



CEHURD
social justice in health



**RIGHT HERE
RIGHT NOW**

PROPOSALS FOR LEGAL REFORM AND REVIEW ON THE RIGHT TO HEALTH AND SRHR



AUGUST 2020

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Introduction

Uganda does not have a law that comprehensively incorporates the Right to Health, although certain Constitutional provisions can be construed as directly or indirectly, protecting the people's right to health.

Cognizant of the fact that the National Objectives and Directive Principles of State policy provide for broader issues of health like Primary Health Care in terms of ensuring food security, access to clean and safe water but also lean towards Universal Health Coverage in terms of access to medical services for all Ugandans, these objectives (**XIV (b), XX, XXI & XXII**) are too general and hence specific articles should be included on the Right to Health and Sexual Reproductive Health Rights as fundamental human rights in the Constitution of the Republic of Uganda.

Based on the principle of interdependence and indivisibility of fundamental human rights, the right to health in Uganda's constitutional bill of rights can be construed directly or indirectly as part of the general right to equality, and freedom from discrimination recognized under **Article 21** of the Constitution as a justiciable right.

Article 33 (3) of the Ugandan Constitution specifically provides that the State shall protect women and their rights, taking into account their unique status and natural maternal functions in society - this clearly and indisputably points to a definite obligation on the state to protect the unique aspects relating to women's right to health and conforms to the country's obligations under the Maputo Protocol on the Rights of Women in Africa.

This could be read together with the protection from inhuman and degrading treatment recognized under **Article 24** of the Constitution.



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The right to life under **Article 22** of the Constitution has also been broadly interpreted by courts in common law jurisdictions to include the right to health.

Uganda however ratified to the International Covenant on Economic Social and Cultural Rights (ICESCR) (21st January 1987). **Article 12** obliges states to recognize the right of everyone to enjoy the highest attainable standard of physical and mental health including the reduction in infant and child mortality, provision of a healthy environment and access to medical care.

Some countries in Africa have recently provided for more comprehensive provisions on the right to health in their Constitutions for example **Kenya**. **Articles 42** and **43** of their 2010 Constitution provides for the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; and to clean and safe water in adequate quantities. **Article 43** also provides that a person shall not be denied emergency medical treatment.

This law also has provisions to ensure greater certainty as to the application of those rights and fundamental freedoms for vulnerable groups, including children, young or elderly people, and people with disabilities, minorities and marginalized groups.

The **South African** Constitution 1996 has a progressive Bill of Rights that recognizes progressively realizable and immediately realizable human rights. Rights such as the right to health are progressively realizable whereas the right to liberty, freedom from all forms of cruel, inhumane and degrading treatment are immediately realizable human rights. **Section 27** of the Constitution further notes that everyone has the right to health and imposes an obligation on Government to use its resources available to progressively realize this



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right (**Minister of Health and others vs. Treatment Action Campaign (2002) 5 SA 721**) and ensure access to emergency medical services (**Oppelt vs. Head of Health, Western Cape (2015) ZACC 33**).

The Constitution equally protects the rights of sexual minorities in South Africa and through such provisions and court decisions, this gives a foundation for the realization of sexual and reproductive health and rights in South Africa.

Just like Kenya and South Africa, it is prudent for Uganda to also have and provide for more comprehensive provisions on the Right to Health in the Constitution, in addition to what the National Objectives and Directive Principles of State Policy provide for.

Sexual Reproductive Health and Rights (SRHR) continue to be among the most controversial and contentious issues in Uganda's legal and policy environment. A wide range of SRHR issues such as family planning, sexuality education, adolescent health, teenage pregnancies, unsafe abortion, maternal mortality and morbidity, sexually transmitted infections (STIs) including HIV, child abuse, gender-based violence, sexual abuse and child marriages, continue to constitute a serious public health, human rights and social equity issue that affects millions of people in sub – Saharan Africa.

The restrictive, archaic, contradictory and inadequate laws and policies on SRHR continue to pose serious challenges and threats to the realization of these rights. It is therefore important that we engage in such areas of law that need legal reform, and ensure that the health and human rights laws in place are up to date with the current changing needs of the people in society.

The Uganda Law Reform Commission (ULRC) is a body established under **Article 248(1)** of the Constitution, to study and keep under constant review the Acts and all other laws of Uganda with a view of making recommendations



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for their systematic improvement, modernization and reform, and in doing so, it is required to prepare and submit to the Attorney General from time to time, for approval, programs for study and examination of any branch of the law.

Given the current law reform agenda that was commissioned by the Uganda Law Reform Commission in 2018 that runs from **2018-2022**, CEHURD came up with suggestions and recommendations of laws that need legal reform and review on the Right to Health and SRHR. **As a key stake holder in matters of law reform, amendment and review, we believe ULRC will have a valuable contribution to this endeavor.**

TO THIS END, WE MAKE THE FOLLOWING PROPOSALS ON THE RIGHT TO HEALTH AND SRHR FOR LEGAL REFORM AND REVIEW;



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THEMATIC AREA	PROPOSED LAW FOR LEGAL REFORM	CURRENT PROVISION TO BE REFORMED	JUSTIFICATION FOR REFORM	RECOMMENDATION
THE RIGHT TO HEALTH	The Constitution of the Republic of Uganda 1995	There is no express provision in the Constitution on the right to Health	<ul style="list-style-type: none"> ◆ Health is a fundamental aspect of life and social wellbeing of a person. It is important that the State places emphasis on it as a legal right that can progressively be realized. ◆ Uganda has put in place policies, plans and strategies to fulfill their obligation to realize the right to health such as the National Health Policy and the Patients Charter but no Constitutional legal framework is available to guide the same. 	<p><i>Parliament should pass /make laws that provide for the right to the highest attainable standard of health which includes the right to health care services including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; and to clean and safe water in adequate quantities” .</i></p>



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			<ul style="list-style-type: none">◆ Including the right to health as a constitutional right provides a bench mark for the Government and the private sector to respect, protect, fulfil and promote the right. In many countries in East and Southern Africa, there is advocacy and debate on inclusion of the right to health in the Constitution◆ Uganda has put in place policies, plans and strategies to fulfill their obligation to realize the right to health such as the National Health Policy and the Patients Charter but no Constitutional legal framework is available to guide the same.	



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<p>EQUALITY AND FREEDOM FROM DISCRIMINATION</p>	<p>The Equal Opportunities Commission Act, 2007</p>	<p>Article 21 on Equality and freedom from discrimination.</p>	<ul style="list-style-type: none"> ◆ Uganda has signed and ratified International Human rights Instruments that expressly provide for the right to health such as the ICESCR 	<p><i>The Equal Opportunities Commission Act 2007 should be amended to expressly include that the State or private persons shall not discriminate individuals directly or indirectly against ANY GROUND”.</i></p>
			<ul style="list-style-type: none"> ◆ Discrimination of persons in relation to access to healthcare services which at times enhances stigma, such as persons diagnosed with HIV are at times asked to access health care services separately or come on different days which at times discourages them from seeking medical services. ◆ Some youths who visit health centers to access family planning services are at 	



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			<p>times denied the services based on the age factor, or requested to come along with partners before seeking the services.</p> <p>◆ There is also discrimination on the basis of Sexual orientation and gender identity which has affected many people when it comes to accessing SRHR friendly services.</p>	
<p>Adoption of the proposed amendments on Termination of pregnancy by the ULRC</p>	<p>Penal Code Act Cap 120</p>	<p>Sections 141, 142, and 143 of the Penal Code Act Cap 120 that criminalize termination of pregnancy.</p>	<p>◆ The public health cost of treating complications from unsafe abortion (14m USD) annually is unsustainable given the poverty level in Uganda (Guttmacher Institute research/study on the health, social and economic consequences of unsafe Abortion)</p>	



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		<p>Section 224 that restricts and accepts termination of pregnancy only in particular circumstances</p>	<ul style="list-style-type: none">◆ Science and evidence has shown that when abortion is criminalized, it does not deter abortions but rather leads women to resort to clandestine methods of carrying out abortions◆ The circumstances under which the surgical procedure would be for a woman's benefit is not well defined which causes a lot of ambiguity.◆ In an attempt to address this restriction Civil Society Organizations formulated Standards and Guidelines in 2015 to reduce maternal morbidity and mortality due to unsafe abortion with broader circumstances under which	<p><i>Fast track the passing of the Uganda Law Reform Commission proposed amendments that cater for termination of pregnancy by the Parliament of Uganda</i></p>



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<p>Advocacy for passing of the marriage and divorce bill</p>	<p>Customary Marriage (Registration) Act Cap 248</p>	<p>Section 11 (1) that stipulates the age of marriage for a girl at 16 years.</p>	<p>an abortion may legally be procured but these were stayed by MOH.</p> <ul style="list-style-type: none"> ◆ There is still need for a law to define the circumstances and widen the scope under which a woman may be allowed to terminate a pregnancy. ◆ The new legislation should also address scientific development since the current law only talks of a surgical procedure yet there are modern methods that don't require that. 	<p><i>Fast track the passing of the "marriage and divorce bill 2009" that incorporates the said amendments</i></p>



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<p>ACCESS TO ESSENTIAL MEDICINES AND SUPPLIES</p>	<p>National Medical Stores Act Cap 207 National Drug policy and authority act Cap 206</p>	<p>Section 32 on Parents giving their written consent to marriage of minors (Minors being defined as children below the age of 21 years)</p>	<p>♦ Drugs and Medical supplies imported and procured by National Medical Stores are not approved by any Government authority and most of them end up expiring fast or being incinerated yet the Government spends lots of money on this.</p> <p>♦ It is not clearly provided for in law that medicines whose shelf life is less than a year should not be imported by NMS.</p>	<p><i>National Medical Stores and National Drug Authority should formulate a policy on the supply, transportation and, distribution of essential medicines</i></p> <p><i>The National Medical Stores Act and the National Drug and Policy Act should be amended to include penalties on theft of essential</i></p>



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		services; the secure, safe and efficient storage, administration, distribution and supply of the goods, having regard to national needs and to the special nature of the goods in question in accordance with the national drug policy and the national drug authority;	♦ Medicine theft is rampant in Uganda and this has resulted into inaccessibility and lack of essential medicines in Uganda .	<i>medicines and include express provisions that cater for the monitoring of medicines after supply has been effected.</i>

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