

AN ANALYSIS OF THE CASE: NANDAGO MARIAM
V. ATTORNEY GENERAL & OTHERS USING A
FEMINIST LENS

BY FEMME FORTE UGANDA

TABLE OF CONTENTS

I. INTRODUCTION AND CASE OVERVIEW.....	2
II. FEMINIST THEORETICAL FRAMEWORK	2
2.1 Reproductive Justice as a Foundational Principle.....	2
2.2 State Violence and Reproductive Oppression	3
2.3 Defilement, Consent, and Bodily Autonomy	3
III. LEGAL ANALYSIS UNDER UGANDAN LAW	4
3.1 Constitutional Violations.....	4
3.2 Statutory Law Contradictions	6
IV. INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS	6
4.1 The Maputo Protocol.....	6
4.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).....	7
4.3 Convention on the Rights of the Child (CRC)	7
4.4 International Covenant on Civil and Political Rights (ICCPR).....	8
V. FEMINIST CRITIQUE OF ABORTION CRIMINALIZATION	8
5.1 Criminalization as Gender-Based Violence.....	8
5.2 Reproductive Coercion and State Power.....	9
5.3 Intersectionality and Compounded Marginalization.....	9
VI. CONCLUSION AND RECOMMENDATIONS.....	10
REFERENCES	12

FEMINIST LEGAL OPINION

Miscellaneous Cause No._ of 2025: Nandago Mariam v. Attorney General & Others

Prepared by: Femme Forte Uganda

Date: 01/10/2025

I. INTRODUCTION AND CASE OVERVIEW

This opinion analyzes the constitutional petition filed on behalf of Nandago Mariam, a 15-year-old survivor of defilement who experienced a miscarriage and was subsequently arrested while receiving emergency Post-Abortion Care (PAC). Through a feminist legal lens grounded in reproductive justice principles, this case exemplifies how intersecting systems of oppression, gender-based violence, criminalization of reproductive healthcare, and state violence converge to violate the fundamental rights of women and girls in Uganda.

The facts reveal a disturbing pattern: a child was sexually violated, became pregnant as a result of that violation, suffered a miscarriage requiring emergency medical intervention, was then subjected to mob violence while critically ill, and ultimately arrested and detained by state actors who denied her life-saving medical care. This case presents a critical opportunity for Ugandan courts to affirm that Post-Abortion Care is essential healthcare, that survivors of sexual violence deserve protection rather than prosecution, and that the criminalization of reproductive healthcare violates fundamental constitutional guarantees.

II. FEMINIST THEORETICAL FRAMEWORK

2.1 Reproductive Justice as a Foundational Principle

Reproductive justice, as articulated by women of color activists, transcends narrow "choice" rhetoric to recognize three fundamental rights: the right to have children, the right not to have children, and the right to parent children in safe and healthy environments (Ross & Solinger, 2017). This framework is particularly salient in Nandago's case, where none of these rights were respected. She did not choose to become pregnant, that choice was stolen through sexual violence. She did not choose to miscarry, that too was a medical event requiring emergency care. Yet the

state's response criminalized her body's natural processes while ignoring the sexual violence that precipitated her pregnancy.

Reproductive justice requires examining how race, class, gender, age, and other identity markers shape reproductive experiences and outcomes. Nandago's case demonstrates this intersectionality: as a 15-year-old girl from a rural community, she faced compounded vulnerabilities that older, urban, or wealthier women might not encounter. The mob violence, police response, and denial of care reflect societal attitudes that view poor, young, rural women's bodies as sites of surveillance, punishment, and control rather than subjects deserving protection and care.

2.2 State Violence and Reproductive Oppression

Feminist scholars have long documented how state power operates through control of women's reproductive capacity (Federici, 2004). The arrest and detention of Nandago while she was hemorrhaging and in excruciating pain represents state violence deployed through ostensibly "protecting life." This paradox threatening a girl's life in the name of protecting potential life exposes how abortion criminalization serves not to preserve life but to exercise patriarchal control over women's bodies and sexuality.

The denial of Post-Abortion Care must be understood as a form of state-sanctioned torture. International human rights bodies have recognized that denial of reproductive healthcare, particularly in contexts involving severe pain and life-threatening conditions, constitutes cruel, inhuman, and degrading treatment (CEDAW Committee, General Recommendation No. 35, 2017). When police officers detained Nandago for two days without medical intervention despite her hemorrhaging, they weaponized her medical emergency to punish her for perceived sexual transgression.

2.3 Defilement, Consent, and Bodily Autonomy

Nandago's pregnancy resulted from defilement a crime that recognizes children cannot consent to sexual activity. Yet the state's response criminalized her rather than protecting her. This inversion reveals how rape culture operates: sexual violence against girls is normalized while their bodies' responses to that violence are criminalized. A feminist analysis recognizes this as a continuum of

violence where the initial sexual assault is compounded by institutional violence that denies her healthcare, subjects her to mob violence, and ultimately prosecutes her.

The concept of bodily autonomy is foundational to feminist jurisprudence. Nandago's body was first violated through defilement, then violated again when an angry mob forcibly removed her from a healthcare facility, and violated yet again when state actors detained her without medical care. Each violation denied her fundamental right to control what happens to her own body a right that should be inviolable, particularly for a child recovering from sexual violence.

III. LEGAL ANALYSIS UNDER UGANDAN LAW

3.1 Constitutional Violations

Article 24: Right to Human Dignity and Protection from Torture

The Constitution of the Republic of Uganda (1995), Article 24 guarantees respect for human dignity and prohibits torture, cruel, inhuman, or degrading treatment. Nandago's treatment violates this provision in multiple ways. First, the mob violence she endured while critically ill being dragged from her hospital bed, beaten, and paraded through the village constitutes degrading treatment that assaulted her dignity as a human being. Second, her detention without medical care while hemorrhaging constitutes a form of torture, as recognized in international jurisprudence.

In *Purohit and Moore v. The Gambia* (2003), the African Commission held that denial of medical treatment can constitute inhuman and degrading treatment. The deliberate withholding of Post-Abortion Care from Nandago, knowing she was experiencing severe pain, falls squarely within this prohibition. The state's duty to protect human dignity includes ensuring that persons in custody receive necessary medical care, particularly when that custody interrupts ongoing emergency treatment.

Article 33: Rights of Women

Article 33 specifically addresses women's rights, guaranteeing equal treatment and protection from discrimination. The discriminatory enforcement evident in Nandago's case where police arrested her in her state rather than the mob that assaulted her or the man who defiled her demonstrates

how abortion laws disproportionately punish women and girls while ignoring male responsibility for pregnancies. This selective enforcement perpetuates gender-based discrimination in violation of constitutional guarantees.

Feminist legal scholars have documented how abortion criminalization inherently discriminates against women because only women can become pregnant (Cook et al., 2014). When laws criminalize pregnancy outcomes, they create a class of criminal acts that only women can commit, establishing gender-based discrimination that violates equality principles. Nandago's prosecution for a miscarriage resulting from a pregnancy she did not choose exemplifies this discriminatory impact.

Article 34(3): Right to Health

Article 34(3) provides that "A person shall not be denied emergency medical treatment." This provision is unambiguous: emergency medical treatment is a constitutional right that cannot be denied. Post-Abortion Care qualifies as emergency medical treatment because miscarriages frequently involve life-threatening hemorrhaging, infection risk, and severe pain requiring immediate intervention. The supplementary affidavit from Dr. Lukomwa clearly establishes that interrupting PAC exposed Nandago to sepsis, organ failure, excessive bleeding, or even death.

The right to health encompasses not merely the absence of disease but access to timely, acceptable, and quality healthcare (WHO, 2017). Nandago's constitutional right was violated when she was forcibly removed from a healthcare facility and subsequently detained without medical care. The state cannot condition emergency medical treatment on a person's criminal status to do so would render Article 34(3) meaningless.

National Objectives and Directive Principles of State Policy: Objective XX

Objective XX commits the state to providing proper medical treatment to all citizens. This obligation extends particularly to vulnerable populations, including children and survivors of sexual violence. The state's failure to protect Nandago's access to medical care, and its active role in interrupting that care through arrest and detention, violates this constitutional directive.

3.2 Statutory Law Contradictions

Section 142 of the Penal Code Act (Cap. 120)

Section 142 criminalizes "procuring abortion," but Nandago experienced a miscarriage a spontaneous pregnancy loss that medical evidence suggests was unintentional. The criminal law's failure to distinguish between intentional abortion and miscarriage creates a legal framework where women experiencing natural pregnancy losses face criminal prosecution. This is particularly egregious when, as here, the miscarriage occurs in a pregnancy resulting from sexual violence against a child.

Moreover, even if abortion criminalization can be constitutionally justified (a proposition feminist legal scholars vigorously contest), such criminalization cannot extend to denying Post-Abortion Care. International medical standards recognize PAC as essential healthcare that must be provided regardless of whether the abortion was spontaneous or induced, legal or illegal (WHO, 2012). The Constitution's guarantee of emergency medical treatment must supersede any criminal prohibition on abortion itself.

Section 207 of the Penal Code Act (Cap. 120)

Section 207 provides that medical practitioners are not criminally liable for performing procedures necessary to preserve a mother's life. This provision recognizes that medical necessity trumps other legal considerations. Post-Abortion Care falls within this exception because it addresses life-threatening complications requiring immediate intervention. The medical evidence establishes that Nandago faced risks of hemorrhagic shock, sepsis, and death—all life-threatening conditions justifying emergency medical intervention.

IV. INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS

4.1 The Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which Uganda ratified in 2010, provides explicit reproductive rights protections. Article 14 guarantees women's right to "control their fertility" and to "decide whether

to have children, the number of children and the spacing of children." Critically, Article 14(2) (c) requires states to protect reproductive health rights and "authorize medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus." In as much as Uganda reserved Article 14 of the same protocol, In Article 3 of the Maputo Protocol, provision is made against degradation of women, respect for their rights and protection from all forms of violence, particularly sexual and verbal violence.

Nandago's pregnancy resulted from defilement a form of sexual assault against a child. Under the Maputo Protocol, she would have been entitled to access safe post abortion services. The Protocol's provisions are directly applicable in Ugandan courts as Uganda has ratified the treaty without reservations on Article 3. Even if Uganda's domestic law criminalizes abortion, the Maputo Protocol's higher protections should apply, particularly where, as here, the pregnancy resulted from sexual violence against a minor.

4.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Uganda is a party to CEDAW, which prohibits discrimination against women and girls. Article 12 specifically addresses healthcare, requiring states to "ensure to women 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 CEDAW Committee has clarified that this obligation includes Post-Abortion Care, which must be available as a matter of women's right to health (General Recommendation No. 24, 1999).

General Recommendation No. 35 on gender-based violence further establishes that denying women access to reproductive healthcare constitutes gender-based discrimination and violence. The CEDAW Committee has specifically condemned laws that criminalize medical procedures only needed by women, recognizing such laws as inherently discriminatory (CEDAW Committee, 2017). Nandago's prosecution for experiencing a miscarriage exemplifies the discriminatory enforcement that CEDAW prohibits.

4.3 Convention on the Rights of the Child (CRC)

As a 15-year-old, Nandago is entitled to protections under the Convention on the Rights of the Child. Article 24 guarantees children's right to the highest attainable standard of health and requires states to ensure access to healthcare services. Article 19 requires protection from all forms of violence, including sexual abuse. The CRC Committee has emphasized that adolescents have rights to reproductive healthcare, including abortion services and Post-Abortion Care, and that these services must be confidential and respectful of adolescent autonomy (General Comment No. 20, 2016).

Uganda's treatment of Nandago violates multiple CRC provisions. She was not protected from sexual violence (Article 19 violation), was denied healthcare to which she was entitled (Article 24 violation), and was subjected to criminal prosecution rather than child protection (Article 40 violation regarding juvenile justice). The state's response treated her as a criminal rather than a child requiring protection and care.

4.4 International Covenant on Civil and Political Rights (ICCPR)

Article 7 of the ICCPR prohibits torture and cruel, inhuman, or degrading treatment. The UN Human Rights Committee has recognized that denial of reproductive healthcare, particularly in contexts involving severe pain and suffering, can violate Article 7 (K.L. v. Peru, 2005). In that landmark case, the Committee found Peru violated ICCPR Article 7 when it denied a pregnant woman carrying an anencephalic fetus access to lawful abortion services, forcing her to continue a pregnancy and deliver a baby that would inevitably die.

Nandago's case presents even more egregious facts: she was forced to remain detained without medical care while actively hemorrhaging and in excruciating pain. The deliberate withholding of medical intervention that could alleviate severe suffering constitutes cruel and inhuman treatment. The state cannot justify such treatment by reference to criminal law enforcement fundamental human rights protections apply with particular force to persons in state custody.

V. FEMINIST CRITIQUE OF ABORTION CRIMINALIZATION

5.1 Criminalization as Gender-Based Violence

Feminist scholars conceptualize abortion criminalization as a form of structural violence against women (Erdman, 2012). When states criminalize abortion, they deny women bodily autonomy, force continuation of unwanted pregnancies, and create health risks by driving women to unsafe procedures. In Nandago's case, the criminalization framework enabled multiple forms of violence: it empowered the mob to assault her because they perceived her as a criminal; it authorized police to arrest her rather than protect her which all resulted to denial of medical care.

The chilling effect of criminalization extends beyond prosecuted cases. Healthcare providers may hesitate to provide Post-Abortion Care for fear of criminal liability, as evidenced by the fact that an angry mob could forcibly remove a patient from a health facility without apparent resistance from medical staff. Women and girls may delay seeking care or provide false information to healthcare providers, undermining the quality of care they receive. These systemic harms demonstrate how criminalization operates as a form of gender-based violence that endangers women's lives and health.

5.2 Reproductive Coercion and State Power

Nandago's case illustrates how abortion criminalization functions as reproductive coercion, the use of legal and social power to control women's reproductive decision-making. She did not choose to become pregnant; that pregnancy was forced upon her through sexual violence. She did not choose to miscarry; her body spontaneously ended the pregnancy. Yet at every stage, state and social actors denied her autonomy: she could not access abortion care despite the pregnancy resulting from sexual violence, and when her body naturally ended the pregnancy, she was criminalized for that outcome.

This pattern reflects what feminist theorists identify as reproductive governance, the ways institutions regulate women's reproduction to serve state interests rather than women's self-determination (Morgan & Roberts, 2012). Laws criminalizing abortion are not about "protecting life" but about enforcing particular visions of women's proper roles and controlling female sexuality. The selective enforcement against Nandago while ignoring Rogers (the perpetrator of defilement) reveals the gendered logic of these laws.

5.3 Intersectionality and Compounded Marginalization

Nandago occupies multiple marginalized identities: she is a child, a girl, a survivor of sexual violence, from a rural community, and economically disadvantaged. Each of these identities compounds her vulnerability to state violence and denial of rights. Wealthier urban women who experience miscarriages are not subjected to mob violence or criminal prosecution; their pregnancy losses are treated as private medical matters. Nandago's prosecution reflects how abortion criminalization disproportionately impacts marginalized women who lack resources to access private healthcare or navigate the legal system.

Critical race feminists have documented how reproductive oppression operates through intersecting systems of domination (Roberts, 1997). In Uganda, as globally, abortion criminalization particularly harms poor women, rural women, young women, and women from marginalized communities. These women cannot access safe abortion services in private clinics, cannot afford to travel to jurisdictions with less restrictive laws, and are more likely to face criminal prosecution when they experience pregnancy losses. Nandago's case exemplifies this intersectional oppression.

VI. CONCLUSION AND RECOMMENDATIONS

This case presents the Ugandan High Court with an opportunity to affirm fundamental principles of reproductive justice, bodily autonomy, and human dignity. The facts are unambiguous: a child who survived sexual violence was denied life-saving medical care by state actors who prioritized criminal enforcement over constitutional rights to health and protection from torture.

The Court should grant the declarations sought, recognizing that:

1. Post-Abortion Care constitutes emergency medical treatment that cannot be denied under Article 34(3) of the Constitution;
2. Arresting and detaining a person requiring emergency medical care violates constitutional guarantees of human dignity and protection from torture under Articles 24 and 44(a);
3. The discriminatory enforcement of abortion laws against women and girls while ignoring male responsibility for pregnancies violates Article 33's guarantee of gender equality;

4. Uganda's obligations under the Maputo Protocol, CEDAW, CRC, and ICCPR require ensuring access to comprehensive reproductive healthcare, including Post-Abortion Care, particularly for survivors of sexual violence.

Beyond this individual case, broader reforms are required: decriminalization of abortion, particularly for survivors of sexual violence; comprehensive sexuality education and reproductive healthcare services for adolescents; prosecution of sexual violence perpetrators with the same vigor currently directed at women experiencing pregnancy losses; and training for healthcare providers, police, and judiciary on reproductive rights and the legal framework protecting those rights.

Nandago's suffering was preventable. She should have been protected from defilement, supported through her pregnancy, provided compassionate medical care during her miscarriage, and offered psychosocial support as she recovered. Instead, she experienced violence at every stage, culminating in state-sanctioned denial of life-saving care. Justice requires not only compensation for Nandago but systemic reforms ensuring no other girl endures similar violations of her fundamental rights.

REFERENCES

CEDAW Committee. (1999). *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*. UN Doc. A/54/38/Rev.1.

CEDAW Committee. (2017). *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*. UN Doc. CEDAW/C/GC/35.

CRC Committee. (2016). *General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence*. UN Doc. CRC/C/GC/20.

Constitution of the Republic of Uganda. (1995).

Cook, R. J., Erdman, J. N., & Dickens, B. M. (2014). *Abortion Law in Transnational Perspective: Cases and Controversies*. University of Pennsylvania Press.

Erdman, J. N. (2012). Bioethics, human rights, and abortion. *Health and Human Rights Journal*, 14(1), 108-120.

Federici, S. (2004). *Caliban and the Witch: Women, the Body and Primitive Accumulation*. Autonomedia.

K.L. v. Peru, Communication No. 1153/2003, UN Human Rights Committee, UN Doc. CCPR/C/85/D/1153/2003 (2005).

Morgan, L. M., & Roberts, E. F. S. (2012). Reproductive governance in Latin America. *Anthropology & Medicine*, 19(2), 241-254.

Penal Code Act (Cap. 120), Laws of Uganda.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). (2003). CAB/LEG/66.6.

Purohit and Moore v. The Gambia, Communication No. 241/2001, African Commission on Human and Peoples' Rights (2003).

Roberts, D. (1997). *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. Pantheon Books.

Ross, L., & Solinger, R. (2017). *Reproductive Justice: An Introduction*. University of California Press.

World Health Organization. (2012). *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed.). WHO.

World Health Organization. (2017). *Patient Safety Rights Charter*. WHO.