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Ahebwa S.P and Balinandi B.D

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RADICAL FEMINISM AS A TRANSFORMATIVE APPROACH TO ADDRESSING WOMEN'S OPPRESSION: A CASE FOR SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN UGANDA

Ahebwa S.P* and Balinandi B.D**

*"We should embrace radical strategies in our struggles. We must reject the arguments that Africa is not ready for radical feminism. What such arguments are saying in essence is that we are not ready for transformation. "*¹

- Sylvia Tamale

Abstract

Radical feminism, as opposed to other strands of feminism, offers a more revolutionary approach to fighting for women's equality. This article uses a doctrinal legal research approach to analyse how radical feminism offers a transformative approach to fighting for SRHRs of women. We trace the evolution of the feminist movement in Uganda from the 1980s to date, then provide the legal framework governing SRHR, and finally offer radical feminist thought as a solution to the gap in SRHR in Uganda with the end goal of attaining sexual and reproductive health for all women. By the end of this article, we shall demonstrate how the patriarchy in trying to control women's sexualities

* Simon Peter Ahebwa is a Research Assistant in the Department of Public and Comparative Law Makerere University School of Law and is very passionate about women's rights. Email: simonahebwamn2@gmail.com

** Biira Daphine Balinandi is a fourth year LLB student at Makerere University, and a feminist commentator on the sociology and psychology of women. The authors appreciate Afoyomungu Lornah for her mentorship, guidance and unwavering support in writing this paper. We dedicate this paper to all the women and young girls in Uganda who continue to resist, survive and speak out. This work is for you!

¹ Sylvia Tamale, 'African Feminism: How should we change?' (Development, 2006) pp. 39.

and bodies has been enabled by the three evils, 'Law, Religion and Culture.'

1.0 INTRODUCTION

At its core, feminism is the belief in the full social, economic, and political equity of women. It recognises that there is a problem with gender as it is today and that it our duty to fix this problem, feminism requires us to do better.² Feminism largely arose in response to Western traditions, but feminist thought has global manifestations and variations.³

African forms of feminism are of different definitions because the oppression African women face is not homogenous. In Africa, western feminism has been perceived as incompatible with many of the concerns of African women today.⁴ However, the need to Africanise these Western feminism has driven Afro-feminists to pick out specific aspects within these strands of thought that speak to the African woman and girl. This article will therefore take an Afro-centric perspective in appreciating how radical feminist thought can provide more solutions to for women, particularly Sexual and Reproductive Health and Rights (SRHR).

The term 'radical' is used to mean going to the root cause of the particular problem at hand.⁵ When many people think of the word 'radical', they tend to think of extreme or outrageous and yet, it simply means a process of going to the root of something.⁶ Radical feminism targets a wider range of oppressions and desires to engage in more aggressive public actions that challenge power structures and demand far-reaching change.⁷ Just like how Afro-feminism takes a decolonial approach, radical feminism works towards dismantling the

² Chimamanda Ngozi Adichie, 'We Should All Be Feminists' (Harper Collins Publishers, 2014) p.11.

³ Encyclopaedia Britannica <<https://www.britannica.com/topic/feminism>> [Accessed 17 July 2023].

⁴ Sylvia Tamale, Decolonization and Afro-Feminism (Daraja Press 2020) pp. xiii.

⁵ Robyn Rowland and Renate D. Klein, 'Radical Feminism: Critique and Construct' pp. 272.

⁶ Breanne Fahs, 'The Urgent Need for Radical Feminism Today' <<https://signsjournal.org/the-urgent-need-for-radical-feminism-today/>> [Accessed 1 August 2023].

⁷ Ibid.

patriarchy, as it is the root cause of women's oppression, in trying to achieve gender equality.

Radical Feminism emerged during the second wave of feminism in the 1960s and 1970s. It was influenced by left-wing social movements such as the civil rights movement.⁸ It is believed to have been created as a way of opposing the other feminist movements at that time such as, Liberal and Marxist feminism.⁹ Radical feminists criticised liberal feminism for not going far enough in the fight to attain gender equality. On the other hand, Marxist feminism confined itself to an economic analysis of women's oppression and believed that women's liberation came from abolishing capitalism.¹⁰

Radical feminists have had a paramount goal of achieving equal rights for women and the fundamental tenets of liberal political philosophy were a comfortable fit for these reformers.¹¹ They seek to address the root causes of gender inequality and challenge societal structures that perpetuate the oppression of women. Radical feminists advocate for significant social and political change to dismantle patriarchal systems and advocate for women's liberation. Later on, radical feminists split into two basic camps that is: radical-libertarian feminists and radical-cultural feminists. Depending on their camp, these feminists voiced very different views about how to fight sexism.¹²

⁸ Dipannita Bhattacharjee and Dr. Swati Banerjee, 'Feminist Theories' 2: Radical Feminism pp 2.

⁹ Olivia Guy-Evans, 'Radical Feminism: Definition, Theory and Examples' <<https://simplysociology.com/radical-feminism.html#The-History-Of-Radical-Feminism>> [Accessed 18 July 2023].

¹⁰ Ibid.

¹¹ Rosemarie Tong, *Feminist Thought; A More Comprehensive Introduction* (3rd ed, Westview Press 2009).

¹² Ibid.

1.1 RADICAL FEMINISM AND SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (SRHR)

According to Maria Nassali, “SRHR as a concept is like an amoeba constantly changing form, nature and scope.”¹³ Its meaning is fast evolving with different perspectives among the different stakeholders such as, health care providers, lawyers, policy makers and academia to mention but a few.¹⁴ The feminist conceptualisation of SRHR encompasses mainly 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).¹⁵

SRHR is among the key aspects of the broader right to health.¹⁶ Reproductive Health is defined as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes”.¹⁷ 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.¹⁸

On the other hand, ‘Sexual Health’ is a “state of physical, emotional, mental and social well-being related to sexuality; it is not merely the absence of disease, dysfunction or infirmity.”¹⁹ The World Health Organisation (WHO) further observes that ‘sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical,

¹³ Maria Nassali, ‘A Sexual and Reproductive Health and Rights Movement Story: By Whom?’ in Maria Nassali et al (eds.): *A Walk Through the CEHURD Garden: Situating Ourselves in the SRHR Movement in Uganda* (Fountain Publishers, 2022) pp 1.

¹⁴ Ibid.

¹⁵ Ibid, pp 2.

¹⁶ Ben Kiromba Twinomugisha, ‘Fundamentals of Health Law in Uganda,’ (Pretoria University Law Press, 2015) pp 43.

¹⁷ United Nations (1994) ‘Report of the International Conference on Population and Development’ Cairo, 5-13 September 1994. A/CONF.171/13. On the importance of the ICPD, see JC Caldwell ‘The international conference on population and development, Cairo 1994: Is it important, desirable and feasible?’ (1996) 6 *Forum: Health Transition Review* 71.

¹⁸ Ibid (n14), pp 1.

¹⁹ WHO Defining Sexual Health (2006) pp. 5.

religious and spiritual factors'.²⁰ These rights include the right of access to sexual health including, reproductive health care services, sexuality education and information, respect for bodily integrity, choice of partner and the decision to be sexually active or not.²¹

Radical feminist thought focuses on a number of themes like sexuality, achieving reproductive freedom, violence against women and, sex work.²² These are key aspects of feminist thought that are intertwined with the concept of SRHR. These elements are very relevant to our discussion on pushing for a radical feminist approach to achieving SRHR for all women in Uganda. In fact, American feminist philosopher and author of the *Feminist Thought*, Rosemarie Tong has also agreed that men's control of both women's sexual and reproductive lives as well as, women's self-identity, self-respect, and self-esteem is the most fundamental of all the oppressions human beings visit on each other.²³

1.2 THE EVOLUTION OF THE FEMINIST MOVEMENT IN UGANDA

While we move towards a radical feminist approach, it is worth noting that the women's movement in Uganda, in trying to attain gender equality before the law, experienced a lot of difficulty. It took time for women to get where they are, and the following discussion will detail its evolution through appreciation of legislative and judicial efforts. This paper will primarily concentrate on the feminist movement from the 1980s to date. It will not only discuss the evolution of SRHR but also commend other key milestones for women in Uganda.

After Uganda attained independence, it became imperative to consolidate a written law that reflected the needs, values, and culture of the Ugandan populace. This was to include women who had previously been overlooked in the law and lacked any legally binding protections that recognised their status

²⁰ Ibid.

²¹ Ibid.

²² Camille Cottais, 'Radical Feminism' <<https://igg-geo.org/wp-content/uploads/2021/04/Technical-Sheet-Radical-feminism.pdf>> [Accessed 28 July 2023].

²³ Ibid (n12).

as a vulnerable and marginalised group in society. In terms of land ownership, women's access to land was limited to their patrilineal ties. They only had user rights to land through male relatives or spouses, and they could not own or inherit land under customary law.²⁴ Women were also subjected to harmful cultural practices that undermined their autonomy, dignity and welfare, such as forced early marriages,²⁵ female genital mutilation,²⁶ and widow inheritance.²⁷ Therefore, there was a great need to harmonise the law to address women's unique plights in society.

The realisation of women's rights started in the late 1980s. President Yoweri Museveni set several women-centered policies in motion, including a 1989 rule that at least 39 seats in the Ugandan parliament be reserved for women, due to his conviction that Uganda's successful development depended on increased gender equity.²⁸

Eventually, during the construction of the 1995 Uganda Constitution, other key players like Miriam Matembe were pivotal in advocating for the inclusion of specific provisions that protected women's interests within this law.²⁹ As a member of the Uganda Constitutional Commission, she brought the gender question to the forefront of national politics. Her role in the Constitutional Assembly was indispensable to the constitution making process, as no single

²⁴ UN Women, 'Assessment of Uganda Women's Movement (1980-2018)' <https://africa.unwomen.org/sites/default/files/202310/state_of_the_womens_movement_in_uganda.pdf> [Accessed 6 June 2025].

²⁵ Joy For Children Uganda, 'Child Marriage in Uganda: A Call for Urgent Action' <<https://joyforchildren.org/wp-content/uploads/simple-file-list/CHILD-MARRIAGE-in-Uganda-A-Call-For-Urgent-Action.pdf>> [Accessed 6 June 2025].

²⁶ 'The persistence of Female Genital Mutilation in Uganda's communities: A case for the Pokot and Tepeth communities in Karamoja,' (The Cross Cultural Foundation of Uganda) <<https://crossculturalfoundation.or.ug/wp-content/uploads/2023/09/The-persistence-of-Female-Genital-Mutilation-among-the-Tepeth-and-Pokot-in-Karamoja-CCFU-2023-min.pdf>> [Accessed 6 June 2025].

²⁷ 'Widow Inheritance,' <<http://lawschoolnerds.blogspot.com/2012/03/widow-inheritance.html>> [Accessed 5 June, 2025]

²⁸ Sylvia Tamale, 'When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda' (Westview Press 1999).

²⁹ Ali Tripp, A. 'Women in Ugandan Politics and History: Collective Biography' (2020, November 19) *Oxford Research Encyclopedia of African History*. <<https://oxfordre.com/africanhistory/view/10.1093/acrefore/9780190277734.01.0001/acrefore-9780190277734-e-644>> [Accessed 18 January, 2025].

clause in the 1995 constitution concerning women escaped her attention and contribution.³⁰

Furthermore, 18% of the elected representatives to the constitutional assembly were women, many of whom were active in a non-partisan Women's Caucus that pressed for women's rights. They were able to get significant concessions in the constitution, including legal equality and protection in political, economic, social, and cultural spheres along with the prohibition of laws, cultures, customs, or traditions that violate the dignity, welfare, or interests of women.³¹

In addition to other provisions of the Constitution, which applied to both women and men, Article 33 was devoted solely to the protection of women's rights. During the constituent assembly, 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.³² Notably, 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."*³³

The constitution thus guarantees women full and equal dignity of the person with men,³⁴ and 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.³⁵

³⁰ Miria Rukoza Matembe and Nancy R. Dorsey, 'Matembe: Gender, Politics, and Constitution Making in Uganda' (Fountain Publishers 2002).

³¹ Ali Tripp, 'Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda' (Oxford University Press 2004).

³² Ben Twinomugisha, 'Juridical Evolution of Sexual and Reproductive Health Rights' in Maria Nassali et al (eds.), A Walk Through the CEHURD Garden: Situating Ourselves in the SRHR Movement in Uganda (Fountain Publishers, 2022), pp 107.

³³ Ibid.

³⁴ Article 33(1).

³⁵ Article 33(2).

Another major point of contention was marriage and divorce equality between men and women. The then section 154 of the Penal Code Act was successfully argued to be unconstitutional in the case of *Law Advocacy for Women in Uganda vs. Attorney General of Uganda*³⁶ as it criminalised adultery for married women and not married men. The case of *Uganda Association of Women Lawyers & 5 Others v. Attorney General*³⁷ challenged the provisions of the Divorce Act, which displayed sexist favoritism for a man over a woman during divorce. They were declared unconstitutional as they violated Articles 21 and 31 of the Constitution, which emphasized the equality of women during the dissolution of marriage.

Article 33(6) of the Constitution further, prohibits all laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status. Some of these customs have been challenged in the courts. In *Law and Advocacy for Women in Uganda v. Attorney General*,³⁸ the Constitutional Court held that the custom and practice of female genital mutilation as practised by several tribes in Uganda was unconstitutional as it contravened various articles of the constitution, including Article 33. This was further outlawed by the Prohibition of Female Genital Mutilation Act Cap.133.

In *Mifumi (U) Ltd and others v. Attorney General*³⁹ the Petitioners challenged the constitutionality of the customary practice of the demand for and payment of bride price. They argued that bride price as a condition precedent to a marriage, and a demand for a refund of bride price as a precondition for dissolution of marriage should be declared unconstitutional as it violates various provisions of the constitution. The Supreme Court ruling sought to protect the sanctity of customary practices whilst applying nuance in order to ensure the protection of women's rights. It upheld the constitutionality of bride price, citing it as a voluntary cultural practice which does not contravene the right to free consent to marry under Article 31(3). However,

³⁶ Ibid pp 27.

³⁷ Constitutional Petition No. 2 of 2003 [2004] UGCC 1ILDC 1137 (UG 2004).

³⁸ Constitutional Petition No. 08 of 2007.

³⁹ (Constitutional Appeal 2 of 2014) [2015] UGSC 13 (6 August 2015).

court abolished the practice of mandatory refund of bride price at divorce, declaring it unconstitutional for violating Article 31(1(b)) of the Constitution, which guarantees equality during marriage and at its dissolution. Court also held that this practice devalued the worth, respect and dignity of the woman.

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 played a critical role in the women's movement by taking a lead in litigating maternal health-related rights in the country. In *CEHURD v. Attorney General*,⁴⁰ the Petitioners sought declarations to the effect that the non-provision of essential maternal health commodities in public health facilities and the unethical conduct of health workers towards expectant mothers were inconsistent with the constitution and a violation of the right to health and other related rights namely, women's rights, the right to life, and freedom from torture, cruel, inhuman and degrading treatment. The court held that the government's omission to adequately provide basic maternal health care services in public health facilities violated the right to health, right to life, and women's rights. The government's omission to adequately provide emergency obstetric care in public health facilities, which resulted in obstetric injury, subjected women to inhuman and degrading treatment.

In *CEHURD & Others v. Nakaseke Local Government*,⁴¹ the Plaintiffs brought an action on behalf of the deceased, Irene Nanteza, who was admitted to the Defendant's hospital with obstructed labour, and later died due to negligence from the hospital staff. The court held that her right to basic medical care had been violated due to the absence of the doctor on duty.

Additionally, in *CEHURD & Others v. Executive Director, Mulago Hospital & Another*,⁴² the third plaintiff, a wife to the second plaintiff, delivered two babies at Mulago National Referral Hospital but was discharged with only one baby. The plaintiffs contended that the third plaintiff gave birth to two live babies,

⁴⁰ Constitutional Petition No. 16 of 2011.

⁴¹ Civil Suit No. 111 of 2012.

⁴² Civil Suit No. 212 of 2013.

while the defendants argued that one of the babies was born dead. 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. The court relied on Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR) which guarantees the right to health and Article 7 on the International Covenant on Civil and Political Rights (ICCPR) which guarantees the freedom from cruel, inhumane or degrading treatment to emphasise state obligations that accrue in the realisation of the right to health. This case was also cited in *CEHURD v. Attorney General* above. The three decisions above show that the right to health of women is justiciable as it can be enforced by the courts.

These constitutional provisions and case law have laid a foundation for further feminist advancements in the law, for they can be leveraged as authorities when confronting systemic patriarchal norms that still pervade several institutions in the country. These concerted efforts demonstrate Uganda's earnest zeal to integrate feminist principles into the fabric of its legal framework. However, large gaps between policy and practice still exist because the subjugation of women is embedded in the country's socio-cultural atmosphere, in ways that are to be dissected and explored subsequently.

2.0 THE CURRENT LEGAL FRAMEWORK GOVERNING SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN UGANDA

The legal framework governing SRHR in Uganda comprises both International and Domestic Laws. Uganda is party to a number of international instruments that provide a framework governing SRHR.

The Parliament of Uganda has also passed a number of laws that have a direct impact on SRHR. These legal frameworks have presented both challenges and opportunities for women in Uganda in terms of the penal laws and humanitarian frameworks respectively.

In regard to the progressive protection of SRHR, the 1995 Constitution of Uganda presents a number of protections to these women domestically.

Uganda, being a signatory to international human rights instruments also places key obligations on the state to protect the SRHRs of women.

On the other hand, a number of legislations like the Penal Code Act Cap. 128 hinder the full realisation of these rights. This section of the paper therefore delves into a discussion of frameworks both at the domestic and international scene.

2.1 INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Uganda has ratified a number of International and Regional instruments that create key obligations on the state that relate to SRHR. Uganda has ratified the core United Nations instruments which include the International Covenant on Civil and Political Rights (ICCPR)⁴³, International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁴, the Convention on Elimination of All forms of Discrimination Against Women (CEDAW),⁴⁵ and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment (UNCAT).⁴⁶

Under the African Regional System, Uganda is party to the African Charter on Human and Peoples' Rights (ACHPR)⁴⁷, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁴⁸, the African Youth Charter⁴⁹, the African Charter on the Rights and

⁴³ UN General Assembly International Covenant on Civil and Political Rights (16 December 1966) UN Treaty Series 999 p. 171. Ratified by Uganda on 21 June 1995, and it came into force on 21 September 1995

⁴⁴ UN General Assembly International Covenant on Economic, Social and Cultural Rights (16 December 1966) UN Treaty Series 993 p.3. Ratified by Uganda on 21 January 1987

⁴⁵ UN General Assembly Convention on Elimination of All forms of Discrimination Against Women (18 December 1979) UN Treaty Series 1249 p.3. Ratified by Uganda in 1985.

⁴⁶ UN General Assembly Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) UN Treaty Series 1465 p.85. Uganda acceded to it on 3 November 1986.

⁴⁷ African Union (AU) African Charter on Human and Peoples' Rights (27 June 1981) CAB/LEG/67/3. Uganda ratified it on 10 May 1986 and it came into force on 27 May 1986.

⁴⁸ African Union (AU) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (11 July 2003). Uganda ratified it on 22 July 2010.

⁴⁹ African Union (AU) African Youth Charter (2 July 2006). Uganda ratified it on 6 August 2008 and it came into force on 22 October 2008.

Welfare of the Child⁵⁰ and the Treaty for the Establishment of the East African Community⁵¹. The African Commission on Human and People's Rights has also welcomed the adoption of the African Union Convention on Ending Violence Against Women and Girls.⁵²

The relationship between domestic and international law is mainly portrayed within the monism-dualism dichotomy.⁵³ Uganda, being a dualist country implies that international law and domestic laws are separate legal systems. This in turn means that many of the principles of international human rights law have to be domesticated in order for them to apply directly to the state.⁵⁴ Ugandan courts have therefore played a key role in application of international law within Uganda's legal system. Despite the fact that the state is dualist, many of these international human rights principles have been manifested in Uganda's supreme law.

2.1.1 THE UNITED NATIONS SYSTEM

a. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR) 1966 AND ITS TREATY BODY

The right to health is enshrined in Article 12 of the ICESCR which provides for the right to the highest attainable standard of physical and mental health and places an obligation on state parties to ensure full realisation of this right.⁵⁵ In 2000, the Committee on Economic, Social and Cultural Rights (CESCR),

⁵⁰ African Union (AU) African Charter on the Rights and Welfare of the Child, adopted on 11 July 1990 and came into force on 29 November 1999.

⁵¹ East African Community the Treaty for the Establishment of the East African Community (30 November 1999) Publication 1. It came into force on 7 July 2000.

⁵² ACHPR, 'Statement on the Adoption of the African Union Convention on Ending Violence Against Women and Girls,' (February 17, 2025) available at <<https://achpr.au.int/en/news/statements/2025-02-17/convention-ending-violence-girls-and-women>> [Accessed 23 February, 2025].

⁵³ Magnus Killander and Horace Adjolohoun, 'International law and Domestic Human Rights Litigation in Uganda: An Introduction' in Magnus Killander (ed.) International Law and Domestic Human Rights Litigation in Africa (Pretoria University Law Press, 2010).

⁵⁴ Human Rights Awareness and Promotion Forum (HRAPF), 'Legal Regulation of Sex Work in Uganda: Exploring the Current Trends and their Impact on the Human Rights of Sex Workers' (HRAPF, 2016) <<https://hrapf.org/?mdocs-file=9310#:~:text=The%20Penal%20Code%20Act%20criminalises,the%20rights%20of%20sex%20workers>> [Accessed 4 June 2025].

⁵⁵ UN General Assembly International Covenant on Economic, Social and Cultural Rights (16 December 1966) UN Treaty Series 993 p.3. Ratified by Uganda on 21 January 1987.

gave a wider interpretation to the right to the highest attainable standard of physical and mental health, through General Comment No. 14.⁵⁶

The Committee emphasised that the right to health has four critical components: availability, accessibility, acceptability and quality.⁵⁷ One of the steps to be taken by states towards the realisation of the right to health is “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 entail “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).⁵⁸

The committee has made its stance on women and the right to health, and called for the elimination of discrimination against women, development and implementation of a comprehensive national strategy for promoting women's right to health through their life span. Such strategies 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.⁵⁹ According to the CESCR, states have a number of positive and negative obligations towards realisation of the right that is, to respect, protect and fulfil.

In 2016, the CESCR issued General Comment No. 22 on the right to sexual and reproductive health to assist state parties' implementation of the ICESCR and their reporting obligations.⁶⁰ According to the committee, the right to sexual and reproductive health entails a set of freedoms and entitlements.

⁵⁶ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12).

⁵⁷ Ibid, paragraph 12(a)-(d).

⁵⁸ Ibid, paragraph 14.

⁵⁹ Ibid, paragraph 21.

⁶⁰ 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).

These 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.⁶¹ The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensures all people enjoy the right to sexual and reproductive health under article 12 of the Covenant.⁶²

The committee emphasises 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.⁶³ 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.⁶⁴

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 CESCR calls upon state 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, who are to be respected for their sexual orientation, gender identity and intersex status.⁶⁵

b. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979 AND ITS TREATY BODY

Article 12 of the CEDAW calls upon states to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care

⁶¹ Ibid, (paragraph II (2)).

⁶² Ibid.

⁶³ Ibid paragraph II (10).

⁶⁴ Ibid.

⁶⁵ Ibid, paragraph III (23).

services including those related to family planning. The covenant also emphasises that states ought to ensure that women have appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. The Committee on the Elimination of Discrimination against Women (CEDAW) 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."⁶⁶

CEDAW 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.⁶⁷ 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.*⁶⁸

2.2 THE AFRICAN REGIONAL SYSTEM

The African human rights system provides for realisation of the right to health, including aspects of SRHR. It is fundamentally governed by the African Charter on Human and Peoples' Rights. The Charter also has a Protocol regarding the rights of women in Africa which Uganda has ratified (Maputo Protocol) and which has particular effect on SRHR of women. Many of the rights protected under the regional system are simply a repetition and enforcement of rights existing under the international system.⁶⁹

⁶⁶ CEDAW (1999). General Recommendation on Women and Health, 1999, para 11. CEDAW (2017) paragraph 11.

⁶⁷ General Recommendation No. 35 (2017) on Gender-Based Violence against Women, Updating General Recommendation No. 19, para 18.

⁶⁸ Ibid, paragraph 59.

⁶⁹ Ibid (n51).

2.2.1 AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS 1981

Under Article 16, the charter guarantees every person the right to the best attainable state of physical and mental health,⁷⁰ and obliges states to take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick.⁷¹

2.2.2 THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL) 2003

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.⁷² In 2003, the Maputo Protocol was adopted, and later came into force in 2005. The Protocol became the first treaty in the history of SRHR to address these rights in detail.⁷³ Article 14(1) provides that state parties "shall ensure the right to health of women, including sexual and reproductive health is respected and promoted". 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.⁷⁴

Under Article 14(2)(c) State parties are called upon to "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".

The African Commission in its General Comment No. 2 on Article 14 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

⁷⁰ Article 16(1).

⁷¹ Article 16(2).

⁷² OAU Resolution AHG/Res. 240 (XXXI).

⁷³ Ibid (n33) pp 77.

⁷⁴ Article 14 (1)(a)-(d).

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.⁷⁵ Paragraph 23 is critical to bodily autonomy and emphasises that the 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. 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.⁷⁶

2.3 SUB-REGIONAL LEVEL

The East African Treaty established the East African Community (EAC) and this sub-regional system exists mainly for reasons of economic cooperation and support for sustainable development.⁷⁷ Though the Treaty does not contain rights provisions, it requires states to abide by their existing human rights obligations in respect of the African Charter on Human and Peoples' Rights in particular.⁷⁸ The East African Court of Justice also plays a critical role as an avenue for ensuring that people's rights are enforced following the protections under international and regional instruments.

Article 118(f) of the treaty provides for co-operation by partner states in specialised training, health research, reproductive health, the pharmaceutical products and preventive medicine". 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.

⁷⁵ Paragraph 11.

⁷⁶ Paragraphs 31-36.

⁷⁷ Ibid (n55).

⁷⁸ See article 6(d) and article 7(2) of the East African Treaty.

2.4 NATIONAL LEVEL

Uganda, being a dualist state, is governed by a number of principal and subsidiary legislations. The following discussion will detail how the framework seeks to protect and threaten the rights of female sex workers in Uganda.

2.4.1 PRINCIPLE LEGISLATION

a. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

This is the supreme law of Uganda and all power and authority of Government and its organs derive from this instrument, which in turn derives its efficacy from the people of Uganda. Laws or customs inconsistent with this constitution are void to the extent of the inconsistency. Thus, the Constitution forms the standard upon which all other laws are enacted. Objective IV(b) read together with Objective XX of the National Objectives and Directive Principles of State Policy provides for the right to access health or medical services. This can be read together with Article 8A which operationalises the National Objectives. Article 45 also provides for the non-exhaustiveness of the Bill of Rights to which one may infer SRHR. In *Centre for Health, Human Rights and Development & Others v. Attorney General*⁷⁹ Justice Barishaki Cheborion emphasises that the right to health is embedded in the Constitution under Objectives IV(b) and XX read together with Article 8A of the Constitution.

The constitution provides for the right to equality and freedom from discrimination.⁸⁰ Article 21(1) provides that, “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.” The Constitution is therefore emphatic that persons shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.⁸¹ The term “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race,

⁷⁹ (Constitutional Petition No. 16 of 2011).

⁸⁰ Article 21.

⁸¹ Article 21(2).

colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.⁸²

The right to human dignity, freedom from torture, inhuman and degrading treatment is embedded in Article 24. It states that, "No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment."

Under Article 33, women are guaranteed full and equal dignity of the person with men and the state is called upon to provide the facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement.⁸³ The state also has an obligation to protect women and their rights, taking into account their unique status and maternal functions in society.⁸⁴

Affirmative action is provided for under Article 33(5) which aims at redressing the imbalance created by history, tradition or custom. The constitution also prohibits all laws, cultures or traditions, "which are against the dignity, welfare or interest of women or which undermine their status."⁸⁵ In *Law and Advocacy for Women in Uganda v. Attorney General*⁸⁶ the Constitutional Court held that the custom and practice of female genital mutilation as practised by several tribes in Uganda was unconstitutional and contravened various articles of the constitution, including Article 33. This laid ground for the Prohibition of Female Genital Mutilation Act in Uganda.

Article 43 is quite critical as it provides for a limitation to the enjoyment of rights within Chapter Four. The article provides that in the enjoyment of rights guaranteed under the Bill of rights, a person shall not prejudice the rights and freedoms of others or the public interest. This clause in effect means that the rights enshrined under the Constitution are not absolute and in the event that there is need to protect the rights of others or the interest of

⁸² Article 21(3).

⁸³ Article 33(2).

⁸⁴ Article 33(3).

⁸⁵ Article 33(6).

⁸⁶ Constitutional Petition No. 08 of 2007.

the public, their enjoyment can be limited.⁸⁷ It is because of this article that it can be said that although the Constitution does not in itself prohibit sex work expressly, there could be justification for the restriction of the rights of sex workers due to the presence of laws that criminalise sex work and related activities.⁸⁸

Article 43(2) creates a limitation within a limitation noting that in curtailing the enjoyment of a right, the limitation should not permit political persecution, detention without trial or anything beyond what is acceptable and demonstrably justifiable in a free and democratic society.⁸⁹ *Mulenga JSC in Charles Onyango Obbo and Another v. Attorney General* formulated the limitation analysis emphasising that under Article 43(2), democratic values and principles were a criteria on which any limitation on the enjoyment of rights and freedoms guaranteed by the Constitution had to be justified.⁹⁰ That in the determination of validity of a limitation, the court had to be guided by values and principles essential to a free and democratic society.

b. THE PENAL CODE ACT CAP 128

The Penal Code Act is the primary criminal law, outlining offences and their corresponding penalties. Since its introduction in 1950, it has undergone several amendments yet much of its original content remains unchanged.⁹¹ Chapter 13 of the Penal Code Act which is titled ‘Offences against Morality’ deals with a number of offences that directly and indirectly affect SRHR of women in Uganda.

On procuring an abortion and related offences, Section 130 criminalises attempts by any person with the intent to procure a miscarriage of a woman while Section 131 criminalises any pregnant woman who procures an abortion with intention. Section 132 also criminalises supplying of drugs to

⁸⁷ HRAPF above n55, 23.

⁸⁸ Ibid.

⁸⁹ See Supreme Court in *Andrew Mwenda & Onyango Obbo v Attorney General* Constitutional Petition No 15 of 1997.

⁹⁰ Ibid.

⁹¹ Adrian Jjuuko ‘The incremental approach: Uganda’s struggle for the decriminalization of homosexuality’ in C Lennox & M Waites (eds) *Human Rights, Sexual Orientation and Gender identity in the Commonwealth: Struggles for Decriminalisation and Change* (2013) 381-408.

procure an abortion. The continued criminalisation of abortion has limited access to safe abortion services for women in Uganda which has increased the maternal mortality rates due to unsafe abortions. According to the International Federation of Gynecology and Obstetrics (FIGO), unsafe abortions are a leading cause of deaths of women in Uganda with an estimated 4-6 deaths attributed to unsafe abortion daily.⁹² This illustrates the dire situation of SRHRs in Uganda.

The Penal Code Act also criminalises sex work in Uganda. Section 127 defines a 'prostitute' as a person who, in public or elsewhere regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary gain. Under Section 128, any person who practises or engages in prostitution commits an offence and is liable on conviction, to imprisonment for a term of seven years. Persons living on earnings of prostitution commit an offence under Section 125 are also criminalised. The continued criminalisation of sex work has pushed the profession underground which further limits access to health care especially sexual and reproductive health care.⁹³

The Penal Code Act also provides for unnatural offences and indecent practices. Sections 134 and 135 provide for offences regarding 'unnatural acts' which in turn can affect female sex workers in Uganda. Particularly, Section 134 (a) provides that any person who has carnal knowledge of any person against the order of nature commits an offence and is liable on conviction to imprisonment for life. Section 135 on the other hand criminalises attempts to commit unnatural offences. This provision directly affects sexual minorities in Uganda since it limits their access to basic health care. It also creates a stigma which is antithetical to prevention of HIV/AIDS, but also other sexually transmitted diseases since these sexual minorities

⁹² International Federation of Gynecology and Obstetrics (FIGO), 'End Preventable Deaths and Disability from Unsafe Abortion' (10 December, 2020).

⁹³ Ben Twinomugisha, 'Beyond 'Malaya' or Prostitute: Interrogating Sexual and Reproductive Health Rights of Young Female Sex Workers in Context of HIV/AIDS in Uganda', Human Rights and Peace Centre, Working Paper No. 37 (March 2012) pp 21.

cannot access basic sexual and reproductive items like condoms and lubricants.

c. THE HIV AND AIDS CONTROL ACT CAP 126

The Act promotes access to HIV/AIDS services by regulating access to facilities, goods and facilities related to HIV prevention, counselling, testing and care, and provides for a number of state obligations. Under Part VII of the Act, discrimination on the grounds of HIV is prohibited. The Act embodies the principle of non-discrimination in the workplace, educational institutions, public service, financial institutions, health institutions, among others.⁹⁴

Under the State obligations in Section 24(1)(k), the Act calls explicitly for prioritising the most at-risk populations in all interventions. The Act defines these communities as fishing communities, persons in prisons, migrants and other populations.⁹⁵ While the law calls for greater access to these groups, it leaves out key and vulnerable groups highlighted by UNAIDS, including transgender persons, persons who use and inject drugs, sex workers and homosexuals.⁹⁶ The omission of these groups from the Act has the effect of rendering them invisible regarding access to services, information and commodities. The Act also criminalises the intentional transmission of HIV with or without intent, a provision which discourages people from testing and disclosing their HIV status.⁹⁷

d. THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT CAP 133

The Act prohibits female genital mutilation (FGM) as being an inhuman cultural practice which violates women's rights and is inconsistent with the provisions of the Constitution. This Act aims at protecting the SRHR of women

⁹⁴ Sections 32-40 of the HIV and AIDS Prevention and Control Act, Cap 126.

⁹⁴

Section 24(2)

⁹⁵ AHAKE, 'Appraising Legal Instruments supporting Sexual and Reproductive Health Rights in Uganda,' (July 16, 2024). Available at < <https://www.afyanahaki.org/appraising-legal-instruments-supporting-sexual-and-reproductive-health-rights-in-uganda/> > [Accessed 15 January, 2025].

AHAKE, 'Appraising Legal Instruments supporting Sexual and Reproductive Health Rights in Uganda,' (July 16, 2024). Available at < <https://www.afyanahaki.org/appraising-legal-instruments-supporting-sexual-and-reproductive-health-rights-in-uganda/> > [Accessed 15 January, 2025].

⁹⁷ Section 43.

in Uganda who are at risk of suffering from this cruel cultural practice that would have adverse effects on them. It also provides for the offence of aggravated FGM where a victim is infected with HIV.

e. THE PUBLIC HEALTH ACT CAP 310

This Act places an obligation on the Ministry of Health to ensure the effective provision of good health care to the people of Uganda, including women. It also encourages the provision of better reproductive health services to women. However, the Act is silent on key and vulnerable populations, including sexual minorities.

f. ANTI HOMOSEXUALITY ACT CAP 117

This Act provides for several penalties in regards to same-sex relations in Uganda. 'Homosexuality' is defined in Section 1 of the Act to mean the performance of a sexual act by a person with another person of the same sex. Section 2 provides for the offence of homosexuality and if liable, the person receives a sentence of life imprisonment. The offence of aggravated homosexuality carries a sentence of death under Section 3⁹⁸ of the Act. Section 6 of the Act rejects the defence of consent to a sexual act, which means that persons remain liable under the law although they agree to same sex relations.

The law also criminalises the offence of promotion of homosexuality, which carries a conviction of not more than twenty years. In *Hon. Fox Odoi-Oywelowo and 21 Others v. Attorney General*⁹⁹, the Constitutional Court found in part for the petitioners, noting that the reporting requirement under Section 14 of the Act would have a chilling deterrent effect on access to health care by homosexual patients. The court also struck out provisions relating to unknowing transmission of HIV through same-sex intercourse, noting that it compounded the susceptibility of persons living with HIV to mental health issues.¹⁰⁰ The court also nullified Section 9 on the use of premises for

⁹⁸ It should be noted that Section 3(2) (c) was also nullified in *Hon. Fox Odoi v. AG. Consolidated Petitions No. 14, 15, 16, and 85 of 2023*.

⁹⁹ *Consolidated Petitions No. 14, 15, 16, and 85 of 2023*.

¹⁰⁰ Chapter Four, 'A legal Analysis of the Constitutional Court Judgement in the Consolidated Petition Challenging the Anti-Homosexuality Act, 2023' (May, 2024),

purposes of homosexuality would have the effect of not only restricting but also denying the right to housing. The law has still continued to limit access to health care and is quite detrimental to prevention of HIV/AIDS and other STIs.

g. THE HEALTH SERVICE COMMISSION ACT, CAP 86

Section 30(1) of the Act mandates health workers to prioritise and consider the health, safety, and interest of the patient and due respect to each patient at all times and in all circumstances. The Act also obligates medical practitioners to provide patients with relevant, clear and accurate information to patients.¹⁰¹ There is also a requirement that the patient gives informed consent prior to testing and treatment unless it is an emergency. However, the Act allows a breach of confidentiality where disclosure is in the patient's best interest. This provision undermines patient autonomy and agency while encouraging health workers' paternalism to decide what is in the patient's best interest.¹⁰² Such provisions promote avoidance of health behaviour, including testing and treatments.

h. THE EMPLOYMENT ACT CAP 226

The Act emphasises employees' right to maternity leave and equal treatment at work, as stipulated under Section 55 of the Act. This brings to the forefront the need for post-natal health care for women.

i. THE DOMESTIC VIOLENCE ACT, CAP 123

Section 1 of the Act defines 'domestic violence' to include physical and sexual violence. Freedom from Sexual and Gender-Based Violence (SGBV) is a critical element of SRHR and the Act offers protection to women in Uganda from such violence. Although this law seemed like a great win for feminists across Uganda, it has not been properly implemented by the state. In fact, some critics have described it as "merely a scarecrow with no ability to fight its

available at <<https://chapterfouruganda.org/resources/reports-analysis/legal-analysis-hon-fox-odoi-oywelowo-21-others-case>> [Accessed March 2, 2025].

¹⁰¹ Section 30(3) of Health Service Act.

¹⁰² Ibid (n94).

cause since relatively a low proportion of the cases are seen through investigation or conviction.”¹⁰³

2.4.2 SUBSIDIARY LEGISLATION

a. THE NATIONAL POLICY GUIDELINES AND SERVICE STANDARDS FOR SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (2012)

These policy guidelines provide for the general rules and regulations governing reproductive health services, components of reproductive health services, target groups for services and appropriate primary information education and communication. They delve into the standardisation of the delivery of reproductive health services and the promotion of SRHR, the policy looks at the roles of Ministries, Development Partners, communities and stakeholders engaged in the “planning, implementation, monitoring, and evaluation of quality, integrated, gender-sensitive and rights-based reproductive health services.”¹⁰⁴ The policy should be appreciated for introduction of the safe motherhood program, which aims at addressing the persisting sexual and reproductive health issues. The motherhood program was developed to ensure that no woman or new born dies or incurs injuries during pregnancy or childbirth.¹⁰⁵

b. NATIONAL HEALTH POLICY 2010

The policy prioritises reproductive health, maternal and child health, and HIV/AIDS control. It further emphasizes access to essential health services, including SRHR, such as safe motherhood, family planning, and adolescent health services. However, it remains silent on critical aspects of SRHR like access to safe abortion.

c. THE MARPS PRIORITY ACTION PLAN 2020

The Key Population Priority Action Plan guides access to services for key populations. The plan of action guides which services are available and how

¹⁰³ Uganda Network on Law Ethics and HIV/AIDS (UGANET), ‘Enforce Laws and Policies That Fight Against Domestic Violence’ (26 November, 2020).

¹⁰⁴ The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights (2012).

¹⁰⁵ Ibid (n94).

they should be provided. Like many others formulated post-2015, this action is inclusive and protects key populations and other vulnerable populations, including those explicitly criminalized.

The foregoing discussion has detailed most of the critical legal framework on SRHRs of women in Uganda today. Uganda's legal framework presents quite the complex intersection of constitutional guarantees, statutory provision and international human rights obligations. While the Constitution affirms fundamental rights to health, dignity and freedom from discrimination, the realisation of SRHR remains hindered by restrictive laws, policy gaps and deeply socio-cultural norms. Legislations such as the Penal Code Act which continue to criminalise aspects of reproductive autonomy, including abortion, while access to comprehensive sexual education remains limited for many women and girls in Uganda.

A key take away from the domestic framework is that it reflects a deep entrenchment of patriarchal control over women's bodies. A truly transformative approach demands dismantling these legal and cultural structures that subordinate women's sexual and reproductive choices. Only through radical reform can the SRHRs of women and girls in Uganda be fully realised.

3.0 RADICAL FEMINISM AT THE FOREFRONT OF SEXUAL AND REPRODUCTIVE HEALTH FOR ALL WOMEN

Under this section, the paper delves into the key arguments propounded by radical feminists. It presents four critical aspects at the heart of SRHRs and radical feminism, that is, Sexual and Gender Based Violence (SGBV), Reproductive Freedom through Assisted Reproductive Technologies (ART) and the Right to Abortion, Sexuality, and lastly Intersectionality. The golden thread running through this section will open the reader's mind to appreciating arguments made by radical feminists, and why the situation in Uganda regarding sexual and reproductive health ought to adopt the radical feminist approach. We shall also demonstrate how the law, culture, and religion as critical institutions in Uganda, have made it a point to police women's sexualities by controlling their bodies.

3.1 HER BODY, HER CHOICE: EMPOWERING REPRODUCTIVE RIGHTS

One of the key slogans of second-wave radical feminism included “My body belongs to me” which reflected women’s desire to reclaim their bodies in a patriarchal society that desires to control them.¹⁰⁶ Other slogans included: ‘*Mein Bauch gehört mir, l'utero è mio e me lo gestisco io*’ which meant ‘*My belly is mine; the uterus is mine and I manage it myself*’ which demanded the right to abortion and women’s control over their own bodies and reproduction.¹⁰⁷

In this section, we delve into a critical aspect at the heart of the radical feminist movement which is pertinent to the realisation of women’s SRHRs in Uganda. The section shall analyse the underlying issues surrounding abortion rights and assisted reproductive health, which critically demonstrate how the patriarchy continues to control women’s bodies by controlling their reproduction.

3.1.1 REFORMING REPRODUCTION HEALTH AND MOTHERHOOD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGIES (ART)

There is a need for a realisation that ART has come to do more good than harm. It is here to liberate Ugandan women from the patriarchal institution of the family that is oppressive and exerts control over their bodies and, tries to deny them access to such reproductive health services. If one of the root causes of women’s oppression in Uganda has been men trying to control women’s bodies, then ART is here to nip it at the bud.

What then is Assisted Reproductive Technology (ART)? According to the Centres for Disease Control and Prevention (CDC), ART includes all fertility treatments in which eggs are surgically removed from a woman’s ovaries, combined with sperm in the laboratory, and returned to the woman’s body or

¹⁰⁶ Ibid (n23).

¹⁰⁷ Gerda Neyer and Laura Bernardi, ‘Feminist Perspectives on Motherhood and Reproduction’ (Leibniz Institute for the Social Sciences, 2011) < <https://www.jstor.org/stable/41151279> > [Accessed 3 August 2023].

donated to another woman.¹⁰⁸ In Vitro Fertilisation (IVF) is the most commonly utilised assisted reproductive technology. ART has opened up the possibility of having children to groups of women and men who did not have this opportunity like sub-fecund and infertile women, to women and men with other health problems, to gays, lesbians, and transsexuals, and to women beyond menopause.¹⁰⁹

Leading feminist thinkers have directly attacked the institution of motherhood and its patriarchal conceptualisation with women's sexuality and maternal work. They have attempted to separate 'birthing' from 'mothering' in order to establish genderless mothering that paves the way to understand inherent questions and contradictions regarding women's bodily choices and motherhood in the context of ART and Surrogacy.¹¹⁰ Radical-Libertarian feminists tend to argue that women's reproductive capabilities and sexual roles and responsibilities serve to oppress them in a patriarchal society, and limit their ability to be full human persons.¹¹¹

Simone De Beauvoir contends that motherhood should be seen as a decision that a woman comes to freely rather than a societal obligation. She argued that a woman's biological disposition should not be used as a marker for her destiny and place an undue reproductive responsibility on her, emphasising that motherhood needed to be a conscious and autonomous choice that a woman made. At its core, her argument advocates for ARTs due to their ability to present women with avenues for 'voluntary motherhood' as opposed to the patriarchal idea of 'enforced motherhood.'¹¹²

Another pertinent theorist in this area is Shulamith Firestone who insisted that, "nothing will change for women so long as natural reproduction remains

¹⁰⁸ Centers for Disease Control and Prevention, 'What is ART' < <https://www.cdc.gov/art/whatis.html#:~:text=According%20to%20this%20definition%2C> > [Accessed 4 August 2023].

¹⁰⁹ Gerda Neyer and Laura Bernardi, n. 109.

¹¹⁰ Nisha Z, 'Negotiating Surrogate Mothering and Women's Freedom' *Asian Bioeth Rev.* 2022 Apr 22;14(3):271-285. <doi: 10.1007/s41649-022-00205-6> PMID: 35791331; PMCID: PMC9250556.

¹¹¹ Rosemarie Tong, above n 12.

¹¹² Simone de Beauvoir, 'The second sex, Trans. by Constance Borde and Sheila Malovany-Chevallier,' (2009, London: Jonathan Cape).

the rule and artificial or assisted reproduction the exception.” She went on to analyse women’s oppression through an intersectional lens of class, race and sex together with the dialectical materialism of Marx and the psychoanalytic insights of Sigmund Freud.¹¹³ She proposed that “family structure is the source of psychological, economic and political oppression,” Shulamith Firestone’s, ‘The Dialectic of Sex’ paralleled the Marxist conviction that the economic underclass needed to seize the means of production in order to weave their way out from under the thumb of capitalistic oppression by advocating for women, who are a sexual underclass under patriarchy, to seize the means of reproduction and child-rearing. She championed the use of technology as a tool to liberate women from their biological reproductive obligations under patriarchy, which played a large factor in their oppression.¹¹⁴

Some jurisdictions in Africa have demonstrated their commitment to giving women agency over their reproductive choices through implementation of laws that uphold reproductive freedom through ART. Countries like South Africa have made conscious efforts to recognise that the right to procreative freedom is not limited to natural procreation but also includes the use of ARTs, through several statutory and judicial considerations.

A significant development towards ART in regards to the law on surrogacy was reached in the landmark case of *AB v. Minister of Social Development*,¹¹⁵ which posed the question of whether a person could legally have parenthood rights over a child born through surrogacy who was genetically related to the surrogate mother. At that time South Africa’s surrogacy law posited that a surrogacy arrangement must involve a child not genetically related to the surrogate mother, and any not in compliance with this scheme was unenforceable and unlawful.¹¹⁶ The law also required that commissioning

¹¹³ Shulamith Firestone, ‘The Dialectic of Sex: The Case for Feminist Revolution’, (William Morrow and Company 1970).

¹¹⁴ Nisha Z. Technicisation of "Birth" and "Mothering": Bioethical Debates from Feminist Perspectives. *Asian Bioeth Rev.* 2021 Mar 8;13(2):133-148. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC8079552/>> [Accessed 06 June 2025].

¹¹⁵ *AB v. Minister of Social Development* 2017 (3) SA 570 CC.

¹¹⁶ South Africa, Children’s Act (2005) Sections 292, 297, and 303.

parents use their own gametes for the conception of the child. The Applicant sought to challenge the constitutionality of these provisions because, she was seeking surrogacy but could not provide her own eggs as they had long been declared as not viable. Her legal argument was that the impugned provision was arbitrary and that it discriminated against her based on her status of being infertile. She further argued that the impugned provision infringed her procreative freedom (expressed in the rights to dignity, privacy, and bodily and psychological integrity) and her right to access reproductive health care services.

However, the minority judgment interpreted the ambit of the right to procreative freedom as including the use of ARTs.¹¹⁷ In this judgement, it was maintained that since we live in an era where the effects of infertility can be ameliorated to a large extent through assistive reproductive technologies, these persons should not be denied the right to benefit from these technological advances. Rather these reproductive avenues should be celebrated as they allow our society to flourish in ways previously impossible.

Other considerations regarding reproductive freedom were explored in the case of *Ex Parte KF2*¹¹⁸, whereby courts considered the objective criteria for assessing the suitability of an intended surrogate-mother.¹¹⁹ The case also examined the notion that an in vitro embryo could have interests, and provides a clear theoretical basis for understanding the legal relevance of acts directed toward the in vitro embryo.¹²⁰

Another judicial decision is, *Surrogacy Advisory Group v. Minister of Health*¹²¹ which answered the ethical considerations about non-medical sex selection strategies during the ART process, and whether this prohibition was a

¹¹⁷ Shoji B, Something Old, Something New: Applying Reproductive Rights to New Reproductive Technologies in South Africa. South African Journal on Human Rights. 2020

¹¹⁸ Ex Parte KAF 2017 ZAGPJHC 227 ("KF 1").

¹¹⁹ Thaldar D, 'The Need to Develop Objective Criteria for Suitability as a Surrogate Mother: Reflections on Ex Parte KAF,' South African Journal of Bioethics and Law. 2018;11(1).

¹²⁰ Jordan D. W. "Legal Status of the Human Pre-embryo in the Context of the Genetic Revolution," South African Law Journal. 2005;122(1).

¹²¹ Surrogacy Advisory Group v Minister of Health 2022 (4) SA 187 (GP).

limitation on the procreative freedom of intended parents? And, if so, could it be justified? The Surrogacy Advisory Group relied on the Choice on Termination of Pregnancy Act (Choice Act) which aims to strike a balance between the procreative freedom of the pregnant woman and the interest of the state in protecting prenatal life,¹²² and made an argument for sex-selective abortion using the provision that states that a woman can have an abortion without having to provide a reason during the first trimester. The judgement held that sex selection falls within the ambit of procreative freedom and can be understood as part of reproductive autonomy, whose scope was significantly increased by the now-available reproductive technology, thereby increasing reproductive liberty.

The above case study of South African jurisprudence regarding ART demonstrates a concerted effort by African societies to expand the terrain of women's reproductive liberty, by not only embracing these new technologies and letting women actively partake of them as they please; but also, ensuring to refine these laws with due regulatory policies. These regulations include; incorporating further ethical considerations pertaining to access to these services, the emotional and psychological wellbeing of the parties involved and the non-medical selective abortion question into the operational fabric of assisted reproductive technology. These courses of action are a measure of good faith from African governments, that the reproductive health and autonomy of women in their populace is of imperative value, which reinforces the radical feminist thought on reproductive freedom of women.

This proactive stance that unequivocally recognizes women's right to procreative liberty is one that Uganda would do well in adopting, as it would solidify women's constitutional protections that guarantee the right to privacy, equality and nondiscrimination.

Women in Uganda are amenable to the use of ART as a reproductive option available to them, and many couples are prepared to resort to ART use to have children if getting them normally fails. Producing children is as cultural as it

¹²² Christian Lawyers Association v Minister of Health 2005 (1) SA 509 (T).

is a biological necessity.¹²³ However, the lived realities of ART use in Uganda are shaped by a complex interplay of socio-cultural, ethical, economic, and legal factors.

Firstly, the centres that provide ART services are few and far between, and are primarily located in urban areas. For assisted reproductive services, we have 9 IVF clinics; 8 are situated in the central region specifically in Kampala district and one in the western region (Mbarara).¹²⁴ Moreover, the exorbitant cost of ART makes it an economic impossibility for the average Ugandan woman, and therefore creates a class divide regarding which type of Ugandan woman is able to gain access to this service.

Due to several costs like surrogate mother compensation, medical procedures (IVF, embryo transfer), legal and administrative expenses, surrogate screening and testing, fertility center fees, prenatal care and delivery expenses and miscellaneous expenses (travel, accommodation, etc.), the total estimated surrogacy cost could accrue to about \$26,000 – \$43,000,¹²⁵ which is an exorbitant cost that the average Ugandan woman might not be able to meet. These socio-economic constraints therefore close access to ART services to the rich and privileged elite, which strays from the constitutional guarantee of equality and nondiscrimination of all women in Uganda.

It also denies women the full enjoyment of the SRHR guaranteed by international law instruments like the ICESCR, of which General Comment No.22 that the right to sexual and reproductive health in the ICESCR also

¹²³ Wilson Muyinda Mande and Eunice Akullo, 'Ethics and Assisted Reproductive Technology in Uganda: An Analysis of the Perceived Mediating Role of Culture,' <<https://ojs.umi.ac.ug/index.php/ujmpps/article/download/100/72>> [Accessed 5 June 2025].

¹²⁴ Zaaake D et al, 'Prevalence, Regional Distribution, and Determinants of Infertility in Uganda Between 2006 and 2016: Analysis Of Three Demographic And Health Surveys,' Journal of Global Health Reports', pp.10 <<https://www.joghr.org/api/v1/articles/94212-prevalence-regional-distribution-and-determinants-of-infertility-in-uganda-between-2006-and-2016-analysis-of-three-demographic-and-health-surveys.pdf>> [Accessed 5 June 2025].

¹²⁵ Fertility Centre Kenya, 'Surrogacy Cost in Kampala' <<https://fertilitycentrekenya.com/surrogacy-cost-in-kampala/>> [Accessed 5 June 2025].

guarantees availability and accessibility of reproductive healthcare services, which includes economic affordability.

Furthermore, Uganda's unique cultural landscape also shapes the acceptance of these seemingly modern reproductive practices, that subvert the traditional ideal and structure of the family. In traditional Ugandan culture, having a paternal claim (belonging) is still taken seriously, hence it is socially difficult for people to accept children who do not share blood relationships with them.¹²⁶ This makes it difficult for parties who might benefit from use of ART to explore this option, for fear of social ostracisation.

Additionally, there is no a comprehensive legal and regulatory policy framework on ART use in Uganda. However, the proposed Human Assisted Reproductive Technology Bill of Uganda stands as a landmark effort to balance the ethical, regulatory, and access considerations in the realm of reproductive technology and healthcare.¹²⁷ Even so, there are several provisions of the bill that have come under fire for their exclusionary and discriminatory connotations. The Bill is stated as purposely applicable to a man and woman who jointly seek to use ART to obtain a child, and a man and woman who suffer a type of reproductive health challenge or infertility.¹²⁸ This conspicuously excludes single women and men who may seek ART with a view to exploring single parenthood. It also simply denies single individuals who are divorced, widowed and other categories of single people a chance at becoming parents.¹²⁹

This compulsion in the Bill to offer access to ART on the basis of being in a partnered heterosexual relationship reflects the broader and much more

¹²⁶ Ibid (n125).

¹²⁷ Resty Nalwanga and Angualia Daniel, 'The Human Assisted Reproductive Technology Bill 2023: Balancing Ethics, Regulation And Access To Reproductive Healthcare In Uganda,' Angualia Busiku & Co. Advocates <<https://lawfirmsinuganda.ug/the-human-assisted-reproductive-technology-bill-2023-balancing-ethics-regulation-and-access-to-reproductive-healthcare-in-uganda/>> [Accessed 18 February, 2025].

¹²⁸ Human Assisted Reproductive Technology Bill 2023, Clause 1.

¹²⁹ 'Regulation or Discrimination? Uganda's proposed IVF Law could be both. The Independent,' (December 1, 2024) <<https://www.independent.co.ug/regulation-or-discrimination-ugandas-proposed-ivf-law-could-be-both/>> [Accessed 7 June 2025].

sinister underbelly of Ugandan jurisprudence, which callously enforces heteronormative ideals of family and procreation onto the masses. The concept of 'heteronormativity' refers to the ideology that views heterosexuality as the normal and only legitimate socio-sexual arrangement of society.¹³⁰

A similar train of thought was reflected in the provisions of the Anti-Homosexuality Act, of which Section 14(2) had actively encouraged professionals to breach confidentiality and report parties suspected of being homosexuals. This provision would severely affect these individual's access to medical care, as parties would stay away from medical centres for fear of being reported. The provision was challenged in *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others*,¹³¹ and consequently struck out, but its presence in the Act in the first place reflects the law's efforts to dictate heteronormativity on the populace, outrightly implying that only heterosexual individuals have a right to access to healthcare services, including ART services.

Gayle Rubin¹³² critiqued such practices that favor 'the charmed circle of sex', whereby societal hierarchies' privilege certain socio-sexual practices over others, such as heterosexual monogamous relationships, which are placed on a pedestal, and systematically enforced through a merging of culture, religion and law. Under this concept, the patriarchal and capitalistic family structure is favoured, within which the nuclear family model is idealised and pedestals. Barbara K. Rothman points out that in a patriarchal society, women are seen as mothers of men's children rather than men being seen as the children of women and that it is women's motherhood that men must control to maintain patriarchy.¹³³ Adrienne Rich described motherhood under patriarchy as an institution which prescribes social norms and regulations

¹³⁰ Rosemary Hennessy and Chrys Ingraham, 'Materialist Feminism: A Reader in Class, Difference, and Women's Lives' (New York: Psychology Press, 1997).

¹³¹ Consolidated Constitutional Petitions Nos. 14, 15, 16 & 85 of 2023.

¹³² Gayle Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' (1984).

¹³³ Rothman Barbara Katz, 'Recreating Motherhood' (New York: W.W. Norton & Company, 1989).

employed to control women and ensure the dominance of men within patriarchal power structures.¹³⁴

This is why even during the advancement of novel and modern ideals like ART, men's interests are placed at the forefront; they are viewed as the breadwinners of the family while women are the designated caregivers, and because of this men's role in family formation is reinforced by ensuring only partnered women can access ART.

The aforementioned Bill tabled in Uganda represents the implication that women must be partnered with men in order to exercise their right to procreative freedom, and succinctly rejects non-traditional family structures, highlighting the role of the state in the construction of family and the influence of assumptions about gender, sexualities, marriage, class, and dependency.¹³⁵ This provision in the bill also contravenes Article 21 of the Uganda Constitution, which guarantees equality before the law and prohibits discrimination based on sex, race, or other grounds. There is a need to harmonise this bill with the radical feminist considerations espoused above so as to satisfactorily fulfill all Ugandan women's right to reproductive freedom.

On the other hand, whilst reproductive freedom is recognised as a fundamental facet of Ugandan women's right to choose, many radical feminists criticize the authenticity of this 'choice', given the broader socio-cultural implications of marriage and motherhood being viewed as core expectations and markers of womanhood in many Ugandan cultures. Women are expected to marry and bear children, which is culturally accepted and enforced.¹³⁶ These societal pressures may influence women's choice to turn to ARTs as a last saving grace in situations of infertility, as the extreme value

¹³⁴ Rich Adrienne, 'Of woman born: Motherhood as experience and institution', New York, (New York University Press, 1976).

¹³⁵ Appleton, Susan Frelich and Weisberg, D. Kelly, 'Families Under Construction: Parentage, Adoption, and Assisted Reproduction', Paper No. 20-12-01 December 2020.

¹³⁶ The Impact of Social and Cultural Norms on Uganda's Child Marriage and Teenage Pregnancy Crisis-Joy for Children Uganda <<https://joyforchildren.org/the-role-of-social-and-cultural-norms-in-ugandas-child-marriage-and-teenage-pregnancy-crisis/>> [Accessed 07 April 2025].

placed on children in Uganda means that women are only recognized, valued, and accorded prestigious status through bearing children.¹³⁷

Thus, failure to bear children translates to a lack of support and recognition in social settings, loss of property rights, stigma and ostracisation from society.¹³⁸ Infertility is also known to cause significant psychological and social effects on the affected party, such as fear, guilt, depression, self-blame, marital stress, emotional abuse, intimate partner violence, divorce and abandonment of the partner, and economic deprivation.¹³⁹

This begs the question, can this choice be called her real choice when she is socially coerced to choose technology to save herself from the social stigma of infertility?¹⁴⁰ Feminists who reject assisted reproductive technology (ARTs) argue that in patriarchy, a woman is defined through the lens of a man in which his desire and interpretation of the desire is more valuable than her own, which has such a strong impact on her choices, actions and decision-making that it cannot be ignored.¹⁴¹

Choices are socially structured and coerced but appear as a free act of an individual. They are based on the social and material situations that allow women to freely exercise them without any constraints.¹⁴²

¹³⁷ Kudesia R, et al, 'Infertility in Uganda: a missed opportunity to improve reproductive knowledge and health', *Global Reproductive Health*. 2018;3(4): e24. DOI:10.1097/GRH.0000000000000024 <https://journals.lww.com/grh/fulltext/2018/12000/infertility_in_uganda_a_missed_opportunity_to.1.aspx> [Accessed 05 April 2025].

¹³⁸ Asimwe S, Osingada CP, et al, 'Women's experiences of living with involuntary childlessness in Uganda: a qualitative phenomenological study', *BMC Women's Health*. 2022 Dec 19;22(1):532. DOI: 10.1186/s12905-022-02087-0. PMID: 36536395; PMCID: PMC9761954. <<https://pubmed.ncbi.nlm.nih.gov/36536395/>> [Accessed 05 April 2025].

¹³⁹ Chiware TM, Vermeulen N, Blondeel K, Farquharson R, Kiarie J, Lundin K, Matsaseng TC, Ombelet W, Toskin I. IVF and other ART in low- and middle-income countries: a systematic landscape analysis. *Hum Reprod Update*. 2021 Feb 19;27(2):213-228. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7903111/>> [Accessed 6 January 2025].

¹⁴⁰ Nisha Z, 'Negotiating 'Surrogate Mothering and Women's Freedom', *Asian Bioeth Rev*. 2022 Apr 22;14(3):271-285. DOI: 10.1007/s41649-022-00205-6. PMID: 35791331; PMCID: PMC9250556. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9250556/>> [Accessed 05 June 2025].

¹⁴¹ Ibid (n116).

¹⁴² Spallone P and Steinberg DL, (editors), 'Made to Order: The Myth of Reproductive and Genetic Progress', (London: Pergamon Press; 1987)

Ruth Hubbard aptly points out that as 'choices' become available, they all too rapidly become compulsions to 'choose' the socially endorsed alternative.¹⁴³ It can be said that, in patriarchy, individual choices are structured in accordance with the social needs of men and, can be used as a tool against women. De Beauvoir asserts that in a male dominated world, men's manipulative and coercive tendencies towards women are only to be expected. Men will use ARTs as an additional means of applying pressure on women to further conform to their role of motherhood under patriarchy.¹⁴⁴

However, Katz Rothman disagrees with other feminists' rejection of ARTs, asserting that all state-backed political and social controls seek to regulate and diminish women's choices. Thus, it is not this reproductive technology that is a problem but the real problem lies underneath the very structure of society that manipulates it into an oppressive tool.¹⁴⁵

"[Women] must not get caught into discussions of which reproductive technologies are 'politically correct,' which empower and which enslave women. They ALL empower and they ALL enslave, they all can be used, by for or against us. We will have to lift our eyes from the choices of the individual woman, and focus on the control of the social system which structures her choices."

3.1.2 LIVE AND LET DIE: ABORTION RIGHTS IN UGANDA

Global efforts to criminalise and ban abortion reflect the tremendous extent to which the patriarchal and capitalistic machine will go in its desire to control women's sexuality and reproductive freedom. Patriarchal societies propagate the ideology of institutional motherhood, which restricts women's mobility and, burdens them with the responsibilities to nurture and rear children. The biological factor to bear children is linked to the social position of women, with responsibilities involving nurturing, educating and raising children by

¹⁴³ Arditti Rita Renate, Klein Duelli, Minden Shelley., editors, 'Test-tube women what future for motherhood?', (London: Pandora Press; 1984

¹⁴⁴ Alice Schwarzer, 'After the second sex: conversations with Simone de Beauvoir', (New York: Pantheon Books, 1984).

¹⁴⁵ Katz-Rothman B, 'The Meaning of Choice in Reproductive Technology', In: Arditti RR, Klein D, Minden S, (editors), 'Test-Tube Women What Future for Motherhood?' (London: Pandora Press; 1984).

devoting themselves to family.¹⁴⁶ Therefore, as it stands, restrictions on abortion are systemic efforts to control women's fertility.

Sylvia Tamale in 'Controlling Women's Fertility in Uganda'¹⁴⁷ posits that indeed, when women abort, they are in essence exercising their sexual autonomy by controlling their fertility. She goes on to argue that,

"When a woman can control her fertility; when she can choose whether or not to have children; when she can determine how often she can have children; when she can have sex and not fear that the outcome will be an unwanted pregnancy, she breaks the chains that permanently condemn her to the domestic arena."

Banning abortion severely limits if, when and how women and others who can become pregnant choose to have children, especially for those who have the fewest resources. That means that, theoretically, these women are more likely to end up as mothers, caregivers and homemakers,¹⁴⁸ which is exactly what society envisions and forces upon them under patriarchy.

It is in the best interests of the capitalistic machine that women remain 'stuck' in the home, fulfilling their motherhood duty under the gendered roles posited by the public-private divide, whereby women's labour is exploited during their confinement to the home, doing tedious and thankless care work that is undervalued and unpaid.¹⁴⁹ Meanwhile the men go out and offer paid labour in the public arena, and are able to gain a more substantial hold of the means of production, further exacerbating the already unfair advantage they hold over women in terms of economic and social and even political power.¹⁵⁰

This is why according to Simone De Beauvoir, safe and legal abortions would rid women of reproductive servitude so that they can take on the economic

¹⁴⁶ Suranjita Ray, 'Understanding Patriarchy', *Feminism: Theory and Practice* (DSE7), Department of Political Science, Daulat Ram College, University of Delhi (2008).

¹⁴⁷ Sylvia Tamale, 'Controlling Women's Fertility in Uganda', *Sur – International Journal on Human Rights*, vol. 24, 2016, pp. 117-128.

¹⁴⁸ 'How the Right Uses Abortion Restrictions to Reinforce Racist and Gendered Hierarchies,' June 13, 2024 <<https://www.splcenter.org/resources/reports/goals/>> [Accessed 4 April 2025].

¹⁴⁹ Sylvia Tamale, 'Gender Trauma in Africa: Enhancing Women's Links to Resources', *Journal of African Law* 48, no. 1 (2004), pp. 50-61.

¹⁵⁰ Friedrich Engels, 'The Origin of the Family, Private Property and the State' (new ed.) (New York: Pathfinder Press, 1972).

roles open to the; roles that would ensure their control of their own person.”¹⁵¹ Beauvoir was not only not opposed to abortion, but also campaigned for a widening of access to abortion clinics for those who did not belong to a social elite.¹⁵²

The trifecta of religion, culture and law reinforces itself when it comes to upholding restrictive policies and attitudes towards abortion. Religion plays a crucial part in constructing the patriarchal logic that women were created to bear and rear children. Natural Law, which is based on the Divine and the belief that all written laws must follow universal principles of morality and religion, is extremely influential in shaping our thinking on issues of contraception and abortion.¹⁵³ Therefore, written law, culture and religion are all instrumental in constructing Ugandan women's sexuality and desire through the inscriptions they engrave on our bodies.¹⁵⁴

Many of these cultural and religious norms, as well as the laws that criminalise abortion were enforced during colonialism, whereby the British imposed their Eurocentric ideals about morality, gender roles and family structures onto indigenous African societies through religion and the Western legal system. These ideas did not reflect the unique cultural and historical context of these communities, which had more nuanced practices regarding their sexual and reproductive health, and the role women played in society.¹⁵⁵

Abortion in Uganda has been criminalised by virtue of Article 22 of the Constitution of the Republic of Uganda. This is emphatically discussed in our Chapter 2 that demonstrates how the penal code criminalises abortion in Uganda. The Penal Code Act also criminalises attempts to procure abortion.¹⁵⁶ Additionally, when Uganda ratified the Protocol on the Rights of Women in

¹⁵¹ Beauvoir, *The Second Sex*, pp.139.

¹⁵² Joseph Mahon, 'Simone de Beauvoir and her Catholicism: An Essay on her Ethical and Religious Meditations', (Galway: Arden House, 2002), pp.118.

¹⁵³ Ibid. 32.

¹⁵⁴ Sylvia Tamale, "'Keep Your Eyes Off My Thighs': A Feminist Analysis of Uganda's 'Miniskirt Law,'" *Feminist Africa* 21 (2016): 83-90.

¹⁵⁵ Ibid (n5).

¹⁵⁶ Section 130.

Africa (Maputo Protocol) in 2010, it did so with a reservation to Article 14(2)(c), which allows for abortion in cases of sexual assault, rape and incest.¹⁵⁷

There is need for Uganda's jurisprudence to reflect the radical and decolonial feminist perspectives espoused above, as well as, the international and regional approaches, which emphasize a human rights approach to reproductive health in the context of abortion. Several jurisdictions in Africa have already leaned heavily towards decriminalisation and legalisation of abortion. Tunisia opened the way to safe legal abortions in Africa,¹⁵⁸ Cape Verde followed a decade later,¹⁵⁹ and South Africa in 1996. Other African countries have allowed for safe and legal abortion in progressive legislation.

In South Africa, the Choice on Termination of Pregnancy Act of 1996 (CTOPA) was enacted with a view to achieving a paradigm shift in the regulation of abortion, from a historically embedded crime and punishment model to a reproductive health rights model. It underscores a commitment to a transformed universe of reproductive health and abortion in which reproductive autonomy, including abortion, is a fundamental right which must be fulfilled by the state.¹⁶⁰ This law has substantially increased access to safe, legal abortion in South Africa and, consequently, impacted positively on unsafe abortion-related morbidity and mortality.¹⁶¹

In Kenya, judicial precedent has had the effect of implicitly conveying the right to abortion onto women. In *FIDA Kenya & 3 Others v. Attorney General & 2 Others*¹⁶² a 14-year-old girl from rural Kisii became pregnant after being raped. Lacking access to safe, legal abortion services and post-rape care, she sought help from an unqualified provider, suffered severe complications, and ultimately died from lack of appropriate medical care. The Petitioners, acting

¹⁵⁷ Ibid (n17).

¹⁵⁸ Among other grounds, the Tunisian Law No 65-25 of 1965, as amended, permits abortion on request in the first trimester.

¹⁵⁹ Law of 31st December, 1986 of Cape Verde permits abortion on request in the first trimester among other grounds.

¹⁶⁰ Preamble of the Choice on Termination of Pregnancy Act of South Africa, 1996.

¹⁶¹ R Jewkes et al 'The Impact of Age on the Epidemiology of Incomplete Abortion in South Africa after Legislative Change' (2005) 112 *British Journal of Obstetrics and Gynaecology* pp. 355.

¹⁶² Constitutional Petition No. 266 of 2015.

on behalf of the deceased's mother, challenged actions by the Ministry of Health (MOH) that created the unsafe conditions in which this incident took place, specifically the 2014 withdrawal of the "Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya" and a ban on abortion training for health professionals. The High Court ruled that the MOH's withdrawal of the guidelines and training curriculum was arbitrary, unlawful, and unconstitutional.

The Court affirmed that women and girls in Kenya have a constitutional right to access lawful abortion, especially in cases of rape, defilement, or where the life or health (including mental health) of the mother is at risk, as provided by Article 26(4) of the Constitution. The Court ordered the reinstatement of the withdrawn guidelines and training tools to provide clear standards for health professionals on safe abortion in constitutionally permitted circumstances. The Court also clarified that a "trained health professional" is empowered to determine whether an abortion is necessary under the law.

The same was held in the case of *PAK & another v Attorney General & 3 others*¹⁶³ whereby the 1st petitioner was pregnant and when she started experiencing complications with her pregnancy including severe pain and bleeding, she went to Chamalo Medical Clinic for treatment. At the Clinic PAK received emergency care from the 2nd petitioner who upon examining her concluded that she had suffered a spontaneous abortion. The 2nd petitioner performed a successful manual vacuum evacuation, after which the petitioner was in a fair general condition. Plain-clothed police officers stormed the clinic without notice or permission and demanded to be given the 1st petitioner's treatment records and subsequently confiscated the same from the 2nd petitioner. They were both arrested and the 1st petitioner alleged that she was forced to undergo a medical examination and was later charged with the offence of procuring an abortion contrary to section 159 of the Kenyan Penal Code. The 2nd petitioner was charged with procuring an abortion contrary to

¹⁶³ Constitutional Petition E009 of 2020) [2022] KEHC 262 (KLR).

section 158 of the Penal Code, and with supplying drugs to procure an abortion contrary to section 160 of the Penal Code.

The court held that inaccessibility of quality abortion care risked violating a range of human rights of women and girls, including the right to life; the right to the highest attainable standard of physical and mental health; the right to benefit from scientific progress and its realization; the right to decide freely and responsibly on the number, spacing and timing of children; and the right to be free from torture, cruel, inhuman and degrading treatment and punishment. The court emphasized that a blanket ban on abortion and or prosecution of medical personnel exposed both the mother and foetus to mortality and therefore flew against state obligations in preventing/reducing maternal and infant mortality rates and *ipso facto* violated the right to life.

Court observed that the country's law did not prevent women from having abortions but instead, severely undermined the quality-of-care women received or forced them to resort to unsafe and clandestine means to terminate unwanted pregnancies. It called out to Parliament, as the legislative body, to fast-track legislation to provide for access to safe abortion for women in Kenya and to actualize the provisions of article 26(4) of the Constitution.

The above assertion rings true in Uganda as well, where a ban on abortion has done little to curtail the number of abortions still carried out within the country. In Uganda, an estimated 314,300 abortions took place in 2013. This translates to 14% of all pregnancies—or a rate of 39 per 1,000 women aged 15–49, down from 51 per 1,000 in 2003. The abortion rate for Uganda is slightly higher than the estimated rate for the East Africa region as a whole, which was 34 per 1,000 women during 2010–2014,¹⁶⁴

It is unfortunate that no effort has been made to take advantage of the opportunity that is presented by Article 22 (2) of the Constitution to create a law that provides specific instances in which an abortion is permitted. The law has barely moved an inch since the Constitution of Uganda came into

¹⁶⁴ Guttmacher, 'Fact Sheet: Abortion and Post Abortion Care in Uganda' <<https://www.guttmacher.org/fact-sheet/abortion-and-postabortion-care-uganda>> [Accessed 5 June 2025].

force.¹⁶⁵ Ambiguity of the law and fear of imprisonment mean doctors turn away women looking for care. The women, influenced by misinformation, then resort to extreme and dangerous measures to rid themselves of unplanned pregnancies.¹⁶⁶

The Ugandan Ministry of Health reported that in 2018, 5.3% of all maternal deaths were due to complications from unsafe abortions.¹⁶⁷ The high rate of unintended pregnancies, driven by limited access to contraception, exacerbates the situation.¹⁶⁸ Unsafe abortion practices remain the major contributor to maternal death in Uganda, impeding the achievement of universal health coverage and quality of maternal health care. In 2015, the Ministry of Health and other stakeholders developed and launched *The National Standards and Guidelines for reducing Maternal Morbidity and Mortality from Unsafe Abortion in Uganda*, but following resistance, these were withdrawn 6 months later.¹⁶⁹ The Ministry of Health withdrew the guidelines in December 2015 before their official launch due to political and religious opposition, particularly from conservative and religious groups who argued that the guidelines did not reflect Uganda's cultural and moral values.¹⁷⁰

This continued reluctance from the government to create a solid abortion policy framework has proven to be a death sentence for women and girls in Uganda.

¹⁶⁵ CEHURD, 'Facing Uganda's Law on Abortion: Experiences From Women and Service Providers,' (July 2016) <<https://www.reproductiverights.org/sites/default/files/documents/Uganda-Abortion-Law-Experiences.pdf>> [Accessed 5 June 2025].

¹⁶⁶ Sophie Neiman, 'It's Needless Death': Ugandan Activists Decry Restrictive Abortion Laws. Aljazeera News, (28 September, 2024) <<https://www.aljazeera.com/features/2024/9/28/its-needless-death-ugandan-activists-decry-restrictive-abortion-laws>> [Accessed 6 June 2025].

¹⁶⁷ Ministry of Health, 'Annual Health Sector Performance Report (AHSPR)' (Financial Year 2017/18) <https://library.health.go.ug/sites/default/files/resources/AHSPR%202017_18%20FY.pdf> [Accessed 6 June 2025].

¹⁶⁸ 'Uganda Abortion Laws (2025): Legal Status, Costs & Safe Options' <<https://safe2choose.org/blog/abortion-in-uganda>> [Accessed 6 June 2025].

¹⁶⁹ Kagaha A, and Manderson L, 'Power, policy and abortion care in Uganda. Health Policy Plan,' (2021) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7996642/>> [Accessed 05 June 2025].

¹⁷⁰ Women;s Probono Initiative, 'Access to Safe and Legal Abortion Services in Uganda, Case Brief' <<https://womenprobono.org/wp-content/uploads/2023/06/standards-and-guidelines-case-brief-1.pdf>> [Accessed 5 June 2025].

The 2015 CEHURD Policy Guidelines proposed that the government of Uganda amend the Penal Code to streamline it with the Constitution by clearly stating the conditions under which safe, legal abortions can be accessed by women.¹⁷¹ Control over the choice and timing of motherhood is crucial to women's agency, welfare and, ultimately, their equality as individuals and a class.¹⁷²

The struggle for reproductive autonomy is in fact a struggle for equal citizenship in a social environment in which there is structural inequality and gender discrimination.¹⁷³ Therefore, it is in the best interests of the government of Uganda to follow the lead of countries like Tunisia, South Africa and Kenya in legalising abortion, so as to facilitate the liberation of women from all ongoing forms of oppression, as well as upholding their constitutionally guaranteed right to equality under the law and non-discrimination.

3.2 SEXUAL AND GENDER BASED VIOLENCE (SGBV): THE ENFORCEMENT MECHANISM OF PATRIARCHY

This part contains a discussion on SGBV through the lens of the radical feminist train of thought by highlighting the state of affairs in Uganda, thereafter making an analysis of case law to buttress the arguments on the role of culture in SGBV and finally, providing radical feminist solutions to this challenge through a case study of Senegal.

Sexual rights include the right of all persons to be free from coercion, discrimination, and violence to the highest attainable standard of health concerning sexuality.¹⁷⁴ Among the underlying determinants of sexual and reproductive health are effective protection from all forms of violence and torture, other human rights violations that harm the right to sexual and

¹⁷¹ CEHURD, 'The Case for Clarifying the Law on Termination of Pregnancy in the Revision of the Penal Code', CEHURD, July 2015, <<http://www.cehurd.org/wp-content/uploads/downloads/2016/02/Clarifying-the-Law-on-Termination-of-Pregnancy-in-the-Revision-of-the-Penal-Code.pdf>> [Accessed 4, February, 2025].

¹⁷² RB Siegel 'Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression' (2007) 56 Emory LJ pp. 815–42, pp. 818

¹⁷³ N Fraser, 'Justice Interruptus Critical Reflections on the Postsocialist' Condition (1997) 11.

¹⁷⁴ Ibid (n17), pp. 44.

reproductive health.¹⁷⁵ Professor Ben Twinomugisha agrees with this and has summarised SRHR to include the, 'right to freedom from sexual and gender based violence in all its forms and the right of access to appropriate medical, counselling and legal services'.¹⁷⁶ The 1993 United Nations Declaration of Violence against Women defines 'gender based violence' as any act causing physical, sexual, or psychological harm including threats, coercion, or deprivation of liberty in public or private life.¹⁷⁷

States including Uganda therefore, have an obligation to shield women from the harmful practices and norms and gender-based violence that deny them their full sexual and reproductive health, such as female genital mutilation, child and forced marriage, domestic and sexual violence, including marital rape.¹⁷⁸ International Humanitarian law takes cognisance of the fact that there is violence and coercion targeting lesbian, gay, bisexual, transgender and intersex persons or women seeking abortion or post-abortion care, forced abortion and forced pregnancy; and medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children.¹⁷⁹

As per 2024, gender-based violence ranks as the most important women's rights problem that Ugandans say their government and society must address.¹⁸⁰ SGBV in Uganda encompasses a range of violations, including rape, domestic violence, female genital mutilation (FGM), early and forced marriages, and emotional or psychological abuse.¹⁸¹ A 2021 report by the Uganda Bureau of Statistics (UBOS) revealed that one in three women aged 15 to 49 has experienced physical or sexual violence.¹⁸² In 2023, Uganda's Police Force Annual Crime Report showed that out of the 15,184 survivors of

¹⁷⁵ Paragraph 7 of General Comment No. 22.

¹⁷⁶ Ibid (n17), pp. 20.

¹⁷⁷ United Nations Declaration of Violence against Women, 1993.

¹⁷⁸ Paragraph 22 of General Comment No. 22.

¹⁷⁹ Paragraph 59 of General Comment No. 22.

¹⁸⁰ Caroline Nakayiza, 'Gender-Based Violence Ranks as Top Women's-Rights Issue That Ugandans Want Government and Society to Address', (Afrobarometer) April 2024.

¹⁸¹ Bridget Nsimanta, 'The growing Impact of sexual and gender-based violence in Uganda.' Nile post September 3, 2024.

¹⁸² UBOS, et al, 'National Survey on Violence in Uganda' 2020.

domestic violence, 10,792 were female, and 113 were killed from aggravated violence.¹⁸³ These alarming statistics are just the tip of the iceberg since many cases remain unreported due to fear and distrust in Uganda's justice system.

Let's look at these statistics from an intersectional lens because, queer or female sex workers and poor women will have it worse when it comes to SGBV compared to other women or girls. A month after the Anti-Homosexuality Act was passed, the Human Rights Awareness and Promotion Forum (HRAPF) recorded a total of 10 cases involving threats of violence against 12 persons based on their sexualities.¹⁸⁴ Violence remains a norm because it is deeply rooted in cultural structures that view women and girls as inferior, and cultural practices, like payment of bride price, exacerbate this violence, often leading to the perception that women are 'owned' by their husbands. This is very common in rural areas where women are poor and uneducated. In poor and vulnerable communities like refugee camps, it has also been noted that SGBV is quite prevalent with increased acts of forced marriages, wife battering, incest, and force prostitution.¹⁸⁵ It should be noted that all these practices are fuelled by culture through their families who use their daughters as source of money or resources to survive.¹⁸⁶

Ugandan communities have also fuelled these evil acts of SGBV by blaming women and young girls and cruising their dressing as a reason for their abuse.¹⁸⁷ For instance, if a girl or woman is raped when she was wearing a trouser, the community members often blame her and call her dress code indecent and hence the perpetrator (man) goes free.¹⁸⁸ In fact, in some communities, women believe that being beaten by their husbands is a 'sign of love'.¹⁸⁹

¹⁸³ Police Force Annual Crime Report, 2023.

¹⁸⁴ HRAPF, 'Two Months After: Report on Violence and Violations on The Basis of Real or Presumed Sexual Orientation And/ Or Gender Identity Two Months After the Anti-Homosexuality Act Came into Force,' Kampala 9th August 2023.

¹⁸⁵ Sarah Ademun, 'Sexual and Gender Based Violence and Mental Health', *Femme Forte* (12 October, 2022).

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

These are a few illustrations of how culture has been the biggest root cause of SGBV in Uganda. One can then link the state's failure to properly implement the Domestic Violence Act as yet another reason that has exacerbated SGBV against women and girls in Uganda. This is why there is a need for a radical approach to dismantle such notions that have become the norm in Uganda.

Several cases have come before the courts, but this paper will rely on two popular cases that shocked many Ugandans, that is the *Hamidu case* and the *Nakoupuet case*. These two cases illustrate the interplay of culture and SGBV.

In *Uganda v. Yiga Hamidu*,¹⁹⁰ the victim who had been culturally married to the accused was subjected to the one of the worst kinds of inhumane treatment. When the victim refused to have intercourse with the accused, he then called two men to hold her hands and legs as he had his way with her. After he satisfied his beastly lust, the three left her lying on the floor covered with dirt and blood. The trial court convicted him and emphasized that, 'the existence of a valid marriage between the accused and complainant no longer constitutes a good defence against the charge of rape after the promulgation of the 1995 Constitution.'¹⁹¹

Similarly, in *Uganda v. Lamoe Nakoupuet*,¹⁹² the survivor knew the accused since her childhood as her village mate, and had been present at home when her father sold her off to the accused while they drunk '*waragi*'¹⁹³. The accused thereafter abducted her. She fortunately escaped from him but, was forcefully handed back to him the next day by her father. She was then held down by her own brothers who spread her legs and the accused raped her. The accused raised his defence by stating that he had only made her his wife.¹⁹⁴ The court condemned the cultures of chasing, abducting and raping girls as it is backward, brutal and barbaric. These two cases portray the state of affairs in Uganda, particularly in the rural areas.

¹⁹⁰ Criminal Session Case 005 of 2002.

¹⁹¹ Ibid.

¹⁹² Criminal Case No. 109 of 2016.

¹⁹³ '*waragi*' also known as '*kasese*' is a generic term in Uganda for locally distilled beverages or gin.

¹⁹⁴ Ibid.

The consequences of SGBV are devastating for victims. Physically, survivors face injuries, sexually transmitted infections (STIs), and unintended pregnancies. Psychologically, many victims suffer from depression, anxiety, and post-traumatic stress disorder (PTSD).¹⁹⁵ A 2022 study by Makerere University's School of Public Health found that SGBV survivors were three times more likely to experience mental health issues compared to non-survivors.¹⁹⁶

During the second wave of feminism which aimed to achieve women's liberation, radical feminists while focusing on patriarchy as the root cause of women's inequality also focused on violence against women by men, and started to talk about violence in the family as well as, rape.¹⁹⁷ According to Camille Cottaise:

*"Violence (or the threat of violence) is a way for men to control, dominate, and perpetuate women's subordination. By appropriating women's bodies through violence, women are reminded of their subordinate status. Radical feminists fight against such sexual and gender-based violence, including domestic violence, which they have helped to render more visible."*¹⁹⁸

Matters traditionally seen as part of the private sphere such as violence should instead be recognized as public and systemic issues. Due to the efforts and activism of radical feminists, sexual violence, including rape and domestic abuse, is now recognized as a criminal offence in most countries.¹⁹⁹

Senegal presents a great example for Ugandan feminists and allies to embrace regarding radical feminism. Because of the various strands of feminism that seemed very western-oriented, the feminists in Senegal decided to embark on their own radical feminist movement. The president of the Senegalese Women's Rights network, Siggil Jigeen, founded in 1998, noted that their

¹⁹⁵ Ibid (n183).

¹⁹⁶ Ibid.

¹⁹⁷ Anca-Ruxandra, et al, 'Gender Matters: A Manual on Addressing Gender-Based Violence Affecting Young People', (Council of Europe, 2019).

¹⁹⁸ Ibid (n23).

¹⁹⁹ Ibid, page 10.

feminism was based on Senegalese values, not individualist Western values.²⁰⁰

In Senegal, feminists advocating against gender-based and state violence have played a crucial role in challenging the status quo and reshaping discourse, activism, and protest methods in Senegal.²⁰¹ Nearly 40 years after the rise of *Yewwu Yewwi*, a significant feminist movement, Senegalese feminists are once again embracing radical feminist organising, even amid growing anti-gender opposition.²⁰² The movement established an award to honour political efforts supporting women's emancipation, condemned gender-based violence, launched the magazine *Fippu* as an advocacy platform, and built international alliances with other feminist organizations.²⁰³ The idea of Senegalese embracing this radical feminist stance through an Afrocentric lens is indeed a great lesson for many Africans to adopt a more radical approach to fight against SGBV.

Similarly in the global north, radical protests by African-Americans, women and sexual minorities in the 1960s played a critical role in the fight against violence.²⁰⁴ These groups challenged the continued hostility and punishment that were being meted out by society.²⁰⁵ The idea that these various groups fought to dismantle these notions of violence that had become the order of the day does lay ground work for Ugandans to also take the streets and fight to end such violence.

In this fight against SGBV, women and men cannot just sit by and wait. There is a need to stand up and take to streets and fight for what every woman and young girl deserves. Ugandans need to stop settling for less. Laws like the Domestic Violence Act have been enacted and yet the same laws give a maximum punishment of two years imprisonment or a fine not exceeding 48

²⁰⁰ Ibid.

²⁰¹ Dieng, RS 2023, 'From Yewwu Yewwi to #FreeSenegal: Class, gender and generational dynamics of radical feminist activism in Senegal', *Politics & Gender*. Available at <<https://doi.org/10.1017/S1743923X2200071X>> [Accessed 21 January, 2025].

²⁰² Ibid, page 2.

²⁰³ Ibid, page 2.

²⁰⁴ Anca-Ruxandra, et al, above n 199, pp. 211.

²⁰⁵ Ibid.

currency points,²⁰⁶ to perpetrators of violence who are often men. Ugandan feminists and women's rights movements have fought hard, but this is not enough. A more radical approach is required to dismantle the root causes of this oppression.

3.3 RADICALISING SEXUALITIES: A CASE FOR HOMOSEXUALITY

The golden thread running throughout this paper has been how radical feminism seeks to dismantle patriarchal notions that men can control women's bodies. This theme continues to this section in which the intersection of culture, law and religion is discussed as a means of enabling the abuse of sexual minorities like LBTQI women. There is a brief discussion of the sex/gender system that creates a foundation for the discussion on the control of women's sexualities.

Radical Feminist, Gayle Rubin makes an argument that the sex/gender system is a "set of arrangements by which society transforms biological sexuality into products of human activity."²⁰⁷ This implies that society takes certain biological characteristics of being male and female and converts them into a system of masculine and feminine identities that create a hierarchical power relation between men and women.²⁰⁸

Essentially, radical feminists claim that gender is separable from sex, and naturalised gender roles are attempts on the part of patriarchal society to control women through rigid sanctions.²⁰⁹ In many African countries, feminism and homosexuality are accused of being foreign and exported from the "West". Uganda is truly no different, and is plagued with sexual

²⁰⁶ Section 3 of the Domestic Violence Act Cap 123.

²⁰⁷ Gayle Rubin, 'The Traffic in Women: Notes on the "Political Economy" of Sex' in Rayna R. Reiter (ed) 'Toward an Anthropology of Women' (Monthly Review Press, 1975) 157.

²⁰⁸ Dipannita and Swati, 'Gender and Social Work'. Available at; <http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000032SW/P001714/M021043/ET/15004642966-RadicalFeminism-Text.pdf> [Accessed 10 July 2023].

²⁰⁹ Ibid.

stereotypes, and individuals who so clearly task themselves with making ignorant assumptions about people's sexualities.

How does gender shape sexualities? How does society try to control women's sexuality? These are some of the key questions one needs to have in mind while trying to understand African sexualities. In the past, few women had the opportunity to openly speak about aspects involving their sex lives with anyone.²¹⁰ In Uganda, many women still find it taboo when it comes to putting their sexual desires before those of their male partners. The control of women's sexualities has been a pivotal tool through which patriarchy has asserted its dominance. Since the 1960s, radical feminists have been at the forefront of fighting for women's sexualities by supporting key aspects like sex work, pornography, and sexual orientations.

The law is the biggest challenge to women's sexualities. The Penal Code Act Cap. 128 criminalises same sex persons from engaging in sexual pleasure. Marriage between persons of the same sex in Uganda is also prohibited by the Article 31(2A) of the Constitution. The Anti-Homosexuality Act Cap.117, prohibits any form of sexual relations between persons of the same sex, and prohibits the promotion or recognition of sexual relations between persons of the same sex.

The patriarchal and capitalistic hegemony strongly opposes the existence and practise of homosexuality, and utilizes religion, culture and the law to solidify its position. As sources of power, the institutions of culture, religion and law structure sexual morality in such a way that it congeals into states of domination.²¹¹ This disdain is demonstrated through a categorical enforcement of hetero-normative practices in the socialization of men and women at every stage in their socio-economic, political and religious interactions.

²¹⁰ Alix Kates Shulman, 'Sex and Power: Sexual Bases of Radical Feminism' (University of Chicago Press Journal, 1980) <<https://www.jstor.org/stable/3173832>> [Accessed 12 August 2023].

²¹¹ Sylvia Tamale, 'Exploring the Contours of African Sexualities: Statutory, Customary and Religious Laws', (lecture, Cambridge University, 4 June 2013).

Adrienne Rich examined this system's downright militaristic insistence on heteronormativity and coined the term 'Compulsory Heterosexuality'²¹², suggesting that heterosexuality, like motherhood, is a political institution whereby violent structures are found necessary to enforce women's total emotional, erotic loyalty and subservience to men. Compulsory heterosexuality, through which the lesbian and queer experience is perceived on a scale ranging from deviant to abhorrent or simply rendered invisible, insists that species survival, the means of impregnation, and emotional/erotic relationships between men and women should be so rigidly identified with each other; and under this system male power manifests itself through the use of cruelty and forceful submission to enforce heterosexuality on women.²¹³

It seeks to trap women within the confines of heterosexuality so that they may be convinced that marriage and sexual orientation toward men are inevitable (even if unsatisfying or oppressive) components of their lives.

In her essay titled, "The Origin of the Family,"²¹⁴ Kathleen Gough lists eight characteristics of male power in archaic and contemporary societies as,

men's ability to deny women sexuality or to force it upon them; to command or exploit their labor; to control their produce; to control or rob them of their children; to confine them physically and prevent their movement; to use them as objects in male transactions; to cramp their creativeness; or to withhold from them large areas of the society's knowledge and cultural attainments.

Heteronormativity involves the idealizing and societal privileging of a strict gender binary, "opposite sex" romantic and sexual desires, heterosexual marriages, and the raising of children in nuclear families. It results in cisgender-heterosexual existence occupying default representational and socio-politico-economic spaces.²¹⁵ This disposition is reinforced through

²¹² Adrienne Rich, 'Compulsory Heterosexuality and Lesbian Existence' (1980) reprinted in *Blood, Bread, and Poetry: Selected Prose*, 1979-1985 (Norton 1986).

²¹³ Ibid, 2.

²¹⁴ Kathleen Gough, 'The Origin of the Family', in *Toward an Anthropology of Women*, ed. Rayna [Rapp] Reiter (New York: Monthly Review Press, 1975), pp. 69-70.

²¹⁵ The Politics Of The Gender, Sexuality, And Religion Nexus: Perspectives From The Margins Victoria Basug Slabinski And Nicolas 'Nicola' Chehade (April 1, 2024)

religious beliefs and practices, which teach and uphold the sanctity of marriage, the concept of sex being for procreation and pleasure within marriage. Religion also outrightly rejects any sexual or erotic practices that are outside the 'charmed circle of sex' of heterosexual monogamy, viewing others like homosexual relationships as sins and forms of deviance that should be quashed.²¹⁶

Patriarchal culture views women as a means to serve men in the private divide of the home through motherhood, nurturing, care work and unpaid labour, and any deviation from these extremely regressive and repressive gender roles as an existential threat to society as it is set up.²¹⁷ Gay women who reject these traditional roles by partnering with other women are viewed with disdain, fetishized, or dismissed because they upset the status quo, challenge male supremacy and threaten male control over female sexuality.²¹⁸

This is why many African countries have taken an unequivocal stance against homosexuality through the implementations of Anti Homosexuality laws. However, the constitutionality of these laws has been challenged by several human rights and feminist groups who assert that these laws are oppressive and discriminatory in nature, serving to rob homosexual women of their constitutionally embedded rights and freedoms.

In Uganda, there has been a dramatic legal back and forth between human rights activists and the criminalisation of homosexuality. 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*,²¹⁹ the Constitutional Court declared the Act

<<https://contendingmodernities.nd.edu/education-module/politics-gender-sexuality-religion/>> [Accessed 16 April 2025].

²¹⁶ Michelle Mueller, 'Polyamory as Religious Sexual Counter-Culture: An Analysis through Gayle Rubin's "Charmed Circle', *Proceedings of the 3rd International Conference on Gender Studies*, Vol. 2, Issue 1, 2020, pp. 15-21 ISSN 2602-8611 online DOI: <<https://doi.org/10.17501/26028611.2020.2102>> [Accessed 16 April 2025].

²¹⁷ Sylvia Tamale (ed), *African Sexualities: A Reader* (Pambazuka Press 2011).

²¹⁸ Pharr, Suzanne. 'Homophobia: A Weapon of Sexism', SIECUS Report, vol. 21, no. 3, Feb./Mar. 1993, pp. 1-6.

²¹⁹ (Constitutional Petition 2014/8).

unconstitutional on the ground that it had been passed by parliament without the requisite quorum.

Later on, Parliament passed the Anti Homosexuality Act, 2023 which was also challenged in the constitutional Court by the *Consolidated Petitions No. 14, 15, 16 & 85 of 2023*, contesting virtually all the seventeen sections of the Act for their alleged contravention of human rights and freedoms that are guaranteed under the Uganda Constitution, and international human rights instruments to which Uganda is a party.²²⁰

Sections of the Act that called for mandatory reporting of homosexual individuals by health professionals demonstrated the law's undermining of the sexual and reproductive health rights (SRHR) of queer women, who might be scared to seek medical care for fear of being reported to the authorities. The Act also further criminalized queer women living with HIV/AIDS, changing their offense to aggravated homosexuality and increasing the punishment from life imprisonment to death. This blatant dismissal of the humanity of these individuals was a direct violation of the constitutional guarantee of the right to life, privacy, nondiscrimination and freedom from cruel and inhumane treatment.²²¹

Criminalisation of HIV/AIDS in any capacity undermines public health efforts to treat and prevent HIV/AIDS,²²² as the stigmatization de incentivises people to disclose their status, and discourages health-seeking behaviours for effective management of the epidemic when there is lack of community support. Moreover, this criminalization does not prevent new infections or reduce women's vulnerability, rather it furthers the harm these women might encounter by closing up channels for access to healthcare services.²²³ These provisions were struck down by the courts in the *Fox Odoi case*²²⁴ and aptly

²²⁰ Constitutional Court pronounces itself on the Anti-Homosexuality Act, 2023 of Uganda, April 3, 2024.

²²¹ Ibid (n102).

²²² Mujugira A et al, 'Uganda's Anti-Homosexuality Act undermines public health,' (J Int AIDS Soc.) <<https://pmc.ncbi.nlm.nih.gov/articles/PMC11075067/>> [Accessed 5 June 2025].

²²³ Ibid (n94).

²²⁴ Ibid (n133).

so as they violated the right to health of homosexual women, and their sexual and reproductive health rights guaranteed under several international provisions like the CEDAW and ICESCR.

Nonetheless, in upholding the constitutionality of the Act, save for four provisions, the Court justified itself using a number of reasons, among them being the recent developments in human rights jurisprudence including the decision of the US Supreme Court in *Dobbs v Jackson Women's Health Organisation*,²²⁵ where the Court considered the nation's history and traditions, as well as the dictates of democracy and rule of law, to over-rule the broader right to individual autonomy

This decision demonstrates how regressive laws and attitudes that are rooted in misogyny and deny women their sexual and bodily liberties reinforce each other, shown by the emboldening of Uganda's court to pass its own law restricting women's autonomy after the US did the same in the *Dobbs* decision.

Radical feminist perspectives demand that the laws regulating women's bodily and sexual autonomy reflect their inherent right to privacy, right to marry, and right to non-discrimination under the constitution.

Since many men identify themselves as heterosexual, they expect all women to conform to these similar heterosexual norms yet these heterosexual norms that many fight so hard for, are simply a colonial export.

In a world where women's bodies are a battleground for control, a radical feminist approach is much required. By adopting such a radical stance, feminists desire to break these generational chains of oppression against women that have been normalised by institutions like the state and church. The fight for an inclusive Ugandan society rests in the hands of each of us and, the fight starts with all of us, to pave the way for a future where every woman and girl can exercise agency over her own body without any discrimination.

²²⁵ No. 19-1392, 597 U.S. 215 (2022).

3.4 RADICALISING INTERSECTIONALITY

This has been intentionally discussed as the last part of the paper because it recognises that, multiple systems of oppression interact and mutually reinforce one another. During the subsequent discussions, the golden thread of how the law, religion and culture have reinforced patriarchy has been demonstrated. But yet another key aspect that the article has portrayed are these multiple oppressions that are interact which has been quite disadvantageous towards the realisation of SRHRs of women and girls in Uganda. Borrowing from the examples of intersectional feminism, radical feminists also recognise these multiple oppressions.

During protests in South Africa, the female students articulated their identities as ‘radical, intersectional African feminists’.²²⁶ This re-introduced discussions of the concept of intersectionality into the private and public domain.²²⁷

American Law Professor and Civil Rights Activist, Kimberle Crenshaw, describes intersectionality as a prism for seeing the way in which various forms of inequity often operate together and exacerbate each other. For example, a woman with a disability may face discrimination not only because of her gender or her disability, but because of the combination of these two factors which operate simultaneously and interact in an inseparable way.²²⁸

Everyone has an identity made up of other complex and intertwined identity factors, which may not be reduced to gender.²²⁹ Females and persons belonging to gender minorities are exposed to oppression because of their gender; nevertheless, their other identity factors (age, disability, sexual orientation, origin, skin colour, marital status, etc.) also play a key role.²³⁰ By including this idea of intersectionality in feminism, the movement becomes

²²⁶ Amanda Gouws, ‘Feminist Intersectionality and the Matrix of Domination in South Africa’ (Agenda, 2017) < <https://doi.org/10.1080/10130950.2017.1338871> > [Accessed 17 August 2023].

²²⁷ Ibid.

²²⁸ Handicap International, ‘Intersectionality in Gender-Based Violence (GBV) Programming’ < <https://www.hi.org/sn/uploads/Briefing-Paper-Intersectionality-in-GBV-programming.pdf> > [Accessed 17 August 2023].

²²⁹ Ibid.

²³⁰ Ibid.

truly inclusive and allows women of all races, economic standings, religions, and orientations to have their voices heard.²³¹

Early radical feminist theory prioritised the experience of women and theorised women as a homogeneous category or unit of analysis.²³² Thus, intersectionality became a corrective mechanism against this type of essentialism.²³³ Using this intersectional approach meant recognition of the historical context around the issue.²³⁴ Women in Uganda and Africa have had a long history of violence and systemic discrimination, which created deep inequalities that disadvantaged them from the outset. Such inequalities intersect with each other, for example, poverty, caste systems, tribalism, and sexism, denying people their rights and equal opportunities, which impacts, extend across generations.²³⁵

The intersectionality lens remains a great tool for advocating for solutions and policy changes that address the needs of the most marginalized.²³⁶ For instance, in Uganda, that is still grappling with high rates of HIV, high maternal mortality rates, high teenage pregnancies, high rates of sexual violence perpetrated against women, girls, and so much more, intersectionality provides an escape beyond the one-size-fits-all approach to SRHR. According to Mubeezi Tenda:

“The intersectionality framework acknowledges that an African teenage girl who is visually impaired and living in a rural area may face more challenges than an older, financially stable married woman in accessing information about reproductive health services. By understanding these diverse experiences, the intersectional lens turns our eyes onto the oppressive systems that prop up these

²³¹ Ginny Sharkey and Taylor Hawk, ‘What is “Intersectional Feminism”?’ (Denison, 26 July 2016) <<https://denison.edu/academics/womens-gender-studies/feature/67969#:~:text=>> [Accessed 28 July 2023].

²³² Ibid (n185) pp. 20.

²³³ Ibid.

²³⁴ UN Women, ‘Intersectional Feminism: What It Means and Why it Matters Right Now’ (1 July 2020) <<https://firstwitness.org/wp-content/uploads/2021/07/Intersectional-Feminsim-What-it-Means-and-Why-it-Matters-Right-Now.pdf>> [Accessed 28 July 2023].

²³⁵ Ibid.

²³⁶ Mubeezi Tenda, ‘How Intersectionality can help everyone realise their Sexual and Reproductive Health and Rights’, MakeWay, (07 December 2023) <<https://www.make-way.org/learn-about-intersectionality-from-this-short-video/>> [Accessed 20 January, 2024].

barriers and enables us to treat the root cause as opposed to the symptoms of the problems. Recognizing these oppressive contexts or systems means that we focus on dismantling discriminatory policies, challenging cultural norms that perpetuate inequalities, and advocating for social and economic justice”.²³⁷

Studies carried out in Uganda have shown that persons with disabilities (PWDs) are not a homogeneous group and that different types of disabilities intersect with social factors in complex ways that affect access to SRHR.²³⁸ In fact, structural ableism, stigma, and systemic barriers such as inaccessible health infrastructure and provider discrimination are continue to undermine SRHR for with disabilities.²³⁹

A survey carried out by BMC Public Health on disability and SRHR revealed that although SRH service utilisation has increased over the decade (e.g., HIV testing rose from 30.8% to 92.4%), including among pwds, disparities persisted based on disability type, especially in antenatal care and contraceptive use.²⁴⁰ Women with hearing or communication difficulties, even when wealthy or educated, were less likely to access antenatal care showing that disability-related barriers persist despite economic privilege.²⁴¹ This demonstrates the how identities like disability could exploited as a means of enabling oppression i regard to realisation of SRHRs.

Radical feminism therefore recognises the intersections of gender with other identities like race, ethnicity, class, and sexuality and therefore advocates for an inclusive approach to address challenges faced by women. Radicalising intersectionality goes beyond acknowledging these intersections and seeks to challenge and dismantle the underlying power structures that perpetuate these oppressions. Radical intersectionality will therefore, delve into the root causes of these intersecting oppressions and seeks to understand how these systems of power and privilege interlock to create and perpetuate inequity.

²³⁷ Ibid.

²³⁸ Muriel Mac-Seing et al, 'Disability and Sexual and Reproductive Health Service Utilisation in Uganda: An Intersectional Analysis of Demographic and Health Surveys between 2006 and 2016' BMC Public Health (2022) <<https://doi.org/10.1186/s12889-022-12708-w>> [Accessed 4 June 2025].

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

Thus, activists will be able to uncover how these political, economic, and social structures such as patriarchy and capitalism generate inequity in all spaces of society.²⁴² This can show how the institutions of the state produce and replicate the systems of oppression based on gender, sexuality, class, race, gender, religion, etc., all of which affect many marginalised groups.

Also, radicalising intersectionality would champion collective liberation by recognising that true liberation requires solidarity among all marginalised groups. This involves building alliances and advocating for change that benefits everyone. Radicalised intersectionality also questions societal norms and constructs that perpetuate inequity e.g., addressing human rights violations against LBTQI+ persons through the intersectional lens may help to move towards meaningful and comprehensive advances.²⁴³ Having passed the Anti Homosexuality Act, the women in the LBTQIA community continue to suffer a different kind of oppression compared to heterosexual women. They are highly discriminated against which has limited their access to basic sexual and reproductive health care.

Yet another example could be how intersectional approaches to violence against women and girls recognise that all oppressions exist simultaneously and that such oppressions mutually construct each other.²⁴⁴ Lastly, the 'Intersectional Praxis'; radicalised intersectionality encourages a praxis, which means applying theory to action. This entails promoting strategies that embody the principles of intersectionality and create tangible change in people's lives.

The SRHRs of women in Uganda are not being realised because intersectionality is not being taken seriously. While gender inequality is most certainly a critical factor in issues of SRHR, so too are other forms of

²⁴² Fernando D' Elio, 'Intersectionality in LGBTI Advocacy' (Sexual Rights Initiative, 14 May 2015) < <https://www.sexualrightsinitiative.org/news/2015-may/intersectionality-lgbti-advocacy> > [Accessed 21 August 2023].

²⁴³ Ibid.

²⁴⁴ Imkaan, 'The Value of Intersectionality in Understanding Violence Against Women and Girls (VAWG)' <<https://eca.unwomen.org/sites/default/files/field%20ECA/Attachments/Publications/2019/10/The%20value%20of%20intersectionality%20in%20understanding>> [Accessed 21 August 2023].

discrimination.²⁴⁵ The current legal framework does not enable a broad enough understanding of what reproductive freedom and health entails for lack of intersectional analysis for women in Uganda. The reason for an intersectional approach is to ensure an in-depth analysis of differing markers of identity and discrimination in order to obtain a clear and accurate contextual understanding. The framework itself not only encourages a deeper analysis and understanding, but requires it.²⁴⁶ The intersectional lens brings to light compounding discrimination and points of intersection which would otherwise be missed.²⁴⁷ Furthermore, it ensures a letting-go of the gender-hold, resulting in, for example, the recognition of privileges which lie outside of simply being a man.

Without this intersectional analysis, other forms of discrimination and violations of women can sip through the cracks, even, and especially, within mainstream SRHR efforts. The result being that,

*“particular reproductive health issues are not addressed. Intersectionality also ensures that inward looking analysis, which as the growth within the global women’s movement has shown, can lead to incredibly valuable and important insight. When analysing intersections of class and gender, the power hierarchies that are operating both on individual as well as systemic levels become clearer.”*²⁴⁸

This is valuable for individual advocates of SRHR, such as members of the donor communities and organisations and systems in themselves. The recognition of privilege leads into another way an intersectional paradigm can benefit the SRHR agenda. The paradigm exposes structural and systemic inequalities which are otherwise reduced to individual level or country-level

²⁴⁵ Amie Ritchie, ‘Intersectionality and The Struggle for Sexual and Reproductive Health and Rights: An Analysis of Un Discursive Patterns’ A Thesis Submitted to the Victoria University of Wellington in Partial Fulfilment of the Requirements for the Degree of Master of International Relations (MIR) School of History, Philosophy, Political Science and International Relations, (2012) page 60 < https://openaccess.wgtn.ac.nz/articles/thesis/Intersectionality_and_the_Struggle_for_Sexual_and_Reproductive_Health_and_Rights_An_Analysis_of_UN_Discursive_Patterns/16999225?file=31447624 > [Accessed 18 January, 2025].

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

problems based on bias, discrimination and stereotyping.²⁴⁹ These stereotypes and forms of discrimination are often institutionalized yet unspoken.

In essence, radicalising intersectionality means moving beyond individual experiences and towards collective systemic change. It is all about recognising that the struggle against multiple oppressions is interconnected and requires a transformative approach. There is need to use the intersectional lens in fighting to reform the law which enables these oppressions while working hand in hand with the institutions of religion and culture.

4.0 CRITICISMS OF RADICAL FEMINISM

This section navigates the critical evaluations directed towards radical feminism. Despite the fact that radical feminism aims at abolishing patriarchy in order to liberate women and girls from oppression, this feminist thought has also been criticised for some of its arguments and beliefs, that have been described as un-feminist. Concentration will be made on the radical feminist objection of sex work and the transwoman face off. While navigating these criticisms, counter arguments will also be provided to further get a wider appreciation of this train of thought.

4.1 RADICAL FEMINIST OBJECTION TOWARDS SEX WORK

In a society plagued with prejudices and marginalisation, sex work stands as an example of a sector burdened by oppression and stigmatisation. For many years, sex work has been a site for contesting sexuality, race, and patriarchy.²⁵⁰ Radical feminist objection to sex work has been described as profoundly un-feminist. According to Lauren Rose Warne, for the radical feminists, sex work is a substitute for the sins of patriarchy and something

²⁴⁹ Ibid. page 61.

²⁵⁰ India Thusi, 'Radical Feminist Harms on Sex Workers' (California Western School of Law, 2018) < <https://core.ac.uk/download/pdf/232622972.pdf> > [Accessed 16 August 2023].

that can lead women away from equity.²⁵¹ Radical feminist campaigns in the 1970s and 1980s were focused on the abolition of sex work.²⁵²

These campaigns characterised sex work as an abuse of human rights, whether it was forced or voluntary.²⁵³ This is mainly because radical feminism was built on understanding female sexuality resultantly, radical feminists viewed sex work as a form of male dominance.²⁵⁴ Despite the fact that feminists generally agree that sex work should never be criminalised, radical feminists argue that abolition is the ultimate goal because sex should never be an employment option.²⁵⁵

However, this rejection of sex work does not meet the reality that criminalisation is actually a serious gender issue which manifests the patriarchy's continued control of women's sexualities. The Penal Code Act of Uganda also criminalises other activities surrounding women's sexualities like sex work, living on the earnings of sex work, aiding and abetting sex work, and operating brothels.²⁵⁶

The Sexual Offences Bill, 2024 also proposes to introduce the criminalisation of the buying of sex, thereby, leading to the adoption of the 'Total Criminalisation' model which aims are curbing demand and supply of sex. The way sex work and other related offenses are defined is based on the idea that sex work is an identity as opposed to it being a commercial activity like

²⁵¹ Lauren Rosewarne, 'Radical Feminists' Objection to Sex Work is Profoundly Un-Feminist' (The Conversation, 8 August 2017) < <https://theconversation.com/radical-feminists-objection-to-sex-work-is-profoundly-un-feminist-81333> > [Accessed 21 August 2023].

²⁵² International Committee on the Rights of Sex Workers in Europe, 'Feminism Needs Sex Workers, Sex Workers Need Feminism: Towards A Sex Worker Inclusive Women's Rights Movement' (ICRSE, March 2016).

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid (n205), pp. 195.

²⁵⁶ Section 128. Prohibition of prostitution: Any person who practises or engages in prostitution commits an offence and is liable to imprisonment for seven years. Section 126. Brothels- Any person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for seven years. Section 127. Definition of prostitute and prostitution: In this Code, "prostitute" means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain, and "prostitution" shall be construed accordingly.

any other business. This framing violates constitutional human rights, guarantees of equality, dignity, liberty, privacy, the right to a fair trial, and the right to work and earn a living.²⁵⁷

Professor Ben Twinomugisha poses the question, "Is there any compelling justification for criminalising sexual activity between consenting adults because they have chosen to turn it into a commercial transaction?"²⁵⁸ The criminalisation of sex work is a serious gender issue because it affects women more than men. By taking up multiple partners, female sex workers (FSWs), challenge the entrenched 'patriarchal and bourgeois morality'.²⁵⁹

The actions of these women show that they have autonomy over their bodies and do not conform to the societal notions that women are expected to be docile, married, submissive, and non-promiscuous. The continued criminalisation has driven sex work underground, where sex workers have been exposed to violence, harassment, and exploitation.²⁶⁰ Criminalisation also increases stigmatisation, which is antithetical to improving the health of FSWs since it is particularly detrimental to the HIV/STI prevention and care programmes based on principles of human rights.²⁶¹

The need to dismantle these patriarchal notions that are embedded in the law and enabled by culture and religion remains one of the reasons why there is a need for a radical approach. The continued desire to control women's bodies is not as obvious as it used to be. It manifests itself through such ideas of 'morality' or 'culture' as a means of fighting women's autonomy over their sexualities.

Lauren Rosewarne also makes quite the arguments in defence of sex work, by stating that it is a matter of consent and bodily autonomy. She makes the following arguments against this un-feminist objection:

"If the sisterhood can support my decision to swallow contraceptive pills or terminate an unwanted pregnancy, then

²⁵⁷ Ibid (n55).

²⁵⁸ Ibid (n 94) pp 21.

²⁵⁹ Ibid pp 24.

²⁶⁰ Ibid pp 25.

²⁶¹ Ibid. pp 27.

*there is a duty for radical feminists to support my choice to have as much or as little sex as I like and, if I so choose, put a price tag on that sex. If feminists aren't fighting for my right to use my body how I choose, then they have dramatically detoured from their mission".*²⁶²

The radical feminists make quite a number of assertions about sex work. They make arguments that since sex work involves women's sexuality, it promotes subordination.²⁶³

According to Catherine Mackinnon, radical feminist theory treats sexuality as a construct of male power.²⁶⁴ Other radical feminists argue that sex work reiterates that women have been reduced from whole person to simply vagina and womb.²⁶⁵ Radical feminists also love to present the "re-victimisation narrative."²⁶⁶ Under this narrative, radical feminists present testimonies of survivors who have been abused as children, have issues with substance abuse, or mental illnesses, or have had bad industry treatment and are now abolitionists.²⁶⁷ It is not right that the "broken woman" who is preyed upon by a pimp and, who is reliving her pain as a sex worker is a narrative that this what the sex industry is all about, rather than the reality is that many women enter the sex industry for an abundance of reasons.²⁶⁸

Yet another assertion made by radical feminists is that sex work shouldn't exist because certain labour should not be sold. Radical feminists often argue concepts like coerced participation, trafficking, and poor working conditions which are used to make claims that no sex worker truly chose this toil.²⁶⁹ It is also a fact that in any industry, even in Uganda, there will be examples of poor working conditions, abused employees, and other bad practices. This doesn't make trafficking or coercion unimportant issues, but equally, it doesn't make the presence of these issues in the sex industry as a special

²⁶² Ibid (n206).

²⁶³ Ibid (n207).

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid (n206).

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

case.²⁷⁰ It should not be right to criminalise an entire industry because of these isolated bad examples.

4.2 THE RADICAL FEMINIST AND TRANSWOMAN FACE-OFF

The dispute between radical feminism and transgenderism began more than forty years ago at the height of the second-wave feminist movement.²⁷¹ Trans women assert their womanhood by expressing a profound feeling of being female, often describing it as having a feminine identity within the male physical form. To some radical feminists, the notion of the “female brain” does not exist.²⁷² According to their perspective, the difference in thought and behaviour between men and women is a result of societal pressures that demand women to conform to notions of sexual allure, nurturing behaviour and submissive attitudes.

Radical feminists who exclude trans women are often referred to as “trans-exclusionary radical feminists” or “TERFs”.²⁷³ Some of these trans-exclusionary feminist campaigners themselves generally object to this acronym “TERFs”.²⁷⁴ In recent years, many have preferred to call themselves ‘gender critical’ – a term that denotes, less a critical approach to gender, and more an emphasis on claiming ‘biologically defined’ notions of femaleness and womanhood over gender identity and social concepts of gender.²⁷⁵ In addition to attacking trans people’s right to access public toilets in line with their sex/gender presentation, ‘gender critical’ feminists have criticised social developments such as LGBTIQ-inclusive school education and positive media representations of trans people.²⁷⁶

According to lesbian radical feminist, Janice Raymond in her book *The Transsexual Empire: The Making of the She-Male*, “All transsexuals rape

²⁷⁰ Ibid.

²⁷¹ Michelle Goldberg, ‘What is a Woman? The Dispute Between Radical Feminism and Transgenderism’ (The New Yorker, July 28, 2014) <<https://www.newyorker.com/magazine/2014/08/04/woman-2>> [Accessed 21 August 2023].

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ruth Pearce et al, ‘TERF wars: An introduction’ *The Sociological Review Monographs* 2020, Vol. 68(4) pp. 681.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

women's bodies by reducing the real female form to an artefact, appropriating this body for themselves."²⁷⁷ Other radical feminist scholars like Sheila Jeffreys, have also made arguments that transsexuals are constructing a conservative fantasy of what women should be, which is insulting to such feminists.²⁷⁸ Although such views are no longer embraced within feminism, a minority of self-identified radical feminists still adhere to them, sparring contentious conflict with trans women and their supporters.

However, not all radical feminists can be described as trans exclusionary. Scholars like Susan Stryker have pointed to the rise of feminist circles that are both radical in their critique of patriarchy and affirming of gender diversity.²⁷⁹ The Trans inclusive radical feminists "TRAs" have also been at the forefront towards the fight for inclusivity of trans women. Cristan Williams in her paper reviews some of the ways in which the inclusion and support of trans people by radical feminists has been hidden from trans and feminist discourse, thereby creating the perception that radical feminism isn't supportive of trans people.²⁸⁰ John Stoltenberg, a radical feminist author and long-term partner of the pioneering radical feminist opinion leader Andrea Dworkin, wrote that:

*"The notion that truly revolutionary radical feminism is trans-inclusive is a no brainer. I honestly do not understand how or why a strain of radical feminism has emerged that favours a biology-based/sex-essentialist theory of 'sex caste' over the theory of 'sex class' as set forth in the work of [Monique] Wittig, Andrea [Dworkin], and [Catharine] MacKinnon. Can radical feminism be 'reclaimed' so that its trans-inclusivity—which is inherent—is made apparent? I hope so."*²⁸¹

It has become quite common for social media platforms and other popular media outlets to assert that "radical feminists" take issue with trans women.

²⁷⁷ Janice G. Raymond, *The Transsexual Empire: The Making of the She-Male* (Beacon Press, 1979).

²⁷⁸ Sheila Jeffreys, 'Transgender Activism: A Lesbian Feminist Perspective' (Journal of Lesbian Studies, 2008) <https://doi.org/10.1300/J155v01n03_03> [Accessed 21 August 2023].

²⁷⁹ Susan Stryker, *Transgender History*, (Seal Press, 2008).

²⁸⁰ Cristan Williams, 'Recounting the Trans Inclusive History of Radical Feminism' *TSQ: Transgender Studies Quarterly* Volume 3, Numbers 1–2 (May 2016) Duke University Press pp. 254 < DOI 10.1215/23289252-3334463 > [Accessed 6 June 2025].

²⁸¹ Ibid.

However, lost in these popular representations of radical feminism is its long and courageous trans inclusive history.²⁸² Through these popular radical feminism versus trans narratives, we also lose the reality that the sound of the 1970s-era women's music movement was actually engineered by an out trans woman because Olivia Records, the radical feminist lesbian separatist music collective, was itself trans inclusive.²⁸³ The trans inclusive nature of radical feminism was also apparent when TERF activist Sheila Jeffreys spoke at the Andrea Dworkin Commemorative Conference where she credited Dworkin as being her inspiration and spoke at length about Dworkin's pioneering book, *Woman Hating*.²⁸⁴ One should note that this same Dworkin advocated that trans people be given free access to trans medical care or that Dworkin viewed gender identity research as being subversive to patriarchy.

It is true that some radical feminists could be trans exclusionary, but it would be wrong to create a storyline that radical feminism is completely trans exclusionary. These narratives that radical feminism is trans exclusionary can be countered by simply tracing the history of this strand of thought. One can also block out the blogs and media outlets that have been at the forefront of creating these narratives as means of putting women down.

5.0 CONCLUSION

From the genesis of this article, attempts have been made to demonstrate how patriarchy has been infused into the law, culture and religion in Uganda. The major aim of this article has been to bring to the forefront a new kind of feminism to Uganda, which will not take no for an answer. A kind of feminism that will fight for autonomy of women's sexualities. A feminism that makes SRHRs a concept that can be enjoyed by all women regardless of class, age, sexuality, or tribe.

Radical feminism emerges as a potent and thought-provoking paradigm that not only identifies the oppression faced by women but also offers potential solutions to dismantle these deeply rooted inequities. It unearths the

²⁸² Ibid 255.

²⁸³ Ibid.

²⁸⁴ Ibid.

underlying power dynamics and patriarchal structures that perpetuate women's oppression in Uganda. Its emphasis on recognition of the interconnections between various forms of oppression such as sexism and classism, offers a key understanding of women's experiences. This comprehensive perspective prompts society to address the root causes rather than merely treating the symptoms of women's marginalisation.

This article discussed patriarchal norms rooted in the three evils (law, culture and religion) as some of the root causes of women's oppression in SRHR and delved into the main issues surrounding sexualities, abortion rights, motherhood, and sexual and gender-based violence. The article had an in-depth analysis of the legal framework governing SRHRs in Uganda, and a conclusion was made, that it was lacking in so many ways. This framework presented more challenges than opportunities for women which demonstrated this article's arguments that the law is one of the greatest tools of patriarchy.

Central to the prospective solutions offered by this article in championing for a radical feminist approach was the concept of 'bodily autonomy'. By championing women's right to make choices about their bodies, including issues surrounding assisted reproductive technologies and abortion rights, radical feminism not only hopes to empower Ugandan women but also challenges societal perceptions that have historically objectified and controlled them. The discussion of sexual and gender-based violence tried to reveal how culture as tool of oppression has enabled this kind of violence to women. It also demonstrated that that public/private divide that exists in which some matters are looked at as domestic issues in which the state should not get involved.

The article's discussion on sexualities and intersectionality also illustrated the multiple oppressions that women with different identities face. It delved into a radical feminist point of view that calls for action and dismantling of some of these oppressions that have become norms.

Uganda is ready for radical feminism, and it has been ready for a while. It will not only need women to champion this fight but will also need men to join in

Radical Feminism as A Transformative Approach to Addressing Women's
Oppression: A Case for Sexual and Reproductive Health and Rights in Uganda

this fight to finally attain gender equity in Uganda. It truly starts at the grassroots, with families and how the parents raise their children, either in an environment that promotes equity or one that does the opposite. This fight will require collaboration between various stakeholders from both the state and the citizens themselves. This article is a call for Ugandans to have a change in their mindsets, to refuse to settle for less and to adopt more radical approaches to achieve the objective of gender equality. It is a call for women and men to take to the streets and fight for the SRHR rights of all women and girls in Uganda.

To all the feminists in Uganda, your work has been quite impeccable, but it is far from over!

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