

CONSTITUTIONAL PETITION NO.10 OF 2017

*Litigating Regulation of Termination of
Pregnancy in Uganda*

June 2017



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EXECUTIVE SUMMARY

Introduction

When a woman decides to terminate a pregnancy, it does not often matter whether the procedure she uses is safe and legal or not. In most instances, the result is what matters once a decision has been made. In countries where the legal environment on abortion is very restrictive and there are no options to access safe abortions, unsafe options for termination of pregnancy are often created. Unsafe services for termination of pregnancy have therefore become the only option for women.

Uganda's law on termination of pregnancy

Uganda has for a long time maintained a restrictive legal framework on termination of pregnancy which only permits abortion where necessary to save the life of the woman. Unfortunately, unsafe abortion is one of the leading preventable causes of maternal mortality and morbidity in Uganda. Unsafe abortions are carried out by unqualified people in unsafe conditions which result in complications for the women who use them and at times death. Despite Uganda having a low per capita income, women are often willing to pay a lot of money for unsafe abortions when they need the services. These expenses reduce the income available to the women and their families to spend on other essentials like food and education which affects their health and socioeconomic well-being. Additionally, despite endorsing the highly restrictive legal environment, the government of Uganda also spends a significant amount of money treating complications resulting from unsafe abortions yet the budgetary allocations to the Ministry of Health remains low.

The law itself is very ineffective and is mostly used by law enforcement officers to harass health workers and women and extort money from them.

An outdated law

Uganda's law comes from an archaic position of the law created by the British Colonial government which has since moved away from this position of the law. Several countries on the African continent including Rwanda and Kenya have taken steps to remove barriers that prevent women from accessing safe abortion services by creating laws that provide for grounds on which women may be authorised to access the services. The Constitution of Uganda recognises that the abortion law is outdated and needs to be advanced and has directed the parliament to make a law providing for grounds on which a person may be authorised to terminate a pregnancy. However, since the enactment of the Constitution, Parliament and Ministry of Health have are yet to take steps toward making a law that provides for grounds on which abortion may be authorised.

Constitutional petition on termination of pregnancy

In March 2017, the Center for Health, Human Rights and Development (CEHURD), Prof Ben K. Twinomugisha and Dr Rose Nakayi filed a constitutional petition challenging the omission of the government of Uganda to make a law on termination of pregnancy. The petitioners are seeking orders of court to declare that omission to be unconstitutional and to direct the Parliament to make a law on termination of pregnancy.

Purpose

This paper attempts to clarify the objective of the petition by providing useful context about the state of abortion in Uganda and its impact on the lives of women. It also highlights the history of abortion law in Uganda, human rights obligations and the progress which has been made by other countries in authorising abortion.

This paper provides information about the facts on which the case is based and the issues which may arise during its litigation before court. Cognisance has been taken of the principle of subjudice and we have endeavoured to ensure that the contents of this digest have no bearing on the litigation of the case before Court.

This paper will be used to raise awareness about the litigation of the petition and inform the process of reforming the legal framework on termination of pregnancy in Uganda.

1. PROFILING ABORTION IN UGANDA: THE PROBLEM AND THE IMPACT

1.1 Incidence of abortion

The clandestine manner in which unsafe abortion is often carried out makes it difficult to estimate with accuracy the nature and scope of its occurrence in Uganda. However, estimates by Guttmacher Institute¹ indicate that in 2013 up to 314,304 abortions were induced², which is an increase in the absolute number, from 293,804 ten years earlier in 2003, even though it reflects a reduction in the abortion rate³ from 51 to 39 per 1,000 women aged 15-45 years.

1.2 Health impact of unsafe abortions

Out of the 314,304 estimated abortions, 93,265 were treated for complications from induced abortions.⁴ Treatment of complications from unsafe abortions is not the same across the country and some areas in the country have a higher difficulty in accessing services. The study estimated that 12 out of every 1000 women were treated nationally for a complication due to an induced abortion. In Kampala however, a higher estimate of 23 per 1000 women were treated for complications arising from induced abortion.⁵

It should be noted that inducing an abortion is prohibited except when it is meant to save the life of a woman and yet this evidence shows that a large percentage of abortions in Uganda are induced and result in complications which have to be treated by the health system.

1.3 Economic impact of unsafe abortions

The lack of clarity around the law on termination of pregnancy of abortion has scared health workers from providing safe services for termination and even those who dare provide the services do so clandestinely and often in unsafe environments which place the health and/or life of the woman at risk.

Ugandan women who need services for termination of pregnancy are often willing to pay substantial amounts of money to access unsafe abortions mostly because they are available within the restrictive legal environment. In a study undertaken in 2012, it was found that women who had an unsafe abortion paid an average of UGX 59,600 for the service; an additional UGX 41,800 for the treatment of the resulting complication; plus an extra UGX 26,700 for medical treatment.⁶ This brings the total to an average expense of UGX 128,000 as the cost incurred by a woman who procured an abortion.⁷

This cost often has a significant impact on the socioeconomic wellbeing of the woman and her household. Children whose mothers have had an unsafe abortion often experience a reduction in food and some of them are unable to go to school.⁸ In addition, there is a loss of productivity for the woman and her caretakers.

Despite the limited resources annually allocated to the health sector, treatment of complications arising from unsafe abortions also deprives the health system of significant resources which could have been applied to the treatment and management of less preventable health conditions. In 2010, it was estimated that provision of post abortion care in Uganda cost USD 13.9 million which was 4% of the budget allocated to the health sector in that year.⁹

Additionally, most of the services for post abortion care services are provided at the least funded and most needy levels of the health system with health centers incurring USD 8.4 million of the cost (61%), district hospitals incurring USD 4 million (29%) and regional referral hospitals incurring USD 1.5 million (11%).¹⁰

District hospitals incur a higher cost of USD 11 per case of post abortion care provided compared to the regional referral hospitals which incur a cost of USD 5.4 per case. Cumulatively the average cost the government incurs in treating a case of post abortion care is USD 131 per patient including both direct and indirect costs. This expenditure, if compared with the per capita annual expenditure of the government of USD 11, means that Government is spending at least 11 times more money for every patient treated with abortion-related complications than it spends on expenditure on the health an average Ugandan.¹¹

Importantly, it should be noted that not all women who have had an unsafe abortion end up receiving post abortion care. Many women in Uganda die due to unsafe abortions either because they are unable to access treatment for the arising complications or they are too late for post-abortion care.

The 2016 Annual Health Sector Performance Report shows that in the financial year ending June 2016, 336 women out of every 100,000 live births died of maternal-related causes.¹² It was also estimated that unsafe abortion contributed to 9% of all these deaths. These statistics imply that one in 10 mothers who died due to maternity related causes died because of an unsafe abortion.

2. HISTORY OF THE LEGAL FRAMEWORK ON TERMINATION OF PREGNANCY

Uganda, like many other African countries, has laws adopted from former European colonial masters. The Penal Code, which contains the law on abortion, is largely based on colonial-era laws of Britain.¹³

2.1 British influence on Uganda's Penal Code

The approach of criminalizing abortion which Uganda adopted in its Penal Code is the same approach which was used by Britain at the time they legislated on abortion in 1861. By Article 15 (2) of the Order in Council of 1902, through which Uganda officially became a protectorate of the British Government, all laws, doctrines of equity and statutes of general application including the penal laws in Britain became applicable to Uganda.¹⁴

One such statute of general application which was adopted by that Order in Council was the UK Offences against the Person Act of 1861 which in Sections 58 and 59 provided for offences relating to abortion. Section 58 punished any pregnant woman or any other person who attempted to terminate a pregnancy. Section 59 punished any person who provided anything to a woman knowing that it would be used to terminate a pregnancy.

58. Attempts to procure Abortion. Administering drugs or using instruments to procure Abortion

Every Woman, being with Child, who, with Intent to procure her own Miscarriage, shall unlawfully administer to herself any Poison or other noxious Thing, or shall unlawfully use any Instrument or other Means whatsoever with the like Intent, and whosoever, with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall unlawfully administer to her or cause to be taken by her any Poison or other noxious Thing, or shall unlawfully use any Instrument or other Means whatsoever with the like Intent, shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life or for any Term not less than Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement.

59. Procuring Drugs, &c. to cause Abortion.

Whosoever shall unlawfully supply or procure any Poison or other noxious Thing, or any Instrument or Thing whatsoever, knowing that the same is intended to be unlawfully used or employed with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for the Term of Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour.

From a close reading of Section 58 of the Offences Against the Person Act, it is obvious that Section 141 and 142 of the Penal Code Act of Uganda were derived from this provision. Furthermore, it is also obvious that Section 143 of the Penal Code Act was derived from Section 59.

It should be noted that even when the British criminalized abortion, Section 58 and 59 of the Offences Against the Person Act qualified prohibited acts relating to abortion with the word “unlawfully”. This qualification established the fundamental principle that not all abortions were to be unlawful and contemplated that in some instances an abortion may be lawful.¹⁵

This fundamental principle, which is recognized in Section 224 of our Penal Code Act, came into existence in 1929.

In 1929, the Infant Life (Preservation) Act was enacted and in Section 1 it prohibits the offence of “child destruction” which is known in Section 212 of Uganda’s Penal Code Act as “killing an unborn child”. The section further created a defense from criminal liability for a person who had been accused of the offence of child destruction and stated that no person can be found guilty of the offence of child destruction unless it is proved that the act which caused the death of the child was not done in good faith for the purpose of preserving the life of the mother.

This was the foundation of the defense in Section 224 in Uganda’s Penal Code. This defense was only available to people prosecuted for child destruction under the Infant Life (Preservation) Act and was not available to individuals prosecuted for abortion under the Offences Against the Person Act. There was no provision for lawful termination of pregnancy in Britain until 1938.

In 1938, Justice MacNaughten extended the application of defense from cases of child destruction to also apply to cases of abortion during the trial of Mr Bourne, a surgeon who had terminated the pregnancy of a 15 year old girl who had become pregnant as a result of rape.¹⁶ While guiding the jury to make their decision on the matter, the judge adopted the defense prescribed in the Infant Life (Preservation) Act of 1929 and interpreted it to apply to cases of abortion where the doctor in good faith terminates a pregnancy with the purpose of preserving the life or mental health of the mother.

This interpretation of the law on abortion was to be relied on during the adjudication of offences relating to abortion in England and some parts of Africa, and was to form the basis upon which Section 224 of Uganda’s Penal Code would be defined.

England in the meantime advanced its laws on abortion further in 1967, five years after granting Uganda independence, when it created its Abortion Act but Uganda could not take benefit of this development since it was independent of England at that time.¹⁷

2.2 Uganda develops own laws on abortion

On June 15, 1950, Uganda reviewed its legal framework relating to issues of criminal law, including the Penal Code Act and on that day, Sections 141, 142, 143, 212 and 224 of the Penal Code Act were enacted. These provisions of the Penal Code Act remained the only legal provisions on termination of pregnancy applicable to Uganda until 1995 when a new Constitution was promulgated.

On Monday September 12, 1994, in the Constituent Assembly, Dr Lawrence Miyingo-Kezimbi-ra moved a motion he co-sponsored with Hon. Chebet Maikut and Dr Posiano R. Mugenyi to include a clause on termination of pregnancy in the Constitution.

The clause they proposed to include read as follows;

“No person has a right to terminate the life of an unborn child, except on medical grounds or when the life of the mother is at risk”.¹⁸

Hon. Miyingo in explaining the purpose of the motion to include the proposed clause, stated among others, that the amendment sought to protect the life of the unborn child as an extension

of the protection of the rights of the child from interference and termination. He further explained the purpose of the proviso (“... except on medical grounds or when the life of the mother is at risk”) in the motion that doctors had been carrying out abortions for therapeutic purposes, including where the continuation of the pregnancy put the mother at risk and could end in the death of the mother and the child, and where some congenital abnormalities would mean that the fetus would not be born, but that the doctors were not terminating these pregnancies under the law.¹⁹

Hon. Mugenyi further explained that the law as it was then (the Penal Code as it is today) was the law used in Britain in 1861 which did not anticipate the technology in place in 1994 which permitted doctors to diagnose some medical conditions like fetal abnormalities and conditions which threatened the lives of pregnant women. This technology, he argued, enabled doctors to make an appropriate decision to terminate the pregnancy to relieve the pregnant woman of the burden of carrying an unviable fetus or to save the life of the pregnant woman but was not recognized by the law.²⁰

This motion elicited a lot of debate in the Constituent Assembly and several views were raised by the members, some of whom made the following suggestions:²¹

- a. Prof. Apollo Nsibambi suggested that the clause be amended to include a proviso authorizing termination of pregnancy as a result of rape;
- b. Hon. Emmanuel Kirenga suggested that the clause be further amended to include a proviso authorizing termination of pregnancy as a result of any criminal act;
- c. Hon. Okalebo opposed the motion and suggested that there should be no discrimination as to the cause of life and if the objective of the clause is to protect the life of the unborn child it should not be looking at how the life of the unborn child came into existence.
- d. Hon. Lagada supported the motion and suggested that there are cases of rape and defilement reported daily in the country and it is traumatizing to the young girls and women to be forced to be forced to have baby they did not want.
- e. Hon. Rev. Fr. Batanyende opposed the motion and suggested that amendment would encourage young people to freely have sex before marriage and that since the act of sex is for enjoyment, girls would have sex then claim to have been raped and demand termination of their pregnancy.
- f. Hon. Sam Njuba supported the motion only to the extent that it provided for termination of pregnancy which resulted from rape but did not provide for all criminal acts which in his opinion was too wide and would include adultery for which termination was not justifiable.

The defining moment in the discussion of the motion that turned the trajectory of the debate towards the content of Article 22(2) as it reads today was initiated by Hon. Aggrey Awori. Hon. Aggrey Awori opposed both Hon. Miyingo and Hon. Apollo Nsibambi's motion and argued that they were turning the Constituent Assembly into a parliament. He further argued that the Constituent Assembly was supposed to make the fundamental law. He recommended to the movers of the motion that the Constituent Assembly makes a generic constitutional provision for parliament to make laws governing the unborn child because going into details would pre-empt medical technology like test tube babies which would come in future.

The debate was finally put to rest by Hon. Joseph Mulenga who moved a motion that instead of specifying the grounds in the Article, the Constituent Assembly would say that the Parliament would make a law to this effect and the clause would read,

“No person has the right to terminate the life of an unborn child except as may be authorized by law”.

Parliament would then study and specify the circumstances under which abortion may be permitted.²² The motion was seconded, debated and put to the vote by the Chairman to the Assembly, which agreed to include the clause in the Constitution without modification. This clause is what exists in the Constitution today as Article 22(2).

3. LEGAL FRAMEWORK ON ABORTION IN UGANDA: LESSONS FROM ENFORCEMENT

Uganda's legal framework on abortion is spread across the Constitution of 1995, the Penal Code Act of 1950 and case law that has a bearing on the interpretation of the provisions of the law.

3.1 The Constitutional Foundation

In Uganda, the Constitution is the main law and provides for abortion as an exception to the right to life by recognizing two key aspects which are important to the regulation of abortion. The first part of Article 22(2) of the Constitution recognizes the life of an unborn child by expressly providing that no one has the right to terminate it.

The second part of Article 22(2) of the Constitution anticipates that there may be situations in which a person may terminate the life of an unborn child and provides that such situations have to be authorized by law. In putting these two parts together, Article 22(2) may be interpreted that while no person has the right to terminate the life of an unborn child, the law may authorize a person to terminate such a life.

22. Protection of right to life.

- (1) No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.
- (2) No person has the right to terminate the life of an unborn child except as may be authorized by law.

In Uganda, only one body has the authority to make a provision having the force of law as has been defined by Article 22(2) of the Constitution. Article 79 of the Constitution provides that the Parliament has powers to make laws on any matter such that no person or body other than Parliament can make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

79. Functions of Parliament.

- (1) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.
- (2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.
- (3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.

3.2 The Penal Code Act, Cap 120, Laws of Uganda

The only provisions with the force of law which relate to termination of pregnancy in Uganda are found in the Penal Code Act. Section 141, 142, 143 and 212 of the Penal Code Act provide for offences relating to the termination of the life of the unborn child before it proceeds out of the body of the mother. Section 141 prescribes imprisonment of 14 years for a person who is convicted for performing any action intended to terminate the pregnancy of a woman.

Section 142 prescribes imprisonment of 7 years for any woman who is convicted for performing any action intended to terminate her own pregnancy. Section 143 prescribes imprisonment of 3 years for any person who is convicted of supplying anything intended to be used to terminate a pregnancy of woman. Section 212 on the other hand prescribes life imprisonment for a person convicted of performing any action which terminates the life of the unborn child and thus prevents the child who is about to be delivered from being delivered alive.

141. Attempts to procure abortion.

Any person who, with intent to procure the miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means, commits a felony and is liable to imprisonment for fourteen years.

142. Procuring miscarriage.

Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.

143. Supplying drugs, etc. to procure abortion.

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

212. Killing unborn child.

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that if the child had been born alive and had then died, he or she would be deemed to have unlawfully killed the child, commits a felony and is liable to imprisonment for life.

Section 224 of the Penal Code Act has been interpreted as having the authorizing provision on termination of abortion in Uganda. The Section excludes criminal liability for a person who in good faith and with reasonable skill and care performs a surgical operation on any person for that person's benefit or upon an unborn child to save the mother's life, if the operation is reasonable having regard to the patient's state at the time and to all circumstances of the case.

224. Surgical operation.

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his or her benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

A literal reading of Section 224 provides that the criminal liability is only excluded for a health worker who uses a surgical operation to terminate a pregnancy but cannot be interpreted to entitle a woman to demand the termination of her pregnancy. The health worker is entitled to exercise his or her discretion in the circumstances of the case and in light of the state of the patient to determine whether indeed he or she should perform a surgical operation on the unborn child to save the mother's life.

3.3 Case law interpreting Section 224 of the Penal Code Act

Courts of law in Uganda have not had the opportunity to interpret Section 224 of the Penal Code and as such despite the provision being based on a very old provision from laws in England, it has not had the benefit of interpretation and application to the contemporary circumstances in Uganda.

The Criminal Court in England provided guidance on the interpretation of Section 224 way before it was enacted in Uganda as part of the Penal Code Act of 1950. In the case of *Rex v. Bourne, McNaughten J*, while clarifying the law, stated:

“It does not permit the termination of pregnancy except for the purpose of preserving the life of the mother. As I have said, I think that those words ought to be construed in a reasonable sense, and, if the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor, who, in those circumstances, and in that honest belief, operates, is operating for the purpose of preserving the life of the woman. These general considerations have got to be applied to the particular facts of this case.”²³

This interpretation of the law was applied in the East African Court of Appeal in 1959, which then had jurisdiction over Uganda, in the case of *Mehar Singh Bansel v. R.*²⁴ The Court of Appeal confirmed the decision of the Supreme Court of Kenya which ruled that an illegal operation is one “which is intended to terminate pregnancy for some reason other than what can, perhaps be best called a good medical reason” and that a good medical reason is one which involves the “the genuine belief that the operation is necessary for the purpose of saving the patient's life or preventing severe prejudice to her health.”

Therefore, the health worker who, on reasonable grounds and with adequate knowledge, is of the opinion that the continuation of the pregnancy places the life of the mother in peril acts within the law when he proceeds to terminate that pregnancy. And these grounds are not limited to only an actual threat to life but can extend to where there is a threat to the mental or physical health of the woman.

One of the most glaring gaps of Section 224, and in what has been reiterated by McNaghten J in *Rex v. Bourne* is that a woman cannot lawfully act on her own decision to save her own life by terminating her pregnancy. Such a decision is preserved for the health worker to make.

3.4 Enforcement of the law on abortion in Uganda

The Human Rights Awareness and Promotion Forum (HRAPF) in 2016 conducted a study in which they assessed the enforcement of criminal abortion laws in Uganda and the impact they had on the rights of women.²⁵ The study found that there had been a progressive increment in the number of people arrested for abortion related cases with 14 people being arrested in 2012, 39 in 2013 and 105 in 2014 totalling up to 182 arrests. In addition, there were about 2,692 cases that were reported in just 2013 and 2014 alone.²⁶ With around 314,304 abortions being induced annually, it is a negative implication for the effectiveness and indeed relevance of the criminalization of abortion when only 2,692 of these are reported to Police. These cases did not necessarily result into arrests, as only 182 arrests are made.

Not all arrests for offences relating to abortion are prosecuted, let alone resulting into convictions. In some cases, the woman or health worker who has been involved is only arrested for the purpose of extorting money from them by the police. Several health workers, mostly midwives, have been arrested for providing services for termination of pregnancy and only released without charge after paying money to the police and/or state prosecutors.²⁷ These cases do not even enter the police records, and yet they discourage health workers from exercising their lawful discretion to provide safe abortion services for fear of arrest and harassment.

There is however, an increase in the number of cases relating to abortion being prosecuted as is the number of convictions being secured in courts of law but the largest number of cases remains under trial.²⁸ It has to be noted though that most of the cases on which convictions are secured are the result of the accused pleading guilty to the charges preferred against them. Securing evidence for the prosecution of abortion cases is difficult and it perhaps explains why most of the cases remain on trial for long periods of time. And yet in some of these cases, pleas of guilt are secured through intimidation and harassment of the accused who often do not have legal representation to guide them on how to respond to charges preferred against them.²⁹

3.5 Ministry of Health's policy guidance

Ministry of Health has recognised the need to define the grounds on which a person may be authorized to terminate a pregnancy and has provided for expanded grounds under The National Policy Guidelines and Service Standards for Reproductive Health Services.³⁰ The Policy Guidelines and Service Standards provide that persons who can access safe abortion services include persons with cases of severe maternal illness threatening the health of the mother, severe fetal abnormalities incompatible with extra-uterine life, cervical cancer, HIV-positive women requesting for termination and survivors of rape, incest and defilement.

This is however, a major departure from the position of the Penal Code Act and Ministry of Health does not have the authority to make provisions having the force of law. As such, the policies provide only guidance but do not provide the position of the law. Given that Ministry of Health policy guidelines do not have the force of law, they cannot lawfully prescribe circumstances in which termination of pregnancy can be authorised.³¹

For that matter, Parliament which has the authority to make laws, has to be given an opportunity to reconsider the circumstances in Uganda and provide for grounds in which termination of pregnancy can be authorized.

4. CONSTITUTIONAL PETITION NO.10 OF 2017: LITIGATING THE REGULATION OF TERMINATION OF PREGNANCY IN UGANDA

4.1 The Petition and its asks

On March 3, 2017, Center for Health, Human Rights and Development (CEHURD) together with Prof. Ben Twinomugisha and Dr Rose Nakayi from Makerere University School of Law filed a petition challenging the failure of Parliament to make a law on termination of pregnancy in Uganda. Article 137, which provides for interpretation of the Constitution, is key:

137. Questions as to the interpretation of the Constitution.

(3) A person who alleges that—

- (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or
- (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.

Article 137(3) of the Constitution is meant to protect and reinforce the supremacy of the Constitution in Uganda in accordance with Article 2 which provides that the Constitution is the supreme law of the land and any other law, custom or practice which is not consistent with the provision of the Constitution is void.

2. Supremacy of the Constitution.

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

The petition argues that the omission to make a law on termination of pregnancy violates provisions of the Constitution of Uganda and should thus be declared to be unconstitutional.

4.2 The hypothesis of the Petition

The hypothesis of the petition is based on Article 22(2) of the Constitution as considered in the preceding sections. The petition assumes that Article 22(2) was created with the intention of prescribing circumstances under which termination of pregnancy would be authorised. Because the Constitution is a fundamental law which sets the standards for all regulation in Uganda, it could not delve into the details to specify the grounds on which termination of pregnancy would be authorized. As such, it could only provide for the fundamental principle of the law and then leave Parliament which is empowered with authority to make laws, to make a law providing for grounds on which termination of pregnancy would be permitted in Uganda.

The Petition also assumes that the fundamental principle on termination of pregnancy was created in Article 22(2) which provides that no person has a right to terminate the life of an unborn child except as may be authorized by law. The petition further assumes that there is no law which authorizes the termination of pregnancy in Uganda and as such, argues that there has been a failure by the Parliament to make a law to provide for instances in which termination of pregnancy may be authorized.

4.3 The grounds of the Petition

The Petition argues that there has been an omission by the state to formulate and enact a law on termination of pregnancy and that this omission is inconsistent with, and in contravention of, the provisions of the Constitution. The Petition takes a minimalist approach and presents only two grounds for the Court to interpret;

- a) That the omission of the state to formulate and pass a law regulating the termination of pregnancy is inconsistent with and in contravention of Article 22(2) of the Constitution of the Republic of Uganda
- b) That the omission of the state to formulate and pass a law regulating termination of pregnancy is inconsistent with, and in contravention of, Articles 79(1) and (2) of the Constitution of the Republic of Uganda.

4.4 Arguments of the petitioners

The Petitioners argue that the content of Article 22(2) is an outcome of debate in the Constituent Assembly which considered and passed the Constitution of Uganda in 1994. They argue that the Constituent Assembly considered multiple views on termination of pregnancy and decided to create a framework provision on termination of pregnancy which would then guide Parliament to make a law providing for grounds on which termination of pregnancy is authorized.

It is argued that Article 22(2) required Parliament to go through a legislative process for the purpose of making a law on termination of pregnancy through which it would formulate, discuss and enact a law.

The petitioners thus seek to persuade the Constitutional Court to find in the first instance, that Article 2(2) of the Constitution requires Parliament to make a law providing for grounds on which termination of pregnancy may be authorized.

The petitioners argue further that since the enactment of the Constitution, there has not been any effort by Government to put into effect Article 2(2) of the Constitution by initiating or going through the legislative process which is required to make a law on termination of pregnancy. This is argued in light of Article 79 of the Constitution which gives Parliament the mandate to make laws.

They thus seek to persuade the Constitutional Court to find in the second instance, that Parliament has omitted to fulfil its obligation to make a law on termination of pregnancy by not making a law on termination of pregnancy as directed by Article 22(2) of the Constitution.

4.5 Reliefs sought by the petitioners

The objective of the Petition is to ensure that the people of Uganda are given an opportunity to consider their aspirations on abortion in light of their rights and freedoms and the aspirations of the Constitutional Assembly and formulate a law that provides for grounds on which termination of pregnancy is authorised.

The petitioners specifically seek the following orders and declarations from Court:

- a) A declaration that the omission of the state to formulate and pass a law regulating termination of pregnancy is in contravention of Articles 22(2) and 79 of the Constitution
- b) An order that the State through the Executive and Parliament should, within two years, or such reasonable time as court may deem fit, of passing judgment in this case, formulate and pass a law regulating termination of pregnancy
- c) An order that the Attorney General should report to the Constitutional Court on the steps taken to implement the order under (b) above every six months or such other reasonable time, of passing judgment in this case, as the Court may deem fit
- d) Any other relief that the Constitutional Court may deem fit.

The Petition requests the Constitutional Court to find that the omission of Government to formulate and pass a law on termination of pregnancy contravenes Articles 22(2) and 79 of the Constitution and as such declare that omission unconstitutional.

Because orders of the court should not be in vain and there should be parameters for their implementation, the petition also asks the Court to specifically direct the Executive and Parliament to make a law on termination of pregnancy within a period of two years. To ensure that steps are taken towards making the law, the Petition also requests Court to order the Attorney General to report back regularly on progress towards the enactment of the law.

4.6 The reply by the Attorney General

On April 26, 2017, the Attorney General, the legal representative of Government against whom the Petition was filed, has responded to the Petition. In their response, Government acknowledged that Article 22(2) creates the fundamental position of the law in Uganda regarding termination of pregnancy.

However, the Attorney General did not respond to the argument that 22(2) creates an obligation on the Parliament to make a law on termination of pregnancy. He also did not respond to the argument that Uganda is required to go through a legislative process which provides for the instances in which termination of pregnancy may be authorized.

Instead, the response argued that there is a legal regime in Uganda which implements Article 22(2) of the Constitution. There is no specific mention in the response or the affidavit in support of the response about the laws in which the alleged regime is.

4.7 The rejoinder to the Attorney General

In a rejoinder to the Attorney General's response, the petitioners insist that there is no law or legislative process toward a law on termination of pregnancy. They argue that the only legal provision on termination of pregnancy is in Section 224 the Penal Code Act which was developed before the Constitution and could thus not be the law anticipated in Article 22(2) of the Constitution. They also argue that Section 224 of the Penal Code Act can arguably only be that authorizing provision, if it has gone through the legislative process anticipated by the Constitution and has been adopted as the law providing for grounds on which termination of pregnancy is authorized, which it has not.

Article 274 (1) of the Constitution preserves all laws which were existent before the Constitution was enacted and makes them applicable by necessary modification to the new legal regime ushered in by the Constitution.

274. Existing law.

(1) Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

It may be argued that Article 274(1) of the Constitution makes Section 224 of the Penal Code Act the law anticipated by Article 22(2). However, it can also be argued that Article 274(1) only applies where the Constitution by its own provisions expressly alters the law on a matter and does not direct Parliament to undertake measures to alter the provision of the law. To this effect, the Constitution does not essentially modify the law on termination of pregnancy in Uganda but states the principle that should guide the law on termination of pregnancy.

In addition to stating that principle, Article 22(2) proceeds to make a prescription which in no way modifies, adapts or qualifies any provision of any law. The consequence is that Article 22(2) effectively prescribes that the law shall be modified, adapted and qualified to provide for grounds on which a person is authorized to terminate a pregnancy.

5. UGANDA'S HUMAN RIGHTS OBLIGATIONS TO LEGISLATE ON TERMINATION OF PREGNANCY

Uganda is party to a number of international instruments in which it has committed to protect the rights of women, including by enacting laws and policies which enable them enjoy their sexual and reproductive health, including through access to safe abortions.

5.1 International law

The International Covenant on Economic Social and Cultural Rights (ICESCR) requires Uganda to recognize the right to the highest attainable standard of health (right to health) for everyone and to take steps to create conditions which ensure medical service and medical attention to all in the event of sickness.³⁴

The ICESCR Committee has defined the obligation of the state to fulfill the right to health to include the obligation to sufficiently recognize the right to health in national legal systems preferably by way of legislative implementation.³⁵ Furthermore, the failure of Government to implement a national policy designed to ensure the right to health for everyone is a violation of the right to health.³⁶

The government of Uganda has an immediate obligation to repeal or reform laws and policies that nullify or impair the ability of certain individuals and groups to realize their right to sexual and reproductive health and this includes restrictive abortion laws.³⁷

To fulfill its obligation to respect sexual and reproductive health rights, the government of Uganda must repeal, and refrain from enacting laws and policies that create barriers in access to sexual and reproductive health services including safe abortion services.³⁸ Uganda is also required to fulfill sexual reproductive health rights by adopting legislative measures which ensure the full realization of the right to sexual and reproductive health including universal access to a full range of quality sexual and reproductive health care, including safe abortion care without discrimination.³⁹

The Special Rapporteur on Extra Judicial Killings has provided guidance on the obligation of the state to regulate abortion in her report on a gender-sensitive approach to arbitrary killings.⁴⁰ The Special Rapporteur has reported that the death of a woman which can be medically linked to a denial of access to life-saving medical care because of an absolute legal ban on abortion amounts a gender-based arbitrary killing only suffered by women and a violation of the woman's right to life and freedom from discrimination.⁴¹

Additionally, conditions that create barriers to safe abortion services such as uncertainty in process of establishing whether a pregnancy poses a risk to life for the woman, reservation of medical professionals to provide safe services because of unclear laws and threats of criminal prosecution may constitute arbitrary deprivation of life where women suffer lasting injuries or die as a result of being compelled to seek unsafe abortions.⁴²

5.2 African regional law

The African Charter on Human and People's Rights recognizes the right to health for all individuals and requires state parties to take measures to protect the health of all citizens and to ensure that they receive medical attention when they need it.⁴³

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, better known as the Maputo Protocol, provides further guidance on the obligation of African states to take measures to protect the reproductive health of women. Article 14(2) of the Protocol requires state parties to take measures to provide adequate, affordable and accessible health services to women, establish and strengthen existing prenatal, delivery and postnatal health and nutritional services for women and protect the reproductive rights of women by authorising medical abortion in specific instances.

Article 14 – Health and Reproductive Rights

2. States Parties shall take all appropriate measures to:

- a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
- b) establish and strengthen existing prenatal, delivery and postnatal health and nutritional services for women during pregnancy and while they are breastfeeding;
- c) 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 fetus.

Measures to be taken to fulfill these obligations include putting in place appropriate legal and policy frameworks which enable provision of the services for safe abortion and access by women to the services they need. It should be noted though that Uganda has reservation on Article 14(2)(c). This however, does not affect its obligation to provide adequate, affordable and accessible health services which include safe abortion services.

The African Commission has provided guidance to the interpretation of the obligation of the state to take steps to protect the health of citizens by creating General Comment No.2 on provisions of the Maputo Protocol concerning family planning, contraception and abortion. Paragraph 29 of the General Comment provides that states must develop laws which allow women to exercise their full rights accompanied by administrative appeal and complaint mechanisms so that they can challenge denials of provision of health services.⁴⁴ These laws should allow women access to safe services for termination of pregnancy and to challenge any denial of those services.

5.3 The Constitution

The Constitution of Uganda recognizes the rights of women and requires the state to provide the facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement, and to protect women and their rights, taking into account their unique status and natural maternal functions in society.⁴⁵ Services for access to safe abortion are unique to women and arise from the natural maternal function they have in society. As such the failure of the state to make laws which enable them to access safe abortion services can be a contravention of the obligation to protect the rights of women under Article 33 of the Constitution.

Article 21 of the Constitution establishes equality of all persons before the law and prohibits discrimination on grounds relating to sex. There is strength in the argument that laws which prohibit women from accessing a service which only they need amounts to discrimination against them and is as such a violation of their freedom from discrimination.⁴⁶ This is more so in light of the fact that criminalization of abortion only targets women and confers on them the burden of dealing with the unwanted pregnancy while the male who was involved in the conception of the pregnancy does not incur any consequences.

Restrictive laws on abortion also arguably violate the right to life,⁴⁷ freedom from cruel degrading and inhuman treatment,⁴⁸ freedom of thought, conscience and belief,⁴⁹ the right to a fair hearing,⁵⁰ the rights of health workers to practice their professions,⁵¹ and the right to access information⁵² as provided by the Constitution.

6. PROGRESS IN REGULATION OF ABORTION IN AFRICA: COMPARATIVE COUNTRY POSITIONS

One of the justifications made in the Petition for the reliefs sought by the petitioners is that Uganda is years behind its peers on the African continent in the enactment of laws which promote the right of women to access safe abortion services. This section reviews a cross section of African countries to illustrate that Uganda's current legal framework on termination of pregnancy holds onto a colonial position which has since been abandoned by not only the colonial powers that introduced the such laws, but also by several countries in region.

Several countries with socioeconomic circumstances similar to Uganda have deliberately undertaken legislative processes to protect the rights of women through laws which prescribe circumstances under which a woman may be permitted to terminate a pregnancy.

6.1 Positions taken by countries in Africa

Kenya, in its Constitution of 2010, took the direction which the Constituent Assembly of Uganda avoided by permitting abortion as an exception to the right to life.⁵³ Kenya recognizes that a woman is permitted to terminate a pregnancy if in the opinion of a health professional there is a need for emergency treatment, or the life or health of the mother is in danger or where it has been permitted by any other law.

26. Right to life.

(1) Every person has the right to life.

(4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

Zimbabwe enacted the Termination of Pregnancy Act in 1977 and provided for grounds and conditions under which pregnancies could be lawfully terminated. Section 4 of the Act permits termination of a pregnancy where the continuation of the pregnancy endangers the life of the woman, poses a serious threat of permanent impairment of her physical health, where there is a serious risk that the child to be born will suffer from a permanent and serious physical or mental disability; or where there is a reasonable possibility that the fetus is conceived as a result of specified sexual offences.

4. Circumstances in which pregnancy may be terminated

Subject to this Act, a pregnancy may be terminated –

- (a) where the continuation of the pregnancy so endangers the life of the woman concerned or so constitutes a serious threat of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health, as the case may be; or
- (b) where there is a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will permanently be seriously handicapped; or
- (c) where there is a reasonable possibility that the foetus is conceived as a result of unlawful intercourse.

Rwanda enacted its Organic Law in 2012, instituting the Penal Code in which it permitted termination of pregnancy in specific instances. Section 165 of the Code permits termination of pregnancy on grounds of rape, forced marriage, pregnancies arising from incest and where the continuation of the pregnancy jeopardises the life of the woman.

Article 165: Exemption from criminal liability for abortion

There is no criminal liability for a woman who commits abortion and a medical doctor who helps a woman to abort if one of the following conditions is met:

1. when a woman has become pregnant as a result of rape;
2. when a woman has been subjected to forced marriage;
3. when a woman has become pregnant due to incest in the second degree;
4. when the continuation of pregnancy seriously jeopardizes the health of the unborn baby or that of the pregnant woman.

The exemption from criminal liability under items 1, 2 and 3 of Paragraph One of this Article shall be permitted only if the woman who seeks abortion submits to the doctor an order issued by the competent Court recognizing one of the cases under these items, or when this is proven to the Court by a person charged with abortion.

One of the criticisms of the Rwandan law permitting termination of pregnancy is that the grounds in the petition are qualified by the need for an order from court before the woman can be permitted to access the safe abortion. The consequence is that by the time the judicial process is completed, the woman who needs to have a safe abortion has already missed the safest windows for termination of the pregnancy and has endured several months of pregnancy and in some instances has already given birth. Uganda should aspire for a less restrictive standard.

In 1985, Ghana amended its Criminal Code of 1960 to provide for grounds on which termination of pregnancy is authorised. Section 58 (2) of the Ghana Criminal Code permits termination of a pregnancy where the pregnancy is as a result of rape, defilement of a female with an intellectual disability, or incest; where the continuance of the pregnancy threatens the physical health, mental health or life of the pregnant woman, or where there is substantial risk that if the child is born it may suffer from or develop a serious physical abnormality or disease.

- (2) It is not an offence under subsection (1) of this section if an abortion or a miscarriage is caused in any of the following circumstances:
- (a) where the pregnancy is the result of rape, defilement of a female idiot or incest and the abortion or miscarriage is requested by the victim or her next of kin or the person in loco parentis, if she lacks the capacity to make such request;
 - (b) where the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health and such woman consents to it or if she lacks the capacity to give such consent it is given on her behalf by her next of kin or the person in loco parentis; or
 - (c) where there is substantial risk that if the child were born, it may suffer from, or later develop, a serious physical abnormality or disease.

In 2005, Ethiopia, a highly religious nation, amended its Criminal Code, providing in Article 551 for termination of a pregnancy where the pregnancy is a result of rape or incest; the continuation of the pregnancy endangers the life or health of the mother or the child; where the child has an incurable and serious deformity, where the woman is mentally unfit to raise the child.

Article 551 – Cases where terminating pregnancy is allowed by law.

(1) Termination of pregnancy by a recognized medical institution within the period permitted by the profession is not punishable where:

- a) the pregnancy is the result of rape or incest; or
- b) the continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother; or
- c) where the child has an incurable and serious deformity; or
- d) where the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child.

In 1973, Tunisia, a strongly Islamic country, amended its Penal Code to provide for grounds on which termination of pregnancy would be authorized. Section 214 of the Penal Code of Tunisia permits termination of a pregnancy on request within the first three months of the pregnancy and after that where the continuation of the pregnancy poses a risk to the physical and mental health of the mother or there is a risk that the unborn child will suffer from a serious disease or infirmity.

Article 214 [Unofficial translation]

The artificial interruption of pregnancy shall be permitted when it occurs in the first three months in a hospital, health care establishment or authorized clinic, by a physician legally practising their profession.

After the three months, the interruption of pregnancy may be performed when there is a risk that the health or mental balance of the mother will be compromised by the continuation of the pregnancy or a risk that the unborn child will suffer from a serious disease or infirmity. In this case, it must be performed in an establishment approved for this purpose.

In 1996, South Africa enacted the Choice of Termination of Pregnancy Act in which it provided for the grounds on which termination of pregnancy was authorised. Section 2 of the Act permits women to terminate a pregnancy on request within the first 12 weeks and thereafter where the continued pregnancy poses a risk of injury to the woman's physical or mental health or life, where there is a substantial risk that the fetus would suffer from a severe physical or mental impairment, where the pregnancy resulted from rape or incest, where the continued pregnancy would significantly affect the social or economic circumstances of the woman.

Circumstances in which and conditions under which pregnancy may be terminated

2. (1) A pregnancy may be terminated –

(a) upon request of a woman during the first 12 weeks of the gestation period of her pregnancy;

(b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman, is of the opinion that -

(i) the continued pregnancy would pose a risk of injury to the woman's physical or mental health; or

(ii) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or

(iii) the pregnancy resulted from rape or incest; or

(iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman; or

(c) after the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy -

(i) would endanger the woman's life;

(ii) would result in a severe malformation of the fetus; or

(iii) would pose a risk of injury to the fetus.

There is consensus among a number of African countries that while the life of the unborn child should be protected, abortion should not be criminalized and measures have to be undertaken to authorize women to access services to terminate pregnancies where necessary.

Endnotes

- 1 Prada E, Atuyambe LM, Blades NM, Bukonya JN, Orach CG, Bankole A (2016) Incidence of Induced Abortion in Uganda, 2013: New Estimates Since 2003. PLoS ONE 11(11): e0165812. doi:10.1371/journal.pone.0165812
- 2 Ibid
- 3 The abortion rate is the number of abortions per 1,000 women aged 15–49
- 4 Ibid
- 5 Ibid
- 6 Sundaram A et al, Documenting the individual and household-level cost of unsafe abortion in Uganda, International Perspectives on Sexual and Reproductive Health, 2013, 39(4): 174-184
- 7 Ibid
- 8 Ibid
- 9 Vlassoff M et al., The health system cost of postabortion care in Uganda, Health Policy and Planning, 2014, Vol. 29, pp. 56–66.
- 10 Ibid
- 11 Ministry of Health, Annual Health Sector Performance Report 2016, p.5
- 12 Ministry of Health, Annual Health Sector Performance Report 2016, p.5
- 13 Ipas Africa Alliance: Human Rights and African Abortion Laws: A Handbook for Judges. Nairobi, Kenya, Ipas Africa Alliance 2014, Para 3.1
- 14 The Uganda Order in Council, 1902, Issue 662 of Statutory Rules and Orders, Darling Publishers, 1902
- 15 Ipas Africa Alliance: Human Rights and African Abortion Laws: A Handbook for Judges. Nairobi, Kenya, Ipas Africa Alliance 2014., para 3.3
- 16 Rex v Bourne [1938] 3 All ER 615
- 17 Section 1, Medical Termination of Pregnancy, 1967
- 18 Constituent Assembly (1994), The Hansard, Republic of Uganda, Page 2029
- 19 Ibid at Page 2032
- 20 Ibid
- 21 Ibid at Page 2032 - 2035
- 22 Ibid at Page 2037
- 23 Rex v Bourne [1938] 3 All ER 615 at 619
- 24 Mehar Singh Bansel v. R, [1959] EA 813
- 25 HRAPF (2016), The Enforcement of Criminal Abortion Laws in Uganda and its Impact on the Human Rights of Women and Health Workers
- 26 Ibid, Page 24
- 27 Ibid at Page 30
- 28 Ibid at Page 37
- 29 CEHURD (2016), Facing the Law on Abortion: Experiences for Women and Health Workers in Uganda, Page 17
- 30 Page 47, The National Policy Guidelines and Service Standards for Reproductive Health Services, 2012
- 31 Ministry of Health, National Policy Guidelines and Services Standards on Sexual Reproductive Health and Rights, 2012

- 32 Ipas Africa Alliance: Human Rights and African Abortion Laws: A Handbook for Judges. Nairobi, Kenya, Ipas Africa Alliance 2014., Section 3.1
- 33 Ibid, Section 4.6
- 34 Article 12
- 35 Para 35, UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html> [accessed 26 May 2017]
- 36 Ibid at Para 52
- 37 Para 34, 40, UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, May 2, 2016
- 38 Ibid, Para 41
- 39 Ibid, Para 45
- 40 Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, Thirty-fifth session, 6-23 June 2017, Agenda item 3, A/HRC/35/23
- 41 Para 94, Ibid
- 42 Para 95, Ibid
- 43 Article 16
- 44 General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Commission, Available at <http://www.achpr.org/instruments/general-comment-two-rights-women/>
- 45 Article 33 (2) and (3), Constitution of Uganda
- 46 HRAPF (2016), The Enforcement of Criminal Abortion Laws in Uganda and its Impact on the Human Rights of Women and Health Workers, Page 12
- 47 Article 22
- 48 Article 24 and 44 (a)
- 49 Article 29 (1)(b)
- 50 Article 28
- 51 Article 40 (2)
- 52 Article 41
- 53 Article 26 (10)

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