organisations.

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## CHAPTER 3

# Sustainability and Funding The SRHR Movement: Emerging Issues and Cautionary Reflections

*Solome Nakaweesi*

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### **Introduction and Context**

The realisation of women's sexual and reproductive health rights (SRHR) and wellbeing is dependent on a complex array of socioeconomic and healthcare factors, and often ignored the funding and other forms of resourcing in order to contribute to the sustainability of the SRHR sector (Channon, Falkingham, & Matthews, 2010). Using CEHURD as a case study, this chapter addresses the issues of funding and resourcing as critical components that either enable or disable movement building across the world. It dissects the deep and complex issues around SRHR funding and movement building, mapping funding trends and politics, and strategies for SRHR movement building. In analysing the general sustainability issues of the SRHR movement building, the chapter reflects on the question of organising in light of the high donor dependency syndrome — largely from the global north — and explores the issues around the capacity to organise resourcing through local philanthropy. The last section of the chapter raises the recurrent issues of the CEHURD dual role as an implementer and sub-granter, masculinity, internal organisational dynamics, the NGO-isation of the social movement, and concludes with a forecast of what the future looks like for the SRHR movement in Uganda and beyond. The following discussion offers a bird's eye view of the funding landscape of SRHR.

### **Funding the SRHR Movements**

International Planned Parenthood Federation (IPPF) reports that funding for SRHR currently comes from different streams, including international donors, national governments and private funds (IPPF, 2021). Current trends

show that individuals in developing countries pay more for their own sexual and reproductive health than their counterparts in the developed countries.

At the African level, the key actors of SRHR funding are: The U.S. President's Emergency Plan for AIDS Relief (PEPFAR), The Global Fund to fight AIDS, Tuberculosis and Malaria (GFTAM), Bill and Melinda Gates Foundation (BMGF), The Elton John AIDS Foundation (EJAF), Clinton Health Access Initiative (CHAI), and The Children's Investment Fund Foundation (CIFF). These have heavily invested in research and provision of services, such as preventing new HIV and Hepatitis cases, addressing stigma, violence and discrimination against People Living with HIV/AIDS (PLHIV), science and development, combatting health livelihoods impact of HIV/AIDS, access to medications, diagnostics, vaccines, ART as well as promoting agency and participation of PLHIV, children, sexual and gender minorities and young women, adolescents and young people. Furthermore, these agencies support multi-stakeholders, including governments through national budget support; inter-governmental bodies, such as UNFPA, UN Women, UNAIDS, WHO; and non-state actors, such as civil society organisations (CSOs), and citizen collectives. There are also funders that have vested in '*shifting power to the global south*', such as Hewlett Foundation, Warren Buffet Foundation and Mastercard Foundation. These provide huge core institutional support to SRHR non-state indigenous actors.

Other emergency contraception have invested in building agency and involvement of non-state actors on various aspects of SRHR. These include: AmplifyChange, Swedish International Development Corporation Agency (SIDA), Humanist Institute for Development Cooperation (Hivos), Women Deliver, Ford Foundation, UHAI-EASHRI, Open Society Initiative for Eastern Africa (OSIEA), Segal Family Foundation, Bergstrom Foundation, Wellspring Philanthropic Fund (WFP), as well as women's funds, such as Global Fund for Women (GFW), The African Women's Development Fund (AWDF), Urgent Action Fund Africa (UAF-A) and the faith-based funders, such as The American World Jewish Society (AJWS), Diakonia, DanChurchAid, among others.

It is noteworthy that Hewlett Foundation has formed the backbone of donor support who in turn sub-grant to other actors (Hewlett Foundation 2021). Key Hewlett Foundation sub-grantees are: Guttmacher Institute, IPAS, Planned Parenthood Global, Planned Parenthood Federation of America, Urgent Action Fund-Africa, Global Fund for Women, Centre for Reproductive Rights, Fund for Global Human Rights, PATH, Medical Students for Choice, Engender Health, Pathfinder, United Nations

Foundation and CEHURD, among others. Many of these actors have rolled out diverse SRHR programming for increased access to reproductive health services, young people's SRHR, reducing unsafe abortion, rapid response/emergency support to SRHR frontline activists, monitoring SDGs, Generation Equality Forum, adolescent and young people SRHR, research and use of data to inform advocacy, SRHR coalition building and general support for CSOs.

Over the last 10 years, several basket funding mechanisms have evolved. These include the SRHR Fund hosted under HIVOS with the support of SIDA and Ford Foundation; The RED Umbrella Fund, which was launched in 2021 as the first global fund guided by and for sex workers; Right Here Right Now and AmplifyChange launched in 2014 as a project by a consortium consisting of Mannion Daniels, African Women's Development Fund and Global Fund for Women to support civil society organisations who advocate improved sexual and reproductive health and rights, and the Spotlight Initiative supported by the European Union and the United Nations to eliminate violence against women and girls. These basket funding mechanisms have supported legal and policy reform, the fight against gender-based violence, eliminating stigma and discrimination, removing barriers to safe abortion, improving sexual health for young people, and improving access to reproductive health. And more recently, at the Generation Equality Forum that took place in Mexico City and Paris in March and July 2021, respectively, governments, business corporations, philanthropists, and UN entities pledged to invest US\$ 40 billion over a five-year period to achieve gender equality (generation Equality Forum 2021).

At the national level, Uganda has witnessed growth of local philanthropy albeit it is yet to draw the same level of traction, such as funding from global north partners and philanthropists. Local Ugandans generally support reproductive health interventions, such as health camps, community outreaches to provide services and SRH information and commodities, such as contraceptives and condoms, provision of sanitary towels for girls aimed at keeping girls in schools, maternal and child health causes and mama days organised by women's groups and collectives, rotary clubs, and other social-economic collectives.

## **Global Geopolitics and Funding Towards SRHR**

Funding for SRHR has always been a contested issue that is shaped by geopolitical factors. The contestation between the right-wing fundamentalist

and progressive forces is often played out in the governance arena at national, regional, and global levels. Key among these have been the Global Gag Rule, the 1973 HELMS Amendment, and the 2020 Geneva Consensus Declaration. There are discussed here below.

The Mexico City Policy – also popularly known as the Global Gag Rule (GGR) – was first enacted by former President of the United States of America (USA), Ronald Reagan, in 1984 following the United Nations International Conference on Population and Development (ICPD) held in Mexico City (UN, 1984). The GGR prohibits foreign NGOs that receive U.S. global health assistance from providing legal abortion services or referrals and advocacy for abortion law reform. The policy only allows access to abortion only in cases of rape, incest, or when a woman's life is at risk.

The GGR has been a ping-pong game typically enacted under the Republican administrations and repealed by Democrat administrations. Since 1984, every U.S. President has decided whether to enact or revoke the policy, making NGO funding for SRHR across the world dependent on the political changes in the country. The GGR forces organisations to choose whether to provide comprehensive sexual and reproductive health care and education without U.S. funding, or comply with the policy in order to continue getting U.S. funds.

On his first day in office, on 23rd January 2017, U.S. President Donald Trump in his *Protecting Life in Global Health Assistance Policy* not only reactivated the GGR but also expanded it (White House, 2017). The 2017 GGR policy barred foreign NGOs that received U.S. global health assistance from providing legal abortion services or referral and conducting advocacy for abortion law reform regardless of the source of funding, including non-U.S. funds (Quackenbush, 2018). In 2019, the Trump administration announced a further expansion of the implementation of the GGR, restricting 'gagged' organisations from funding groups that provided abortion services and information, even though those organisations did not get any U.S. aid. This meant that organisations, donor governments, and funders were bound by this policy, even when they did not accept any U.S. government funding. The Trump administration imposed an unprecedented and unjustified expansion of the GGR to systematically target global SRHR programmes. Consequently, there was a global increase in unintended and high-risk pregnancies, unsafe abortions and maternal deaths, and disruption of the HIV and SRHR programmes. Research by The Guttmacher Institute showed that while the expanded GGR

Gag rule affected clinical providers, community health workers, legal aid providers, advocates and critical public health partners, including NGOs, communities and care providers around the world, the impact was more severe in the global south compared to other regions (Ahmed, 2020).

In its latest pushback on women's rights and bodily integrity, on 26th October 2020, on the sidelines of the World Health Assembly held in Geneva, Switzerland, the U.S co-hosted the virtual signing ceremony of the 'Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family' (Geneva Consensus Declaration 2020), in which 33 countries, including Uganda, under the slogan "*Together we are Stronger*", affirmed that 'there is no international right to abortion, nor any international obligation on the part of states to finance or facilitate abortion, consistent with the long-standing international consensus that each nation has the sovereign right to implement programmes and activities consistent with their laws and policies.' The declaration created a united coalition that was opposed to the international human rights regime. Simultaneously, this onslaught fostered renewed collective action and organising opportunities for promotion of SRHR. On 28th January 2021, his first day in office, US President Joe Biden rescinded the GGR as part of actions to reverse policies put in place by the Trump administration. President Joe Biden signed a Presidential Memorandum with the US Congress to ensure that the GGR is permanently legislatively repealed so that it cannot be easily reinstated by a future administration. It also expanded PEPFAR support and reinstated funding for UNFPA to help ensure increased and sustained funding for contraceptive options for women as well as dismantle white supremacy, racist and anti-feminist structures in the US that end up extending to its foreign policy, aid and development programmes. Subsequently, on 4th October 2021, the Geneva Consensus Declaration was revoked.

The above geo-political forces have unquestionably had an implication on SRHR movements and organising in the global south. In Uganda, for instance, they have led to reduced funding of sexual rights issues, such as abortion and sexuality education, enactment of repressive and policies, and the criminalisation of sex work and LGBTIQ+ persons. CEHURD, as an organisation working on promoting the right to safe and legal abortion and being host to the Coalition to Stop Maternal Mortality due to Unsafe Abortion (CSMMUA), finds itself trapped in the geopolitics without sufficient leverage to influence national and foreign policy in the global north.

## **Effects of the Global GAG Rule**

The GGR led both to a dry spell and boost in the funding. The expansion of the GGR in 2007 by the Trump administration resulted in the withholding of an estimated US\$8.8 billion, which was higher than the previous versions of the GGR that were only limited to family planning funds, approximate at US\$ 575 million. This meant that most of the SRHR services, ranging from HIV and AIDS programming and health systems support to water, sanitation, and hygiene to LGBTIQ+ rights, to abortion were negatively impacted by this shift in policy.

Generally, in Uganda, there is more funding towards non-contested SRHR issues, such as Reproductive Maternal, New-Born, Child and Adolescent Health (RMNCAH), family planning and contraceptive access, HIV/AIDS, GBV and violence against women and children, compared to the contested areas, such as safe and legal abortion, sexuality education, LGBTIQ+ rights, rights of persons with disabilities or elderly persons. Furthermore, there has been a general focus on illness and disease within the SRHR funding. Hence, in the 1980s, health activists utilised the HIV pandemic as an entry point to address issues of SRHR.

Similarly in the 2000s, the term ‘Key Populations’ was capitalised upon to imply sex workers, their clients and LGBTIQ+ persons within the HIV/AIDS discourse. While this has enabled the penetration of hitherto discriminated groups into the realm of public policy — particularly in respect of the National HIV/AIDS Strategic Plans, Uganda AIDS Commission and Ministry of Health Technical Working Groups — it has equally depoliticised the work they do and turned them into data collection points for managing the HIV pandemic. In essence, while funding has opened doors for sexual and gender minorities, it has created weak intersections with other issues and equally reduced their agency and language to pursue greater rights on wider issues beyond health and HIV/AIDS. Available funding for sexual and gender minority organising especially for LGBTIQ+ and sex worker movements is majorly for data and research, bio-medical interventions, HIV/AIDS and the distribution of sexual and reproductive health commodities, such as condoms, lubricants, ART, PrEP, PEP and family planning supplies. This, in essence, has hampered collective voice, participation and wider engagement on: decriminalisation, improving livelihoods, expanding opportunities and strategic engagement on other intersecting social-economic justice issues, such as: education, housing, land, natural resources and economic empowerment that impact their lives and affect SRHR choices. A case in point is the availability of funding

from the U.S government through PEPFAR/CDC and channelled through institutions such as Key Populations Investment Fund (KPIF), Infectious Diseases Institute (IDI) and Baylor. Other funding streams towards key populations include Bill and Melinda Gates Foundation (BMGF), The Elton John AIDS Foundation (EJAF) and The Global Fund to fight AIDS, Tuberculosis and Malaria (GFTAM) Key Populations Catalytic Funding. While the funding stream has included sex workers and LGBTIQ+ organisations, groups and networks into drop-in-centres (DICS) and data collection points at community level, it largely associates them with *'the HIV epidemic as spreaders and hosts of the virus and is about reporting numbers and targets'*, leading to further discrimination (UHAI-EASHRI, 2021). This has the effect of shifting the movement's focus away from its main goal to issues outside its focus areas. This demonstrates how money depoliticises movements, reducing them to data objects that feeds into the wider development outcomes, but not redressing the strategic and practical needs of the affected populations.

### **CEHURD SRHR Funding Trends from 2010 to 2020**

At the time of inception, CEHURD funding was basically from consultancies, sub-letting, receiving of pro-bono legal support from a legal firm and technical assistance from partners. Consultancies were undertaken on behalf of organisations, such as EQUINET Southern Africa, National Union of Disabled Persons in Uganda (NUDIPU), Open Society Initiative for Eastern Africa (OSIEA), HEPS Uganda, The Uganda National Health Users'/Consumers' Organisation (UNHCO) and other NGOs in Uganda, which enabled the co-founders to generate resources that run the programmes and operations of the young organisation. Over the years, consultancies remained a major source of income for CEHURD up until 2017. The resources generated through sub-letting of its first office space located at Plot 614 Tufnell Drive in Kamwokya, Kampala contributed to the administration and logistical support.

CEHURD's shift from exclusive focus on maternal health to addressing the underlying cause of maternal mortality and deaths increased its financial base. As such, the period 2016-2018 witnessed a sharp increase in funding and resourcing of SRHR (CEHURD, 2018). Ironically, this was an unintended result of the GGR. There was increased funding of governments to halt the Standards and Guidelines on Reducing Maternal Mortality due to Unsafe Abortion (S&Gs), a ban on Comprehensive Sexuality Education, and a restrictive stand around abortion rights. In Uganda, for

instance, the government in 2016 halted a programme on Comprehensive Sexuality Education for school children. The country has also witnessed a lack of political will to fast-track the enactment of laws and policies that actualise SRHR. Besides, in 2017, CEHURD lost funding of approximately US\$ 220,857, which adversely affected its work on safe and legal abortion. Similarly, other partners in the SRHR movement, including the International Planned Parenthood Federation (IPPF), Marie Stopes, Population Services International (PSI), Alliance of Women Advocating for Change (AWAC) and Human Rights Awareness Promotion Forum (HRAPF) were also affected by the policy shift and lost funding.

Following the GGR, most of the funding streams adopted an approach of only dealing with specific SRHR issues, which creates a disconnect between the SRHR and other broader concerns, such as development. In addition, most funding fails to address the underlying determinants of health, such as poverty, food security, social norms and values, sexual and gender-based violence, education and media and so on.

On the other hand, the GGR triggered renewed interest from other funding organisations to counter the negative impact of the policy. Key among the organisations included: Bill and Melinda Gates Foundation; She Decides, Women Deliver; Global Fund to fight HIV/AIDS, Malaria and Tuberculosis; Hewlett Foundation; Warren Buffet Foundation; Mastercard Foundation. Hence, CEHURD's funding base exponentially grew by 21.2 per cent to approximately US\$ 1,000,000, which enabled the organisation to undertake a range of SRHR activities including sexuality education, maternal health, litigation on SRHR issues, SRHR movement-building, GBV, access to medicines and essential commodities, HIV/AIDS, the right to safe and legal abortion and the impact of COVID-19 on SRHR.

The rapid growth of CEHURD presents opportunities as well as challenges for the organisation as it threatens its core purpose of at various levels – board, staff, partners and funders as well as priority areas of engagement.

### **Recalibration: CEHURD Repositioning and Honing on its Niche**

From 2017, the learnings from the GGR experience – coupled with the growth of stronger movements, enabled CEHURD to hone its niche from engaging on the right to health issues in general and deliberately focus on SRHR. The period also saw CEHURD adopting movement-building as a critical strategy of harnessing collective power and leverage to engage

on broadly SRHR issues. Furthermore, CEHURD began to engage with geopolitical conversations and spaces, such as Global Financing Facility (GFF), Global Gag Rule (GGR), Geneva Consensus Declaration, Universal Health Coverage (UHC), Family Planning 2030 (FP2030), Women Deliver and Generation Gender Equality. In so doing, it created the much-needed link between indigenous CSOs and the global processes. This enabled CEHURD to nurture strategic partnerships with international organisations, such as IPPF, the Centre for Reproductive Rights (CRR), the Guttmacher Institute and Women Link Worldwide (WLW), which positioned the organisation as a key global actor on the right to health and SRHR in the global south. CEHURD became the focal point for some of these global partners when they sought to either work in Uganda or roll out funding to local partners, which collaboration culminated in the organisation's sub-granting/regranting model.

At the national level, recalibration took the form of expanding partnerships with like-minded actors within the sub-movements of the wider SRHR Movement, such as the women and feminist movements, sex work movements, youth movements, as well as with SRHR health service providers and professional associations, such as the Association of Obstetricians and Gynaecologists in Uganda (AOGU), Uganda Medical Union (UMU), Uganda Private Midwives Association (UPMWA) and Uganda Law Society (ULS); hence, the evolution of CEHURD's dual role as an implementer and sub-granting organisation.

### **New Dawn: Evolution and Scale-up of Sub-granting SRHR Movements by Indigenous CSO Actors in the Global South**

The discussing the evolution of SRHR movement focusses on three main issue, namely: the tectonic shift, the CEHURD funding model and its major milestone.

#### **Contest for tectonic shifts in the funding sector**

Since 2015, the aid industry has been questioning who development aid serves and why it replicates the same inequities within the development world. These discussions saw several international NGOs (INGOs) relocate their headquarters from the global north to the global south, such as the Sub-Saharan Africa, India, Asia and Latin America. Critics have described this move as mere posturing of the INGOs with a view to position themselves as development actors in the global south. Critics have also questioned the middle-man role of the INGOs, who would subsequently sub-grant

to indigenous organisations in the global south with short-term project-based interventions rather than longer-term programmes and institutional development interventions. Over the years, efforts have been devoted to developing the capacities of funding mechanisms of indigenous global south actors that are deeply rooted within CSO groups, movements, collectives, think-tanks, and progressive movements. The aim of this intervention is to strengthen the capacities of the global south actors to consistently and collectively work on specific issues within the SRHR sector.

In the late 2000s, two key developments further fuelled debate about the nature of funding and how it promotes inequality especially for global south CSO partners. First, was the Women's March held on 21st January 2017, a day after the inauguration of President Donald Trump, in which protests were held in Washington D.C. and across the world to protest against the Republicans' clampdown on bodily integrity and autonomy, and voice support towards gender equality, women's rights, civic rights. Second, was the Global *Black Lives Matter* social movement that gave impetus to the question of inclusion, exclusion, and racism. These two developments had a ripple effect of improving equity in the development aid arena by seeking to directly fund locally-based indigenous CSOs in the global south. Questions were raised about who actually benefits from international aid (whether it is the global north partners or global south partners) and whether development aid is an extension of racism and extraction by INGOs that strategically position themselves to receive the grants for and on behalf of poor people in the global south and end up sub-granting the global south CSOs. By the late 2000s, three major funders – Mastercard Foundation, Warren Buffet Foundation and Hewlett Foundation – made policy shifts through '*shifting power to the global south*' and directly provided grants to indigenous and locally based CSOs in Sub-Saharan Africa, Asia and Latin America for institutional support. Later, The Dutch Foreign Ministry followed suit and also allocated multi-year grants towards global south-to-south SRHR consortia. These resources have enabled SRHR actors, such as CEHURD to ground themselves, grow institutional base and deepen their SRHR niche.

### **Evolution of the CEHURD sub-granting model**

CEHURD sub-granting function dates back to 2015/2016, where the organisation provided small sub-grants to community health advocates associations in the districts of Buikwe, Kiboga and Kyankwanzi to advance advocacy work on access to safe and legal abortion services in their respective

districts. Initial approaches also included activity-based financial support to its partners, where CEHURD would contribute towards a specific SRHR advocacy activity or institutional development activity based on a request from a partner.

Over the years, CEHURD has gradually moved into more formalised re-granting to indigenous civil society organisations (CSOs). In 2020 alone, sub-granting contributed 10 per cent of CEHURD's annual income. At the time, the organisation was managing grants from funders, such as Swedish International Development Cooperation Agency (SIDA) under the Joint Advocacy for SRHR in Uganda (JAS Programme), Open Society Initiative for Eastern Africa (OSIEA), Hewlett Foundation and Office of the Prime Minister. In the same year, CEHURD sub-granted to 13 indigenous organisations working in the field of health, human rights and SRHR (CEHURD, 2021, Annex 1: sub-grant recipients from 2010 to 2021). With increased financing towards SRHR came budget growth that pushed CEHURD into intentional and deliberate investment in growing its internal systems. The intentional development and investment in the growth of systems within CEHURD further stimulated the growth in both its project and core funding.

The sub-granting portfolio grew rapidly in 2020 when CEHURD acquired partnership/collaborative and consortium grants/projects/programmes from various donors to support SRHR advocacy work through the SIDA-funded three-year JAS Programme that brings together different SRHR partners, namely Akina Mama wa Afrika (AMwA); Coalition for Health Promotion and Social Development (HEPS); Human Rights Awareness and Promotion Forum (HRAPF); National Forum for People Living with HIV/AIDS Networks in Uganda (NAFOPHANU); The Uganda Network for Sex Worker Organisations (UNESO); Reach a Hand Uganda (RAHU); and CEHURD to roll out a national programme on a range of intersecting SRHR issues, such as sex work, HIV/AIDS, maternal health, access to medicines and commodities, gender and women, adolescents and young people and refugees and sexual minorities. The JAS Programme is aimed at building a progressive SRHR advocacy movement in Uganda and it focuses on 14 districts across the four regions of Uganda. To date, CEHURD has sub-granted out approximately UGX 5.4 billion (approximately US\$ 1,542,857) to 26 implementing partners working on issues of health, human rights and SRHR, with some partners running more than one sub-grant across various programmes. Of this figure, sub-grants totalling to UGX 4,363,355,825 (US\$ 1,246,673) are running up to the

year 2023. These sub-grants are towards projects supporting a cross range of SRHR interventions to address impact of COVID-19, JAS Programme, Generation Equality Forum and promoting legal empowerment and social accountability for 20 CSO partners. These includes: Action for Rural Women's Empowerment (ARUWE); Action Group for Health, Human Rights and HIV/AIDS (AGHA); African Institute for Investigative Journalism (AIJ); Akina Mama wa Afrika (AMwA); Coalition for Health Promotion and Social Development (HEPS); Human Rights Awareness and Promotion Forum (HRAPF); National Forum for People Living with HIV/AIDS Networks in Uganda (NAFOPHANU); National Union of Women with Disabilities (NUWODU); Partners in Community Transformation (PICOT); Reach a Hand Uganda (RAHU); The Uganda Association of Women Lawyers (FIDA Uganda); The Uganda Network for Sex Worker Organisations (UNESO); Uganda National Health Consumers Organisation (UNHCO); Women with a Mission (WWM); Women's Pro-Bono Initiative (WPI); and 5 CBOs in the districts of Kiboga, Buikwe, Gomba, Kyankwanzi and Wakiso.

### **CEHURD sub-granting model: milestones, learnings and challenges**

There are notable learnings garnered through CEHURD's sub-granting model. First, sub-granting has potential for contributing to the institutional legacy of an organisation. In the case of CEHURD, sub-granting has kept the organisation agile and relevant in an ever-changing funding world and volatile SRHR movement. Second, sub-granting further provided an opportunity for institutional capacity strengthening of CEHURD itself and other actors in the CSO space. Consequently, the young and small organisations were given an opportunity to grow and strengthen their programmatic and institutional capacities. The diversity of actors also led to the improved intersectional SRHR linkages. Third, the fact that many organisations are seeking for partnership with CEHURD in grant development, is a clear indication of the trust and confidence in its ability for grants management. Similarly, donors are approaching CEHURD and requesting for support with grant management.

The above successes notwithstanding, there are some challenges. The grant management role in CEHURD is scattered across the different programmes and departments, mainly within the responsibilities of identified project implementing teams with support from middle-level managers and senior management team. With such a fast-growing

portfolio, this poses a risk for losing track on the process including the necessary documentation which must be up-to-date all the time. What is more, there is a lack of a sub-granting database that keeps sub-granting information in one central place. It also runs the risk of non-compliance with terms and conditions of the sub-grants or even grant mismanagement by the sub-grantees if not closely monitored. Key questions lie with the reality that CEHURD is not registered as a granting mechanism. So, how can actions, such as lack of accountability and transparency or impunity within the sub-grantees and partners be addressed? Lastly, the sub-granting role may shift CEHURD's focus away from its core identify and niche and pose relationship challenges within the sector.

It is suggested that deliberate efforts be made to set up clear institutional infrastructure and framework to support re-granting or sub-granting. This requires establishing a functional grant management unit at CEHURD with dedicated staff to manage the growing needs of the organisation's and SRHR movement's sub-granting portfolio. The unit would coordinate, manage and support sub-granting processes, including the monitoring of compliance among sub-grantees, as well as provide capacity enhancement of key SRHR actors. It would entail establishing an automated grants management system to maintain up-to-date records; a database of sub-grantees to compliment record keeping, support monitoring and reporting on sub-granting, and widening strategic engagement to seize emerging unanticipated opportunities for SRHR frontline activists and to provide effective response to challenges and threats posed to SRHR activists.

### **Cautionary Reflections: Emerging Issues and Implications**

From the foregoing, using CEHURD as a case study; this chapter draws the following cautionary takeaways and questions to mull over in informing the wider SRHR movement(s) and organising in Uganda.

#### *Power, Money, and Strategic Positioning within SRHR Movements*

CEHURD's contribution to the SRHR movement building is very distinctive in the arena of reproductive health and rights. It has also piloted work on SRHR movement building and sub-granting. There is a worrisome uncertainty of CEHURD's shifting role within the SRHR movement. Although CEHURD has a clear understanding of its current operating context within SRHR organising, some hard questions need to be asked. For instance, what is the role of CEHURD now and moving forward? What role and identity does CEHURD want to embrace in the next 10 years? Is CEHURD an enabler or catalyser in its capacity as a funder/sub-granter, or

is it an active actor or soldier on ground in its capacity as an implementer of programmes? Does CEHURD want to transition totally from an implementer to an enabler? Is there such a thing as a complete shift? Should it even be there or happen? Are there models that can be understudied that enable one to be a blend of both? What are the implications of the identified role towards SRHR movement building in Uganda? This is critical, not only for its positioning within the movement but also to inform other key actors in the sector that would like to understudy and travel similar journeys.

It is laudable that CEHURD has grown from an indigenous CSO implementing partner to a sub-granter. Nevertheless, this has not only created tensions with other key actors but also requires unique sets of skills and expertise, which may not all be currently available within CEHURD. The growth CEHURD has registered in the last 2-3 years, as well as its dual role as a sub-granter and an implementer, have provided an opportunity for the organisation to identify allies, but at the same time also given rise to protagonists and protractors in equal measure. This calls for soul-searching on the part of CEHURD to interrogate its future positioning and to assess the level of investment it needs to effectively execute each of the roles.

Furthermore, the shifting role of CEHURD also has implications on its funding sources, and regional and global partnerships. Some of its funding partners feel the organisation has outgrown the categories of organisations that they fund. It is commendable that CEHURD has negotiated its way out of funding partnerships and recommended other organisations that can fit within the funding portfolio. In an interview with a CEHURD staff, a respondent observed as follows:

The more we have deepened and scaled up our SRHR work, the more it has had negative implications on our funding. We have had situations where some donors feel that we have overly outgrown their portfolios, or that their focus is to help small organisations ... In some instances, as we grew big, some of our donors have reservations on some of the SRHR issues we pursue. In instances, such as this, we have had to move out of the bracket of organisations that they support, negotiated our way out and recommended other smaller organisations and continuously provided technical support to whoever else they select to work with... Though we have not had any confrontation with our donors and funding partners, it is sometimes risky and uncomfortable losing a donor/partner that has stood by you for long in pursuit of a big pot of money. We are in

long negotiations with the donors and we understand where they are coming from.

This shifting role further calls for deliberate efforts within CEHURD board, management and staff to be conscious of and manage this power in a manner that fosters equitable partnership and equal respect with peers. It also implies that CEHURD overtly addresses the gender imbalances within the SRHR movement through deliberate engagements, meaningful participation and involvement of key allies and partners who feel that they are relegated to the periphery in the SRHR interventions, yet they were at the forefront in pushing for SRHR issues. Some of these include: feminist movements and organisations, women's rights organisations and collectives, community-based groups, sexual and gender minority groups, LGBTIQ+ persons and sex workers, as well as health services providers. This, therefore, requires sustained partnership building with these sub-movements far beyond the sub-granting on SRHR work and occasional involvement in CEHURD activities.

In précis, historically, money breaks or makes movements. Navigating the power, space and voice accruing from money is a tight rope which if not well managed can alienate stakeholders. Questions that SRHR movements in the global south and Uganda in particular need to ponder over are: When you become a donor, what does it mean? How do you manage relationships with allies who were hitherto peers? How do indigenous organisations in the global south that were hitherto grantees and have become donors manage this new role? How can they avoid slip-ups undertaken in the past by global north donors and INGOs to avoid being abusive, exclusive, extractive and exercising power over others?

### *Allyship and Space within the SRHR Movement*

CEHURD's sub-granting role has altered the expectations of its partners especially for its community engagement interventions involving smaller NGOs and community-based organisations (CBOs). Currently, navigating this expectation is majorly through memoranda of understanding signed with various stakeholders at community and national levels. There are increased partner expectations on what CEHURD should do and what it should not; which space it should lead and which one it should allow others to lead; when do you get conscious of how empowering and disempowering the power you have impacts positively or negatively on others within the SRHR movements where you are located? Should CEHURD work on all areas under SRHR or strategically leave some for others to take leadership

and CEHURD follows? For instance, when CEHURD works on maternal health, what does it mean for the women and girls who are affected? Are they at the forefront and are their voices heard and acted upon?

### *Rethinking Models of Engaging with Masculinities*

Male engagement is an important strategy that most organisations — including CEHURD — have adopted. However, CEHURD's male engagement work is ad-hoc without a clear strategy of engaging community programmes that target men in order to improve SRHR outcomes for women and girls.

Having a 360° engagement with SRHR issues requires one to contend with the reality that society is highly gendered. Although SRHR work is majorly around addressing issues that impact on women and girls, it must intentionally design interventions that target men not as the 'super-hero celebrated male champions' with the power to make women's lives better. Such a model is highly patriarchal and still uses male power privilege in the pretext of working on addressing gender equality. Hence, meaningful engagement with masculinities in ways that do not replicate the unequal gender-sexual-power relations is still an area that is yet evolving.

At organisational level, CEHURD has deliberately ensured inclusion of women in leadership and decision-making positions at board and senior management levels. Emerging issues that CEHURD ought to address itself to are having a standard approach to guide its community structures so that men do not work in destructive ways that delegitimise women's and feminist movement efforts. The applauding of men as celebrated champions for what should be expected of them in supporting women's agency, bodily autonomy, choice and staying non-violent is in itself a replication of gender negative stereotypes.

Pertinent issues that SRHR movements need to contemplate over under-engaging with masculinities are: How can male engagement interventions be effective without depoliticising issues of gender equality and women's empowerment? How can men be held accountable when their engagement is used as a vehicle to push forward men's rights and privileges against the unprecedented suffering of women and girls? At what point do male leaders in the SRHR movement speak out on women's SRHR issues and when do they stay silent — especially staying silent when the women and feminist movements speak out on issues of concern? To what extent do male engagement interventions and programmes within the SRHR movement account for the direct/indirect/unintended impact of

their work? How can male engagement in programming and policy efforts in Uganda be effectively aligned with and informed by the agenda of the women's movement, SRHR movement and feminist movements? How is the space shared without replicating patriarchal power relationships?

### *Positionality Within Women's SRHR Movements and Feminist Organising*

From its founding to date, CEHURD identity is very clear. It has never claimed to be a feminist organisation; nor does it identify with it, albeit it works on issues that challenge power and women's bodily autonomy. Unfortunately, in the last 10 years, there has been a massive shift of SRHR funding away from women's movements to other movements within the public health, legal and human rights movements (where CEHURD belongs). Historically in Uganda, SRHR movement was 'headquartered' within the women and feminist movements. The agenda-setting was previously a preserve of the women's and feminist SRHR movements and organisations, such as Akina Mama wa Afrika, FIDA Uganda, Uganda Women's Network, Isis-WICCE (now WIPC) and feminists in the academia. This funding shift has bred both opportunities and contestations in equal measure, prominent of which is the legitimacy of male engagement interventions and/or male-led organisations working on a range of SRHR issues, particularly when such organisations crowd out the space of those worst impacted under the SRHR.

Funding partners have also not been spared of these funding contestations and politics. In the mid-2000s, abortion advocacy funding (from an anonymous funder) that was originally earmarked for FIDA-U ended up with CEHURD. This, for years, dented the relationship between the two organisations and the women and feminist movements. It took a while for both organisations to restore relations, and in 2011, they started working together under new Gender Equality Forum interventions.

Similarly, another area of contestation is around the level of funding allocated by partners. Although the discretion to allocate resources to the grantees lies with the donor, there are concerns about the level of funding allocated to male-led SRHR actors vis-a-viz their women-led SRHR counterparts. For instance, under the Hewlett Foundation funding stream, allocations to women-led organisations viz-a-viz those that are male-led differ in size – with male led organisations receiving more SRHR funding. While Hewlett gives general operating support/institutional grants to both women-led and male-led institutions in their gender equity and governance portfolio, the amounts differ on the basis of gender. For instance, under

one of the funding streams of the institution, women-led organisations received less amounts of grants than their male-led counterparts. Some of the women-led organisations included: Forum for Women in Democracy (FOWODE) (US\$ 550,000); Global Fund for Women (Generation Equality Forum) (US\$ 250,000); Urgent Action Fund-Africa (UAF-A) (US\$ 1,000,000); Trust for Indigenous Culture and Health (TICAH) (US\$ 500,000). Male-led organisations that were supported under the same funding stream included: The Great Lakes Institute for Strategic Studies (GLISS) (US\$ 400,000); Uganda Radio Network (URN) (US\$ 450,000); Advocates Coalition for Development and Environment (ACODE) (US\$ 1,800,000) and CEHURD (US\$ 1,000,000) (Hewlett Foundation, 2021).

Nonetheless, CEHURD has partnered with key women and feminist spaces in Uganda, such as Akina Mama wa Afrika (AMwA), The National Union of Women with Disabilities (NUWODU); The Uganda Association of Women Lawyers (FIDA Uganda), The Uganda Network for Sex Worker Organisations (UNESO), Women with a Mission (WWM), Women's Pro-Bono Initiative (WPI), Alliance of Women Advocating for Change (AWAC), and Action for Rural Women's Empowerment (ARUWE) to pursue matters of mutual interest regarding women's health rights, COVID-19 response and SRHR movement building.

In view of the above, there are contestations by the feminist movement on the legitimacy and credibility of CEHURD as an organisation which does not identify as a feminist organisation in its founding and leadership, yet it occupies a huge SRHR space in Uganda. Other contestations are about male engagement as a strategy used by CEHURD, which glorifies male champions while de-legitimising women and girls whose lived realities of patriarchal oppression manifested in limitations of their agency, bodily integrity and choice. There is also high male visibility and funding in the SRHR space, which further narrows the space and resourcing for women and their organisations. This, therefore, poses the following questions: who owns the space in the SRHR movement? Who has the convening power? Who has the legitimacy and who does not? Is CEHURD the headquarter of the SRHR movement in Uganda, or it is the feminist movement?

### *Managing Partnerships and External Tensions that Come with Growth*

The fact that CEHURD has rapidly grown in the last three years can be viewed as both an opportunity and a challenge. Its rapid growth has created the need for the organisation to, among others, harmonise its positions on various

issues — particularly the most controversial ones on SRHR, strengthen its internal systems, processes and structures, work towards developing a strong sustainability plan, cultivate a myriad of strategic partnerships, and continuously reposition itself to suit within the ever-changing SRHR terrain. In so doing, one of the biggest challenges CEHURD faces is managing partnerships, their expectations, and being conscious of its own power and how it can empower others.

### *Managing Conservative Fundamentalism*

The world is increasingly becoming retrogressive and anti-rights. The rising opposition is destabilising normative ideas about the state, religion, faith, bodies, rights, corporate power and interests, gender and sexuality. With the political changes in the US arising from the 2020 presidential elections and reversal of the retrogressive US policy – some of which impacted on SRHR and funding – comes opportunities for re-engaging as well as organising to promote SRHRs. On the other hand, these developments create a situation where highly funded right-wing fundamentalists are organising (underground) and having counter-narratives, investing in health and education, which creates retrogressive narratives about bodily integrity, choice, gender, family and rights. These developments threaten to undermine the achievements that have so far been registered, thus necessitating a reflection on the past to enable actors to strategise accordingly.

In the case of CEHURD, its rapid growth and expansion of its SRHR programming presents challenges of managing both internal and external opposition. While the organisation has clear mechanisms of mapping, managing, mitigating and engaging with external SRHR opposition, it still struggles with how to manage the dynamics within the SRHR movement. This opposition is as a result of the rise of religious fundamentalism within the organisation, self-censorship, placing preference to reproductive health over core sexual rights issues. At what point does one create a realistic balance between skills, expertise, systems and the right politics? How effective can indigenous CSOs protect themselves from internal infiltration by right-wing religious forces? What can a progressive SRHR movement learn from the retrogressive one and how can they effectively organise to infiltrate progressive space and force?

### *NGO-isation of SRHR Movements*

The emergence of the NGO sector through its neoliberal roots has meant that movement organising has been structured through donor-funded lens. This has, in turn, isolated and defined who belongs to the movement; thus,

excluding others who could potentially grow the movement. Arundhati Roy (2014), in her essay “*The NGO-isation of Resistance*”, has critiqued the NGO model as a vehicle for change, noting:

In the long run, NGOs are accountable to their funders, not to the people they work among. They are what botanists would call *an indicator species*. It is almost as though the greater the devastation caused by neoliberalism, the greater the outbreak of NGOs. NGOs have funds that can employ local people who might otherwise be activists in resistance movements but now can feel they are doing some immediate, creative good (and earning a living while they are at it). Real political resistance offers no such shortcuts. The NGO-isation of politics threatens to turn resistance into a well-mannered, reasonable, salaried, 9-to-5 job. With a few perks thrown in. Real resistance has real consequences. And no salary.

Many studies urge progressive social movements to avoid NGO-ising the SRHR movement. While others agree that the SRHR movement is comprised of several sub-movements and that inter-movements organising is important, forceful merging as dictated by donors can sometimes set the agendas rather than the movement actors, which make some issues disappear. For instance, recently, the LGBTIQ+ movement and sex worker movement have been lumped together by donors. This has also been the case with the abortion rights movement which has been merged with other equally contested sexual rights movements. Important to note is that the lumping together of these movements is not so much around weaving intersectionality, but merely for convenience of funding of these different aspects collectively. Additionally, because the funding of these movements is majorly by foreign missions and capitals, they have been largely criticised for advancing a Western agenda and for being un-African. This narrative is best captured by Stella Nyanzi (2013), who describes how open support of the LGBTIQ+ movement by donors and diplomatic missions has delegitimised their struggles and created massive public view that some SRHR issues — especially deeper sexual right issues — are non-African; hence, feeding into the opposition narrative, widespread discrimination and homophobia. This, therefore, poses the following questions: what does it take to be inclusive and how can communities and citizens outside the NGO model be reached and effectively mobilised? What models work? How can the SRHR movement learn from other progressive movements, such as those in India and Latin America on how to mobilise widespread support and movements that are critical to break the bastions of SRHR control through norms, values and

cultures? What funding mechanisms work best for non-NGO-ised models of movement building? How can SRHR movements tap into other spaces of collective organising, such as trade unions, community social-economic groups and collectives that continue to shape the narrative about gender social norms and what bodies can and cannot do?

### *Sustainability*

In its 2020-2024 Strategic Plan, CEHURD commits to explore its sustainability in terms of projecting its vision, ensuring visibility and branding, sustaining impact, managing risks and sustaining funding and reserve funds that support its work and an endowment. The Centre of Excellence on Health and Human Rights – a semi-autonomous entity under CEHURD – is one of the ways in which the organisation's vision remains alive as it builds a pool of knowledge and critical thinking on SRHR by global-south based think-tanks, academics, activists and movements.

While sustainability is a core component that many SRHR movements struggle with, questions arise of how this will be actualised in the short-term, given that most of the actors heavily rely on external funding partners many of whom do not fund sustainability initiatives. Besides, the fact that most SRHR actors work in a volatile context implies that they are considered a high-risk area that struggle identifying varying funding streams. It, therefore, becomes critical to interrogate how sustainable the SRHR movement in the global south is amidst the reality that they are highly donor-dependent and perceived to pursue Global West agendas. How sustainable is the work of SRHR amidst emerging issues, such as COVID-19? What more needs to be done to sustain key achievements?

### **Forecasting: What Does the Future Look Like for SRHR?**

The future of SRHR work is unpredictable due to the rise of right-wing extremism, fascism, and the growing power of business fused with the state. The future of SRHR is defined by the political space as many actors confine themselves to the non-contested SRHR issues. The future of SRHR movements lies in building mass movements across Africa that deconstruct the perceptions on sexuality, bodily integrity, choice that push for SRHR; diversifying funding from governments, businesses, private philanthropies, including growing local African philanthropy. Inevitably, SRHR is political and necessitates re-politicising the SRHR movement and weaving the different strands together. The future of any organisation is around setting the pace, being versatile, understanding the fluidity of its operating context, understanding the national/regional/global trends and being able to develop

strategies and tools for engagement and reversal. No actor can afford to be comfortable and static, but be ready to be uncomfortable, mutable, daring, very novel and innovative!

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## CHAPTER 4

# Juridical Evolution of Sexual and Reproductive Health Rights

*Ben Twinomugisha*

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### **Introduction**

One of the major achievements in the field of health and human rights has been the recognition that sexual and reproductive health rights (SRHR) are human rights. SRHR are integral components of the right to health, which is recognised in international, regional and national human rights instruments. The constitution of the World Health Organisation recognises health as a fundamental human right and defines it as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’ (WHO, 1946: Preamble). Although the 1948 Universal Declaration of Human Rights (UDHR) does not explicitly provide for the right to health generally and the SRHR in particular, it guarantees everyone ‘the right to a standard of living adequate for the health and well-being of himself and of his family’ (Article 25(1)), including medical care and necessary social services (Article 25(1)). Apart from calling for special assistance and care to motherhood (Article 25(2)), the UDHR, which has been sharply criticised as having ignored women’s issues (Charlesworth, 1998), does not explicitly mention SRHR. The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that state parties ‘recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (Article 12(1)) but does not specifically address the question of SRHR.

The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which elaborated on the norm of non-discrimination on the basis of sex, does not comprehensively provide for SRHR. The CEDAW calls upon state parties ‘to ensure, on a basis of equality of men and women, access to health care services, including those

related to family planning' (Article 12(1)). State parties are also enjoined to 'ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as nutrition during pregnancy and lactation' (Article 12(2)). Like the UDHR, the focus of the CEDAW was on motherhood and not necessarily other aspects of SRHR.

In the 1960s and 1970s, focus was on population growth. The argument was that increase in population growth due to unregulated fertility rates could harm economic progress and the environment. The solution was seen in the increased availability of birth control (contraceptive methods and devices) to prevent unintended pregnancies. According to Tamale (2016), these contraceptive devices "put women in control of their futures and their bodies for the first time".

In 1994, the International Conference on Population and Development (ICPD) held in Cairo marked a radical shift from a focus on population and fertility control targets to placing women's needs and rights at the heart of population and development policies (UNFPA, 1994). The ICPD Programme of Action was a significant victory for the reproductive rights movement as it placed individual rights and well-being at the centre of the reproductive health agenda. In 1995, the United Nations Conference on Women held in Beijing reaffirmed and amplified the SRHR that were underlined in Cairo in the ICPD Programme of Action (UNGA, 1995). The 2000 Millennium Development Goals (MDGs) did not explicitly recognise sexual and reproductive health (UN, 2011). However, in 2007, MDG 5 was included to target reducing maternal mortality and achieving universal access to reproductive health.

Although the 2015 Sustainable Development Goals (SDGs) do not expressly recognise sexual rights, Target 5.6 enjoins states to ensure universal access to sexual and reproductive health and reproductive rights as agreed in 1994 and 1995 in Cairo and Beijing, respectively. The 2000 General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) simply recognised women's right to health, whose realisation necessitates the removal of barriers that interfere with access to sexual and reproductive health services (CESCR, 2000). However, in 2016, General Comment No. 22 explicitly recognised the right to sexual and reproductive health as an integral part of the right to health (CESCR, 2016, paragraph 1).

At the regional level, the 2003 Protocol to the African Charter on Human and Peoples' Rights (Maputo Protocol) explicitly calls upon

state parties to ensure that women's right to health, including sexual and reproductive health, is recognised and promoted (Article 14(1)). At the national level, although the 1995 Constitution of the Republic of Uganda does not expressly provide for the right to health generally and SRHR in particular, it obliges the state to protect women's rights due to their unique maternal functions in society (Article 33). The existing pieces of legislation do not specifically address SRHR. These include the HIV and AIDS Prevention and Control Act, 2014, which addresses prevention, treatment, care and support in the context of HIV; and the Prohibition of Female Genital Mutilation Act, 2010 and Domestic Violence Act, 2010 that criminalise female genital mutilation and domestic violence, respectively. Recently, parliament also passed the Sexual Offences Bill, which is awaiting the assent of the president and insertion in the national Gazette. The bill addresses questions of sexual violence, such as rape, aggravated rape, defilement, aggravated defilement, incest, sexual assault, indecent assault, indecent communication, sexual exploitation and sexual harassment. The bill also criminalises sex work and same sex relations under the so-called unnatural offences. However, there are media reports that the president is ambivalent about assenting to the bill allegedly because criminalisation of homosexuality has foreign policy implications (Wekesa 2021) Several policies such as the 2004 National Adolescent Health Policy; the 2006 National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights; National Strategy to End Child Marriage and Teenage Pregnancy; National Engagement Strategy for Adolescents and the Youth; and the 2007 Management of Sexual and Gender Based Violence Survivors also address questions of sexual and reproductive health.

Against the above backdrop, this chapter interrogates the juridical evolution of SRHR at the international, regional and national levels. In this chapter, the term 'juridical' refers to laws, including the constitution, legislation, human rights instruments and case law. The chapter is divided into six parts. The first part is this introduction. The second part maps out, through a bird's eye view, the sexual and reproductive health situation in Uganda. The third, fourth and fifth parts examine the juridical evolution of SRHR at the international, regional and national levels, respectively. The fifth part highlights the contribution of the Centre for Health, Human Rights and Development (CEHURD) towards the promotion of SRHR, especially maternal health rights, through litigation. The last part provides concluding remarks.

## **Sexual and Reproductive Health Situation in Uganda: A Bird's Eye View**

According to the Uganda Bureau of Statistics (UBOS, 2016), the median age at first marriage in Uganda is 18 years among women aged 25-49 years while it is 23 years among men aged 25-49 years. The median age at first sexual intercourse among women aged 20-49 years is 17 years. Eighteen percent of women aged 20-49 have had sex by the age of 15 and 62 per cent by the age of 18 (UBOS, 2016). The total fertility rate in Uganda is 5.4 children per women although on average, rural women have two more children than women in urban areas (UBOS, 2016). Teenage pregnancy and motherhood are major health challenges in Uganda. Among women and men aged 15-19, 10 per cent of women and 17 per cent of men had sexual intercourse by the age of 15 (UBOS, 2016).

Guttmacher Institute (2019) has observed that there are serious gaps in sexual and reproductive health services for adolescent women in Uganda. Approximately, 648,000 women aged 15-19 years are sexually active and do not want to have a child in the next two years but they have an unmet need for modern contraception (Guttmacher Institute, 2019). Approximately, 50 per cent of all pregnancies among women aged 15-19 years are unintended, totalling to an estimated 214,000 unintended pregnancies annually (Guttmacher Institute, 2019). According to UBOS (2016), use of modern contraception among currently married women increased from 14 per cent in 2000/1 to 35 per cent in 2016 with injectables as the most used method. However, the contraceptive prevalence rate (CPR) among married women aged 15-49 is only 39 per cent (UBOS, 2016). Among sexually active unmarried women, only 47 per cent use a modern contraceptive method (UBOS, 2016). Yet, demand for family planning is high. The total demand for family planning among married women increased from 54 per cent in 2000/1 to 67 per cent in 2016 (UBOS, 2016), while 27 per cent want to limit births and 40 per cent opt for space births (UBOS 2016). Only 58 per cent of the family planning needs of married women are being met and only 52 per cent of demand is satisfied by modern methods (UBOS 2016).

Regarding certain aspects of maternal health care, almost all women (97%) aged 15-49 with a live birth in the past five years received antenatal care (ANC) from a skilled provider during their most recent pregnancy (UBOS, 2016). However, only 29 per cent of women had their first ANC visit during the first trimester of the pregnancy (UBOS, 2016); 60 per cent completed at least four ANC visits; 73 per cent live births were delivered

in a health facility and almost the same percentage (74%) had skilled birth attendance (UBOS, 2016). Although this data looks fairly impressive, maternal mortality is still worrying. Maternal Mortality Ratio (MMR) for the seven-year period before the 2016 demographic and health survey was estimated at 336 maternal deaths per 100,000 live births (UBOS, 2016). Maternal mortality is a leading cause of death among women of child-bearing age due to unavoidable causes, such as severe bleeding, infections, high blood pressure (pre-eclampsia and eclampsia), lack of access to emergency obstetric care and unsafe abortion (Twinomugisha, 2017). Infant mortality is 43 deaths per 1000 live births, with 42 per cent happening during the neonatal period (UBOS, 2016). There are also challenges with availability, access and utilisation of emergency obstetric care (EmOC) especially in rural areas (Mbonye et al., 2007). For example, Walunda et al. (2019) found that in Karamoja, the number of EmOC facilities per 500,000 population was only 3.7 and none of the health care facilities met the criteria for basic EmOC.

There is also limited participation of men in maternal and child health care. For example, in a study exploring community perspectives towards participation of men in maternal and child health in Kabale District, western Uganda, Muheirwe and Nuhu (2019) found that there was low involvement of men in maternal and child health care largely due to patriarchal community values and norms that influenced gender roles. Gopal et al. (2020) also found that male involvement in reproductive health programmes in Uganda was low due to, among others, inadequate training of health workers to support men in their partners' health and limited participation of men in the design and implementation of interventions aimed at male involvement in maternal and child health programmes.

HIV and AIDS, which are critical aspects of SRHR, are still a burden in Uganda. As of December 2019, the total number of people living with HIV (PLHIV) was approximately 1,400,000 as compared to 1,200,000 in 2010 (UNAIDS, 2020). About 830,000 women aged 15 and above were living with HIV, while the figure stood at 530,000 for men in the same age group. The adult HIV prevalence rate was 5.8 per cent. The HIV prevalence rate among women aged 15 to 49 was 7.1 per cent, while that of men within the same age bracket was 4.3 per cent (UNAIDS, 2020). Women and young girls are disproportionately affected by HIV. This may be attributed to factors that reinforce unequal power relations between men and women. These include: gender inequality, sexual and gender-based violence, harmful cultural or traditional practices, low education

status, poverty, limited access to health care and physiological factors. Other groups particularly affected by HIV in Uganda include sex workers, men who have sex with men, people who inject drugs and people from fishing communities (AVERT 2021). The situation of sex workers and men who have sex with men is exacerbated by laws that criminalise and penalise sex work, sodomy and transmission of HIV. These laws enhance stigma and discrimination against sex workers, men who have sex with men and PLHIV who, for fear of criminal prosecution, are driven underground where they may not be meaningfully engaged by health workers in the context of HIV prevention, treatment, care and support (Twinomugisha, 2015).

In respect of sexual and gender-based violence (SGBV), 51 per cent of women and 52 per cent of men both in the age bracket of 15-49 have experienced physical violence (UBOS, 2016). Meanwhile, 22 per cent of women and 8 per cent of men have ever experienced sexual violence (UBOS, 2016).

## **Juridical Evolution of SRHR at the International Level**

### *Population Control Through Family Planning*

SRHR, which are integral elements of the right to health, are some of the most fluid, complex, sensitive and controversial issues in international human rights law. They involve moral, religious, ethical, cultural, philosophical, political and even economic questions especially population control. SRHR were introduced largely as a matter concerning population growth rather than a human rights issue. Before the 1994 International Conference on Population and Development (ICPD), the population control paradigm dominated debate on socioeconomic issues. Population growth was not conceptualised in terms of human rights as such but was largely viewed through the demographic lens. Many governments supported family planning programmes as a demographic tool, that is, to reduce the birth rate and slow down population growth. Population growth was seen as the major cause of poverty and underdevelopment and thus an obstacle to the realisation of human rights. At the 1968 Tehran International Conference on Human Rights, UN member states observed the nexus between population growth and human rights. The Proclamation of Tehran stated that the then rate of population growth in some parts of the world adversely affected the struggle against hunger and poverty, thus inhibiting full realisation of human rights (United Nations Population Division, 1968).

In 1974, at the Bucharest World Conference on Population, some countries argued that the population question should be treated as a consequence and not a cause of poverty and underdevelopment. That it was critical to place human rights at the centre of the discourse of the link between population growth and underdevelopment. Consequently, the World Population Plan of Action (WPPA), which was adopted at the Bucharest Conference, stressed that population programmes should be consistent with human rights and that states should, irrespective of their overall demographic objectives, respect and ensure “the rights of persons to determine, in a free, informed and responsible manner, the number and spacing of their children” (United Nations Population Division, 1974). The WPPA also emphasised that individuals and couples “have the basic right to decide freely and responsibly the number and spacing of their children” (paragraph 14(f)) and they should “have the information, education and means to do so” (paragraph 14(f)). The WPPA also stressed that states should pay particular attention to the role of women in population control issues (paragraph 41). In this regard, the WPPA stated that the overall improvement of “the status of women in the family and society can contribute where desired, to smaller family size, and the opportunity for women to plan births also improves their individual status” (paragraph 43). In 1984, at the International Conference on Population in Mexico City (United Nations Population Division, 1984), states reiterated the importance of human rights in the field of population control. States were enjoined to “ensure that all couples and individuals have the right to determine freely and responsibly the number and spacing of their children and to have the information, education and means to do so” (recommendation 30). States were also urged to ensure that legislative and policy frameworks concerning the family should neither be coercive nor discriminatory and should be consistent with internationally recognised human rights (recommendation 31). On the role and status of women in population and development matters, states observed:

In view of the slow progress made since 1974 [in Mexico City] in the achievement of equality of women, the broadening of the role and the improvement of the status of women remain important goals that should be pursued as ends in themselves. The achievement of genuine equality with respect to opportunities, responsibilities and rights would guarantee that women could participate fully with men in all aspects of decision-making regarding population development issues that affect their families, communities and countries (paragraph 16).

States also asserted that “[t]he ability of women to control their own fertility forms an important basis for the enjoyment of other rights” (paragraph 17) and they should be assured of “socio-economic opportunities on an equal basis with men and the provision of the necessary services and facilities [to] enable women take greater responsibility of their reproductive lives” (paragraph 17). Due to the strong objections from the United States and the Holy See, abortion was not promoted as method of family planning. States were enjoined to “take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and whenever possible, provide for the humane treatment and counselling of women who have had recourse to abortion” (recommendation 18(e)). States also stressed the involvement of men in reproductive activities and other family activities in order to enhance women’s participation in society. They stated that “[i]n order to provide women with freedom to participate fully in the life of society, it is equally necessary for men to share fully with women responsibilities in the areas of family planning, childbearing and all other aspects of family life” (paragraph 7).

It can be seen that although the instruments discussed above made reference to a number of human rights, they largely focused on population control through family planning. Consequently, the pre-1994 population control paradigm has been criticised by a number of commentators (Cook, 2003; Corres & Reichman, 1994; Pizarossa, 2018). First, that it instrumentalised women’s bodies in order to achieve population goals. Second, that it failed to address structural causes of poverty and underdevelopment. Third, that women were not viewed as actors or agents. That they were treated as objects and not subjects, that is, they were not placed at the centre of the development process. Fourth, that it did not address dimensions of social inequality, such as land redistribution, employment creation, mass education and health care.

### *Paradigm Shift from Narrowly Focused Family Planning Programmes to SRHR*

A year to the 1994 ICPD, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action, which underlined the fact that “[a]ll human rights are universal, indivisible and interrelated” (paragraph 15). The Declaration stressed that women’s human rights are human rights, which should be protected and promoted by all governments (paragraph 18). In this respect, the Declaration stated:

The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Building on the Vienna Declaration, the ICPD placed women at the centre of an integrated approach to reproduction. The ICPD was a landmark event because it marked a paradigm shift from a narrow focus on population control through family planning to a recognition that human rights have a critical role to play in relation to sexual and reproductive health. According to Pizzarossa (2018, p. 6), the ICPD “transformed the conversation, not only by delegitimising top-down governmental efforts that ignored or violated women’s human rights, but also by recognising that policies on development in fact could not succeed without ensuring human rights”. The ICPD approach was horizontal, holistic and human rights-based unlike the population control paradigm that was narrow, vertical and technical (Pizzarossa, 2018).

The ICPD Programme of Action (PoA) provided some ground-breaking principles and definitions in the context of sexual and reproductive health. The PoA emphasised not only fertility control, but also safe sex and pregnancy free from coercion, discrimination, and violence. The POA stressed that human rights, as well as women’s empowerment and gender equality, are cornerstones of population and development programmes. In this vein, the PoA stated:

Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women’s ability to control their fertility, are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral part of human rights. The full and equal participation of women in civil, cultural, economic, political, and social life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community (principle 4).

The PoA also called upon states to take appropriate steps to ensure realisation of the right to health, including access to sexual and reproductive health services. In this regard, the PoA stated:

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all

appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have information, education and means to do so (principle 8).

The PoA provided a progressive, comprehensive and integrated approach to health needs beyond the narrowly focused family planning programmes that were largely aimed at population control. The PoA defined reproductive health as:

[A] state of complete physical, mental and social well-being and not merely the absence of disease and infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the rights of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women go safely through pregnancy and child birth and provide couples with the best chance of having a healthy infant (chapter VII, paragraph 7.2).

The PoA conceptualised reproductive rights as “the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest attainable standard of sexual and reproductive health” (paragraph 7.3). According to PoA, the concept of reproductive rights also includes the right of couples and individuals “to make decisions concerning reproduction free from discrimination, coercion and violence, as expressed in human rights documents” (paragraph 7.3). In order to effectively construe SRHR, including reproductive rights, the PoA built on already recognised human rights. In this regard, the PoA stated that “reproductive rights embrace certain human rights that are already recognised in national laws, international human rights documents and other consensus documents” (paragraph 7.3). These rights include the right to the highest attainable

standard of physical and mental health (Article 12, ICESCR; Article 12 CEDAW; Article 24, CRC), and the right to life (Article 6, ICCPR).

Various actors, especially the Holy See, opposed the introduction of the definitions of reproductive health and rights in the PoA. The Holy See argued that “no sexual and reproductive rights should be recognised and guaranteed to those outside of the traditional, heterosexual monogamous marriage” (Pizzarossa, 2018, p. 7). Consequently, the Holy See expressed a general reservation to the entire Chapter VII on Reproductive Rights and Reproductive Health.

During the ICPD, there was a heated debate on a critical aspect of SRHR: the controversial question of abortion. The PoA failed to treat abortion as means of fertility regulation or a matter of reproductive choice. According to the Holy See, it rejected “any recognition of a right to abortion through policies aimed at creating new categories of personal rights [and] no nation should be forced to change or violate its own laws that prohibit or regulate abortion practices” (UN Commission of the UNDP, 1999, cited in Pizzarossa, 2018, p. 9). Albeit the PoA did not provide for universal access to safe and legal abortion, it defined reproductive health in the context of primary health care to include “prevention of abortion and the management of the consequences of abortion” (paragraph 7.6). The PoA urged states to tackle the public health consequences of unsafe abortion by taking “appropriate steps to help women avoid abortion which in no case should be promoted as a method of family planning, and in all cases provide for humane treatment and counselling of women who have had recourse to abortion” (paragraph 7.24). On unwanted pregnancies, the PoA stated:

Prevention of unwanted pregnancies must always be given the highest priority and every attempt must be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to available information and compassionate counselling. ...

In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family planning services should be offered promptly, which will also help to avoid repeated abortions (paragraph 8.25).

The Fourth World Conference on Women held in Beijing in 1995 adopted the Beijing Declaration and Programme of Action (PoA) (UNGA, 1995). The conference reaffirmed the goals and standards on SRHR set out in the ICPD PoA (paragraphs 9-96 and 106). The Beijing PoA underlined women’s

right to the enjoyment of the highest standard of physical and mental health, which is “vital to their life and well-being and their ability to participate in all areas of public and private life” (paragraph 89). It also stressed that this right “must be secured throughout the whole life cycle in equality with men” (paragraph 92). It reaffirmed that “reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health” (paragraph 223). The Beijing PoA further stressed that “[g]ood health is essential to leading a productive and fulfilling life and the right of all women to control all aspects of their health in particular their own fertility is basic to their empowerment” (paragraph 92). “The PoA enjoined states to review their laws, especially those which impose punitive measures upon women who have undergone illegal abortions” (paragraph 106(k)).

Due to campaigns by the political opponents of SRHR, the 2000 Millennium Development Goals (MDGs) did not focus on the vital importance of the realisation of SRHR in order to achieve the MDGs. The objective of Target 5A was limited to the reduction of maternal mortality by three quarters. However, in 2005, Target 5B was added and its objective was universal access to reproductive health. The indicators for Target 5B were officially established in 2007. However, the implementation of Target 5B was delayed due to strong political opposition from the Holy See, evangelical Christians in the United States and conservative Islamic states. Thus, the MDGs narrowly focused on maternal health and ignored broader issues of sexuality and reproduction.

At the Nairobi Summit on ICPD25, which took place in Nairobi from 12th-14th November 2019, states observed that in spite of remarkable progress made since the 1994 ICPD, realisation of universal access to the full range of sexual and reproductive health information, education and services remained a distant reality for millions of people. The states committed themselves to achieve universal access to sexual and reproductive health and rights as part of universal health coverage through a number of measures. According to the Nairobi Statement on ICPD25: “Accelerating the Promise”, the states committed to strive to achieve “zero unmet need for family planning information and services, and universal availability of quality, accessible, affordable and safe modern contraceptives” (paragraph 2). The states also committed to achieve zero preventable maternal deaths and maternal morbidities, such as obstetric fistulas by integrating sexual and reproductive health interventions, including “access to abortion to

the full extent of the law, measures for preventing and avoiding unsafe abortions, and for provision of post abortion care”, into universal health care programmes (paragraph 3). The states also promised to protect and ensure rights to bodily integrity, autonomy and reproductive rights (paragraph 3). The states also agreed to ensure adolescents access to “comprehensive and age-responsive information, education and adolescent-friendly comprehensive, quality and timely services” so that they may be able to make informed decisions and choices about their sexuality and reproductive costs (paragraph 4). States also promised to strive to attain zero sexual and gender-based violence and harmful practices (paragraph 5(a)) and elimination of all forms of discrimination against women and girls (paragraph 5(b)).

### **Clarifying on the Normative Content of SRHR: Role of Treaty Bodies**

In 2000, the Committee on Economic, Social and Cultural Rights (CESCR), the body responsible for monitoring state compliance with the standards in the ICESCR, elaborated on the right to the highest attainable standard of physical and mental health, through General Comment No. 14 (CESCR, 2000). The CESCR stressed that the right to health has four critical components: availability; accessibility; acceptability; and quality (paragraph 12(a)-(d)). Public health and health care facilities, goods and services should be available in sufficient quantity (paragraph 12(a)) and should be both physically and economically accessible (paragraph 12(b)). Health-related information should also be accessible (paragraph 12(b)). All health facilities, goods and services should be acceptable, that is, they “must be respectful of medical ethics and culturally appropriate” (paragraph 12(c)). The facilities, goods and services should also be of quality, that is, they must be “scientifically and medically appropriate and of good quality” (paragraph 12(d)).

One of the steps to be taken by states towards the realisation of the right to the highest attainable standard of physical and mental health is the “provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child” (Article 12(2)(a)). The CESCR has interpreted this to mean that states are required to take “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information” (paragraph 14). On women and the right to health, the CESCR stated:

To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health through their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services (paragraph 21).

According to the CESCR, states have a number of obligations towards realisation of the right: respect, protect and fulfil. The obligation to respect requires the state to refrain from denying or interfering with realisation of the right to health. This obligation requires states to “refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information” (paragraph 34). The obligation to protect requires the state to take appropriate measures, including legislation to ensure that private actors do not inhibit the realisation of the right to health. States are obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family planning (paragraph 35). The obligation to fulfil requires states to sufficiently recognise the right to health in their legislative and policy frameworks. The obligation to fulfil also requires states to ensure that public health facilities “provide for sexual and reproductive health services, including safe motherhood especially in rural areas”. The obligation to fulfil also requires the state to provide health services to those who are unable, due to means beyond their control to realise the right to health using means at their disposal. The CESCR also outlined a number of minimum core obligations, which include ensuring reproductive, maternal and child care (paragraph 44).

In 2016, building on the ICPD, General Comment No. 14, and the 2030 Agenda for Sustainable Development, the CESCR issued General Comment No. 22 on the right to sexual and reproductive health (CESCR, 2016) to assist state parties' implementation of the ICESCR and their reporting obligations (paragraph I (3)). According to the CESCR, the right to sexual and reproductive health entails a set of freedoms and entitlements. In this respect, the CESCR stated:

The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, over matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all

people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant (paragraph II (2)).

The CESCR emphasised that the right to sexual and reproductive health is indivisible and interdependent with other human rights, such as the right to life; physical and mental integrity; liberty and security of the person; freedom from torture and other cruel, inhuman and degrading treatment; privacy and respect of family life; and equality and non-discrimination (paragraph II (10)). An example of violation of these rights is a lack of emergency obstetric care services or denial of access to safe abortion, which often lead to maternal mortality and morbidity (paragraph II (10)).

On the normative content of the right to sexual and reproductive health, the CESCR stated that the right is an integral part of the right to health and it contains four interrelated and essential elements: availability, accessibility, acceptability and quality. The state is obliged to ensure availability of sexual and reproductive health care goods and services (paragraph III (12)). The state should also ensure availability of essential medicines, including “a wide range of contraceptive methods, such as condoms and emergency contraception, medicines for abortion and post-abortion care, and medicines, including generic medicines, for the prevention of sexually transmitted infections and HIV” (paragraph III (14)). Regarding accessibility, the CESCR stated that health facilities, goods and services related to sexual and reproductive health must be physically and economically accessible (paragraph III (16) and affordable to all (paragraph III (17)). The state should ensure that there is information accessibility, which includes “the right to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues” (paragraph III (18)), including maternal health, contraceptives, family planning, safe abortion and post abortion care, infertility and fertility options, and reproductive cancers (paragraph III (18)). Regarding the element of acceptability, the CESCR provides that facilities, goods, information and services must respect particular cultures but “this cannot be used to justify the refusal to provide tailored facilities, goods, information and services to specific groups” (paragraph III (20)).

Facilities, goods, information and services related to sexual and reproductive health must be of good quality (paragraph III (21)). According to the CESCR, in order to ensure quality of care, the state should incorporate technological advancements and innovations in the provision of sexual and reproductive health services, such as medication for abortion and assisted reproductive technologies (paragraph III (21)).

The CESCR enjoined states parties to ensure non-discrimination and equality in the provision of sexual and reproductive health services. States should respect “the right of all persons, including LGBTI persons, to be respected for their sexual orientation, gender identity and intersex status” (paragraph III (23)). Recognising that criminalisation of sex between consenting adults is a violation of human rights, the CESCR called upon states to “combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health” (paragraph III (23)). The obligation to eliminate discrimination and ensure equality in the context of sexual and reproductive health requires legal and policy reform. In this regard, the CESCR Committee stated:

The realisation of women’s rights and gender equality, both in law and practice, requires repealing or reforming the discriminatory laws, policies and practices in the area of sexual and reproductive health. Removal of all barriers interfering with women’s access to comprehensive sexual and reproductive health services, goods, education and information is required. To lower rates of maternal mortality and morbidity requires emergency obstetric care and skilled birth attendance, including in rural and remote areas, and prevention of unsafe abortions. Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexuality education, including for adolescents, liberalise restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care, including by training health care providers, and respect women’s right to make autonomous decisions about their sexual and reproductive health’ (paragraph III (28)).

States have an immediate obligation to eliminate discrimination against individuals and groups and to guarantee them their right to sexual and reproductive health. In this vein, states are enjoined to repeal or reform laws and policies that inhibit realisation of the right to sexual and reproductive health, including laws criminalising abortion or consensual sexual activities between adults (paragraph IV (34)). States should adopt legislative, judicial and other measures to ensure full realisation of the right to sexual and reproductive health (paragraph IV (45)). States have a number of minimum core obligations. They are obliged to repeal or eliminate laws, policies and practices that inhibit access to sexual and reproductive health facilities, services and information (paragraph IV (49)(a)); to guarantee universal and

equitable access to affordable and quality sexual and reproductive health services, goods and facilities (paragraph IV (49)(b)); to take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need (paragraph IV (49)(c)); and to provide medicines, equipment and technologies essential to sexual and reproductive health (paragraph IV (49)(d)).

Other treaty bodies and human rights mechanisms have also elaborated on the question of denial of safe abortion in the context of discrimination. The Committee on the Elimination of Discrimination against Women (CEDAW, 2009) had earlier noted in 1999 that “it is discriminatory for a state party to refuse to legally provide for the performance of certain reproductive health services for women” (paragraph 11). CEDAW (2017) has also emphasised that criminalisation of abortion, delay of safe abortion and or post-abortion care, and forced continuation of pregnancy are forms of gender-based violence and are violations of women’s sexual and reproductive health rights and freedom from torture or cruel, inhuman or degrading treatment (paragraph 18). CEDAW has also stated:

Criminal regulation of abortion serves no known deterrent value. When faced with restricted access, women often engage in clandestine abortions including self-administering abortifacients, at risk of their life and health. Additionally, criminalisation has a stigmatising impact on women and deprives women of their privacy, self-determination and autonomy of decision [making], offending women’s equal status, constituting discrimination (paragraph 59).

The Human Rights Committee (2018) has also stated that “although States parties may adopt measures designed to regulate voluntary termination of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl or her other rights under the Covenant” (paragraph 8).

The Working Group on Discrimination against Women (2018) has also stressed that the “right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy involving intimate matters of physical and psychological integrity, and is a precondition for the enjoyment of other rights” (paragraph 35). The Special Rapporteur on Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment also stated that “the denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount

to torture and ill treatment” (A/HRC/31/57, paragraph 44). The Special Rapporteur on the Right to Health also emphasised that laws criminalising abortion “infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health” (A/66/254 (2011), paragraph 21)

### **Juridical Evolution of SRHR at the Regional Level**

The African human rights architecture provides for realisation of the right to health, including aspects of SRHR. In 1981, the Organisation of African Unity (OAU) Heads of State and Government adopted the African Charter on Human and Peoples’ Rights (ACHPR), which came into force on 21st October 1986. The ACHPR guarantees every person the right to the best attainable state of physical and mental health (Article 16(1)) and obliges states to “take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick” (Article 16(2)).

In June 1995, the Heads of State and Government of the Organisation of African Unity endorsed the recommendation of the African Commission on Human and Peoples’ Rights (African Commission) to elaborate a Protocol on the Rights of Women in Africa ((OAU Resolution AHG/Res. 240 (XXXI). In 2003, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa was adopted and came into force in 2005. The protocol was the first treaty in the juridical history of SRHR to address these rights in detail. The protocol was also the first treaty to specifically address the human rights issues of women in Africa. According to the protocol, state parties “shall ensure the right to health of women, including sexual and reproductive health is respected and promoted” (Article 14(1)). The right includes: the right to control women’s fertility; the right to decide whether to have children; the right to choose any method of contraception; the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS (Article 14 (1)(a)-(d)). The right also includes the “right to be informed of one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices”; and the right to have family planning education (Article 14(e) and (f)).

According to the protocol, in order to realise the right to health, including SRHR, states parties shall take all appropriate measures to achieve a number of things. First, state parties shall “provide adequate, affordable and accessible health services, including information, education

and communication programmes to women especially those in rural areas” (Article 14(2)(a)). Second, states parties are enjoined to “establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding” (Article 14 (2)(b)). Third, states shall “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus” (Article 14(2)(c)).

The African Commission has elaborated on the normative content of some of the SRHR above in General Comment No. 2 on Article 14. The African Commission has emphasised the indivisibility of rights and stated that although the General Comment focuses on provisions of Article 14 guaranteeing women’s sexual and reproductive rights, “they must be read and interpreted in the light of other provisions of the Protocol on cross-cutting issues of women’s human rights, including the right not to be discriminated against, the right to dignity, the right to integrity and security, access to justice and the right to education” (paragraph 11). Regarding the right to control one’s fertility, the African Commission has stated that “[t]he rights to exercise control over one’s fertility, to decide one’s maternity, the number of children and the spacing of births, and to choose a contraceptive method are inextricably linked, interdependent and indivisible” (paragraph 23). States parties are enjoined to “remove impediments to the health services reserved for women, including ideology or belief-based barriers” (paragraph 25).

The right to family planning education obliges states parties to “provide complete and accurate information which is necessary for the respect, protection, promotion and enjoyment of health, including choice of contraceptive methods” (paragraph 28). States parties should also ensure that “information on family planning/contraception is provided to communities in accessible languages and in a form that is accessible to all women and girls, including those with disabilities” (paragraph 28(d)). “For purposes of the protocol, ‘family planning’ means the measures taken for an individual to control their fertility, including the use of contraception, if they choose not to have children neither immediately nor in the future” (paragraph 9).

The right to adequate, affordable health services obliges states parties to ensure “the availability, financial and geographical accessibility as well as the quality of women’s sexual and reproductive health-care services,

without any discrimination” (paragraph 29). States parties should “develop a national public health plan with comprehensive sexual and reproductive health services, guidelines and standards” (paragraph 30).

The right to safe abortion covers various rights, including freedom from discrimination; the right to benefit from scientific progress and its applications; privacy and confidentiality; and freedom from cruel, inhuman and degrading treatment (paragraphs 31-36). According to the African Commission, women should not be subjected to criminal proceedings simply because they have benefited from available safe abortion services. Likewise, health workers should neither be prosecuted nor disciplined merely because they have provided abortion services. In this vein, the African Commission stated:

The right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as abortion and post-abortion care. Furthermore, it entails that health personnel should fear neither prosecution, nor disciplinary reprisal or others for providing these services, in the cases provided in the Protocol (paragraph 32).

For purposes of the protocol, ‘safe abortion’ “refers to safe abortion services provided through specific medicines or methods, with all the necessary information and the informed consent of concerned individuals, by primary, secondary and tertiary level health professionals, trained in safe abortion, in line with the WHO standards. These services also include surgical techniques and treatments” (paragraph 10).

Building on the typology of obligations of the CESC, the African Commission stated that state parties have obligations to respect, protect and fulfil women’s sexual and reproductive rights. The obligation to respect “requires states to refrain from hindering, directly or indirectly, women’s rights and to ensure that women are duly informed on family planning/contraception and safe abortion services, which should be available, accessible, acceptable and of good quality” (paragraph 42). The obligation to protect requires state parties to take the necessary measures to prevent third parties from interfering with the enjoyment of women’s sexual and reproductive rights (paragraph 43). The obligation to promote obliges state parties “to create the legal, economic and social conditions that enable women to exercise their sexual and reproductive rights with regard to family planning/contraception and safe abortion, as well as to enjoy them” (paragraph 44). The obligation to fulfil requires state parties

to adopt relevant laws, policies and programmes that ensure fulfilment of women's sexual and reproductive rights (paragraph 45).

The African Commission outlined a number of specific obligations. State parties should provide an enabling legal and political environment to ensure realisation of sexual and reproductive rights. The African Commission stated:

States parties should provide a legal and social environment that is conducive to the exercise by women of their sexual and reproductive rights. This involves revisiting, if necessary, restrictive laws, policies and administrative procedures relating to family planning/contraception and safe abortion in the cases provided for in the Protocol, as well as integrating the provisions of the said legal instrument into domestic law (paragraph 46).

State parties are also obliged to “ensure provision of comprehensive information and education on human sexuality, reproduction and sexual and reproductive rights” (paragraph 51) and to “take all appropriate measures through policies, sensitisation and civic education programs, to remove all obstacles to the enjoyment by women of their rights to sexual and reproductive health” (paragraph 60).

The African Union Commission (2006) also developed the Plan of Action on Sexual and Reproductive Health and Rights (Maputo Plan of Action). The key strategies for operationalisation of the continental framework for sexual and reproductive health and rights include: repositioning family planning as an essential part of the attainment of health MDGs; addressing the sexual and reproductive health needs of adolescents and youth as a key sexual and reproductive health component; addressing unsafe abortion; and delivering quality and affordable services in order to promote safe motherhood, child survival, maternal, new-born and child health (paragraph 17(i)-(v)). The key strategies of the Maputo Plan of Action 2016-2030 include: removal of legal, regulatory and policy barriers limiting adolescent and young people's access to sexual and reproductive health services; and ensuring gender equality, women and girls' empowerment and respect of human rights (paragraph 18). This entails “protecting the rights of women, men, adolescents and youth to have control over and decide freely and responsibly on matters related to sexual and reproductive health, free from coercion, discrimination and violence” (paragraph 18(iv)).

At the sub-regional level, there is no law that specifically addresses SRHR. However, the Treaty Establishing the East African Community (EAC) provides for co-operation by partner states in “the development of

specialised training, health research, reproductive health, the pharmaceutical products and preventive medicine” (Article 118(f)). The East African Sexual and Reproductive Health Rights Bill seeks to provide a legal framework for matters relating to sexual and reproductive health; to protect children, adolescents and young persons from sexual abuse and other forms of exploitation; and to provide for assisted reproductive technology.

## **Juridical Evolution of SRHR at the National Level**

### *Pre-Colonial Era*

Various commentators (Meena, 1999; Mbilinyi, 1992) caution against any attempt to generalise the pre-colonial era because the rights and duties of men and women varied from one society to the next. However, there are certain features that were common to most pre-colonial societies in Africa, which apply with some generality to the situation in pre-colonial Uganda. What emerges from the review of literature on the status of women during this period is that the development of a sexual division of labour in Uganda, like in many other African societies preceded the colonial period (Tamale, 1999; Okeyo, 1980). However, in pre-colonial societies, the sexual division of labour did not necessarily imply patriarchal oppression. The work of both sexes was valued as critical for the functioning of society. Although Bisiliat and Freloux (1987) recognise that the situation between women and men was unequal in most pre-colonial societies, they argue that gender relations were more complementary than hierarchical and that men respected the status of women. Rodney (1972) argues that although women were exploited by men through polygamous arrangements, there was a counter-tendency to ensure the dignity of women in most pre-colonial African societies. Turshen (1984) and Edel (1957) argue that in pre-colonial societies, women contributed heavily to subsistence production and enjoyed greater independence in relation to food production and processing.

While the status of women in pre-colonial Africa varied greatly, they had considerable power and influence in society, which was exercised through various roles and responsibilities as mothers, mothers-in-law, midwives, diviners, herbalists, medicine women, princesses, queen mothers, chiefs, warriors, prophets, rain makers and mediums (Twinomugisha, 2004). Although African cultures could be manipulated by men in order to oppress women, in many respects, the dignity of women as human beings was respected. Most women enjoyed a degree of independence in decision-making. Elder or senior women had a voice in important matters concerning the family and the community. For example, among the Bakiga, Nyabingi

and Muhumuza played a major role in mobilising the communities and acquired cult status (Edel, 1957; Ngorogoza, 1972; Murindwa-Rutanga, 1994). These women had considerable power and influence in society, which illustrates the point that in pre-colonial societies women were not necessarily relegated to the domestic sphere.

During the pre-colonial era, women significantly contributed to the health and well-being of the family and the community. Women acted to ensure their own health within the limits of their communities' standards of living. In Kigezi, some women played critical roles, such as diviners, therapists, herbalists and birth attendants (van Der Meeren-Yeld, 1973; Rugyema, 1983). In the area of reproduction, women were aware of the benefits of child spacing to maternal and infant health. They employed various methods, such as herbal portions and prolonged breast feeding to prevent conception and ensure child spacing (Surdakasa, 1986). They were also "generally in control of their sexuality and possessed an elaborate system of management of their sexual and reproductive health" (Tamale, 2004: 6).

In the area of sexuality, however, in most pre-colonial societies, a double standard was exhibited. In Buganda, like in many societies, although men had multiple sexual partners, if a husband suspected a wife of committing adultery, he was allowed to tie her up and torture her until she confessed her guilt (Roscoe, 1966). Women were generally expected to refrain from pre-marital sex and any girl that became pregnant before marriage was heavily punished. For example, among the Bakiga of southwestern Uganda, if a girl became pregnant before marriage, she would be thrown over a cliff at Kisizi Falls in Rukungiri District (Edel, 1957). The Banyankore also frowned upon pre-marital sex. A girl who became pregnant before marriage would be taken to River Kagera, a stone tied to her back, and cast into the river (Roscoe, 1923).

The picture that thus emerges from a survey of the pre-colonial era is complex and fluid. What is clear, however, is that colonialism greatly interfered with the sexual division of labour and increased the subordination of women by men.

### *Colonial Period*

The state of Uganda can roughly be traced to around 1894 when it was declared a British protectorate. Colonialism imposed an alien mode of production upon the pre-colonial societies and typically incorporated them into the capitalist system by force (Rodney, 1972; Shivji, 1989). To achieve their objectives of capital accumulation, the colonial administration

introduced and promoted cash crop production for export, which undermined food sufficiency that had existed under the pre-colonial era and had ensured women and their families good nutrition and health (Kaberuka, 1990). Commentators, such as Turshen (1984) and Tamale (2020) trace the origins of poverty and marginalisation of men and women to the arrogant imposition of the capitalist mode of production on pre-colonial societies. The colonial division of labour ensured that men engaged in productive labour while women were confined to the home doing the least economically domestic chores and fieldwork to supplement their husbands' or partners' earnings. In her investigation of the historical and cultural construction of 'bad' women in the emerging urban space of Kampala during the colonial era, Nakanyike-Musisi (2001) concludes that the political economy of the colonial period privileged male labour and led to women's marginalisation.

In the sphere of education, the colonial system of education never took serious interest in African women. Missionary education for women was geared towards bringing up good, pure women for marriage. Writing about the work of Ms Hornby who was an educationist in Kigezi in the 1920s, Ngorogoza (1972, p. 30) states that she taught young girls "to be good women, how to look after their children properly, and to obey their husbands, cleaning their houses and entertaining visitors". Perhaps, the Victorian view of women might have influenced the colonial policy on education. For example, according to Adam Smith (1987: 20), the purpose of educating women during the Victorian period in England was "either to improve their natural attraction of their person or to form their mind to reserve, to modesty, to chastity and to economy; to render them both likely to become the mistress of the family, and to behave properly when they become such".

In the field of public health and medicine, the British colonial officials were largely concerned with venereal diseases/sexual transmitted diseases (STDs) and the assumed licentious behaviour that led to its spread (Summers, 1991). Throughout the colonial period, one of the major public health activities was prevention and control of the spread of venereal diseases (Lyons, 1994; Tuck, 2003). Colonialists viewed traditional healing practices as inferior, superstitious, concerned with black magic and witchcraft (Thairu, 1975). Traditional maternal and child health practices — where birth attendants assisted women in pregnancy and childbirth — were frowned upon and not promoted. Colonial health policy makers implemented the ideology of motherhood through maternal and child health care programmes. Indeed, following the medical work and midwifery of Dr Albert and Mrs Katherine Cook in the Uganda

Medical Mission, emphasis was placed on childbirth and child bearing (Davin, 1978). Women were encouraged to go to Mengo Hospital for antenatal care and childbirth, which included training in Western methods of looking after babies, and an emphasis on monogamy and sexual purity (Dimock, 1995). In promoting maternal and child health care, the major concern of the colonialists was the reproduction of the labour force but not the SRHR of women as such.

The colonialists viewed African women as hyper-sexed, polygamous and promiscuous and largely responsible for the spread of venereal diseases. Thus, women's sexuality had to be strictly regulated and controlled. In pre-colonial Africa, women sexuality and reproduction, like many other aspects of society, was governed by customary laws, norms and practices. However, during colonial rule (1894-1962), customary law was isolated from the law imported from Britain (common law and doctrines of equity) and relegated to a secondary position. Although the colonialists did not abolish customary law, they limited its application. Customary law was permitted to develop alongside English law but was only applicable if it was not repugnant to justice and morality or contrary to any written law (Morris & Read, 1966). Recognition of customary law had nothing to do with the well-being of the people, including their SRHR; it was useful as an instrument of colonial rule.

Colonialists viewed African customary values, norms and practices as undermining the status of women. For example, the customary practice of bride price, where money or property is paid by the groom's family to the bride's family at the time of the marriage, was seen as equating women to chattels. In *R v. Amkeyo* ((1917) 7 E.A.L.R. 14)), the court considered whether a woman married under customary law was a wife for purposes of giving evidence against her husband. The court held that, in Africa, there was no marriage as in 'Christendom' and that it was a misnomer to call customary law marriage a 'marriage' since taking a woman by a native was like buying a chattel. The court condemned bride price as wife purchase and concluded that, because the women did not participate in the marriage arrangements, there was no consent in the legal sense. Mamdani (1996) also observed that the colonialists condemned the customary practice of polygamy on grounds that it would be harmful to their interests as it would promote idleness among male natives, which would affect their [colonialists] source of labour.

In order to repress and control women's sexuality, the colonialists imported laws on criminal adultery, prostitution, abortion and homosexuality to the colony. These laws, which are antithetical to the

realisation of SRHR, are still on our statute books. For example, the Penal Code Act under Section 137 criminalises prostitution and states: “Any person who practices or engages in prostitution commits an offence and is liable to imprisonment for seven years.” The Act also criminalises living on the earnings of prostitution (Section 136) and operating a brothel (Section 137). It defines a prostitute as “a person who, in public or elsewhere, regularly or habitually holds himself or herself as available for sexual intercourse or other sexual gratification” (Section 138). Due to criminalisation of prostitution (sex work), many sex workers are arrested by the police and some are subjected to extortion and or charged with the offences of being idle and disorderly (Section 167) or rogue and vagabond (Section 168). I have argued elsewhere for decriminalisation of sex work as its criminalisation undermines sex worker’s SRHR (Twinomugisha, 2012).

Other offences that undermine a woman’s right to safe abortion include attempts to procure abortion (Section 141); procuring a miscarriage (Section 142); and supplying drugs to procure abortion (Section 143). Criminalisation of abortion has serious implications for realisation of a number of SRHR, including equality and non-discrimination, health, privacy, freedom from torture, cruel, inhuman and degrading treatment, and above all life. Due to criminalisation of abortion, women and girls are forced to undergo unsafe abortion, which significantly contributes to maternal mortality and morbidity in the country (HRAPF, 2016; CEHURD, 2016). The Penal Code Act also criminalises sodomy, which is known as having “carnal knowledge of any person against the order of nature” and a person who commits this offence is liable to imprisonment for life (Section 145(a)). The Act also criminalises attempt to commit sodomy (Section 146). Parliament passed the Anti Homosexuality Act, 2014, which criminalised same sex relations and the promotion of homosexuality. However, in *Oloka-Onyango and others v. Attorney General* (Constitutional Petition 2014/8), the Constitutional Court declared the Act unconstitutional on ground that it had been passed by parliament without quorum. Marriage between persons of the same sex in Uganda is also prohibited by the constitution (Article 31(2A)). Due to criminalisation of homosexuality, LGBTI people have been deprived of their rights, including sexual rights (Jjuuko, 2013). Under the Sexual Offences Bill, cited above, homosexuality is criminalised under ‘natural offences’.

### *Post-Independence Period (1962-1985)*

Uganda obtained political independence on 9th October 1962. The period (1962-1970) was of relative stability and prosperity, and overall, Ugandans

enjoyed a relatively economically accessible health care (Okuonzi & Macrae, 1995). However, there was no deliberate law or policy to challenge the unequal gender relations that had been exacerbated by colonialism. At the juridical level, the state played lip service to women's issues and concerns. For example, the 1967 Constitution omitted sex as a ground of discrimination to formally deny women equal rights with men as well as equality of treatment in the exercise of their human rights. Up to the end of 1970, the overriding interest of the Obote I regime was consolidation of power and dealing with the Buganda question (Mamdani, 1976; Barya, 1990) and thus little attention was paid to realisation of human rights, including SRHR.

Idi Amin overthrew the Obote I regime and ruled by decree. The period (1971-1980) witnessed a general decline in the economy and the general collapse of social services (Okuonzi & Macrae, 1995). Government health services were neglected and most health professionals, including doctors, fled the country (UNDP, 1999). Violations of human rights at the hands of state agents were rampant, and the period witnessed a general deterioration of life (Mudoola, 1988). Idi Amin was overthrown in April 1979. The Obote II regime (1980-1985) was characterised by horrendous violations of human rights. In 1981, the Structural Adjustment Programmes (SAPs) were introduced in Uganda for the first time (Nabudere, 1990). Under the SAPs, which exalted the private sector at the expense of state involvement in the provision of social services, everything, including essential services, such as medicine, were imported. There was a sharp decline in real wages and incomes, and social services, such as health care were tremendously neglected.

The Obote II regime was overthrown by the military led by Gen. Tito Okello. Like the Obote II regime, the Okello-led military regime was pre-occupied with fighting insurgency and was characterised by human rights violations. It may be concluded that the post-independence period (1962-1985) did not witness any meaningful juridical developments in the area of the right to health generally and SRHRs in particular.

### *National Resistance Movement (NRM) Period (1986 - to date)*

#### Constitutional Developments in the Area of SRHR

The Okello regime was overthrown by the National Resistance Army/Movement (NRA/M) led by the current President, Y. K. T Museveni. Since 1987, the NRM has implemented market-led reforms, including SAPs and other neo-liberal policies, which have undermined the public health sector generally and rendered health care services unaffordable for the people, including rural and urban poor women (Twinomugisha, 2020). However,

under the NRM regime, there has been some progress in the advancement of women's status through juridical and policy strategies. Women are now visible at decision-making levels, although some analysts have attributed this to the bureaucratic or paternalistic concessions of the NRM, benefitting largely the elite (Naggita, 2001; Asiimwe, 2002).

Unlike the 1967 constitution, the 1995 constitution provides for the right to equality (Article 21(1); Article 33 (1), (4) and (6)) and freedom from discrimination on a number of grounds, including sex (Article 21(3)). Some laws have been challenged as being discriminatory on grounds of sex. For example, in *Uganda Association of Women Lawyers and others v. Attorney General* (Constitutional Petition No. 2 of 2002), the petitioners argued that sections 4 (grounds of divorce), 21 (damages or compensation for adultery), 22 (costs against a co-respondent), 23 and 24 (alimony) and 26 (settlement) of the Divorce Act, cap. 249, were unconstitutional as they contravened and were inconsistent with a number of articles including, 21(1) and (2) and 33(1) and (6) of the constitution. The Constitutional Court held that the impugned sections discriminated against women since they favoured one sex (a husband) in a divorce matter and are thus unconstitutional, null and void. According to the court, the sections in question should apply to both sexes. The challenge is that parliament has not yet repealed these sections. Indeed, the difficulty of enforcement of the court order was observed by Okello, JA who stated: "Application of this order is likely to meet some difficulties. It is, therefore, necessary that the relevant authorities should take appropriate steps as soon as possible."

In addition to other provisions of the constitution, which apply to both women and men, a whole article was devoted to the protection of women's rights (Article 33). During the constituent assembly, which debated the draft constitution that was prepared by the Odoki Commission, there was overwhelming support from the delegates for the recognition of the status of women in society, and thus the inclusion of a specific article on women's rights. For example, Hon. Mr Basaliza, representing Fort Portal Municipality, stated:

The status of women should be recognised and acknowledged in the constitution. It is the first time the constitution addresses itself to gender issues. It is important that women find their right status in the constitution. If you want to build a healthy, balanced and educated group of people, we must see to it that women are catered for properly in terms of education, health and social well-being (Republic of Uganda, 1994: 504).

The constitution thus guarantees women “full and equal dignity of the person with men” (Article 33(1)). The constitution also enjoins the state to “provide the facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement” (Article 33(2)). The state is obliged to “protect women and their rights, taking into account their unique status and maternal functions in society” (Article 33(3)). I have argued elsewhere that the phrase ‘their rights’ includes women’s SRHR, which are recognised in international and regional human rights that Uganda is party to (Twinomugisha, 2007). The constitution also guarantees women “the right to equal status with men and that right shall include equal opportunities in political, economic, and social activities” (Article 33(4)). Women are also guaranteed “the right to affirmative action for the purpose of redressing the imbalance created by history, tradition or custom” (Article 33(5)). The constitution also prohibits all laws, cultures or traditions, “which are against the dignity, welfare or interest of women or which undermine their status” (Article 33(6)).

Some of the customs that undermine women’s dignity have been challenged in courts of law. For example, in *Law and Advocacy for Women in Uganda v. Attorney General* (Constitutional Petition No. 08 of 2007), the Constitutional Court held that the custom and practice of female genital mutilation as practised by several tribes in Uganda is unconstitutional as it contravenes various articles of the constitution, including Article 33. It is important to point out that the customary practice of female genital mutilation has been outlawed by the Prohibition of Female Genital Mutilation Act, 2010. It is an offence to practise female genital mutilation (Section 2) or aggravated female genital mutilation (Section 3).

In *Mifumi (U) Ltd and others v. Attorney General* (Constitutional Petition 2007/12), the petitioners challenged the constitutionality of the customary practice of demand for and payment of bride price. They argued that bride price as a condition precedent to a marriage, and a demand of a refund of bride price as a precondition for dissolution of marriage should be declared unconstitutional as it violates various provisions of the constitution, including Article 33(6). By a majority of four to one, the Constitutional Court dismissed the petition on grounds that the petitioners can seek remedies under Article 50 (enforcement of rights) and other laws, such as the Penal Code Act in case of domestic violence associated with the custom of bride price. Although she dismissed the petition, Mukasa-Kikonyogo, DCJ stated:

I am in agreement with the view that the customary practice of the husband demanding a refund of the bride price in the event

of dissolution of marriage demeans and undermines the dignity of a woman and is in violation of article 33(6) of the Constitution. Moreover, demand of refund violates a woman's entitlement to equal rights in marriage, during marriage and at its dissolution. Further, a refund demand fails to honour the wife's unique and valuable contributions to a marriage. A woman's contribution in a marriage cannot be equated to any sum of money or property, and any refund violates a woman's constitutional right to be an equal co-partner to the man.

Justice Kikonyogo was, however, ambivalent about sexual rights of women. According to her, any 'marriageable woman' should be a virgin. Thus, unmarried women, including adolescents, do not have a right to have sex. On the importance of bride price and the need for virginity, she stated:

I wish to comment on the difference between 'bride price' and 'dowry'. In certain African societies, the custom of presenting a gift to the bride's family is practiced as a token of gratitude. This gratitude is for the part the bride's family has played in taking care of the potential bride. Under this view, the gift or gifts are, under no circumstances, to be considered payment. The groom's family is not the only ones giving gifts; the bride's family may give gifts as well. This practice arises out of the value society attaches to virginity as the fountain of life that is valued as the proper form for any marriageable women to be in. A woman is endowed with the spring of life, and the gifts in dowry sometimes express gratitude for preservation of this spring of life without using the spring wastefully.

Pursuant to the constitution, the parliament of Uganda enacted the Equal Opportunities Act, 2007, which establishes the Equal Opportunities Commission (EOC) whose mandate is to monitor and evaluate and ensure that legal and policy frameworks, cultural norms and practices "are compliant with equal opportunities and affirmative action in favour of groups marginalised on the basis of sex ... gender ... or any other reason created by history, tradition or custom" (Section 14(b)). Under the Act, the powers of the EOC had been restricted because it could not investigate any matter involving behaviour that is considered to be immoral and socially harmful or unacceptable by the majority of the cultural and social communities in Uganda (Section 15(6)(d)). However, in *Adrian Jjuuko v. Attorney General* (Constitutional Petition No. 001 of 2009), the Constitutional Court declared this Section 15(6)(d) unconstitutional on grounds that it created a class of social misfits who are referred to as immoral, harmful and unacceptable and denied them access to justice before the EOC.

The 1995 constitution also attempts to address the question of access to safe legal abortion. During the debate of the draft constitution in the constituent assembly, there was a heated debate about the controversial subject of abortion. Some delegates wanted an article in the constitution that outlined the exceptional grounds for medical abortion, such as protection of the life of the mother, rape, and foetal abnormality. Other delegates were totally opposed to abortion. For example, Hon. Rev. Fr Batanyenda (presidential nominee) stated:

Mr Chairman. I strongly oppose this amendment for the following reasons. If this amendment is carried, Mr Chairman, I think we shall be giving free licence to our youngsters to engage in sex before marriage, since they know that once they [discover] that they are pregnant, they will automatically abort. Secondly, Mr Chairman, suppose this Miss X or Miss A willingly accepts boy B and they engage themselves in sex. First of all, the act of sex is for the enjoyment, but not for the girl to become pregnant. Now, suppose a girl agrees with boy X and afterwards she becomes pregnant, she will come and say she was raped. Now, some women are saying that everyday their husbands rape them. So, they will say pregnancy came about because of rape. So, let me terminate the pregnancy. So, Mr Chairman, I think by passing the amendment, we are legalising abortion and it would be dangerous to the country (Republic of Uganda, 1994).

Yet, other delegates were of the view that the relevant article should not spell out the grounds of abortion but the matter should be left to parliament. Hon. Aggrey Awori (Samia Bugwe North) was of the view that delegates should “make a generic provision for parliament to make laws governing the unborn child” (Republic of Uganda, 1994). Hon. Joseph Mulenga proposed that the delegates should give parliament an opportunity to study and specify circumstances under which abortion may be permitted (Republic of Uganda, 1994). He moved the following amendment: “No person has the right to terminate the life of unborn child except as may be authorised by law”, which was seconded and adopted by the delegates and is now in the constitution (Article 22(2)).

There are a number of cases pending determination in the Constitutional Court in respect of the question of abortion. For example, the case of *CEHURD and others v. Attorney General* (Constitutional Petition 10 of 2017) seeks from the Constitutional Court an order directing parliament to make a law for termination of pregnancy. The case of *Human Rights Awareness and Promotion Forum (HRAPF) v. Attorney General* (Constitutional Petition

No. 25 of 2020) is also seeking a declaration from the Constitutional Court that sections 141-143 of the Penal Code Act, which criminalise practices relating to abortion, are unconstitutional as they violate articles 21 (equality and non-discrimination) and 33 (women's rights) of the constitution and are thus null and void.

### *Litigating SRHR: Critical Role of CEHURD*

The Centre for Health, Human Rights and Development (CEHURD), an organisation engaged in the struggle for health, human rights and social justice in Uganda, has, in addition to other advocacy strategies, taken a lead in litigating maternal health related rights in the country. Below, I briefly look at some of the cases litigated upon.

#### **Case 1: Challenging Government Failure to Provide Maternal Health Services**

In *Centre for Health, Human Rights and Development & Others v. Attorney General* (Constitutional Petition No. 16 of 2011), the petitioners petitioned the Constitutional Court seeking declarations to the effect that the non-provision of essential maternal health commodities in public health facilities and the unethical conduct and behaviour of health workers towards expectant mothers are inconsistent with the constitution and a violation of the right to health and other related rights namely, women's human rights, the right to life, and freedom from torture, cruel, inhuman and degrading treatment.

The respondent attorney general raised a preliminary objection that the matters before court raised a political question. According to the attorney general, the petition required the court to make a judicial decision involving and affecting political questions. That in doing so, the court would in effect be interfering with the political discretion of other branches, namely, the executive and the legislature. She further contended that in order to determine the issues in the petition, the court has to call for a review of all the policies of the entire health sector and make findings on them, yet implementation of these policies is the sole preserve of the executive and the legislature. She prayed that the petition should be dismissed because the questions that informed it are not justiciable, that is, they are not capable of being decided by court. In reply, counsel for the petitioners argued that the preliminary objection was misconceived as the question to be determined was whether the acts and omissions are in contravention of the constitution and not the determination of a political question.

The court agreed with the attorney general and struck out the petition. The court stressed the importance of separation of powers in the implementation of policies and stated as follows:

Much as it may be true that government has not allocated enough resources to the health sector and in particular the maternal health services, this court is ... reluctant to determine the questions raised in this petition. The Executive has the political and legal responsibility to determine, formulate and implement policies of government ... This court has no power to determine or enforce its jurisdiction on matters that require analysis of the health sector government policies, make a review of some and let on, their implementation. If this court determines the issues raised in the petition, it will be substituting its discretion for that of the executive granted by law....

The petitioners appealed the decision of the Constitutional Court (Supreme Court Appeal No. 1 of 2013). The Supreme Court held that the petitioners had raised questions of constitutional interpretation within the ambit of Article 137 of the constitution. Thus, the Constitutional Court should hear the petition in order to determine whether the allegations therein entitle the petitioner to the redress sought.

Kisaakye, JSC observed that the political question doctrine has limited application in Uganda's current constitutional order and the Constitutional Court was established to hear disputes where private citizens allege that action or inaction by the executive or parliament contravenes or is inconsistent with the constitution. Katureebe, CJ stressed that where a citizen alleges that a health policy or actions and omissions made under that policy contravene the constitution, the Constitutional Court has a duty to determine whether such action or omission indeed contravenes the constitution. The learned chief justice also emphasised that the notion of separation of powers is not absolute. He observed that since the petition raised constitutional issues regarding the right to health and medical services under National Objectives XIV and XX of the constitution, respectively, the Constitutional Court would have to consider whether the right to health falls under the constitution and whether government had taken "all practical measures to ensure basic medical services" as required by National Objective XX. The chief justice agreed with the Constitutional Court that questions of negligence and the attitude of health workers towards patients did not require constitutional interpretation and would be properly handled in the High Court. In a unanimous decision, the Supreme Court ordered the Constitutional Court to hear the petition on its merits.

Following the order of the Supreme Court, the Constitutional Court heard and unanimously allowed the petition. The court held that the government's omission to adequately provide basic maternal health care services in public health facilities violates the right to health, right to life and women's rights. That government's omission to adequately provide emergency obstetric care in public health facilities which results in obstetric injury subjects women to inhuman and degrading treatment.

Barishaki Cheborion JCC reaffirmed that the right to health is a fundamental right which states ought to respect, protect, uphold and promote. Emphasising the indivisibility of human rights, the learned judge stated that "[t]he right to health, life and human dignity are inextricably bound. There can be no argument that without the right to health, the right to life is in jeopardy" (p. 36). He further stated:

The right to health, human dignity and life of women [are] protected both under international law and our constitution. The right encompasses access to adequate maternal health care. ... Maternal health has a direct relation to the physical attributes of women and as such their reproductive health forms an integral part of the health of a woman and for this reason, it is conceived as part and parcel of human rights of women. The right to health of a woman forms an integral part of her right to life, right to equality, right against torture, cruel, degrading, and inhuman treatment (p. 53).

The court ordered the government to prioritise and provide sufficient funds in the national budget for maternal health care; to ensure that staff who provide maternal health services are fully trained and all health centres are full equipped; and to complete and submit to parliament a full audit report on the status of maternal health in Uganda. The court awarded the 3<sup>rd</sup> and 4<sup>th</sup> petitioners a total of UGX 155 million for general and exemplary damages.

#### Case 2: Denial of Emergency Medical Care Through Negligence

In *Centre for Health, Human Rights and Development & Others v. Nakaseke Local Government* (Civil Suit No. 111 of 2012), the plaintiffs brought an action on behalf of the deceased, Irene Nanteza, who was admitted at the defendant's hospital with obstructed labour. The nurse called the doctor on duty who delayed to arrive. Nanteza who had been in labour for about eight hours died due to a lack of emergency obstetric care. It was alleged by the plaintiffs that the deceased had an obstructed labour condition but did not receive the appropriate medical care and attention due to the absence of the doctor assigned to her. The judge visited the defendant's hospital in order to acquaint himself with some of the facilities such as the theatre and maternity ward, which were mentioned in the evidence. The court held

that her right to basic medical care had been violated due to absence of the doctor on duty. That because of the doctor's absence, she did not receive the necessary care to overcome the condition she was in, leading to a violation of her human and maternal rights guaranteed under the constitution, which obliges the state to "protect women and their rights, taking into account their unique and natural maternal functions in society". The court also held that the rights of her children and spouse had been violated since through the doctor's negligence, they had been deprived of their mother and wife respectively. The court awarded the plaintiffs UGX 35 million in damages.

### Case 3: Theft of a Baby Resulting in Psychological Torture, a Critical Component of Mental Health

In *Centre for Health, Human Rights and Development & Others v. Executive Director, Mulago Hospital & Another* (Civil Suit No. 212 of 2013), the third plaintiff, a wife to the second plaintiff, delivered two babies at Mulago National Referral Hospital. On 15th March 2012, she was discharged with only one baby. The plaintiffs contended that the third plaintiff gave birth to two live babies while the defendants argued that one of the babies was born dead. The second and third plaintiffs reported the loss of their baby to the police. On 17 March 2012, they were given a dead baby by a mortuary attendant at the hospital. The second and third plaintiffs rejected the dead baby and a DNA examination confirmed that they had no biological connection with the body handed over to them by the mortuary attendant. Although the case hinged on negligence of hospital staff leading to loss of a baby, the judge creatively cited and applied relevant provisions in international and regional rights instruments on the right to health and held that the psychological torture inflicted on the second and third plaintiffs amounted to a violation of the right to health, including SRHR. Although this case was decided by a judge of the High Court, it was cited with approval by the Supreme Court in *Centre for Health, Human Rights and Development & Others v. Attorney General* (Constitutional Petition No. 16 of 2011) above.

The decisions above show that the right to health is now firmly established in our jurisprudence and is justiciable, that is, it can be enforced by the courts. The decisions also illustrate the point that some judges may be innovative while handling health rights-related questions. For example, although visiting the *locus quo* (place where the cause of action arose or scene of the event) usually occurs in land disputes, in the *Nakaseke Local Government* case, the learned judge visited the hospital. He was able to understand and appreciate the state of the relevant maternal health facilities and services before ruling on the matter.

In the *Mulago Hospital and another* case, the judge was creative in a number of ways. In the first instance, she applied relevant international human rights instruments to the case in question in detail in order to arrive at her decision. Secondly, she interpreted relevant rights in an interdependent and interrelated fashion. For example, she applied relevant civil and political rights such as freedom from torture, cruel, inhuman and degrading treatment; right of access to information; rights of the family; and children's rights to the right to health. Thirdly, although the plaintiffs had not requested for certain remedies, she issued orders to address certain health care system challenges at Mulago Hospital. She ordered the police to investigate the disappearance of the baby and file a report in court within six months from the date of judgement. The executive director of Mulago Hospital was ordered to submit a report to CEHURD every four months regarding the steps or measures taken in enhancing the respect, movement and safety of babies. She also ordered Mulago Hospital to grant CEHURD free access to the hospital to oversee implementation of the measures. CEHURD was also ordered to ensure that the second and third plaintiffs access psychological care and counselling services as part of their healing process.

The decisions also show that as with civil and political rights, the struggle to realise SRHR can be fought in the courts of law. Courts can be utilised to challenge violations of SRHR. Courts are able to clarify on the nature, scope and content of the rights question. By framing issues, such as health in the language of rights and constitutional obligations, the litigation process assists in placing sexual and reproductive health matters on the agenda, both before the judge and the court of public opinion, especially through media reporting. Both print and electronic media captured most of the salient issues in the above decisions, especially Constitutional Petition 16, thereby raising the level of awareness and insight into the maternal mortality and morbidity questions in the country. The unacceptable number of preventable deaths of women was brought into the public domain. Maternal health issues were debated in parliament, culminating in a parliamentary resolution on maternal health. Thus, SRHR litigation is an important tool for demanding accountability from the state and its organs. It places SRHR on the agenda of these organs, including the judiciary and the legislature.

According to the Human Rights (Enforcement) Act, 2019, "a person who has reason to believe that the state is not taking adequate steps for the progressive realisation of rights and freedoms guaranteed under chapter four of the Constitution or international treaties to which the state is a

party, may apply to the High Court for redress” (Section 13(1)). However, a word of caution is in order. A focus on litigation in the struggle for realisation of SRHR is certainly not a panacea to the sexual and reproductive health challenges in the country. Litigation may simply ‘massage’ the structural and systemic causes of violations of SRHR. For example, I have argued elsewhere that the root cause of maternal mortality and morbidity in Uganda is neoliberalism, whose policies are antithetical to the realisation of socioeconomic rights generally and human rights in particular (Twinomugisha, 2017). Litigation which focuses on individual violations is likely to foster individualism and exacerbate inequalities brought about by privatisation and commodification of health care policies. Colleen and Gross (2014) have argued that health rights litigation may undermine a fair allocation of resources within a health care system and may destabilise the allocation of scarce public resources to the disadvantage of the most vulnerable. Consequently, limited resources may be diverted to those with the means and ability to litigate SRHR or those who may be reached by civil society organisations, such as CEHURD.

Litigation may also obscure the need for other strategies for tackling the systemic factors that inhibit access to and utilisation of critical components of SRHR, such as maternal health care. Litigation is expensive and access to the courts is only available for those who can afford. Given the poverty and inequality levels in the country, the majority may not be aware of their human rights, including SRHR. They may also not afford the legal expenses involved in petitioning courts challenging violations of SRHR. The majority of rural and urban poor women may even not be able to access justice due to inequitable gender relations. Thus, for litigation to achieve the desired results, it should be buttressed by other non-judicial strategies, which are beyond the scope of this chapter.

## **Conclusion**

The major objective of the chapter was to interrogate the juridical evolution of SRHR at the international, regional and national levels. At the international level, SRHR, especially reproductive health rights, have been extensively elaborated upon, and as Pizzarossa (2018) has observed, they are ‘here to stay’. At the regional level, there have also been significant developments in the area of SRHR especially the Maputo Protocol, which various states have signed and ratified. However, there are juridical challenges, especially reservations entered by a number of states. The Vienna Convention on the Law of Treaties defines a reservation as “a unilateral statement, however phrased or named,

made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State” (Article 2(1)(d)). A reservation is, therefore, a caveat to a state’s acceptance of the treaty. In other words, the state categorically informs the whole world that it is not bound by the treaty or any of its provisions. For example, Uganda entered a reservation to Article 14(1)(a) of the Maputo Protocol in respect to women’s right to control their fertility, which the state interpreted to mean that women entirely have the right to control their fertility regardless of their marital status. Uganda also entered a reservation in respect of Article 14(2)(c) of the protocol, which the state interpreted as conferring the right to abortion or mandating a state party to provide access to abortion. Uganda made it explicitly clear that it is not bound by the clause unless permitted by domestic legislation providing for abortion.

Courts in Uganda have elaborated on the normative content of the right to health, including components of SRHR. It can be stated that the right to health, including certain components of SRHR, such as maternal health rights, are now justiciable in Uganda. However, in order to strengthen the justiciability of the SRHR, there is a need to explicitly provide for the right to health in the Bill of Rights (chapter four) of the constitution as is the case with the 2010 Constitution of the Republic of Kenya (Article 43) and the 1996 Constitution of South Africa (Section 27). An explicit recognition of the right to health may embolden the courts further to scrutinise government policies and strategies with the view of finding out the extent to which they promote or negate SRHR. There is also a need to domesticate Uganda’s international and regional human rights obligations by developing a specific legislation on SRHR. This legislation would augment the existing policy frameworks on SRHR. To avoid any ambiguity, direct application of international law should also be expressly provided for in the constitution.

CEHURD should lobby the relevant departments of the state to ensure that the reservations alluded to above are lifted. There is also a need to lobby parliament and the executive for the amendment or repeal of obnoxious provisions of the laws in the Penal Code Act that undermine realisation of SRHR. CEHURD should also continue to sensitise women and men about their SRHR so that they may be able to claim them. They should also pursue more incremental litigation by identifying areas in the legal and policy frameworks that may be antithetical to the realisation of SRHR. Litigation in the area of SRHR should be augmented by other

advocacy efforts, including sensitisation, lobbying and engaging relevant stakeholders.

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## CHAPTER 5

# Sexual and Reproductive Health and Rights Movement in Uganda

*Noah Mirembe*

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### **Introduction**

The term sexual and reproductive health and rights (SRHR) emerged out of global human rights and reproductive policy frameworks. In 1994, the United Nations International Conference on Population and Development (ICPD), held in Cairo, Egypt, shifted global perspectives and approaches on population by broadening the focus of the population to a rights-based framework that included SRHR (Ahlberg & Kulane, 2011). The post-ICPD policy work saw programme resources shift from being dedicated specifically to family planning, to funding reproductive health (Zlatunich, 2012). This was followed by the Beijing Conference on Women (FWCW) in 1995 which built upon the developments at the ICPD, expounding on the notion of sexual rights as part of the human rights of women to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence (UN FWCW, 1995).

This express naming of sexual and reproductive health, along with the prohibitive and enhancing aspects painted a clear picture for potential interventions to advance SRHR. Following these developments, good sexual and reproductive health rights was ultimately defined as: "...a state of complete physical, mental and social wellbeing in all matters relating to the reproductive system. It implies that people are able to have a satisfying and safe sex life, the capability to reproduce, and the freedom to decide if, when, and how often to do so" (UNFPA, 2021).

SRHR are a complex set of rights shaped by the legal and policy framework as well as cultural and social attitudes and practices in which they are located. SRHR impact on the different groups of the same

populations differently. Miller offers a useful foundational reference on the complexities that came with the merger of sexual rights with reproductive rights. She elaborates how women's reproductive health rights advocacy was an important site from which claims to sexual rights have emerged (Miller, 2000).

The growth of the SRHR movement in Uganda mirrors the developments at the international and regional level. The SRHR movement can be understood as a collective of social movements working to address injustices and discrimination related to sexuality. The groups that make up the SRHR movement include those working around reproductive health, those fighting gender-based violence (GBV), fighting around the legal age of consent, those engaged with lesbian/gay/transgender decriminalisation and protection, among others. Using the SRHR framing, these previously marginalised groups have been able to claim rights as legal entitlement in order to mobilise collective action to achieve them as a group (Scheingold, 2004).

These energies only cohere at a theoretical level – the activisms are split and as such often divided. Actors working on SRHR issues in Uganda contend with inquiries around their legitimacy within the coalescing movement, questions of accountability and inclusivity, and broader civil society participation. They also have to contend with various conceptual concerns that include building a shared political agenda, issues of representation and leadership, inclusion and marginalisation. Working within the global frameworks catalysed by the ICPD, these groups have kept SRHR issues at the forefront of public dialogue, policy making, and criticism at the national level for the last decade. These groups have been at the frontlines for the struggle for SRHR, drawing political participation from sectors, including: law, academia, medical practice, media, social workers, and policy makers.

This chapter traces the journey of what is now framed as an SRHR movement in Uganda over the past decade. It begins with a conceptual framework embracing the tripartite interrelationship between the human rights-based approach, feminist theory of power and social movement theories. This is followed by a historical development of the struggle for SRHR at the international and continental levels that influenced the emergence of the SRHR movement at the national level. The discussion at the national level highlights the actors, issues, strategies and tools used to advance the SRHR issues. It also highlights the achievements, tensions and lessons learnt within the SRHR movement during this period. The chapter

concludes by identifying opportunities for growth and identifies areas of work that still require attention.

### **Theorising the SRHR Movement's Journey**

The following section provides the conceptual framework for investigating SRHR movement in the last decade. This study relies on interdependent theories of feminist analysis of power and sexuality, human rights and social movement theory to unpack the development and status of SRHR work in Uganda.

#### *Sexuality and Power*

Sexuality is understood as a system of power in which the social-political structures of power define what is “acceptable” sexual behaviour for men and women in our societies (Tamale, 2008). Sexual practices and their present interpretations are interwoven with unspoken historical infusions of race, religion and cultural assumptions. Thus, many scholars and practitioners within the field of SRHR recognise the relevance of questioning these underlying scripts.

Analysing social change around SRHR requires an analysis of power because it is both one of the factors that act either to constrain or enable. Power, its distribution and control, is a central issue in understanding how politics and particularly sexual politics operate. The International Peace Advisory Team (2015) reflects on power as a central focus in multi-stakeholder processes because of the asymmetries between stakeholders based on formal authority/power, wealth, social status, gender, age, and knowledge about the issue, self-confidence and so on. Individuals and groups seek to challenge these asymmetries of power in the hope of realising improved lived conditions, health outcomes, and ultimately, their freedom to make informed decisions about their sexual or reproductive options.

Batliwala (1994) defines power as having two central aspects — control over resources (physical, human, intellectual, financial, and the self) and control over ideology (beliefs, values and attitudes). Social control over SRHR is manifested through norms, practices, and laws based on hetero-patriarchal dominance infused with religious and cultural interpretations. For instance, sexuality in Uganda as elsewhere in the world, is constructed and reinforced by the laws and social norms to which individuals are subjected; norms around who they can experience attraction to, who they can marry or choose to have children with. If power means control, then empowerment is the process of challenging existing power relations, and of gaining greater control over the sources of power.

Many contemporary struggles about gender justice (and indeed SRHR) on the continent are hinged on the feminist analysis (Bennett, 2011). This is because the deeply patriarchal nature of social and cultural life shapes SRHR issues for instance, dominant cultural practices that grant men the right to make most decisions regarding sexual relations. Women's sexual and reproductive agency and modes of identity are subordinated to male desire and male control (Bakare-Yusuf, 2011). This tension formed the root of national activism around women's reproductive rights and the push for women's freedom to make choices about their bodies. As such, any discussions of sexual rights must be premised on an understanding of the need for gender equality (Klugman, 2012).

Individuals do not have singular identities or experiences within social structures, but rather their multiple identities intersect with each other. Yet, the dominant SRHR discourse creates a deeply entrenched and value-laden system that casts sexual expression either as acceptable or unacceptable, natural or unnatural, good or bad (Oloka-Onyango, 2012). On this scale, same sex eroticism together with prostitution and sex outside the hetero-normative marital bond is considered morally reprehensible. It is this very conception of sexual hierarchies that justifies criminalisation of homosexuality and prostitution in Uganda despite the fact that sex is a historical phenomenon. Thus, by discussing sexuality and SRHR as issues of human rights, we shed new light on issues such as abortion, prostitution, homosexuality, and HIV/AIDS. Significantly, the rights approach demonstrates the centrality of the inherent dignity and right of each person to make choices about their lives, which choices include bodily integrity, autonomy, control of one's sexuality and reproductive capacities (Tamale, 2011a).

One of the goals of feminism and feminist movements is to cause a redistribution of power as a resource in more equitable ways that recognise both women's and men's individual agency and bodily autonomy. This challenge of power necessitates what Batliwala (1994) terms collective action — 'power with'. Thus, the movements that make up the SRHR movement in Uganda employ a range of tactics, engaging in emancipatory resistance and counter-opposition to the existing patterns of social control. As HIV/AIDS grew to become a threat to the economic and social functioning of countries, it provided an entry point for bringing questions of sexuality and sexual power relations into the public arena (Klugman, 2012). Although some African countries, such as Benin and Morocco, argued vocally against sexual rights, the official African position was for sexual rights. African

ministers had agreed to the language of sexual rights recognising that addressing unequal sexual power relations between men and women was a central pre-requisite for preventing HIV/AIDS and responding to VAW. This was met with significant opposition from countries with religious fundamentalist regimes.

A significant majority of Ugandans subscribe to one form of organised religion or another with Christianity as the predominant religion. The discomfort of Christianity with sex and sexuality meant that governments understood HIV/AIDS prevention from the very beginning in terms of moral fundamentalism. Resistance to articulation of sexuality and reproduction as a rights issue espouses religious and cultural fundamentalist ideas of women's place in society whereby women's desire for rights is seen not as a normal aspiration but rather as a rebellion against national, ethnic, or religious identity (Freedman, 1995).

The feminist movement sparked the link between grassroots movement activism on reproductive health issues with political action in order to cause positive change on what was now framed as SRHR. The SRHR advocacy groups coalesced into a movement with a range of actors that employ a number of tactics of subversion and resistance. These tactics include legal advocacy and reform; the establishment of organisations offering support, resources and education; the establishment of shelters for abused women and children; educational campaigns; movement building; trainings for police and judicial officers; provision of medical resources; marches and demonstrations; research on the links between gender-based violence and many other issues, such as poverty, HIV/AIDS and conflict (Bennett, 2011).

### *Human rights framework and SRHR*

The law significantly shapes the landscape for political processes, mobilisation opportunities, and ideas utilised by social movements to advocate for change. It constructs common-sense perceptions of social, and sexual practices (Oloka-Onyango four years of demonstrably progressive experience, 2012). Law legitimates social movements' struggles as legal rights and thus fosters mobilisation for the common good (Scheingold, 2004; Brigham, 1996; McCann, 2006). Hence, this begs the question whether knowledge of the law is sufficient to pursue SHRH issues or are there particular skills or specialisation necessary to influence the advocacy actions?

The human rights-based approach to sexual rights and reproductive rights connotes affirmative duties demanded from the state and other

actors to provide for diverse sexual activity and expression, autonomy, and choice. It extends the application of existing rights (for example, to life, liberty, and security of the person, or to equality and non-discrimination) to protect certain forms of sexual activity and expression, applicable also in the reproductive rights context (Miller, 2000). The plural form of the phrase 'sexual rights' suggests more than one right is needed to address sexuality and that rights are inter-dependent and indivisible. Agreeably, rights work must recognise sexuality as comprising more than physical or social sexual conducts or behaviours. It must connect to the formation and assertion of sexual identities and manifestations (conduct, ideology, speech) and to the enabling conditions required for the formation and expression of diverse sexual identities. It should be able to protect fluid identities and a range of behaviours without forcing individuals to claim a fixed, 'naturalised' identity made up of only one particular constellation of orientation, behaviours, and social role (Miller, 2000).

Miller (2000) and Miller and Vance (2004) observe that advancing sexuality as a human right would benefit from the feminist analysis of the drivers of women's and men's capacity to explore the links between sexuality, conduct, identity, social structures, and reproduction, and their diverse results. In Uganda, the feminist and women's movements have maintained leadership on this aspect of SRHR work through grassroots feminist consciousness and movement building initiatives aimed at equipping women with skills to interrogate patriarchal norms and policies. The Uganda Feminist Forum (UFF), a biennial hosted by Akina Mama wa Africa, is one specific national convening that brings together feminist movements with the sole aim of consciousness-raising of how women's rights are a political issue. UFF provides a space for feminists to interrogate and explore new ways of working from consciousness or knowledge about women's oppression to a conscientious (active, working, fighting, advocating and striving) to dismantle the pillars of heteropatriarchy (AMwA 2021). This process of rights political analysis and consciousness-raising continues to enable actors working on SRHR issues to engage in the process of agenda setting to name and challenge existing social wrongs or injustices using the legal discourse (McCann, 2006).

The political analysis and consciousness-raising efforts often come into conflict with some of the tactics employed by actors within the SRHR movement specifically the application of human rights norms to sexual and reproductive health. The drawback to employing the rights-based approach

to give life to the underlying political analysis is accurately elaborated as follows:

Human rights work is often ad hoc, driven by the politics of violations-based work... Because of this situation, human rights norms have tended to be applied in ways that reflect the claims of specifically situated groups or individuals. Activists have not always had the luxury of connecting across sectors-or the political will to do so- yet achieving the most comprehensive and effective framework for “sexual rights” protection will require just such a coalition strategy (Miller, 2000, p. 72).

Recognising the tensions in the contemporary rights-based approach, Tamale (2020) proposes a conscious revisiting and application of human rights norms to the protection of women and minority rights. This conscious intersectional approach was one of the central claims of the civil society coalition on human rights and constitutional law, which actively brought together SRHR actors to combat legislation like the Anti-Homosexuality and Anti-Pornography Act between 2009 and 2016. At the same time, this approach represents some of the missing pieces in the approach taken by actors within the contemporary SRHR movement as regressive legislation continues to emerge.

### *Social movements and SRHR*

Here, we explore the emergence of the SRHR movement, highlighting the various political and resource mobilisation opportunities that have shaped the movement in the last decade. Social movements are “forms of collective action that emerge in response to situations of inequality, oppression and/or unmet social, political, economic or cultural inequalities through collective action” (Batliwala, 2012, p. 3).

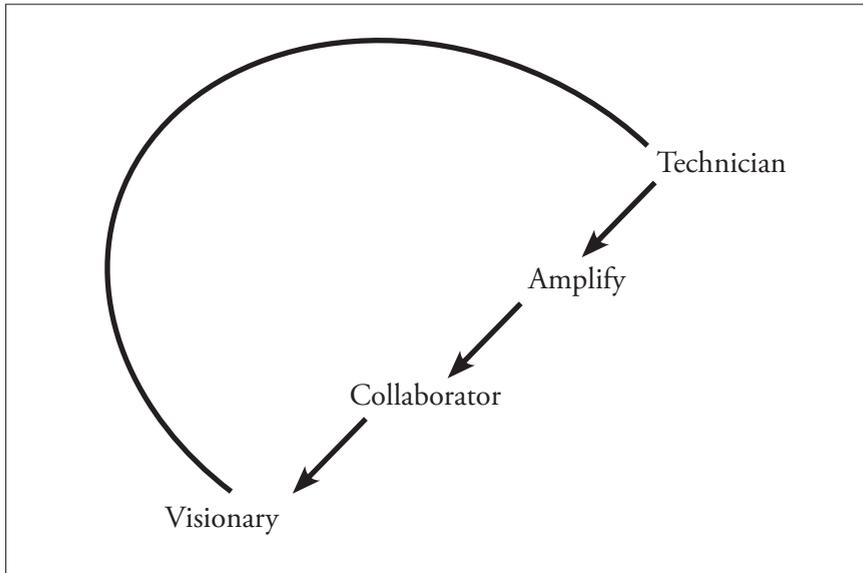
McAdam, McCarthy, and Zald (1996) emphasise three core theories that interact to shape social movements, namely: the political process theory, the resource mobilisation theory, and the framing theory. Their perspective suggests that most political movements and revolutions are set in motion by social changes that render the established political order more vulnerable or receptive to change. The political opportunities from the international arena propelled the global embracing of SRHR, enabling marginalised groups such as women and sexual and gender diverse groups to claim their rights to make reproductive choices. The resource mobilisation theory emphasises the role of elites in mobilising monetary and other resources

to support a movement. Lastly, the framing theory underlines the role of narratives in shaping what, how and why there is need for social change.

Social movements remain a significant force for challenging inequalities and exclusions in society and for proposing new models and visions for more egalitarian and just social, economic and political power relations. Image 1 below presents the stages of movement emergence and growth over time. This image is one of the three visual tools included in this paper, which were developed during the SRHR movement journey reflection meeting organised by the Centre for Health, Human Rights and Development (CEHURD) in Mukono District, Uganda in May 2021. Participants identified the visionary as the activist or actors who hold a vision for change on a specific issue.

1. The visionary is usually one who is directly or personally impacted by an issue and creates the initial spark or interest in the issue at hand. In effect, the visionary provides the initial seed that feeds the cause.
2. The collaborators emerge as those groups or individuals that support the visionary, enabling them to shape the idea and act upon it. The amplifier usually emerges once there is a clear vision, direction, and on-going actions working to amplify the emerging work and ideas to reach wider audiences for support.
3. The technician is one with a specific skillset that serves the vision, for instance, lawyers, doctors, accountants, and journalists, among others. These technicians usually serve as means to serve an end.

The image suggests linear progression between the visionary and the technician. Yet, in practical terms, these distinctions are not always as clear and are often inter-twined. For instance, within the Ugandan context, there are a tiny handful of organisers/writers who think in terms of an SRHR movement. The groups that make up this movement are not people who 'march together', 'strategise together'. Politically, they operate in silo of each other. Some actors emerged as technicians with specific skillsets in law or journalism and later seized opportunities to create a vision for change regardless of their own personal afflictions with the subject matter. Indeed, some actors, such as academics tend to consider themselves to be apolitical, even though they have played a vital role as a thinking hub thus motivating the various actors within the movement.



**Figure 5.1:** Stages of movement growth/process/progression

Movements are neither homogenous nor linear. People move in and out of the movement. They ebb and flow, die and resurrect; depending on how rocky or murky the political moment or need arises. Exercising varied levels of self-preservation, actors/people disagree, find tracks that seem to take them somewhere, lose the plot, get inspired once more. How then can a conclusive determination be made as to who is part of the SRHR movement? While no conclusive answer can be presented at this time, some criteria have been suggested for self-assessment of movement participation. At a personal level, do people have any investment in the issue beyond funding? Put differently, can an individual still be invested in changing the status quo if funding for the work ceased? Leadership, at multiple levels, is important within movements as actors set out to intentionally work to contribute to the SRHR movement.

Another consideration is the existence or lack thereof of the political ideology of the actors that make up a given movement and the extent to which the shared political ideology allows the movement to engage in common analysis and develop common goals for change. Different analysis of the problem can lead to serious disagreements within the movement with the resultant uncoordinated and conflicting actions. Given the differences in the levels of political analysis, there tends to be different understanding and appreciation to sexual identities and rights as well as different strategies of action. Moreover, the weak contribute to the fragmentation of the

movement with the tendencies of the different actors to narrowly focus on their safe issues of concern, often using a projectised approach.

Each organisation grapples with how its systems or structures in place can support its core mandate while simultaneously contributing to their goals of the broader SRHR movement. While affirmative responses to these assessments are not conclusive determination of movement membership, they offer some inclination towards movement composition. Hence, the importance of having clear understanding and communication of how one's interests are intertwined with those of others within a movement. In other words, relationships within the movement can be defined based on interests that they serve and they are only sustainable when there is a clear collective agenda that contributes to the survival and wellbeing of the particular actors. How individuals or groups navigate these transitions within the movement is a core aspect of how the movement grows and progresses over time. How do identities evolve within the movement? For instance, does considering oneself as part of the SRHR movement exclude the individual or group from the broader (so-called mainstream) human rights and social justice movement agenda? How do these multiple identities coalesce into what can be understood as an SRHR movement?

In précis, a clear commitment or loyalty to the cause of the movement as well as demonstration of both internal and external accountability for one's actions or inaction is a measurable asset in determining movement composition. Movement belonging ought to be deeply a part of one's identity and participation within the ecosystem. If I believe myself to be part of the movement, how do I express that in the governance structures, staffing, or values-based interactions with service providers? These questions reflect some of the considerations continuously undertaken by those at the core of SRHR organising in Uganda, which are applied to the analysis of the SRHR movement in the sections that follow.

## **Influence of International and Regional Developments on the SRHR Movement**

The SRHR movement in Uganda is anchored in the global discourse on population, family planning; reproductive and maternal health; trafficking and broader sexual rights issues.

### *International Arena*

A number of international developments served as key pivotal points and provided opportunities that contributed to the framing of the SRHR

movement. The International Conference on Population and Development (ICPD) in 1994, the Beijing Conference on Women in 1995, and the Millennium Development Goals in 2000, helped set the stage for the SRHR movement to emerge in Uganda around the mid-1990s into the late 2000s.

The adoption of the ICPD in 1994 placed reproductive rights and reproductive health rationale on the centre table (Seltzer, 2002). The ICPD radically shifted focus from the 'population problem' to reframing SRHR as a human rights issue (Finkle & McIntosh, 1996). Framing reproductive rights and reproductive health as a human rights issue was critical for empowering the SRHR movement and particularly of marginalised groups such as women (McCann, 2006). This marked the public shift from mere focus on macro-level concerns about population growth (and population targets) to broader concern about micro-level health and rights issues as a state obligation. In this way, it expanded reproductive health beyond family planning to include maternal health, prevention of sexually transmitted infections (STIs) including HIV, adolescent reproductive health, and sexual health (Programme of Action, paragraph 7.2).

Outstandingly, the feminist groups present at Cairo ensured that women's rights were affirmed as part and parcel of human rights (Caldwell, 1996; Presser, 1997). For instance, the Women's Caucus was the originator of the most progressive and feminist language in the ICPD Program of Action including all of the definitions on reproductive health and the reference to 'sexual' in the context of 'reproductive health' (Nyanzi, 2011).

In September 2000, the United Nations (UN) adopted the Millennium Declaration that committed nations to a new global partnership to reduce extreme poverty and set out eight time-bound targets known as the Millennium Development Goals (MDGs) (UNDP, 2015). Although maternal health became enshrined in global consensus through the Millennium Development Goals (MDG 5), reproductive health was not originally specifically included. Rather, it was incorporated as a sub-goal of MDG5 later in 2005 (United Nations Statistics Division, 2011). Consequently, explicit mention of sexual and reproductive rights was missing from the MDGs, largely due to strong opposition from the United States, the Holy See (Vatican) and nations within the G-77 (Crossette, 2005; Hulme, 2009). Subsequently, reproductive health/family planning were included as targets under MDG Goal 5 on maternal health, under Target 5.b: to achieve universal access to reproductive health (United Nations, 2012; United Nations General Assembly, 2000).

### *Regional Impact on the SRHR in Uganda*

Operationalised in 2005, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) is one of the most progressive legal instruments providing a comprehensive set of human rights for African women (African Union). It was one of the leading continent-wide efforts that boosted the possibility of creating national policies on a number of issues including gender-based violence, access to reproductive healthcare, and a focus on sexuality education, among others (Tamale, 2011b: 3). It challenges the old stereotypes about the role of women in society by recasting women as equal and critical partners with men in the development of their communities (African Union).

Significant efforts by non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) to raise the profile of maternal health gained even greater global traction from 2005 with the launch of the Partnership for Maternal, New-born and Child Health followed by a series of global advocacy conferences. In addition, a number of African countries focused particular attention on maternal health from 2006 when the African heads of state ratified the Maputo Plan of Action (African Union, 2006). These developments cumulatively contributed to the birth of the SRHR movement in Uganda.

## **SRHR Issues as a Social Movement Agenda in Uganda**

### *Mapping the Journey*

The HIV/AIDS pandemic forced governments to become more open about addressing issues of sexuality although they were still uncomfortable with references to sex or sexuality which go beyond the context of provision of sexual health services (Oloka-Onyango, 2012). From the 1990s, the government of Uganda was hailed for successfully implementing the HIV prevention strategies that led to a decline in the number of infections (Twinomugisha, 2007; Nyanzi, 2011; Tamale, 2008; Oloka-Onyango, 2012). Retrogressively, the country adopted an ideology of abstinence and fidelity campaigns, which undermined implementation of many positive policies (Zlatunich, 2012). As a counter strategy, advocates referenced the ICPD's new human rights language to craft strategies to tackle discrimination, violence, and exclusion with the SRHR issues. The ICPD, thus, enhanced the legitimacy for SRHR movement.

Starting the early 2000s, Uganda, like many African countries, adopted country-specific roadmaps to reduce maternal mortality, which included

focus on abortion, maternal health, and gender-based violence, family planning, and adolescent health. A number of local initiatives emerged. For example, there were many popular publications, such as *Straight Talk* in Uganda that enjoyed wide circulation and addressed issues of sexuality, reproductive health and rights (Bennett, 2011). The main public health mantra advocated within government-led SRHR initiatives was and largely remains practising safe sex in order to prevent unwanted pregnancies and transmission of sexually transmitted infections including HIV/AIDS (Nyanzi, 2011). This approach has been criticised as often being about reproduction and disease. Rarely (if ever) is it about sexual pleasure, well-being or indeed about non-reproductive sexualities (Miller, 2000).

Ironically, the political climate at the time could be described as a liberalised autocracy in which the regime adopts electoral democracy with regular elections while governing in a heavy-handed manner that restricts participatory rights, such as the rights to freedom of expression and association (Bratton & Chang, 2006; Diamond, 2002). For instance, in 2005, the *Vagina Monologues* took Uganda by storm. This play was supported by Action Aid Uganda, and organised by a team of four gender activists (Sarah Mukasa, Solome Nakaweesi-Kimbugwe, Rita Aciro-Lakor and Jessica Nkuuhe). Although the play was banned by government on account of being an affront to public morality, it opened public debate on sexuality and sexual rights (Nakaweesi-Kimbugwe & Chigudu, 2019). It opened debate, dialogue and broke silences on sexuality in Uganda. The state's response was an early indicator of how public advocacy on sexual rights issues would be treated in the coming decade. This later led to the emergence of a range of organisations working on a number of issues under SRHR, such as: sexual orientation and gender identity expression (SOGIE), *Sex Work*, abortion rights, family planning, Comprehensive Sexuality Education, adolescent SRHR.

The government continued to treat SRHR issues with disdain, dismissal, and lack of importance as demonstrated by the miniscule budgetary allocation to health services compared to the infrastructure budget. While the human rights language was inserted into the government policy, it was not accompanied by significant actionable goals at the programme level. In other words, there was hardly any political will to translate the progressive policy on paper into actionable goals. Moreover, Uganda's political leadership has a continuing desire for high fertility levels amidst low prioritisation for improving women's health (Zlatunich, 2012). These tensions within the political context mean that advocates have to find

creative ways to mobilise without antagonising government or scaring off would-be supporters within the elite and grassroots.

Jhangiani and Tarry (2014) suggest that people have a tendency to explain their situation as a function of individual deficiencies rather than features of the system. Isolated individuals seem especially likely to explain their troubles on the basis of personal rather than system attributions. Consequently, it is important to be intentional in mobilising diverse individuals to share a common understanding of the root causes of their problems or challenges (McAdams, McCarthy & Zald, 1996). Such mobilisation within the SRHR movement is demonstrated by the fact that existing women's groups capitalised on their long history of organising within Ugandan politics to serve as a major springing block for responsive collective action to address SRHR issues.

Individual feminist and women's activists became significant pillars for mobilising their organisational structures, which further energised the budding SRHR movement (Ferree & Miller, 1977). People, such as Solome Nakaweesi-Kimbugwe, then Executive Director of AMwA, Professor Sylvia Tamale from the Makerere University School of Law, Dr Maria Nassali, then Executive Director of FIDA-Uganda, Sarah Mukasa, then at Africa Women Development Fund, as well as Stella Mukasa, and Hope Chigudu, a feminist consultant, were amongst the people who were instrumental in various activist journeys (AMwA, 2010). They hand-held, mentored, evacuated and supported leadership and organisations to grow as well as built their organisational structures to sustain collective actions (Nakaweesi-Kimbugwe & Chigudu, 2019).

The above successes notwithstanding, the country continues to struggle to address sexual and reproductive health and rights issues. There has been emphasis on maternal health to the exclusion of rights because it had a greater appeal to policy makers (Crossette, 2005). Improving women's health is less threatening to the status quo than enhancing women's power within and outside the family (Presser, 1997). Consequently, rights arguments are often invisible in advocacy work with health arguments continuing to dominate the framing of issues. These developments explain the opportunities that shaped the emergence of organisations, such as CEHURD, whose interventions tackle laws and practices directly through litigation, but which maintain silence on the politics of sexuality.

To date, gender inequality frustrates women's ability to decide on the number of children to have or to use contraception, as well as compounds the structural exclusion of sexual and gender minorities. Young people,



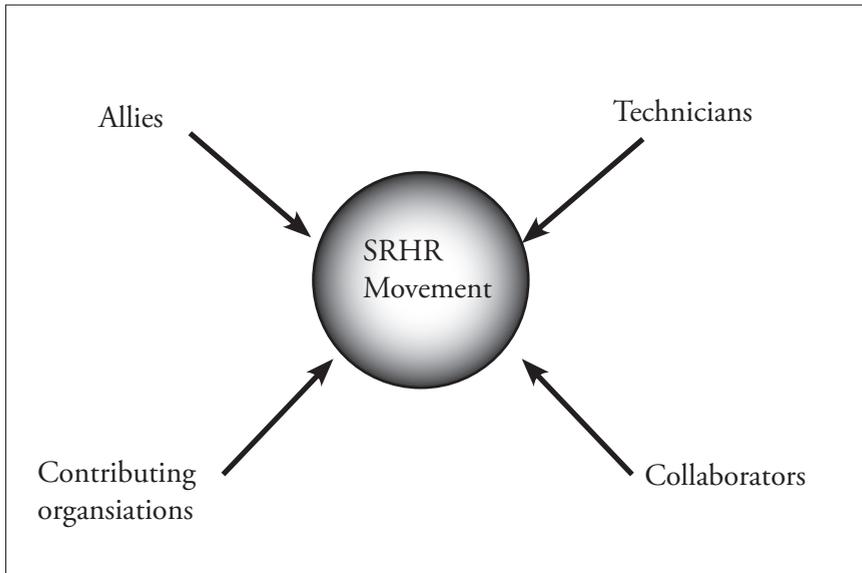
The 'safe' issues are presented at the centre of the chart and they represent the issues which receive attention broadly and are considered acceptable areas of advocacy. These issues include: HIV/AIDS, child sexual abuse, child marriages, sexual and gender-based violence, safe male circumcision (SMC), among others. The outer wings represent the contested issues within the SRHR movement. Nyanzi (2011) raises similar questions as some of the gaps in our knowledge and practice around SRHR. These issues include: comprehensive sexuality education (CSE), elderly sexuality, menopause and andropause, female sex work, among others, which are considered controversial for public advocacy although they are recognised as existing issues of concern within the local context. The third categories of SRHR issues are placed in the outer space of the map in black ink. These are hardly addressed because they are widely considered to be issues of morality or too foreign for the local context and are represented in the outer space of the map in black ink. These include scholarly writing on SRHR, lubricants and sex toys, sexual harassment across the divide (men sexually harassing men, or women sexually harassing women), trans and male sex workers, among other issues.

The map is reminiscent of Rubin's 'charmed circle', a concept of sexual hierarchy through which sex acts are appraised according to a hierarchical system of sexual value (Nyanzi, 2011). The concept, published by Rubin in 1984 in the essay "Thinking sex: notes for a radical theory of the politics of sexuality", offers insight into the process of mapping undertaken by SRHR advocates to identify and then categorise all available sex practices within the diverse sexual cultures. An interesting observation from a close look at the SRHR map as it currently stands raises a question of what the map would look like when re-drawn from a different lens or perspective. For example, if a lesbian woman living in a rural area or a woman living with a disability in a refugee camp were to re-draw this map, which issues would form the centre for advocacy purposes? This remains some of the unfinished work for the movement to consider in the years ahead.

## **Unresolved Dilemmas**

### *Belonging or not?*

Image 3 below depicts the kind of civil society ecosystem that fed and nurtured the SRHR movement in Uganda. It highlights the various actors situated outside the movement, but also helps to influence the movement's strategies within the local context.



**Figure 5.3:** SRHR movement and broader civil society in Uganda

Given that there are many other competing movements, some of which overlap, and at times complement or conflict with the SRHR movements, actors within the SRHR often grapple with their multiple identities. They often contend with questions of identity: whether or not they belong within the movement? Whether their organisations or individuals view their own contributions as part of the SRHR movement? Whether membership to the SRHR movement is automatically assumed based on the actor's type of work? Given the varied levels or roles of participation within the SRHR movement, this raises the following questions. Do the actors see themselves as core part of the SRHR movement or as allies to the movement? Does belonging to a movement require merely self-declaration? What are the obligations/responsibilities of participation within a movement?

In reflecting on these questions, individuals within civil society have confessed that at times, the participation in the movement is not intentional. As explained by one of the assumed actors of the SRHR movement:

When we started this work, the conversation was never about a movement. We looked to fill a gap in the SRHR ecosystem. We did not know who was there in the movement; and we did not take the trouble to figure it out. We acted because of the need to address the crisis of maternal mortality. As others joined us in this struggle, we found ourselves coordinating the different linkages.

An equally perplexing dilemma is how actors within the SRHR movement view their participation within broader civil society: whether their contribution to the SRHR movement is perceived as distinct from contribution to the NGO sector. The broader NGO sector has not always acted outrightly supportive of the SRHR movement. For instance, at the height of Anti-Homosexuality Bill and the Anti-Pornography Bill, the mainstream NGO sector seemed to distance itself from those advocating these SRHR because they were deemed as controversial issues.

The online terrain offers access to subversive voices in interesting ways, and is a growing force for navigating and interrogating sexualities in the public sphere. Some of the most vibrant voices on sexualities in African contexts and indeed in Uganda can be found in the online environment (Olamijuwon et al., 2021). An example is the African feminism platform that connects African feminist voices on a range of issues, including sexual and reproductive rights. Organisations, such as Let's Walk Uganda, a youth-led LGBT organisation, boast of a broad following on Facebook. Women for Uganda organises on WhatsApp, while prominent sex workers, such as Shanita Namuyimba, popularly known as Bad Black, thrive on the streets of Twitter, dishing advice on sexual and gender subversion. The dangers of visibility on online platforms are well known, with individuals and activists in particular reporting targeted harassment, outing, revenge pornography and so on. Structural issues, such as access and ownership also come into play as issues of bandwidth and access to constant electricity have an effect on the use of Internet space in African countries (Tamale, 2020).

### **Tracking the Backlash: The Counter-SRHR Movement**

The human rights-based approach put forward by actors within the SRHR movement is not an uncomplicated one. Even as the movement makes progress, opposition from within the local context and external forces all shape the parameters of the movement's response. SRHR claims often spark powerfully driven attacks on the concept of 'rights' as an excessively individualised and atomistic (Miller, 2000). A number of other dilemmas also emerge, three of which are worth highlighting here, and are elaborated by other authors in this book.

#### *Funding Dilemmas*

Without significant contributions from international and increasingly regional donors, the SRHR movement in Uganda would look vastly different. Solome Nakaweesi's chapter in this book offers an in-depth analysis of the role

of funding in shaping the SRHR movement in Uganda over the last decade. As noted in the introduction, international human rights developments, including funding patterns, have shaped the SRHR movement in Uganda. Funding has forced organisations within the movement to abandon the issue every now and again and go back to their organisation since movement work is hard-to-measure within most existing donor frameworks; yet, donors want clear measurements as a condition for funding.

Some funds, while necessary, employ restrictive policies and serve to reshape SRHR interventions in local contexts. For example, in 2003, the U.S. government under the administration of George W. Bush (2001-2009) launched its HIV and AIDS funding programme, the President's Emergency Plan for AIDS Relief (PEPFAR) (Horn, 2011). There is evidence to suggest that this initiative has supported a number of ultra-conservative religious actors in Africa over the years. The programme has been widely criticised by women's rights, health advocates, and recently LGBT groups for its conservative ideological stance that has included restrictions on using funds to support sex workers, funding to conversion therapy clinics, requirements that large proportions of the funds for education and prevention be directed toward abstinence-based programming (Horn, 2011; Khatondi, 2021). Such policies have been strongly supported by religious organisations. At the same time, more than any other aspect of donor funding, selective funding that is most dominant in the area of SRHR leading to fragmented programming (Ahlberg & Kulane, 2011).

### *Religious and Cultural Fundamentalisms*

Contemporary fundamentalist movements in the global north and south tend to construct their agendas around a defence of traditional gender norms, maintaining patriarchal control over the family, sexuality and reproduction, and gendered social roles (Kaoma, 2009). A number of scholars on gender and sexuality in the African context have elaborated the influence of religious and cultural fundamentalisms on the advancement of SRHR across the continent. While religious belief and practice across African countries is dynamic and diverse, there are also many common strands.

Religious fundamentalisms can be defined as 'the strategic use of religious discourse and institutions to forward views and actions that are absolutist and intolerant, anti-human rights and women's rights and at their root fundamentally patriarchal'. The U.S. Christian right and U.S. Christian fundamentalists continue to provide targeted financial support to key African clergy and churches in both the mainline and charismatic

Protestant traditions (Horn 2013). Aided by the fact that Christianity is global in nature, fundamentalist clergy actively network with, learn from, and replicate discourses and mobilising strategies applied by fundamentalists in other countries, in particular by the Christian right in the U.S. Conservative and fundamentalist forces continue to make strategic use of debates around gender and sexuality as entry points to rallying popular support for conservative agendas or as routes through which to implement laws and policies that impact on other progressive issues (Horn, 2013: 53). Largely because of the moralist approach described above, discriminatory laws and policies that curtail the freedoms of citizens, civil society and the media have been legislated, resulting in the (re)criminalising of abortion, HIV transmission and homosexuality (Ahlberg & Kulane, 2011).

## **Conclusion**

The framing of SRHR as a human rights issue is a landmark achievement that placed it as an obligation of the State (Keck & Sikkink, 1998). Advocates bring nuance to understanding of the impacts of stigma, violence, and discrimination on marginal communities. A significant contextual barrier for the contemporary SRHR movement has been the lack of awareness of human rights standards and principles that apply to sexual rights broadly. Yet, SRHR is inherently interlinked and interrelated to other human rights like the rights to equality, dignity, privacy, freedom of expression and association, protection from cruel, inhuman and degrading treatment to mention but a few.

The SRHR movement is still heavily focused on sexual violence and reproductive issues as the major themes addressed by the movement. In that way, linking sexual and reproductive rights simultaneously contributes to and paradoxically hinders national work to develop a liberatory theory and practice for sexual rights as an element of human rights (Miller, 2000). Advancing SRHR is both a struggle against the wider structural conditions in which individuals find themselves enmeshed, as well as an internal battle of values (Oloka-Onyango, 2012). Women's and human rights movements have used the spaces offered by the rights-based approach to make advocacy alliances locally, regionally and globally, to demand their rights and, more significantly, to initiate institutional building in very innovative ways (Ahlberg & Kulane, 2011).

It is generally agreed that Public Interest Litigation (PIL) seems to be one of the most effective actions to change the root causes of marginalisation (Oloka-Onyango, 2012). The SRHR movement has heavily relied on

litigation as a strategy to the detriment of grassroots mobilisation and other forms of potentially more effective political organising (Scheingold, 2004; McCann & Silverstein, 1998). At the same time, extra-legal political factors continue to undermine social mobilisation for the SRHR movement (McCann, 2006). Activists within the movement thus question whether the legal frameworks and remedies that they have pursued are always the most appropriate tools to address the human rights issues (Oloka-Onyango, 2012). Consequently, I agree with Twinomugisha (2007) that the SRHR movement has to engage in advocacy to improve the overall function of the rule of law, improve independence and capacity of courts, the law enforcement agencies as well as the legal, medical and social sciences professionals. Reflecting on CEHURD's experience, it is the organisation's public interest cases, which stimulated the media and public attention and importantly acclimatised it to the potential of PIL as a vehicle of social mobilisation.

Heterosexual values and homophobic prejudices remain both within the SRHR movement and among health and policy makers are barriers to the full enjoyment of the right to health for all. The SRHR movement must address these attitudes in order to become truly representative of all identities and aspects that reflect the rich diversity of African sexualities. The parallel organising of the health groups, rights groups and sexuality groups continues to erode the collective gains as an SRHR movement, with sexuality rights placed at its periphery. The health needs of the health needs and rights of trans and intersex people as well as their internal sector violence are largely invisible and unaddressed nor challenged (Oloka-Onyango, 2012).

Disputes over sexual behaviour often become the vehicles for displacing social anxieties, as can be seen from President Museveni's frequent reference to sexual and/or reproductive rights issues to mobilise political capital (Bhalla, 2021). This all coincides with the increased repressiveness of the Museveni regime. The pledge to offer pads for girls in the 2016 presidential election, the passage of the Anti-homosexuality Act and Anti-Pornography Act in 2013 (following the post 2011-presidential election walk-to-work protests), and the recent passage of the sexual offences bill in an NRM led parliament demonstrates sexuality's potency as a political tool.

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## CHAPTER 6

# On Sexuality and The Tango of The SRHR Movement

*Maria Nassali*

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### **Introduction**

In choosing this title, there were other competing options, namely the “Struggle of the SRHR Movement” and the “Battle for the Sexual and Reproductive Health Rights (SRHR) Movement.” The struggle analogy was considered because the concept of human rights is one of struggle against abuse of power or privileges and yet those with power would not readily give up their privileges for the sake of the marginalised majority (Shivji, 1989; Heyns, 2006; de Feyter, 2005; Clapham, 2005). The struggle for human rights manifests itself both at the wider structural context within which individuals are located as well as an internal battle of individual values (Oloka-Onyango 2012). Similarly, the “Battle of SRHR Movement,” was considered as a potential title being alive to the fact that transforming society for equality is a critical battle in the just war for better societies (Mutunga, 2009). Moreover, for sexual minorities, equality is a battle of life and death achieved at high personal risk and violence. However, this title was equally dropped because of the ability of the powerful to subvert progressive struggles by sheer use of force. I pondered why such an important and intimate concept of sexuality through which society renews itself and may be either natural or learned behaviour should be a matter of struggle or battle as is predominantly the case.

Although metaphorically, a movement is commonly likened to a river, this imagery is also problematic because it conjures images of vulnerability and helplessness of the movement to the vagaries of nature. However, people make choices to support, resist or be indifferent to struggles against social injustice. What is required is deliberate actions to challenge the status quo of inequities. Therefore, the analogy of the tango was chosen for

the following reasons: Originally, the SRHR journey began as a solitary concern of women due to the patriarchal, personal and institutional marginalisation, discrimination and violence against them built and entrenched over centuries. While men as part of the privileged society joined in the tango, they tended to do so for ulterior motives to display their superiority. Likewise, men who self-claim to support the struggles against marginalisation are often celebrated as good human beings with hardly any scrutiny of their practices. Regretfully, some women may exhibit arrogance and re-entrench male supremacy and leadership over females. A few others though, may be willing to adhere to feminism leadership in attacking discrimination in all its manifestations. Consequently, despite the lack of clear-cut answers on how to popularise the SRHR movement by recruiting the mass participation of both women and men, one way forward is to tango along as we improvise the steps in an enjoyable experience. Put differently, building an SRHR movement need not be exclusively a struggle nor fight, as is currently the case, but a popular and pleasurable social interaction – that brings multitudes of people together to celebrate the human interaction.

This chapter offers a theoretical analysis of why the component of “sexual” under the constellation of SRHRs is the most contested and least addressed. It begins with unpacking the terms of sexual rights, highlighting the multiple connotations to different stakeholders. Drawing from the experience of the women’s movement, it profiles the case study of the Vagina Monologues in Uganda to demonstrate its contradictory impact on sexual rights advocacy which caused retrogression of the mainstream women organisations from overtly addressing positive sexuality. As the government of Uganda began to enact retrogressive laws to constrain freedom, activism around HIV/AIDs, sex work and LGBTQI intensified. Regretfully, fifteen years later, the case study of the advocacy around the Sexual Offences Bill of 2021 highlights the repeat of history, exposing the fragile nature of the SRHR movement around positive sexual rights, its being led by the male activists notwithstanding. The chapter also illuminates the progress ushered in by the judiciary in upholding sexual rights. It concludes by making a case for a mass movement of men and women to support sexual rights.

### **Unpacking Sex, Sexual, and Sexuality**

Although the term “sexual” comes first under the SRHR, it was the last addition to the concept. Initially, the bio-medical interventions in health focused on maternal and child health and later shifted to reproductive health,

with the more recent addition being the term sexual (Nyanzi, 2011). Indeed, the term sexual rights is yet to be overtly recognised in the international community (Tamale, 2007) and its conceptualisation is still evolving.

The terms, sex, sexual and sexuality are similar yet different. Under the gender framework “sex” means the biological difference between men and women. However, to a lay-person, or an ordinary person on the street, the primary meaning of sex is the act of physical sexual intercourse. From a religious perspective, the purpose of sex is for reproduction. However, there is an evolution from sex as merely a tool for reproduction to also include an expression of love, a confirmation of human bonding and an important component in our psycho-social well-being (Cook, Dickens & Fathalla, 2003). In *Tonnen vs Australia* (Communication No. 488/1992), the term sex was interpreted to include sexual orientation.

Sexuality is a broad concept including: sexual knowledge, beliefs, values, attitudes, behaviours, procreation, sexual orientation, personal and interpersonal sexual relations. Sexuality touches a wide range of other issues including pleasure, the human body, dress, self-esteem, gender identity, power and violence. It is an all-encompassing phenomenon that involves the human psyche, emotions, physical sensation, communication, creativity and ethics. (Tamale, 2011, pp. 11-12).

Given that sexuality is context-specific, different people relate to and practise sex in different ways; and within an individual, there are different sexualities identities, the term sexuality should be plural (Helle-Valle, 2004). Moreover, African sexuality did not prescribe rigid gender roles according to biological sex, but rather the term was more flexible with both men and women capable of playing both masculinised and feminised roles (Tamale, 2020; Amadiume, 1987).

The contestation over sexuality amongst different individuals within the same context as well as within an individual renders sexuality a highly emotive and turbulent discourse. Besides, a number of scholars assert that commonly in Africa, sex had a ritualistic and celebratory effect and was associated with joy and abundance to the extent that most everyday milestones, such as birth of a child, death of a husband, marriage of a child, construction of a home, or planting and harvesting of crops, were either preceded or proceeded by a sexual act (Nakanyike, 1996; Jjuko & Kibalama, 2011; Tsanga, 2011; Tamale, 2011). Silberschmidt (2004) aptly notes that sexuality has gendered connotations:

[M]en and women engage in sexual relations for an array of reasons that range from the pursuit of pleasure, desire for intimacy, expression

of love, definition of self, procreation, domination, violence or any of the above, as well as others. How people relate sexually may be linked to self-esteem, self-respect, respect for others, hope, joy or pain. In different contexts, sex is viewed as a commodity, a right or a biological imperative. It is clearly not determined fully by rational decision making (Carovano, 1995, pp. 3-4, quoted in Silberschmidt, 2004, p. 234).

The controversial nature of sexuality, compounded by the social norms and taboos of secrecy, shame, guilt and privacy frustrates public discussion which reinforces male dominance. Sexuality is vested with symbols that often mean different things to men and women due to their relationship with power and social inequality (Silberschmidt, 2004). Therefore, what may give social value to a man may not necessarily give social value to a woman. Moreover, there is no standard definition of the terms masculinity nor feminism within the sexuality discourse. Neither are the two terms biologically determined nor natural, but are learned dynamic concepts that are shaped by the economic, socio-cultural and political processes within which they are situated (Silberschmidt 2004). Furthermore, the two terms are relational constructs because the definition of one depends on the definition of the other (Silberschmidt, 2004). Nevertheless, masculinity is about dominance buttressed with a social imperative of men to constantly prove that they are real men (Mutunga 2009; Silberschmidt, 2004; Njoya, 2008). With men positioned as public beings with authority, notions of masculinity are premised on men's wage-earning powers, male virility, sexuality and sexual performance (Silberschmidt, 2004). In contrast, women are stereotyped as passive and subordinate private beings socialised to provide men sexual pleasure (Silberschmidt, 2004).

Constructed as private beings, when women assume the roles men are expected to fulfil, the credit may be appropriated to men (Njoya, 2008). Additionally, even when women progress to powerful political positions, their sexuality is often at the centre of the ideological construction (Ahikire, 2004). For example, Byanyima and Mugisha (2004) document how women ministers were dismissed as "collective wives" of the president which sexualisation serves to reduce their credibility as legitimate actors in the public arena. A recent critique of the female scholars at Makerere University by Tamale unveils that they are viewed as a misfit in the academic space of male-dominated intelligentsia constituting a meagre 29 per cent of the total academic staff and marginally represented in the top leadership ranks of the university. The institution is replete with formal bureaucratic

structures and practices that legitimate inequality and act as smokescreens for sexism with female academia juggling the often-underestimated gender politics, such as family-career conflicts, sexism, domestic abuse to mention but a few (Tamale, 2021). Hence, Tamale underscores the necessity of a mind shift from the legacy of colonial paradigms that delinked the masculinised “labour of the mind” from the feminised “labour of the body” to reform the institutional and organisational structures that perpetuate and reproduce sexism, ageism, heterosexism, and other inequalities (Tamale, 2021).

Another contradiction is that although purported to be private, sexuality is politicised and indeed regulated by the state. Despite being private and personal, the sexual terrain is inherently political, characterised by power and powerlessness in defining “good, civilised, normal, moderate and acceptable sex vis-à-vis bad, backward, dangerous, disastrous, wild, excessive, subversive and high-risk sex” (Nyanzi, 2011, p. 478). Anthropological research in the early 1900s was contemptuous of the relatively unrestrained sexualities of both African men and women which it categorised as primitive, bestial and lascivious, immoral, insatiable and barbaric (Tamale, 2011; Lewis, 2011; Nyanzi, 2011). Hence, colonialism policed the sexual conduct of both African men and women, treating it as a problem to be curtailed, controlled, subdued and governed (Lewis, 2011; Nyanzi, 2011). Between 1908 and 1920, colonial government policy on health centred around controlling the spread of venereal diseases amongst the European and Indian colonial staff with an obligation imposed on the person with a venereal disease to identify the person who infected him or her (Mulumba, 2021).

Before, the 1995 constitution, ‘sex’ was omitted as a ground of prohibited discrimination. This lack of explicit legal protection of women as a sex, under the then prevailing 1967 constitution, compounded their vulnerability to abuse by men. As reflected by a senior member of FIDA-Uganda Sarah Bagalaliwo:

By not recognising the equality of women to men under the law, the law reinforced a self-defeating image of women in all other spheres of life. How could a woman, a legal object or a possession of a man seek legal redress against the perpetrator who, in most cases, is the social owner, a physical and legal protector? At the Law School we were consoled that under the law, “he” included “she.”

Moreover, the Divorce Act exhibited double standards that condoned male adulterous relationships while heavily punishing that of the wife (s.4. Cap

249). The crime of criminal adultery was constructed on the basis of wives as a sexual property of men (s. 154 of the Penal Code). In order to bridge the eclipsing of women from legal protection, FIDA-Uganda, capitalised on children's rights to hold men accountable for the fruits of their sexual exploits. Another senior member, Jennifer Bitarabeho recollected:

FIDA utilised the children's rights as an uncontested entry into using legal aid as a political tool. Given that children are a result of sexual intercourse, in a way FIDA-Uganda poked holes into the sexuality arena by holding men accountable for their sexual philandering. This was strategic against the backdrop that a majority of our clients begot children as an accidental result of a sexual episode: Worse still, the majority of them did not even enjoy the socio-cultural protection of cohabiting women, but were invisible sexual partners. Their recourse to some modicum of legal protection could only be secured through their children. Perhaps what made men cooperative and readily signed the memoranda of understanding for the maintenance of their children, was that child neglect then attracted social ridicule on the perpetrator.

Moreover, a majority of women interact with their sexuality not out of sheer pleasure but survival due to their economic dependence on men or as an overt act of violence. The testimony of Nabankema, a former head of the Legal Aid Clinic at FIDA-Uganda is telling:

One of the life lessons I learnt is never to ask a woman seeking maintenance for her child or children: What happened? This question opens up a Pandora box of broken dreams and ongoing wars over bodily integrity.

One client had gotten pregnant by a security guard whose real name she did not know. FIDA-Uganda managed to secure maintenance of 20,000 a month (then about 4 dollars), for her one-year-old baby. A year later she returned with yet another baby by the same man. The man claimed that he still earned 80,000 a month (20 dollars) and therefore he could only add 10,000 more (2 dollars). This woman was forced to succumb to offering sexual service to the man on a monthly basis in the quest of securing a livelihood for her child and as a result begot another.

Another seemingly well-to-do client drove to FIDA weeping. She had gotten a child with a married man. The father of her child kept on referring to her as 'your client' meaning FIDA's client. He passionately affirmed that he was staunch a Catholic man; that he had

been overwhelmed by the devil to engage in a one-time accidental sexual encounter which had happened during the day and that he had worn a condom. Ironically, he further expressed relief that the mother of his child had come to FIDA because he had no desire of seeing her again. In disgust, he angrily scoffed at her: Please do not look for me. I will maintain 'your' child through FIDA.

The above scenarios reveal that the pregnancies were unintended. It is noteworthy that the 2009 Guttmacher study revealed that in 2008, 56 per cent of all pregnancies in Uganda were unintended (Guttmacher 2009). Rather paradoxically, child-birth provided an avenue to women's access to legal recourse and social security.

In the realm of human rights discourse in general and SRHR in particular, there is more prioritisation of the negative aspects of sexuality predominantly focusing on sexual and gender-based violence (SGBV). Often, abuses against women are afflicted by men in intimate and social relations with women, such as 33 per cent being spouses, 15 per cent neighbours and 11 per cent strangers (UNFPA 2020). Ironically, efforts to transform the underlying causes of SGBV, such as sexuality are not as enthusiastically embraced. Generally, the legal fraternity is confronted with the contradiction between law and justice exhibited under the SRHR. The Penal Code Act views sexuality through the prism of morality (Cap. 120 Part XIV). In other words, sex work, abortion, rape, defilement, offences against the order of nature, are all labelled as crimes against morality. Consequently, exercise of sexual rights is equated to breaking the law or violating the moral ethos. Elements of sexual pleasure are absent in most analytical works of African feminists (Mumbi, 2004). Scholarly writing hardly acknowledges that during pre-colonial times, wives enjoyed pleasure and eroticism and the community frowned upon sexual violence (Tamale, 2011).

Female sexuality is seen as something to be contained and controlled, with labels of 'good' women as virgins and 'loose' women as whores, evil and dangerous who should be constrained (Mumbi, 2004). Indeed, Urgent Action Fund's book, "What is the point of the revolution if we can't dance?" highlighted the unease of issues concerning sexual pleasure amongst the African feminist movement and its categorisation as a non-essential activity (Barry & Dordevic, 2007). Within the human rights movement and the women's movement, sexuality is conceived as a matter requiring personal solutions rather than political engagement (Mukasa, 2009). Given the normalised marginalisation of women, a majority of women exhibit

indifference to issues of positive sexuality which inadvertently condones the unequal status quo: A man's world.

Hence, the next analysis addresses how the women's movement engaged with the sexuality discourse. Ironically, by attempting to address sexuality head-on, the Vagina Monologues caused a social stir that both blunted women's organisations from overtly engaging the sexuality discourse. Concurrently, the onslaught of the state's authoritarian laws, bolstered a new breed of fearless, unconventional activists who relentlessly fought for their sexual rights as a matter of life and death, firmly entrenching sexual rights in Uganda's public sphere, which is the subject of the next analysis.

### **The Crossroad: Case Study of the Vagina Monologues Saga**

African women have been at the forefront of pushing for a rights-based approach to SRHR because women as a collective are a marginalised sex and suffer multiple oppression by the family, community, the state and the market (Schlyter, 2009; Mutunga, 2009; Sadik, 2003; Ahlberg & Kulane, 2011; Mukasa, 2004)). Borrowing from the Bridge Development and Gender definition:

Intersectionality is a conceptual framework that makes visible the multiple discrimination that people face, the way in which systems of oppression (for example those framing gender, race, class, sexuality, ability, interact with each other, and thus the activists imperative to name and challenge multiple inequalities as part of seeking justice (Horn, 2013, p. 29).

However, women's movements skirted around the issues of positive sexuality and only began to overtly address them following the 1995 constitution. At the beginning of 2005, a group of feminists, namely Ms Sarah Mukasa, Ms Eva Luswata of Akina Mama Wa Africa, Ms Amanda Serumaga of Action-Aid Uganda, Ms Solome Kimbugwe of UWONET, Ms Jessica Nkuuhe of ISIS-WICCE and Ms Rita Aciro organised the "V-DAY Kampala 2005" to stage the Vagina Monologues on 19th February 2005. The organisers argued that the play had been staged in 76 countries, including Kenya as an artistic tool which centred on the "vagina as the focal point of drawing attention to Violence Against Women (VAW)." as reported in the *In the matter of the Press and Journalists Act, Cap 105 and in the matter of the Media Council and In the Matter of The Vagina Monologue, by Eve Ensler*. On 16th February 2005, the Media Council issued its ruling, requesting the organisers to expunge certain sections of the play before staging it.. The Media Council found the name of the campaign: "The V-day: "Valentine, Victory and Vagina," ...

“rather sensational, shocking and controversial” and ruled that it should be changed (Media Council Ruling, 2005). Indeed, traditionally, the female genital is described as a dirty and unspoken word. Mumbi observes that:

[S]ince the sixteenth century ... the standard view focuses on the reproductive function of the vagina. According to the standard medical opinion, the main functions of the vagina are to receive the penis during sexual intercourse and provide a passageway for the sperm; to provide a passageway for the baby during birth and to serve as a duct for menstrual fluids (Mumbi, 2004, p. 160).

Significantly, the citation of the ruling in the following extract remained ingrained in the minds of most Ugandans of the intention of the play to spread lesbianism:

At page 9, of the scripts, the authors compare a clitoris to a penis. She argues that the clitoris has twice the number of nerves than a penis. She then asks a question ... ‘Who needs a handgun when you’ve got a semi-automatic?’ It is clear that this part aims to encourage women to find sexual satisfaction either with fellow women or by themselves (Media Council Ruling, 2005, p. 4).

Apollo Makubuya, as a member of the Media Council, tritely, opined at a public Baraza organised by the Human Rights and Peace Centre on 18th March 2005 that:

Because of strong social and cultural forces, women’s rights remain suppressed even in the face of the constitutional guarantees. In this sense, women’s rights are more apparent than real. ... The law predominantly represents the interests and values of the dominant class or sex (Makubuya, 2005, p. 6).

Nevertheless, Makubuya defended the Media Council ruling, underscoring the necessity of separating the struggle of women from that aimed at promoting lesbianism and other related practices (Makubuya, 2005, p. 7). Fundamentally, the singling out of lesbianism as a core aspect of the play, seeded the public misconception that feminism was equivalent to the exclusive promotion of lesbianism. And yet, the ban illuminated government’s double standard given the pornographic images newspapers, such as *Red Pepper*, *Entango*, *Bukedde* and *The Mirror*. (Media Council ruling, 2005; Makubuya, 2005; Ahikire, 2005). Moreover, major media houses had reproduced the controversial content in a bid to inform the public of the controversy surrounding the play.

The banning of the *Vagina Monologues* resulted in two conflicting reactions. On the one hand, it led to the receding of the mainstream

women's rights movement from the overt engagement of issues of positive sexuality. On the other, it seeded the budding of the sexuality movement, led by sexual minorities. The following discussion provides a detailed analysis of these parallel developments.

Following the ban, an internal consultation within the women's movement ensured, focusing on three main questions: Where are we and how did we get here? Are we facing the right direction? What strengths and pitfalls? Where do we want to go and how do we get there? (Ahikire, 2005). On the positive side, there was affirmation that the women's movement was alive with strong goodwill to push the agenda forward (Ahikire, 2005, p. 4):

Issues of women's rights have gained visibility. The women's movement has hence sparked off a debate. And even when there is resistance, it still means that women have succeeded in making their issues a part of public debate. They are not merely private matters. Indeed, resistance means that society is being forced to engage.

However, the overwhelming view within the women's movement was critical of the organisers' combative approach which it misconstrued as promoting immorality. Following the backlash from the banning of the *Vagina Monologues*, the women's movement was forced to adapt indirect ways of addressing SRHR, such as community out-reach programmes, domestic violence, leadership capacity building for young girls, feminist principles, bodily integrity and HIV/AIDs, to mention but a few (Mukasa, 2009). In effect, this approach led to the fragmentations into silos and "ad-hoc-cy," a term coined to infer the ad-hoc nature of advocacy work, devoid of holistic approaches of women's rights (Ahikire, 2005). In its reflection, UWONET conceded that the women's movement began to intentionally shun or skirt around the sexuality discourse:

In its subsequent campaigns for women's rights, UWONET would strive to tailor its messages towards the attainment of broader development goals and political interests of the government, and not exclusively focus on equity issues, which were seen as socially destabilising factor. ... It also learned to broaden ... stronger linkages across actors and on critical socio-economic issues like poverty eradication, education, health, religion, conflict resolution and environmental conservation (UWONET, 2013, p. 78).

Similarly, FIDA-Uganda struggled to "learn" feminism through a series of workshops facilitated by acclaimed feminists, Betty Murungi, Vahida Nainar, Jane Kiragu, Hope Chigudu and Sylvia Tamale to train women lawyers in "What is feminism?" Alas, it was a battle that was eventually lost. As a

trade-off and to cement our solidarity and coherence as an organisation, we agreed that what brought us together was first that we were lawyers and second that we are women: a marginalised sex within an intrinsically male profession: The Law. We agreed to disagree and leave issues of choice and pleasure to individual preference and choice. Women lawyers began to evade overt issues of sexuality as a discourse. In large measures, there was exclusion and segregation of women who did not fit the stereotype woman worthy of the protection of the law. As pertinently wrapped up by Jackie Asiimwe:

It was an Aha moment of the naked realisation that feminism is not a natural choice for the women's movement. But it is an intentional willingness to challenge any form of discrimination and injustices, irrespective of any distinction.

Ironically, the assumption that women organisations are intrinsically feminists and would embrace the SRHR agenda in its totality is incorrect or an ugly contradiction. Globally, gender justice tends to fall off the agendas of even the most progressive movements or trivialised as disruptive of the larger movement struggles (Batliwala, 2013). It is also probable that the slogan: "Feminist, No Ifs, No Buts" although well intentioned to endear activists' commitment to the feminist movement inadvertently excluded those who continuously struggle with the feminism principles, particularly in their private lives. Feminism is treated with awe, even amongst women's organisations. As such, most women prefer to be referred to as "gender experts, gender consultants or gender specialists" (Ahikire, 2005, p. 11). Moreover, the concept of gender has been hijacked to maintain the status quo under the pretext that "men have been 'left behind' and now need to be carried along" (Adeleye-Fayemi, 2002, p. 112).

Sexuality was relegated to the periphery, predominantly addressed by those worst affected by the status quo, namely by sexual minorities such as sex workers, persons suffering with HIV& AIDs, LBBQTI, to mention but a few and mostly amongst the youth because SRHR affects them more adversely as an age group (Mukasa, 2009). Yet, as warned by Ahikire, under the theme: "Sexuality: Where Angels Fear to Tread:"

If the movement avoids contentious issues, it means that it is just tinkering with patriarchy rather than seeking to change it. It is those uncomfortable questions that are at the heart of women's subordination. It is noted that the majority of women have tended to shy away from controversy- treading where angels have had a field day. ... In a wave individual stakes are not apparent as is the

case now, where a few individuals are identified with specific issues (Ahikire, 2005, p.12).

### **Government Counter-Reaction**

A more chilling effect of the vacuum of the collective agency of the women's movement is that it fell prey to the president's usurping of its power by designating himself as the "driver of the vehicle of the women's movement" and custodian of the institution of marriage (UWONET, 2013, p. 69; Ahikire, 2005, p. 5 & 15). In so doing, President Yoweri Kaguta Museveni submerged the women's rights agenda under his personal political goals by disparaging struggles for redefining the gender relations as disruptive of the political, social order or immoral (Ahikire, 2005; UWONET, 2013). Specifically, in 2013, the President issued a 21-page document to guide the public discussion on the MAD Bill, and was empathic that "he personally disagreed with the provisions on divorce, property sharing in case of divorce, marital rape and cohabitation and concluded that the MAD Bill was potentially dangerous and divisive of Ugandans who were apparently happy with the status quo (UWONET 2013: 105 & 107).

Consequently, government became more intentional in controlling positive sexuality through the law. The constitutional amendment of 2005 included the prohibition of same sex marriages (Article 31 (2a)). It also enacted draconian laws, such as the Anti-Pornography Act 2014, popularly known as the "Mini skirt law," the Public Order and Management Act 2010 and the Regulation of Interception of Communications Act 2010, the NGO Act amendment of 2010 and 2016, the Anti-Homosexuality Act 2014, albeit some of these were successfully challenged in court.

To the credit of the women's movement, the 2010 Domestic Violence Act, a very progressive law applying to any person in a domestic setting and with a comprehensive definition of domestic violence, was passed. With the benefit of hindsight, its trigger effect was the realisation by men that women could inflict violence against them in a manner that would erode their sexual identity. On 28th June 2008, in the heat of anguish, Angelina Kyomugisha cut off the penis of Geoffrey Mugarura, a habitual paedophile, whom she found defiling her ten-year-old daughter (Adeleye-Fayemi, 2005). The swiftness with which Kyomugisha was arrested and charged for attempted murder is testimony of men's collective resolve to protect the symbol of their manhood. Yet, Kyomugisha was driven by the repeated frustration and failure of the law to reign in Mugarura on account of insufficient evidence. Within that month, the debates on the Domestic

Violence Bill were resumed with zeal and were concluded within a record two years (AWDF 2010).

Although the HIV/AIDS pandemic adopted a medicalised approach that accentuated women's vulnerability to disease and violence, it thrust sexuality into the public arena (Tamale, 2011; Silberschmidt, 2004). Simultaneously, government adopted a moralist approach of Abstain, Be Faithful and Wear a Condom (ABC) resulting in the increased prevalence amongst women at 62.9 per cent while men were at 53.6 per cent (Uganda Population Based Impact Assessment, 2017) and amongst adolescents, 15-19 years and young people 20-24, the prevalence was four times higher for females than males (Uganda Population Based Impact Assessment, 2017). This despicable situation compelled government to work with sex worker and LGBTQI community amongst its Most At-Risk Population programming.

### **Birth of a New Sexuality Movement**

From the 2000s, there was growing social and political disparagement, abuse and social denigration of advocates for sexual rights. For example, in 2003, Sylvia Tamale was crowned the Worst Woman of the Year, which she claimed with an incessant pride as a badge of honour (Mukholi 2003).

The drivers of the *Vagina Monologues* felt so embattled that they celebrated and counselled each other. As reflected by Adeleye:

It is very difficult to create and sustain feminist spaces in many African countries for various reasons. Feminism is still very unpopular and threatening. The word still conjures up bogeys of wild, naked white women burning their bras, imperialism, domination and undermining of African culture, etc. Feminists are subjected to ridicule and insults. They are called 'frustrated, miserable spinsters, castrators and home wreckers' (Adeleye Fayemi, 2000, p. 110).

Since time immemorial, African women have sought to assert the rights to dignity and respect and equal opportunity, albeit they did not use the term feminism (Amadi-Njoku, Lwanga & Chiwara, 2019; Adeleye Fayemi, 2000). To buttress the fragile sexual rights movement within the country, the coalition capitalised on the African continental drive to articulate a continental understanding of African feminism. Women's funds and actors, such as Africa Women Development Fund (AWDF), Urgent Action-Fund Africa (UAF), Mama Cash, Women's Global Fund and Akina Mama Wa Africa, organised the African Feminist Forum in November 2006 in Accra Ghana as a safe continental forum to nurture collective understanding of

what feminism is. It was underscored that feminism in Africa is a response of resistance against the historical marginalisation, racism, women's oppression, race, ethnicity, poverty and class (Adeleye Fayemi, 2000). Put differently, feminism affirms that women's rights are human rights and, therefore, seeks to address unequal patriarchal power relations, norms and values that privilege men over women, resulting in gender injustices and discrimination. This drive culminated in the Charter on African Feminist Principles (AWDF, 2006).

The pronouncement of the Anti-Homosexuality Bill was a silver lining that electrified the women's movements to address issues of bodily integrity and choice in the public discourse and spurred the efforts of collective organising across the civil society sector. Around June 2009, there was a public rumour that David Bahati was preparing to submit a private member's bill: The Anti-Homosexuality Act. Hence, a group of feminist, namely, Solome Nakaweesi, Sylvia Tamale, Hope Chigudu, Stella Mukasa, Jessica Horn, Jessica Nkuhe, under the chairperson of Akina Mama Wa Africa (AMWA) formed the nucleus of what eventually became the Uganda Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), hereinafter referred to as the Coalition. They proactively mobilised the financial and human resources and galvanised international support for the global north as well as thought-leadership who authored a concept note that addressed sexual rights in an indivisible and holistic manner. On 13th October 2009, the Coalition was informed of the Order Paper and on 14th October 2009, the Anti-Homosexuality Act (AHA) was formally tabled. Immediately thereafter, the Uganda Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) was officially born in October 2009.

As a first step, the name was so self-mobilising that it entrenched the struggle for sexual rights within the constitutional and human rights discourse. The argument was simple the AHA was unconstitutional and anti-human rights and affected all persons (Jjuuko, 2013). In order to deflate opposition and to mitigate further marginalisation of the existing homosexual community by pitting them against the dominant heterosexual groups, the few publicly known LGBTI activists, such as Victor Mukasa, Frank Mugisha, Julius Kaggwa, Kasha Nabagesera and Peppe Onzima were engaged to appreciate the usefulness of entrenching the struggle within the wider constitutional rights framework. This was also mindful that at the time, Sexual Minorities Uganda (SMUG) and Freedom and Roam Uganda (FARUG) were yet to be registered.

Second was the academic grounding in providing thought leadership on sexual rights. Tritely, while argument advanced against sexual rights are crafted under being un-Africa and anti-cultural activism, the most vicious resistance often stems from religious fundamentalism (Tamale, 2007 & 2009; Mutua, 2011; Oloka Onyango; Mumbi, 2004; Mutua, 2011; Mutunga, 2002; Jjuuko, 2007). Sylvia Tamale introduced the Gender, Law and Sexuality project at the Makerere University School of Law in 2006 (Kabumba, 2021). As a result, “Africa Sexuality: A reader” was published (Tamale, 2011). Subsequently, the Research and Publication Committee provided a counter-narrative against profiling sexual rights as alien and un-African. It produced concept papers to guide the debates. The analytical expertise was augmented by prominent academia and institutions, such as the National Union of Researcher Users, such as Aisha Imam, Oloka Onyango of the Human Rights and Peace Center (HURIPEC) and Willy Mutunga, then of Kenya Human Rights Commission and Makau Mukua, then Dean of Law, Suny, Buffalo University and the Centre for Human Rights, Pretoria University. While international organisations, such as Amnesty International and Human Rights Watch, International Community of Women Living with HIV & AIDS, ORCA rendered support, they were obliged to adhere to the terms of what they could speak about and rely on the concept papers and a clear ideological framework that grounded the sexual rights within the wider African realities and normative framework. This decision was strategic, cognisant that the first choice of the normative system governing private relationships is the traditional legal system (Butegwa, 2002; Tsanga, 2011).

The African concept of *ubuntu*, the essence of being human and humane encompasses values of respect for the human person, responsibility and compassion towards one another, participation, tolerance and collective unity, among others (South African Human Rights Commission, 2006; Cornell & van Marle, 2005; Mokgoro; An-Na’im & Deng, 1990). Similarly, Oloka-Onyango contends that:

Indeed, many aspects of African culture in general – and Ugandan culture in particular – are built on ideas in inclusion (*ubuntu*) and engagement (palaver) not discrimination and hegemonic discourses. ... The legal forms by which sexuality was controlled in most pre-colonial African societies did not pay much attention to sexual orientation. Indeed, the many varied forms of which same sex relations assumed is testimony to a much higher degree of tolerance and accommodation than those which are being paraded in the

name of African culture on the continent today. Moreover, the really foreign influences are homophobia and sexual intolerance, which are mediated through external religions (Islamic and Christian) influences; Ugandan societies were and are basically pluralistic and polytheists. It is those qualities that we need to harness, revisit and re-introduce into the contemporary structures of the forces governing sexual politics in the country, and into our strategies for addressing homophobia and heterosexism (Oloka-Onyango, 2012, p. 109) .

Indeed, a reflection of three former leaders of United Nations' (UN Women) and the United Nations Development Programme (UNDP) at the continental levels, amplify the relevance of *ubuntu*:

The *Ubuntu* philosophy and the African gender paradigm, which facilitates shared power partnerships, were implemented through the practice of equity and complementarity of roles between men and women. This practice of equity guarantees women to some extent, separate spaces of identity, authority, participation, ownership and achievement... Unfortunately, the equity practice, like the gender paradigm and the dual sex power sharing principle was subsequently undermined and not re-integrated into post-colonial Africa (Amadi-Njogu, Lwanga & Chiwara 2019:167).

As pertinently summarised by Tamale:

*Ubuntu* as a transformative framework would challenge the reasoning that as bearers of children, women must not only be their *rearers*, but also make their commodified bodies readily available for men's sexual gratification. ... The concept of equality would be based not in law but in actual experiences of the subordinated where domestic work would cease to be privatised and undervalued, female bodies cease to be objectified, sexualised and untethered from male control (Tamale, 2020, p. 233).

The Coalition issued numerous statements condemning the violation of human rights in general. For example, on 10th December 2010, the Coalition issued a statement, "The Rise and Fall of Human Rights in Uganda?" condemning the closure of AMWA's regional workshop on sex work in November 2010; government's inaction against *Rolling Stone*, a tabloid that exposed 100 alleged homosexuals and government inaction against the forced genital mutilation of 100 Sabinu girls, the passing of the Anti-Female Genital Mutilation Act, 2010 notwithstanding; the repeated postponement of the Adrian Jjuuko Constitutional Petition challenging the Equal Opportunities Commission, the failure to hear the Uganda National

NGO Forum Constitutional Petition on Freedom against the NGO Law of 2006. It also challenged the draconian bills, such as the Public Order and Management Act and the Interception of the Communication Act 2010 aimed at constricting human rights and freedoms. The Coalition issued a 14-page Memorandum to Parliamentary Committee on the AHA: *Uganda's Anti-Homosexuality Bill: The Great Divide* and had interviews with CNN, BBC and Aljazeera (Jjuuko, 2013).

UNAIDS and embassies placed the AHA on the international radar and mobilised global support. Significantly, the fact that the then US Secretary of State Hillary Clinton and the British Prime Minister Gordon Brown called the President of Uganda over the AHA, he began to consider it as foreign policy issue, which waned his personal resistance against it (Jjuuko, 2013). The success of the Coalition was so remarkable that Rwanda, Burundi and Liberia sent delegations to understudy how to mobilise for very controversial issues, such as homosexuality.

### **Organising from Women- to Male-Led Sexuality Movement**

The organising of the sexual rights movements eventually evolved from a women-led to a male-led one. This chapter discusses the case study of the Sexual Offences Bill 2011, to highlight the continued controversy of sexual rights within the SRHR movement.

Sylvia Tamale recollects that mobilising of the Coalition was a tedious task entailing deliberate individual solicitation of support:

From the onset, it was acknowledged that the campaign could not succeed if it were to be supported by a few individuals or groups. Conversely it would have easily failed because it would have pitted homosexuals against the heterosexual majority. We clearly framed it as a constitutional rights issue. We literally sat in the AMWA and called up all known women's and human rights organisations to ascertain whether or not they were part of the Coalition. We simply asked: Are you in or are you out? Why are you out?

Amongst the initial members whose logos donned all the press statements were, Refugee Law Project, Africa Women Development Fund (AWDF), FIDA-Uganda, Raising Voices, Centre for Domestic Violence Prevention (CEDOVIP), Forum of Women in Democracy (FOWODE), CEWIGO, Integrity Uganda, Spectrum Uganda, Uganda Feminist Forum, National Guidance and Empowerment Network of People Living with Aids (NGEN+), Uganda Health Press and Science Association (UHSPA), National Association of Women Organisations in Uganda (NAWOU),

MIFUMI, Human Rights Awareness and Promotion Forum (HRAPF), East and Horn of Africa Human Rights Defenders Project (EHAMROP), DENIVA, Avocats Sans Frontières, Akina Mama Wa Africa, Mentoring and Empowerment Programme for Young Women (MENPROW), Women Organisations and Networks for Human Rights Advocacy (WONETHA), Platform for Labour Action (PLA), SIPD. Subsequently, donors helped to galvanise because many organisations were weary that should they not support the Coalition, they would lose their financial support. Evidently, there was a perception that some of the support towards the coalition was not out of a shared belief but more because of the fear of losing financial support from donors. Nonetheless, the Coalition membership was bolstered in both numbers and diversity. By December 2011, the membership had increased to over 40, including LGBTI, sex workers, women's rights, HIV & AIDs, and mainstream organisations (Jjuuko, 2013). Although male-led organisations supported the Coalition, they willingly accepted feminist leadership. Sarah Kihika attests that while she and Freda Mutesi were the only women on the Legal Committee, they never felt marginalised because the men made it their personal responsibility to ensure that the women felt safe and secure as equal participants.

Nonetheless, some organisations and prominent activists refused to join the Coalition. In such a situation, Nakaawesi posits that the Coalition capitalised on the 'power of silence' to augment a united front:

Although some organisations such as Foundation for Human Rights (FHRI) and prominent activists, such as Miria Matembe and Syda Bumba, adamantly refused to join the Coalition on religious grounds, they were begged not to publicly oppose the Coalition nor have a position on the Anti-Homosexuality Bill and the Anti-Pornography Bill. Their agreement to keep silent for the sake of other women was greatly appreciated for mitigating the public perception of internal fissures within the Coalition which would have been detrimental to the campaign. This silence was immensely appreciated by the Coalition as an invaluable demonstration of solidarity.

Likewise, Adrian Jjuuko observed that the NGO Forum steered clear of the Coalition because it found sexual rights radical.

Initially the participation and organising was informal. To ensure a stealthy presence, the meetings were code-named "karaoke or saloon" and the venue was rotational amongst different organisations. The inaugural coordinator of the Coalition, albeit of an informal nature, was Solome Nakaawesi assisted by Maria Magezi of AMWA who served for the period

2009 to the first half of 2011. With the increase in the volume of work, the Coalition recruited Maria Magezi and Adrian Jjuuko as the first co-coordinators in 2011. Magezi provided the necessary continuity. The choice of Jjuuko was informed by the need for inclusiveness by having the male gender in the coordination seat as well as have someone from the mainstream human rights organisation (Minutes on file). Subsequently, around 2012, in the quest of making the hosting rotational amongst the membership, HRAPF became the host organisation, with Geoffrey Ogwaro, a self-professed gay, recruited as the coordinator. On the agitation of the women's movement, Clare Byarugaba, a self-professed lesbian, became a co-coordinator to ensure gender balance.

Around 2012, a number of women organisations drifted off on account that the Coalition was male-dominated, being hosted under a male-led organisation and coordinated by a man.

A female leader whose participation in the Coalition dissipated after 2012 and requested to be anonymously reflected as follows:

The politics of trust play a great role in mobilising support. In other words, before joining a controversial campaign, I did not truly understand the issues that we were coalescing around. But the feeling of I am in the right place and I will be safe was what made me join and also place the organisation's logo on the press statements. I knew the convenors had my best interests at heart. If things go wrong, I will not be left in the cold. They would support me. I said to myself, probably there is something that they see that I do not see at the time. And probably they did not want to leave me behind. I did not want to be left behind from joining the new future.

Another respondent opined: "I am against promoting male privileges in spaces that should empower women. At the time men came on board, the *Vagina Monologues* had broken the ground on sexuality in that the seeds of positive change were ready to germinate.

Similarly, the LGBTQI community began to feel marginalised as donors defunded organisations living at the trenches of life in favour of the Coalition. It was equally felt that the issues of the Coalition were too broad to aptly address the lived realities of the LGBTQI community. Tensions became fever pitch in 2012 at the Sajovaro Hotel meeting, where the main question was, Who is the LGBTQI and who isn't? At the same time, gendered inequalities also manifest themselves even within the LGBTQI movement, as Men having Sex with Men are more visible and more integrated in the HIV/AIDS sector than Women having Sex with

Women; yet, the two have different human rights issues (Oloka-Onyango, 2012). Lacking clear conflict resolution mechanisms, proper mechanisms of sharing resources and equal acknowledgement of successes, the vibrancy of the Coalition waned.

Concurrently, with the annulment of the AHA as unconstitutional, there was deflation of interest in the Coalition. To date, it is difficult to identify the seat of the Coalition or its membership. In practice, many men-led organisations find it easier to organise parallel to the feminist movement albeit their goals may be inter-connected. For example, Reach A Hand Uganda (RAHU) attests that targeting men who wield informal influence in schools, such as head cook, senior man, askaris and head-boys, dramatically improved the bodily security of both female and male students. Human Rights Awareness and Promotion Forum (HRAPF) is training law enforcement officers in sexual rights and diversity. Nevertheless, a number of small organisations have mushroomed and legally registered themselves, and have even become emboldened to organise better, across the range of SRHR issues. However, sexual rights remain at the periphery. The case study of the advocacy for the SOB 2021 is illustrative.

### **Sexual Offences Bill 2021**

Mobilising numbers for a campaign without a coherent ideological framework of what links different actors together can be both empowering and disempowering for marginal groups. Although bills do not have any legal relevance, the advocacy for the SOB provides useful insight into the ability of powerful actors to appropriate both the agendas and language of the progressive movements in order to neutralise their transformative change. This has been the fate of the Sexual Offences Bill in respect of sexual minorities. To date, the status of the Sexual Offences Bill 2019 is unclear. It was officially passed by parliament in January 2021. However, on 3rd August 2021, the president refused to promulgate the SOB 2019 because it duplicated existing laws and it did not constitute a comprehensive review of the Penal Code (The Observer 2021).

It is noteworthy that the SOB has a long history of over twenty years. It was originated in 2000 under the Sexual Offences Miscellaneous Amendment Act. Having stalled for twelve years, in 2012, it was revived by the Uganda Women Parliamentary Forum (UWOPA), resulting in the SOB 2015. Subsequently, it was introduced as a private member's bill of UWOPA on 14th April 2019, withdrawn on 24th April 2019 to incorporate the recommendations from the floor of parliament and

resubmitted on 24th November 2019 by its chairperson, Hon. Monicah Amoding, a female youth representative. (Preamble to the SOB, 2019; Report of the Sectoral Committee 2021).

Despite the joining of forces by the women's movement, the parliamentarians and male-led organisations and coalitions, the SOB advocacy resulted in serenading its agenda to entrench the unequal and patriarchal status quo, knowledge of human rights and social justice frameworks notwithstanding. In fact, the Report of the Sectoral Committee on the Sexual Offences Bill to Parliament (hereinafter referred to as the Sectoral Committee) was very retrogressive compared to the actual bill that was published in January 2021 (Parliamentary Watch 2021). Consequently, the Report of the Sectoral Committee enlisted both celebration for its seemingly incremental but cosmetic gains as well as outrage for rolling back the gains ushered in by the progressive judiciary and universal human rights standards. A few glaring examples are outlined here-below:

On the positive side, the objectives of the bill were novel:

- a) To revise the law on sexual offences for the effectual prevention of sexual violence;
- b) To provide for the enhanced punishment for sexual offenders;
- c) To provide for the protection of victims during trial of sexual offences; and
- d) To provide for extra-territorial application of the sexual offences and the consequential repeal of some provisions of the Penal Code Cap 120.

Furthermore, the 2019 SOB consolidates most of the existing offences and crimes under one law, making referencing easier. It also defines a sexual act as a gender-neutral term capable of being committed by both men and women (sections. 1, 5, 13, 14). It includes sexual harassment as a crime (sections.7); provides for payment of compensation to victims of abuse (s.23); provides for private proceedings (sections.24); and prohibits publications leading to the identification of the victims (sections.25).

The above progressive rights language notwithstanding, in reality, the SOB adopted a punitive approach to choose, bodily integrity and pleasure, as discussed here below. It reinforces being infected with Human Immunodeficiency Virus (HIV) as an aggravating factor, increasing the penalty of the offence (sections. 3(1) a & 14(1) c). This would disproportionately discriminate against women who because of their

maternal functions are most likely to be tested first for their HIV/AIDS status although they may have contracted it from their partners.

In addition, the Sectoral Committee had elevated corroboration of sexual offences from a common law principle of judicial practice to a legal requirement albeit at the discretion of the individual officer (clause 27). Doing so would have reinforced the construction of a sexually aggressive man vis-à-vis a sexually docile woman lacking the rational inability to give a coherent “no” to sexual advances and for provoking a man’s uncontrollable sexual urge. Hence, there would be the need for other independent evidence to legitimate her “no.” In effect, the Sectoral Committee had qualified the victim’s evidence as one of a pathological liar:

The rationale for requiring corroboration is ... that “there is a sound reason for this requirement because sexual cases are particularly subject to the danger of deliberately false charges resulting in sexual neurosis, fantasy, jealousy, spite or simply a girls’ refusal to admit that she had consented to an act of which she is now ashamed of. ... The Committee observes that corroboration still serves as purpose and should not be dispensed with. The Committee notes that by their nature, sexual offences are usually committed in seclusion with little or no independent witnesses to support the assertion of the victim (Report of the Sectoral Committee on the SOB, February 2021, p. 33).

Significantly, in *Ntambala vs Uganda* (Criminal Appeal No 34 of 2015), Justice Lillian Tibatemwa Ekirikubinza in decision delivered in 2018, observed that the cautionary rule that originated in 1671, was abolished by the 1994 UK Criminal Justice and Public Order Act section 32 (1). She affirmed that subsequently, numerous courts acknowledged that this rule is neither a scientific nor logical basis and had declared corroboration of sexual offences as unconstitutional for being gender discriminatory. She, therefore, held that:

Although gender neutral on the face of it, its outcome disproportionately disadvantage one gender, cognisant that a majority of victims are women. It therefore follows that the cautionary rule violates Uganda’s Constitutional provisions on equality before the law (See: Articles 21, 32 and 33)... The evidence of a victim in a sexual offence must be treated and evaluated in the same manner as the evidence of a victim of any other offence. As it is in other cases, the test to be applied to such evidence is that it must be cogent.

It is noteworthy that the final version of the 2019 bill removes corroboration as a legal requirement (section. 27).

Worse still, the Sectoral Committee had also recommended the criminalisation of false allegations for sexual assault, with a severe penalty of three years (Report of the Sectoral Committee on the SOB, February 2021). While the committee acknowledged the imperative of safeguarding the right of the victim to report sexual offences from being silenced by labelling the allegations as false, it was apprehensive of the “false reporting of sexual offences as a tool of coercion, intimidation, defamation and character assassination” (Report of the Sectoral Committee on the SOB, February 2021, p. 34).

Moreover, the Sectoral Committee had resisted the acknowledgment of marital rape as a crime. It claimed that the right to withdraw consent at any time during intercourse, “was a sneaky way of introducing marital rape, a matter that had been included in the Sexual Offences Bill, 2015, and was rejected by the Committee before the Bill was withdrawn” (Sectoral Committee Report, 2021, p. 36). Yet, Ugandan courts in *Uganda vs Yiga Hamidu* (HCT, Criminal Session case 0055 of 2002) and *Uganda vs Lomoe Nakaoupuet* (Criminal Case No 109 of 2016) had declared marital rape as an act of sexual savagery and an affront against human dignity. As a middle ground, the 2021 SOB is silent on marital rape and by implication reaffirms it as an offence. Although the SOB punishes both the seller and buyer of sex (sections 1 & 12), it recommended the retention of sex work as a crime on grounds that it is a religious and cultural taboo (Sectoral Committee Report, 2021). Ironically, it ignores the element of two consenting adults’ right to choose how and when to give each other sexual pleasure. Not only does the SOB punish homosexuality as an unnatural offence, but it also clusters LGBTQI together with sex with animals which is in itself degrading and derogatory (clause 11a &b). Yet, any laws which violate individual sexual autonomy and sexual behaviour violate human rights unless they are applied equally to all persons regardless of their sexual orientation and gender identity (Oloka-Onyango, 2012). Lastly, it extends the Ugandan courts’ jurisdiction to offences committed outside the country (section.40).

In reality, it became a question of survival for the fittest with the most marginal groups under sexual rights left to defend themselves and submit independent memorandums. Hence, social movements are not inherently progressive in addressing marginalisation and discrimination in all its manifestations, nor aimed at transforming equitable redistribution of power, wealth, resources and ideologies. The interaction of social divisions

such as gender, caste, religion, immigration, status, race, disability as well as the power contestations in the processes of agenda setting, policy making and implementation, augment the inequalities in the outcome of the SRHR work (Schaaf, 2021). There is hardly any indication that the different segments, such as sex work, LGBTQI, abortion rights to mention but a few, collaborated as peers in challenging the SOB passed by parliament in January 2021. While one can argue that it was an issue of specialisation, it could also be a question of lack of coherent theory of power interfaces with different marginalised interests. Besides, irrespective of the refusal of the president to promulgate the SOB of 2021, the status quo remains as it was at the beginning of the advocacy to reform the SOB in 2000. Outstandingly, there was a lost opportunity for the different movements to coalesce together and put up a collective spirited campaign against the SOB results of 2021.

### **Pushing Back Through the Courts**

Major progress for sexual rights has been achieved through courts and other forums. The case of *Uganda Association of Women Lawyers vs AG*, (Constitutional Petition 2 of 2003) challenged the fact that a wife could not petition on the ground of adultery alone but had to combine it with another matrimonial wrong (section. 4(2)). In contrast, a husband could only petition for divorce on only the ground of adultery (section.4 (1)). Moreover, a husband was entitled to damages from a co-respondent (sections.21 & 22) and the wife could lose her right to the matrimonial property in favour of her children or husband (section. 26). Court found the impugned sections unconstitutional. Justice Twinomujuni found that:

I have no doubt in my mind the impugned provisions are a result of the Englishman's pre-20th Century perceptions that a man has a superior being to a woman and they could not be treated as equal in marriage. It is in my view glaringly impossible to reconcile the impugned provisions of the Divorce Act with our modern concepts of equality and non-discrimination between the sexes enshrined in our 1995 Constitution.

The case of *Law Advocacy for Women in Uganda (LAW-U) vs AG*, (Constitutional Petition No13 of 2005) challenged section. 154 of the Penal Code on criminal adultery in that a married man commits no adultery with an unmarried woman, but a married woman commits adultery irrespective of the marital status of the person. In so doing, it exonerated a married man's

conduct when he had sex with an unmarried woman. The court extensively relied on the FIDA-Uganda case to declare Section 154 unconstitutional.

In *Victor Juliet Mukasa and Yvonne Oyo v Attorney General*, (Civil Division, Misc Cause No. 24 of 2006) on 20th July 2005, the LC 1 of Kireka Village aggressively entered Victor Mukasa's house at about 6.30 pm, had it ransacked, and confiscated private property. Oyo was refused to go to the toilet forcing her to urinate on herself. When finally allowed to go to the toilet, it was in the presence of an armed male local defence soldier. The chairman disgustingly referred to her as "this creature." The officer-in-charge of the police forcibly undressed her and roughly fondled her breasts to establish her sex. Justice Stella Arach Amoko opined that the case was not about homosexuality nor abuse of power, but about the violation of the victim's rights. She concluded that it amounted to cruel, inhuman and degrading treatment in violation of international human rights law. She also awarded a 10-million shillings compensation.

*Centre for Domestic Violence Prevention (CEDOVIP), vs AG*, (Constitutional Petition 13 of 2014) challenged the constitutionality of the Anti-Pornography Act for exacerbating the harassment and mistreatment of women in public and denying them control over their bodies. Ironically, while government had argued that the law was intended to protect women from sexual offences, the court took judicial notice that several women had been undressed in public spaces and Jane Nabukenya and Prossy Nassuna had, on different occasions, been detained for three hours by the Grade I Magistrates' Court in Bukomansimbi for being indecently dressed. The petitioners argued that the broad definition of pornography (sections. 2 & 13) could be abused to criminalise legitimate debate, commercial activities and private pursuits and that the wide discretionary powers may violate private spaces (section. 15). On 13th August 2021 the Constitutional Court found that:

[an] imprecise statement of prohibited conduct may lead to inconsistent enforcement of the law, uncertain application of the law, and failure to preclude conduct that it was intended to prohibit. ... There is no justification of the harm that would result if images of sexual parts of the human body or sexual activities primarily for sexual excitement is not prohibited.

The court found the definition was so imprecise that it is liable to unfettered discretion and that government had failed to justify the reasonable and objective test for preventing substantial harm.

In *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame* (High Court of Uganda Misc Cause No 163 of 2010), on 2nd October 2010, *Rolling Stone*, published a newspaper article entitled: “100 Pictures of Uganda’s top homos leak” providing their home addresses. It accused the gay community of brainwashing school children into bisexual orientation, holding orgies and made a call for homosexuals to be hanged or subjected to mob justice, causing a threat to life and violated their right to privacy of the person and home. Government argued that the respondents had already exposed themselves to the public and that homosexuality was a criminal offence. On 30th December 2010, Justice Musoke Kibuka found that the publication of the applicants’ identities and addresses, coupled with the explicit call to hang gays by the dozen, tended to tremendously threaten their right to human dignity and threatening their right to privacy of the person and home. Significantly, the court clarified that under Section 145 of the Penal Code Act, a person was not considered a criminal for the sole fact of being gay. In order to be regarded as a criminal, one had to commit an act prohibited under that provision. The court thus distinguished between being gay and sexual conduct. It issued the injunction restraining *Rolling Stone* from publishing more information.

In *Oloka-Onyango and Others vs Attorney General*, (Constitutional Petition. No 8 of 2014) the Anti-Homosexuality Act was declared unconstitutional on a technical ground of having been passed by parliament without quorum.

In *CEHURD vs AG and Family Life Network*, (Misc Cause No 309 of 2016) CEHURD applied for a judicial review against the inordinate delay by Ministry of Education and Sports to issue a policy on Comprehensive Sexuality Education (CSE) for violating the rights of children. A parliament resolution, of 17th August 2016, banned CSE on grounds that it would liberalise sex among children and promote illicit sexual conduct such as homosexuality and masturbation. Steven Langa swore an affidavit urging that sexual rights have been misunderstood by children to mean “the right to have sex with anyone or anything, anywhere and at any time.” In a decision by Justice Lydia Mugambe on 24th August 2020, she highlighted the international human rights standards that oblige government to provide adolescents, from both within schools and the community, adequate information essential for their health and development and for their ability to participate meaningfully in society and practise healthy behaviour. Court also clarified that the term sexuality education includes “information on

use and abuse of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity” (CRC/GC/2003/4 para 26). In addition, the judge relied on the United Nations Educational, Scientific and Cultural Organisation’s (2018) definition of CSE:

...as a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to realise their healthy well-being and dignity, develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others and understand and ensure the protection of their rights throughout their lives.

The case did not dispute the power of parliament and the government ministry to ban materials considered unfit for consumption for the children, but rather urged for the inclusive participation of relevant stakeholders and professionals. Court concluded that failure to have CSE is a violation of articles 30, 41, 34(2) and Children Amendment Act 2016, 4(1) 2 of the Education Act 2008. The court ordered the government to develop CSE within two years, and report progress to the registrar every six months.

The case of *Adrian Jjuuko vs AG*, (Constitutional Petition No 1 of 2009) challenged section. 15(6)d of the Equal Opportunities Commission (EOC) Act for excluding the EOC’s jurisdiction in matters considered immoral, socially harmful or unacceptable by the majority of the cultural and social communities for violating the rights to equality before the law, fair trial and protection of minorities (Art 20, 21, 28 and 43). On 10th November 2016, the Constitutional Court reaffirmed that the protection of human rights is a primary objective of every democratic constitution and an essential characteristic of democracy. It further ruled that, “parameters of judging moral issues should not be a basis of adjudication of matters of the Constitutional Court” and that the constitutional right to a fair hearing before an impartial court is a right that belongs to everyone. Hence, court ruled that it was unconstitutional to create a class of social misfits who are referred to as immoral, harmful and unacceptable, legislating discrimination against them and denying them access to justice.

While some success has been made in terms of protecting the rights of LGBTI individuals through recourse to the judiciary, they did not directly deal with the myriad structural problems that sexual minorities face (Oloka-Onyango, 2012). Nonetheless, the above cases set the precedent

that reaffirmed the obligation of both state and non-state actors to respect sexual rights as inherent in each human being (Jjuuko, 2013).

In *Daisy Nakato vs Kabalagala Police Station* (UHRC/184/2010), Nakato sought recourse from the Uganda Human Rights Commission. On 14th October 2010, police violently dispersed a sex workers' workshop at Kabalagala. The convenor, Daisy Nakato, was manhandled by one Mr Nyombi, a policeman who hit her on the shoulders with a gun, slapped her twice; and pointed his cocked gun at her. On 16th September 2011, the UHRC found that Nakato had been subjected to inhuman and degrading treatment and ordered the inspector general of police to initiate disciplinary proceedings against Nyombi for abuse of office.

At one of the MEMPROW's awareness-raising sessions, Justine Nsimbi confided in the organisers that she had been subjected to sexual abuse at Makerere University, School of Statistics and Planning, College of Business and Management Science (COBAMS). She had been involved in an examination malpractice, having transcribed notes on her handkerchief. She was referred to Brian Musaga, the then School's Administration Coordinator. On 15th December 2014, she met with him at the university and he demanded that she remove her underwear; he inserted his fingers in her vagina and later drove her in his car where he forced her to suck his penis and she complied. Musaga continued to harass her with extortion of money and demanded that she avails her body to him up until her completion of her studies. On 20th October 2015, Justine Nsimbi lodged a formal complaint of sexual harassment to the Dean, School of Statistics and Planning, Makerere University. According to Sylvia Tamale the wide publicity of the case prompted the review of the university's Sexual Harassment Policy of 2017.

The proceeding discussion makes a case for why both sexes can be mobilised to embrace sexual rights.

## **The Tango of the Sexes**

This chapter underscores the imperative for a paradigm shift that respects diversity and bodily autonomy as central to an egalitarian society. This begs the question: In whose best interest do equitable relations under the SRHR movement serve? To women, SRHR is predominantly a personal issue of lived experience. Consequently, questioning of masculinity within the SRHR movement is important because gender injustices are often normalised and manifest themselves in everyday life practices of all institutions; thus, yielding unfair distribution and ownership of power and resources (Batliwala, 2013;

Chimamanda, 2014; Cooks, Dickens & Fathalla, 2003). Thus, the resistance of engaging men as agents of feminism is due to three major reasons: first is the political importance of placing women as agents of change in challenging patriarchy; second is the need for women as a gendered minority to build their collective power; and thirdly, the negative experience of men usurping the women's movement voices and resources in a manner that entrenches male supremacy and social right to leadership but hardly critically addressing gender-based power within their realm (Horn, 2013). Arguably, there is caution that while men are welcomed in the struggle, they cannot "pretend to have a daily personal understanding of what it means to be subjugated and subordinated on the basis of gender" (Tamale, 2009, p. 72).

The above notwithstanding, there seems to be an increasing appreciation to build personal and professional relationships that encourage more men to join the struggle for an equitable society. It is neither desirable nor feasible that women exclusively shoulder the burden of an egalitarian society. Indeed, why should changing the status quo of SRHR be an only woman's problem but not a societal concern that enables both men and women to complement each other? (Batliwala, 2013). It is noteworthy that all the cases that advanced sexual rights, were argued by male lawyers; and although the majority of the judicial panels are male, they have produced ground-breaking jurisprudence that advances equality of sexes, as well as reinforced sexual rights as part of human rights.

Mindful that people often engage from self-interest, it is important to articulate why men have vested interest in participating in an equitable SRHR movement. First, reproductive health is an important component for both men and women, albeit it is more critical for women given their biological function and natural physiological role (Cook, Dickens, & Fathalla, 2003). In one of the online tirades, a male activist within the SRHR movement found it very painful when asked: "Have you ever menstruated? Have you ever been pregnant? Have you ever lived in fear of sexual violence?" Yet, men also have health concerns of their own and their behaviour affects that of women (Cook, Dickens & Fathalla 2003, p18). Thus, Twinomugisha advocates men's engagement:

Men should be involved in education concerning sexuality, fertility and anatomy, contraceptives and other related issues. Implementing gender strategies implies accepting that women's and men's lives are interlinked. Discussions of gender issues must include both women and men in order to increase the likelihood of less traumatic transition towards gender equality. Not all men are villains. Some

are active partners in the struggle to realise women's maternal health rights (Twinomugisha, 2017, p. 41).

Furthermore, men are also negatively affected by masculinity so much so that it is in their best interest to support an equitable world. The Nnabagereka (Queen) Sylvia Nagginda of Buganda Kingdom, therefore, posits that cognisant of men's domination of decision making at both a public and personal level, they should be targeted to appreciate the crisis of masculinities and the antecedent necessity to support gender equity and equality as part and parcel of promoting *obuntubulamu* (humaneness) (Amadi-Njoku, Lwanga & Chiwara, 2019).

Contradictorily, while masculinity is imbued with an ideology of supremacy and power, the concept renders men in the real world quite vulnerable and egoistic (Silberschmidt, 2004). Consequently, male domination negatively affects men by making them detach themselves from their emotions in order to be hard (Mutunga, 2009). In Silberschmidt's words (2004: p 242):

[W]hile masculinity is power, masculinity is also terrifyingly fragile because it does not really exist in the sense we are led to think it exists, that is, as a biological reality. ... It exists as ideology; it exists as scripted behaviour; it exists within 'gendered relationships. ... This is because the male gender is constructed around at least two conflicting characterisations of the essence of manhood. First, being a man is natural, healthy and innate. But second, a man must stay masculine. He should never let his masculinity falter. Masculinity is so valued, so valorised, so prized and its loss is such a terrible thing that one must always guard against losing it. As a result, men should always be on guard and defend and demonstrate their masculinity. It is worth noting though that male honour is dependent on women's appropriate behaviour. Therefore, women and female sexuality represent an active and threatening power to male identity and masculinity.

Similarly, Njoya argues that explosive masculinity characterised by violence is triggered by men's frustration of failure to assert themselves, provide livelihood, protect their homes, own property and enlist automatic female subservience (Njoya, 2008). Nonetheless, affluent and elite men also abuse women because their social power is enhanced by their personal achievement that they expect women to readily tolerate their indiscretions and abuses, almost as a favour for their attention. Indeed, at FIDA-Uganda Legal Aid

Clinics, the legal officers used to joke that: “The bigger the house the larger the problems.”

Feminist men are developing practical insights into ways patriarchal power affects men and boys, questioning definitions of masculinity, social norms about men’s labour, sexuality aggression and exploring how men can relate to women in more egalitarian ways (Horn, 2013; Mutunga, 2009). Nonetheless, work on masculinity is weak without a coherent framework on how to stimulate and maintain a consistent mass movement of feminist men (Mutunga 2009). Moreover, the engagement of men although welcome, is often done as an event of support with hardly sustained action for long periods of time because it is not their core mandate, but an occasional add-on (UWONET, 2013). Commonly, those men who address gender issues learn from their individual relationships of their mothers, friends, daughters or relatives for whom they wish to enjoy meaningful lives. However, a majority of men, like women, are uncomfortable with addressing gender issues or ignore them and thus do nothing to change the unequal power relations (Chimamanda, 2014).

Thus, it is imperative for all men and women working on SRHR to exhibit deep personal commitment to equity in all their private and public relationships and practices.

## **Conclusion**

In mobilising support for sexual rights, the Coalition premised their discussion on the African experiences and capitalised on the concept of *Ubuntu*. While this strategic positioning is no longer the case, sexual minorities continue to strive for their rights with an impressive tenacity. To date, sexual rights have drifted to the periphery of the SRHR movement, hardly addressed by both women and men’s movements. However, there is still divided opinion over the role of men in the ostensibly women’s rights spaces, such as the SRHR movement. The persistent dilemma is that when men claim to be feminist, they are considered weak amongst society for going against the patriarchal hegemony. Concurrently, some feminists are weary of men’s ulterior motives – accusing or suspecting them of usurping women’s voices and agency and appropriating women’s gains. The challenge then is how to broaden social support for the SRHR movement. Are we not mirroring the behaviours of exclusion that we so strongly agitate against? Therefore, rather than expect perfect feminists, we can start by accepting the progressive ones and improving as we go on, while working to enable them

to appreciate that unequal gender and social relations are neither natural nor sustainable.

In any social movement, the journey is never linear nor singular. Like a Tango, it sways, at one point either party getting their feet off the ground and exhibiting a certain degree of vulnerability, but the dance dramatically continues. Rather than get preoccupied with who should lead the Tango, it is pragmatic to nurture trust to enable any of either men or women to lead so long as it adds value to the rhythm – inclusive engagement and equitable outcomes of the SRHR movement. In the words of Lieutenant Colonel Frank Slade, “There are no mistakes in a Tango. Not like life. Simple. If you make a mistake and get tangle-up, just tango on.” (*Scent of a Woman*, 1992).

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# Epilogue

## Unfinished Revolution: A Conversation Between Hope Chigudu (HC) and The SRHR Women's Movement (WM)

*(Conversation Continued from Prologue)*  
*Hope Chigudu*

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*WM*

Well, well, I am lost for words. It has indeed been a breath-taking walk through your garden – with a sight of your neighbours' front and backyards! You have all the reasons to brag about your BOOK!

Now, back to your original question about our books!

Our books, which are written on women's bodies, demand SRHR in a hetero-sexualised and patriarchal world and our agenda is built from a gendered feminist analysis of the problem. We live in a world where we are taught to turn ourselves and our work into little nuggets that are easily digestible and not fully seen, taught to humble ourselves so that we make sense to others, to be strangers to our bodies so the right society and religion might accept us and the right organisations might hire us, and the movements might open doors for us, and someday, the right God might invite us to the right heaven where we will sing, dance and praise forever. We refuse these awful bargains we have been taught to take. So, if this is not feminism, what is it?

As feminists, our work does not stop at the door of homes. We are dead inside looking around to see what is happening in the private spaces that are protected from the public and we force whatever is hidden into the public domain! This approach enables us to widen our analysis and acknowledge the many places, nooks and corners in which patriarchy hides — notably, in the domestic, reproductive, and intimate spheres. We spot-light issues

of rape, incest, violence, denial about sex and sexuality, stigma and taboos related to sexuality; and put them on the local and global discussion tables.

Ours is a feminist struggle. It brings us together, energises and sustains us. It is composed of individuals, organisations, groups and communities that actively resist rebel and refuse oppressive power; the power that invisibilises, diminishes, dominates and controls. We challenge cultural norms, beliefs, practices, internalised attitudes, values, that make it difficult for women, especially to access and control resources. In short, we actually challenge that which is perceived as normal as well as fixed identity positions.

Some of the issues we identify might require the courtroom to redress, for example, taking on the case of maternal mortality and morbidity as a result of unsafe abortions caused by a legal and policy environment, which inhibits the work of health professionals. This is where CEHURD's mission becomes relevant to us. It provides legal support.

## Stories and Bodies

*HC*

This is profound and expressed with such eloquence; but let me ask again, why can't you write all this in a book the way CEHURD has done?

*WM*

You definitely cannot hide your fascination and obsession with the CEHURD story. I am not surprised. This is what happens when a mainstream organisation takes on a big project. Our feminist work which paved the way for all other movements is forgotten. Our work, like most women's work, might not be visible but where would Africa be without it?

So, let me repeat, our books (not one) are written on bodies of different groups of people but mostly women and transgender. The books have many chapters that traverse a wide array of topics including: sex, sexuality, sexual orientation, gender and gender identity, violence against women, sex trafficking, and all health issues related to access to reproductive health. Our books highlight some of the challenges, such as exclusion, homophobia and the impact on dignity, health, wellbeing, and even on life itself. We all understand that we are shaped by more than gender and hence, we use an intersectional analysis that engages class, location, sexuality, age, ability, ethnicity, education and other dimensions of human difference. All our books aim at advancing equity, diversity and social justice in the country.

*HC*

You can really talk! Do you realise that you did not close your mouth and did not breathe until the last word?

*WM*

Do you want me to keep my words inside until they are tired, rusty, ugly, meaningless and feeble from being stuck in my throat for so long? Unlike what most of us were taught, voice is important so do not steal my airtime. And why were you concentrating on my breath instead of focusing on yours?

*HC*

Does every woman or transgender person know that various parts of your work are written on their bodies?

*WM*

No. Not every woman or transgender is aware of what aspects of the work of SRHR movement are written on her body. We sometimes carry bodies without stopping to analyse what is written on them but if we slowed down and went into history, we would realise that we are indeed beneficiaries of both what we know and what we do not. We will not realise without reflection. We need to stop; deepen, consolidate, and appreciate our ancestors who taught us to imagine, dream and build the conditions for a different kind of future. In fact, every human being should reflect on their bodies and appreciate how they have benefitted from the work of SRHR activists.

*HC*

I also know that there are many whose bodies are painted with patriarchal paint and scars.

*WM*

You are right. The majority of women and transgender people do not even know that we exist because we do not live in their world. We are in big towns and cities or we are seen in their communities twice a year and then disappear. We do not have adequate resources to scale up our work. As a result, there are many young people who are violated in multiple ways. Violations include denial of bodily autonomy and integrity, leading to forced early marriages, misogynistic violence, restricted mobility which hinders their access to opportunities, sex trafficking, lack of access to contraceptives and abortion facilities, bullying using verbal abuse and social media, being

stigmatised and silenced for carrying a body not approved of by ‘the body the bureau of standards’. They have no support and do not even know that there is such a thing as SRHR.

*HC*

The SRHR revolution is unfinished! Tell me, which individuals wrote the books that you are talking about? Do they represent the different humans of Uganda?

*WM*

Why do you want to allocate our work to individuals when feminism is about the collective; collective action, collective gains, and a collective approach? We work hard to dismantle the harmful aspects of individuality and create the foundation for a collective movement, solidarity and collaboration. I am not saying that individuals do not matter. They do and have contributed significantly to the movement. However, if one writes a book about the movement, members of the movement should add their voices by creating spaces for conversation the way CEHURD organised for us to meet in Mukono and contribute to its book. If not, the movement should be acknowledged.

Back to your question, you asked about the writer of our stories. Remember, there are various organisations and movements within the SRHR movement. They are all at different stages of organisational growth and each foregrounds and prioritises different issues. There are also varying points of entry.

Multi-generational activists with diverse backgrounds have written. This is important as no single organisation or movement can meet the needs of its entire constituency. So, sex workers, LBT, disability, young women and those from the HIV and AIDS movements have all written different chapters. They have also benefitted from the colleagues’ chapters. I must confess though that there are few rural youth and women contributors. This is mostly because of lack of resources. You can see that the SRHR revolution remains unfinished.

## **SRHR Movement, Its Head Office and Political Conviction**

*HC*

I am curious; do you have a head office of the movement where all things are sorted out?

**WM**

We are not a factory producing goods. There is no specific office, but various offices, and spaces. If you want information, for example, on women living with HIV, you go to the International Community of Women living with HIV in East Africa. If it is about young women, you go to MEMPROW. If it is transgender, you go to TAALA. If it is about young women and leadership, you go to Akina Mama Wa Africa, and so on. All these organisations are important but we try to think beyond them so that we all become the head office.

Most important is that genuine and authentic activists take the movement wherever they go; be it their sports clubs, religious institutions or family gatherings. They use their power of conviction as their head office

Here is what movement embodiment means:

Having begun my life in FIDA, as a lawyer wanting to do legal aid, then along the way, interacting with others; as a network officer, I began to understand that we are more than just FIDA. I came to the realisation that I am part of the women's movement...so that wherever I worked, whether it was in a government ministry, whether it was in NGOs that did not focus on women, I know that wherever I am located, my number one goal is asking where the women are, where their voices are. Where are they being excluded? How can I bring them to speak for themselves? Once I bring them in, inevitably, we will talk. Issues related to SRHR will be put on the table. My assumption is, when you belong to a movement, it is deeply part of your identity – whatever you do, wherever we are. This is what embodiment means to me. My actions, the choice of friends and allies, arrangement of office and home are not secondary to either the women's movement or work around rights, or to dialogue generating advocacy and awareness programmes (Dorothy).

Another view:

I started out in the youth movement but when I am called anywhere, I say I belong to the women's movement, not the youth movement. Do I disassociate myself from the youth movement? No! But I do not consider myself a youth anymore in that structure because I no longer contribute to the youth movement as much as I contribute to the women's movement. Therefore, I carry women's movement wherever I go. But even in the women's movement, I carry the feminist movement more than I carry the women's movement. And so how do we appreciate those evolutions and bring all of them in

the space? Because not being in the SRHR movement in the middle there, does not mean I am not part of the agenda. Depending on what is happening, I might be on the sidewalk within the SRHR movement because my contribution there is not necessarily direct (Penny).

These voices testify that we do not need a head office. We need activists who embody the work of the movement, those that are convinced about the power of the movement.

## **CEHURD's Niche in the SRHR Movement**

*HC*

I hear you. The movement is everywhere. With such an amorphous structure, where is CEHURD's niche?

*WM*

The movement is focused, facilitated, encouraged to develop, to deepen, and to discover. It is not amorphous. CEHURD is aggressive. It was not given a niche. It created it. When CEHURD was born, the SRHR movement was happy. CEHURD would join the Federation of Women Lawyers (FIDA) to promote joint learning between lawyers for human rights and health professionals working in the field of reproductive rights. CEHURD has not disappointed. It has worked hard to ensure that the rights to health are more enshrined in the legal fabric of the country. Given that legal and political frameworks are often extremely hostile to women and those who do not conform to the patriarchal order, the work of CEHURD has a clear niche in the SRHR movement. Its services are needed and in demand.

*HC*

So, should I assume that CEHURD has a permanent chair in the SRHR movement?

*WM*

Don't be silly! You are imagining CEHURD sitting, resting and supervising the rest of us? Need and not seats drives most organisations to join the movements. Each organisation is like a brilliant 'musician' in its own right with the space to go solo and the courage to join the collective and enthusiastically embrace the magic that can only come from the power of working on a joint agenda.

It is also worth noting that there are very few organisations that were born with the aim of creating or joining a movement. It happens because it is the only effective way of transforming society in a positive manner.

## How Organisations Join the Movement

*HC*

That reminds me of a question that was raised during the CEHURD-organised Mukono meeting:

We started this work or these organisations because we had a vision. Did we start because we are part of a movement, or to contribute to a movement? Do we assume that people who do SRHR work are part of a movement, like people assume that when you are part of a religion, then you are part of that religion and professing it? (Jackie)

Leaders who were in the Mukono meeting, including CEHURD, reflected on the question:

My motivation for starting was never to contribute to the SRHR movement. It was just to fill a gap in the ecosystem of SRHR. We did not know who was in the movement. Lately, beyond the SRHR movement, I had never thought of our contribution to the broader NGO sector. The NGO sector looks at SRHR organisations as a sector. But voice alone cannot work. As lawyers, our wins were in litigation and judgments, but letting others into some of the petitions was a good thing. Maybe that is when the movement started but still, we were looking at it as a lawyerly business and process (Moses).

Other comments:

We did research on LGBT rights and started an organisation. But our focus was on human rights awareness, not LGBT rights. We started with things like social and economic rights. Other controversies of LGBT came in when the Anti-Homosexuality Bill was tabled. Then HRAPF was baptised as part of that coalition and just kind of joined it. It is recently that I started realising that we are part of a bigger movement. This was not helped by hostility from the NGO forum that kind of isolated us because our position was strong. So, I gave them a wider berth (Adrian).

No matter the movement, individual organisations continue to fight for their own spaces as articulated by Maria:

We understood that sisterhood with each other at critical times is important. We did joint programming. We made joint press

statements. But then the time came and we said that this movement is not serving us. You are eclipsing us, and we needed to curve our space.

*HC*

I am learning. So, most organisations are created without a vision of belonging to movements. What are the implications of this in terms of movement work?

*WM*

Some of the challenges we face are caused by fact that our organisations are conceptualised without thinking about movements. As a result, the required infrastructure, resources, time and energy to grow and sustain the movement have to be built along the way.

## **SRHR and Poverty**

*HC*

Some say that considering the magnitude of poverty in Uganda, SRHR is not a priority. Could you comment?

*WM*

Embedded in sexuality are emotions, sensations, pleasure, movement and nurturance. Sexuality is the tree of life; it is a survival issue. Is there anyone in this world whose conception, birth and growth is not linked to SRHR? How many women have died in childbirth and left their families without financial support? How many women have been abandoned and disinherited simply because they were not able to give birth to male children?

Who cannot see that there is a strong link between poverty and exclusion, and between feminism, human rights and sexuality? A young woman can be killed for wanting to own her body. Norms around sexuality can restrict one's opportunities to make a livelihood. How many young women cannot venture out, in the evenings, to work due to fears of sexual violence?

There is also severe policing and restrictions on the mobility of girls, norms related to gender, body and sexuality, and rigid notions of masculinity and femininity which make it difficult for girls to access public spaces and to play freely and openly in the sports fields and playgrounds.

Society punishes those who express their feelings especially if those feelings do not resonate with societal norms and values. This makes SRHR of a priority concern.

**HC**

Is poverty only about material deprivation?

*WM*

Poverty is not just about material deprivation, but can also be about ill-being, including the misery caused by family, society or institutions that demand perfection, obedience, and submission and punish severely if one fails to conform to societal norms around sexuality.

How many people have lost their jobs because employers discriminate against them simply because they are gay or transgender or just look like they are? How many live in cold, foreign, hostile places just because they happen to think for themselves? The queer receives a concentrated dose, no doubt, but repression is a bitter pill that is offered to all women. We are taught to hide so many parts of who we are and what we have been through: our love, our pain, for some, and our faith.

On the other hand, norms and practices around sexuality may create economic opportunities. For example, if you become a sex worker or marry a rich person for sex, you get your income.

## **Sexual Pleasure**

*HC*

Could you comment on sexual pleasure?

*WM*

Here is something that is even more puzzling. When sexuality is constructed as positive and sexual pleasure as a human right, then an SRHR movement is seen as promoting indecency. Politically, we live in a polarised world. And even COVID 19 cannot unite us; but when it comes to sexuality, political, cultural and religious homophobia unite our people and they descend on SRHR movement as if it is the cause of all the misery in the world. They will sit together and call anything related to sexuality as promoting homosexuality; unnatural, evil, a threat to the nation, promotion of Western culture, unreligious, un-African, and clear evidence of the ongoing need to Christianise or Islamise the country. They will demand that homosexuality should be eradicated together with those who practise it (meaning all activists and their families should die).

Regarding politics, one way of bringing down a politician is calling him a homosexual. A woman who tries to join politics is attacked on the grounds of her marital status, her past life or her own body.

## Forms of Being an Activist

*HC*

SRHR work in Uganda – reformist or revolutionary?

*WM*

The nature of our political agendas and activism must be gauged against our socio-political context, not judged by absolute ideological standards. One of the benchmarks of our movement is that it is a space of free association. Some in the movement may be politically aligned, but not all have to be politically aligned or even overtly political. Whilst activism may be our benchmark, we cannot restrict the forms of being activist. Hence, we work together and pull off a few things well. However, when it comes to contested issues, working together is much harder. Power differences mostly embedded in the social positionalities different people bring play out. For example, given the context, it is difficult to challenge the broader spectrum of sexual-intimate norms that govern behaviour, such as the norm of marriage, monogamy, or gender norms of sexuality.

We may not be revolutionaries but we are proud that we have put issues of sexual minorities on the table, and if their lives can improve a little, then that will be a significant achievement.

One thing though that we must continue to emphasise is thinking. It is the radical project that we must undertake and stimulate in others. Without clear thinking, the intelligence needed to handle the contradictions that arise out of our existence and context is lost. The future is not something we plan for and then operationalise. The quality of doing in the present will become the future that we inhabit.

*HC*

You have given me a comprehensive response. Could you explain what you mean by sexual minorities? What model describes which sexuality is major and which one is minor?

*WM*

I am referring to the LGBTQ+ family.

*HC*

Sexuality is a divine fabric composed of different patches. Is it only the LGBTQs+ that stand outside this model? What exactly is the nature of the majority to which sexual minorities stand in opposition? How about those who are heterosexual, and whose sexuality is interpreted, constructed and treated differently because of their tribe, religion, ability, and/or gender? For example, are priests and nuns sexual minorities since many are celibate and their sexualities are outside the majority, who are assumed to be heterosexual? In Hindu mythology, sexuality is everywhere. Among the gods, sexuality is sacred. Then, there is the antricc philosophy with the goal of liberation of consciousness into supreme realisation. Is there really a large, homogeneous coherent majority of heterosexuals? How about those heterosexuals who are disenfranchised, under-represented, othered, silenced and unheard because of their sexuality practices?

*WM*

Your questions are unsettling. I realise that we sometimes frame pieces of our work in ways that seem to indicate that the LGBTQ+ community has some separate and unique set of human needs and demands, instead of naming and normalising human sexuality as something that all humans have. Human sexuality though is complicated. Maybe, we should talk about inclusion and leave it there.

*HC*

Inclusion? What does it really signal and mean in the Uganda context? Who gets included? By inclusion, I hope you mean that all of us should actively engage and imagine beyond the bodies that are visible to the world?

*WM*

Do not be hard on us. We are learning on the job.

*HC*

You said you are thinkers. So, as part of the learning, let us talk about language. It determines how we frame difficult issues and how those issues are understood. Many of you use the language of human rights which has a particular power, and when invoked, commands reverence and respect. But is the language of human rights really understood by many people? When working with rural people, how do you ensure the language of human rights concept retains its analytical clarity? I know that transnational activism shapes the way movements are emerging but are we not depending too much on

Western definition of sexuality? Is the SRHR movement in Uganda created and shaped by specific local cultural or political contexts that you have already referred to?

*WM*

You are right. We will continue to develop the language we use so that we can find a better way of speaking that all Ugandans including those living in rural areas, who are not necessarily exposed to our language of human rights, can feel recognised by and in which they can recognise one another. Without that, we are left with tasteless words and jokes that are of no use to them. So, language remains a barrier to advancing sexual rights to freedom and autonomy as we are often mired in what seems like ideological contestation.

Some SRHR issues, especially those related to health are easier to explain than others. We need a conversation that just focuses on language. For example, we do not know how to support rural communities to engage with the LGBTQ alphabet and position it in their own history and culture. What does each alphabet and its many overlappings mean? Inability to unpack each alphabet has left many issues and concerns unaddressed from the SRHR map of Uganda.

One of the takeaways from this lengthy conversation is that framing is important. We actually learnt that from the case of HIV/AIDS and global access to antiretroviral, arguably the most successful campaign of global health advocacy to date.

## **Reproductive Health**

*HC*

Let us turn to reproductive health! What is happening in that area?

*WM*

Almost three decades ago, the landmark international consensus documents of the International Conference on Population and Development in Cairo (1994) and the Fourth World Conference on Women in Beijing (1995) succeeded in securing a place for women's SRHR on the global development agenda. Other global initiative, such as the Millennium Development Goal (MDGs) and Sustainable Development Goal (SDGs) have built on the earlier initiatives. Human rights defenders, especially women, have continued to promote the right to choose. However, some elements in society use

conservative interpretation of religious and cultural beliefs to restrict the national and global political landscape for those rights.

The right to choose is not about coercion but rather that a woman owns her body, which is different from the work of advocates of population control who blame overpopulation for a range of problems, from global poverty to ethnic conflict and environmental degradation. Historically, this type of thinking has led to a range of coercive fertility control policies that target third world women. These include sterilisation without a woman's knowledge or consent the use of economic incentives to 'encourage' sterilisation, a practice that undermines the very notion of reproductive choice; the distribution and sometimes coercive or unsafe use of contraceptive methods, often without appropriate information; the denial of abortion services; and sometimes, coercive abortion.

*HC*

Surely, at least our government should be paying attention to primary health care especially?

*WM*

I agree! Most of the diseases that affect pregnant women and new-borns have little or no effective treatment. Research into women's health is largely underfunded globally, especially in Africa with more high-profile areas of medicine attracting researchers. Hence, access to maternity care, including antenatal, postnatal and delivery care, and emergency obstetric care and skilled attendants are very limited. In many areas of the country, young people find it difficult to have access to contraceptive information and services, including emergency contraception.

But as activists, we have not surrendered our agency. Read the CEHURD story. The organisation and its allies continue to not only highlight the failures of our government to provide relevant resources and protection for all its citizens but have also taken several legal actions to force the government to do its work.

## **SRHR Map of Uganda and Organising Strategies**

*HC*

Let me switch to the SRHR map of Uganda! We have to remember that a map is as good as those who drew it and, hence, the importance of diversity.

The current ways of organising might challenge the SRHR map of Uganda in terms of who is organising and who is not. How is it that the

most visible actors come from NGOs while there are people from different walks of life organising? They include artists, religious groups, writers and so on. Is it not possible to miss them and think that SRHR movement starts and ends with NGOs?

### *WM*

Yes, there are many people organising with interesting seeds of depth and radicalism but they seem to be carelessly overlooked. We cannot build a movement without bringing all into the SRHR 'boat'. They are overlooked for a number of reasons. The nature of perceptions around the subject of sexuality means that those who speak out may be considered ill-mannered in a counter-cultural sense. This stigma can be costly in terms of social relations, employment prospects, physical safety and so on. This work can be dangerous for individuals. So many are silent supporters or interveners but they do not take up public advocacy. NGOs, on the other hand, are relatively protected. Because this is their work, then individuals can make their contributions by working through those organisations. This means that the organisations, in many ways, are a vehicle for community issues.

NGOs are also 'over-resourced' contributors to the SRHR movement. Aside from government, which receives public funding for sexual and reproductive health services, NGOs are the leading private vehicles for funding to communities directly. This gives them a bigger platform to serve as visible advocates even where so many other contributors exist.

There are also so many different ways of organising on SRHR. Advocacy, policies, and so on are just some of the methods that NGOs use. But when you have been violated, sometimes you need someone to hold your hand or cater for your basic needs, while you find a better situation for yourself. And that is work that requires a different skillset, such as human connection not necessarily NGO-style activism.

Maybe what we can now consider is, who is organising in other ways? What kind of support do they need – if any at all? And, where can this support come from?

### *HC*

Since we are talking about different constituencies, including rural people, what strategies does the SRHR movement use to ensure that its messages are widely understood?

*WM*

We weave different strategies but each member of the movement has developed those that speak to what they do. Some of the current common strategies include the following:

- a) Catalysing and supporting dialogue and critical awareness, power analysis and strategy development;
- b) Combining e.g., marches, protests, advocacy and lobbying;
- c) Investigative journalism and other media approaches;
- d) Strategic litigation;
- e) Mobilisation and building solidarity;
- f) Research and knowledge production to inform the field;
- g) Direct action, including legal aid;
- h) Scholarly writing and publications; and
- i) Promoting well-being, safety and security.

What we need is to sit and assess the effectiveness of each of these strategies and the extent to which they can be applied to different contests and audiences. We also need an SRHR organising guide to support us in our work.

## **Challenges**

*HC*

Throughout our conversation you have touched on some of the challenges. Could you highlight a few critical ones?

*WM*

The challenges are as many as the field of SRHR itself. Some are contextual and others are internal. The list is very long and includes the following:

- a) Dreaming about the future is important but we dream in a dehumanising context, where, as put by Freire, decision making occurs outside our own realm (Freire, P. 1970; Freire, P. (1994) and where history is considered as a pre-given and the future as determined. It is a context which demonises political voices of dissent, demobilises and disintegrates our work. And every now and again, backlash is unleashed on us.
- b) Politicians, cultural and religious leaders use our sexualities and genders as their political tools to achieve their own political and

economic ends. In addition, mainstream social media platforms are used to censor us.

- c) When the global north states push any issues related to abortion and sexual orientation, gender identity and expression as well as comprehensive sexuality education in any space, the backlash here at home in Uganda is intensified.
- d) Bureaucracies reinforced by ignorance both within our own movements and external are limiting, especially when it comes to trying to advocate better SRHR goods and commodities for certain communities. As asked by Noah during the Mukono meeting, “How are you going to ask for Tran’s health care within a government system that doesn’t have any information for how issues like hormones, for instance, will be accessed or supplied within public facilities?”
- e) Lack of funding and other forms of support especially for movements that are still emerging and whose organisational, internal leadership and decision-making structures are still works in progress.
- f) The context is ever-changing and movement building is not linear – with leaps ahead at times and reversals at others. Lack of continued assessment and analysis of the contexts, problems/gaps/needs of activist make it difficult for us to adjust the tools to meet the needs of today, for example, those related to COVID-19.
- g) An under-developed culture of collective review, thinking, analysis, sharing, critique; learning and knowledge creation.
- h) Limitations that arise from operating within the legal framework, (and unpacking the current context of the SOB). The framework does not always analyse power and how power operates to either support or promote.
- i) Many of us are learning on the job! There is no school in the country that teaches SRHR from an activist/feminist perspective. So, sometimes, we get it right and other times we do not. Added to this problem is fear of the “feminist” label for complex reasons.
- j) As Uganda activists, we have an obligation to engage with the broader economic and political imperatives. There might be a few people within our movement who have a sophisticated understanding of the complexities of navigating the geopolitical terrain with sexuality and gender-related asks and demands; but

there is little access to simple, clear resources, tools, platforms and conversations that guide us as activists. As such, our confidence, competence and consciousness about how to do this work are limited to a few.

- k) Leadership is really critical for our movement and shapes what is taken seriously and what is ignored. However, we have many leaders who work without analytical tools that reveal entire layers of hitherto invisible inequality, the depth and breadth of discrimination against women and girls that societies have “normalised” and called “custom” and “tradition”. Added to this are some religious fundamentalists within the movement. All this leads to reproduction of patriarchal power dynamics within our own spaces.
- l) Sexual pleasure is an expansive movement of the life force. It is the dance that balances, restores, renews, and reproduces. Yet, we live in a culture where this element of our lives is either repressed or exploited.
- m) It is still difficult to unplug ourselves from consumption of words, concepts and development language so that we can use words that people understand and use in real life – those that have rich, flexible and diverse meaning. When, as development practitioners, we drop words on people, as new discoveries, words that do not stem from their soil, and lives, and are not abstracted from their experiences, observations and reflections, they disengage. Our challenge is how to avoid the global framing of language/words so that there is no disconnect between our words /language and our intentions.
- n) Ignoring statistics, outcomes and impact. For instance, when we talk about issues of violence or lack of access to certain goods or services for sexual health and rights, how can we use information around statistics and impact to make our case? It is critical to weave statistical information into the kind of advocacy that we do so as to show the existing gaps.
- o) The issue of silos is still serious. People are whole beings and it is important and useful for us to be able to bring our full selves, to address political issues in a way that allows us to both provide for immediate needs but also politicise our language and experiences and bring them to the biggest sphere. If you are sitting in a space

and talking about access to safe abortions, why shouldn't the different identities be able to invest in this conversation? Being able to weave the silos together and find ways that we can use the different teams to come together and then organise in our separate and collective groups is still difficult.

- p) We do not have a strong power base, with leadership from the primary constituency. Politicians know that even if they harass or arrest us, there will not be a national outcry for our release.
- q) Lack of collective risk and security strategies and plans for human rights defenders, including collectively standing in for each other. If anything happens, we do not have a go-to urgent plan.
- r) Lack of non-negotiable values and concerns that everyone working on SRHR rights should agree with especially with regard to national policies and laws, such as the Sexual Offences Bill (SOB). Even if a bill may not be affecting one negatively, it is important to side with those that are affected, guided by intersectional, anti-oppressive feminist values. That is why we have movements.
- s) No strong strategies to engage religious and cultural fundamentalists.
- t) Limited investment in artistic expression, for example, why have we not used innovative methods, such as comedy to pass on the message? Why are we not using our creativity to amplify our impact and reach? One of the great functions of art is to help us imagine what it is like to be *not* ourselves. What it is like to be someone or something else? What it is like to live in another skin? What it is like to live in another body, and in that sense to surpass ourselves, to go out beyond ourselves? (Rich 2012).

## Building Collective Power

*HC*

If there are all these challenges, how does the movement work to build collective power?

*WM*

One of the key tools that we have is the ability to engage in mapping exercises. When we are mapping, we are trying to build collective power. You do not just wake up and run. You have to figure out what other people are doing and how to build upon that. So, within the mapping exercise, we look at:

- a) The organisations: What are these organisations? What are they doing? How are people organising in different forms – whether its community based or regional, national, or service based versus other types of organisations?
- b) The constituencies within these organisations: What are they addressing and dealing with?
- c) Mapping out the themes and trying to understand what the contested issues are: What are the uncontested issues within our movement that speak to where we are going? What is receiving more voice? Which is the next issue and visibility? Or, what are the issues that people are silent about, where you find that even the advocates for people affected by these issues do not have the confidence or will to want to take these issues forward?
- d) Values clarification: This is work related to political ideology, but also our social context and upbringing. What are the values that this person carries forward? If we are going to talk to the community about these issues, how should they be phrased?

Added to the mapping exercises are the following:

- a) Developing learning, communications and publications actions and products across the movements and increasing our impact and visibility on key priorities.
- b) While this work varies by each organisation within SRHR and context, there is a shared understanding that what makes our movement stronger and bolder – organising, community, resilience, clear analysis, strategic action, unity – also makes us safer. We believe that our movement is vital for both power and safety – offering the collective clout of people acting together and belonging, community and safety nets necessary in a violent world.
- c) Although we need to do more work with regard to power analysis, there is some understanding of power, from its manifestations in the most personal experiences of our lives to the most public. This understanding is vital to change efforts of any kind. Leaving power out of the equation not only obscures the realities of women's lives but undermines our ability to construct effective strategies for resistance, survival and change.

## Achievements

### HC

Could you share some of the *braggables* of the movement?

### WM

The CEHURD *braggables* have been covered by Moses and Doris in their chapters. So, I will comment on those of the whole movement.

The achievements are scattered everywhere in the country, they include the following:

- a) Some shifts at the national level related to SRHR: For example, significant work related to HIV+ women's bodies, and access to treatment and healthcare, integrating LGBTQ+ rights, and opposing gender-based violence.
- b) Amplifying voices that are usually silent and increasing freedom of expression and the right to organise and participate in decisions that affect them both individually and collectively. For example, voices of sex workers are loud and clear at the national level and within the Uganda Feminist Forum.
- c) Creation and development of grassroots and national youth structures. Some SRHR work is being built and led by younger people, mostly women – especially on issues not readily espoused by older women (LGBT, sex work).
- d) Young women are helping to strengthen and hold movements accountable in a number of ways, such as demanding to participate effectively in the Uganda Feminist Forum, talking openly about mental health, challenging the politics around sexuality, pushing for higher-risk actions, and advancing more innovative strategies.
- e) The things that were deemed 'undiscussable' have become discussable, for example, SOB.
- f) More men are joining the SRHR movement and bringing many others along.
- g) We are setting precedents and inspiring activists all over Africa.
- h) We are providing legal support to activists who find themselves on the 'wrong' side of the law.
- i) There is consistency in creating credible *evangelists* to speak on specific issues and building multi-generational leadership.

- j) Penetrating education spaces and more academic activists sharing key messages related to SRHR, and provoking conversations, including on controversial issues inviting bold questioning, exploration of ideas, and new thinking.
- k) Documenting the gains: This provides energisers for the movement to continue inspiring the activists, building on their intelligence, experience, knowledge and dignity, enabling them to think about a more liberated future.
- l) Taking a feminist and holistic approach to the protection and safety of women: We recognise that safety is deeper than survival and that protection must include not just legal advocacy, safe houses and security measures, but also well-being, networked and community support, and the respect of women and their leadership. We can think about increasing safety in a parallel and multi-faceted way as we do about developing different forms transformative power.

Our SRHR journey is built on a dream. The dream is called *subversion*. We have used our dream as a stepping stone to our liberation, each day expanding our political consciousness and our horizons.

## Conclusion

*HC*

What are your concluding remarks?

*WM*

Our SRHR activism in Uganda has not all been rosy. There are some examples of where advocacy and campaigns did not work as envisaged. There are many times when the key actors disagreed and some even left the movement.

There have been many achievements, however small. The cumulative impact of many small accomplishments, even the experiences gained from failed initiatives has contributed to the movement's determination to do more in ensuring social justice. Empowerment, as Freire suggests, involves naming the world for oneself. (Teaching Empathy Institute 2017) Where necessary, it involves a political decision to be defiant, to take small actions and chirp at the huge patriarchal mountain. Sometimes, the actions may well seem to involve spitting in the wind, accepting that some efforts will simply rebound. The important thing that the movement does is to slog on, even when the vision might seem to be receding rather than getting closer.

Against the blind paralysing magnitude and scope of political, social and cultural problems, that are caused and emphasised by patriarchal systems and structures, a small number of people, using creative, feminist, daring and popular education methods, can make a difference.

The movement continues to spit its empowerment seeds into a patriarchal wind in an abiding effort to ensure a future health, vibrant freedom, justice, wholesome flowering of rights and unleashing of the potential of all humans.

As we move into the future, we need to hold on to social solidarity and our humanity, and we need to let go of competing, dark, toxic conspiratorial politics of some within the SRHR family. We need to state our position/values strongly and let others agree or resist and we be brave as a collective, and move towards the unknown. We cannot afford to remain safe. It is very important to look and listen for leadership sparks among young people and provide support.

The SRHR movement will continue to implement its programmes as aggressively as possible, taking time along the way to listen to both loud and silenced voices and ideas, to learn and harvest lessons and evolve with vigour, agency and energy.

In its work, the movement will continue to be inspired by many stories, including one of CEHURD.

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