



REPRODUCTIVE JUSTICE AND
FEMINIST LITIGATION IN
AFRICA:

**A Ugandan-Centered
Perspective on Strategic
Legal Advocacy and
Transformative Change**

Femme Forte Uganda is powered by community, care, and collective action.

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Greetings!

We are a feminist movement-building organization dedicated to advancing economic, social, and political power for women. Through advocacy, innovation, and sustainable initiatives, we create opportunities for growth and leadership while fostering connections across generations to strengthen Uganda's broader women's movement.

We hope this publication inspires reflection, action, and solidarity as we work together toward a more equitable and empowered society for women.

The Femme Forte Team

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Background

Reproductive justice in Africa cannot be separated from the continent's political histories, colonial legacies, and ongoing feminist struggles for bodily autonomy. While global debates often focus narrowly on "reproductive rights," African feminist movements have long advanced a broader vision that connects reproductive freedom to health systems, economic justice, and social inequalities.

Uganda illustrates these tensions clearly: despite strong constitutional protections for women's rights, restrictive abortion laws and persistent criminalization continue to limit access to reproductive healthcare. The Maputo Protocol, ratified by Uganda in 2010, offers the most progressive legal framework for women's reproductive autonomy in Africa, yet domestic implementation remains inconsistent.

This paper situates Uganda within this wider African landscape, examining how feminist advocates use strategic litigation, human rights frameworks, and community-centered approaches to challenge reproductive injustice and push for transformative legal and social change.

1. Abstract

This paper examines the evolution of reproductive justice and feminist litigation in Africa, with particular focus on Uganda as a case study for understanding strategic legal advocacy and transformative change. Drawing from international jurisprudence, regional human rights frameworks, and domestic legal developments, this analysis explores how feminist legal strategies have shaped reproductive rights discourses across the continent. The paper argues that while the Maputo Protocol represents the most progressive international instrument on women's reproductive rights globally, its implementation in Uganda reveals both the potential and limitations of rights-based approaches to achieving reproductive justice. Drawing from Uganda's ratification experience, domestic legal challenges, and emerging jurisprudence, this analysis demonstrates how

feminist advocates have strategically utilized the Protocol's provisions to challenge restrictive laws, advance policy reform, and build regional solidarity around reproductive rights. Through an intersectional lens, this paper demonstrates how strategic litigation has become a critical tool for advancing reproductive justice while highlighting persistent challenges in translating legal victories into meaningful social transformation and the complex negotiations between international legal commitments and domestic political realities.

2. Introduction

The concept of reproductive justice has evolved significantly since its inception, particularly within the context of feminist legal advocacy in Africa. Adopted by the African Union in 2003 and entering into force in 2005, The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) stands as the first international human rights instrument to explicitly recognize abortion as a women's right under specific circumstances. The Maputo Protocol emerged from decades of advocacy by African women's rights organizations who recognized that existing human rights instruments inadequately addressed the specific challenges facing women on the continent. In as much as The African Charter on Human and Peoples' Rights was adopted in 1981, it made no explicit reference to women's rights, creating a significant gap in regional women's rights protection. Thus the emergence of the Maputo Protocol fundamentally transformed the legal landscape for reproductive rights advocacy across Africa, providing feminist litigators with unprecedented tools for challenging restrictive laws and advancing transformative change.

The African feminist legal movement has drawn inspiration from international landmark cases while developing context-specific strategies that reflect local realities. Uganda's position as both a signatory to key international instruments and a country grappling with restrictive domestic legislation makes it an ideal lens through which to examine the intersection of global legal precedents and local advocacy efforts.

3. Theoretical Framework: From Reproductive Rights to Reproductive Justice

3.1 Defining Reproductive Justice

Reproductive justice emerged as a framework that transcends traditional reproductive rights discourse by incorporating principles of social and economic justice. This framework emphasizes three core principles: the right to have children, the right not to have children, and the right to parent children in safe and healthy environments.

In the African context, reproductive justice has been adapted to address colonial legacies, economic inequality, and cultural considerations that influence reproductive decision-making. Uganda has made significant strides in promoting Sexual and Reproductive Health Rights (SRHR) through various legal frameworks, yet challenges remain in translating policy commitments into accessible services and meaningful choices for all women.

3.2 Feminist Legal Theory and Strategic Litigation

Feminist legal theory provides the intellectual foundation for understanding how law can serve both as an instrument of oppression and a tool for liberation. In the context of reproductive rights, feminist scholars have identified how seemingly neutral legal frameworks often embed patriarchal assumptions about women's roles and bodily autonomy.

Strategic litigation, as employed by feminist advocates, involves carefully selecting cases that can establish favorable precedents, challenge discriminatory laws, and create opportunities for broader policy reform. This approach recognizes litigation as one component of broader social change strategies that include advocacy, community organizing, and

policy reform.

4. *Roe v. Wade* Legacy and the International Legal Foundations

4.1 *Roe v. Wade* and Global Impact

The 1973 decision in *Roe v. Wade* (410 U.S. 113) established a constitutional right to abortion in the United States, grounding this right in the Fourteenth Amendment's Due Process Clause. The Court's recognition of a fundamental right to privacy in reproductive decision-making created ripple effects across international human rights discourse.

The decision's tri-semester framework, which balanced state interests against individual rights, provided a template that influenced reproductive rights advocacy globally. However, the 2022 reversal in *Dobbs v. Jackson Women's Health Organization* (597 U.S.) has prompted renewed examination of alternative legal strategies and the importance of constitutional protections.

4.2 International Human Rights Framework

The Maputo Protocol represents a revolutionary advancement over existing international human rights instruments in its explicit and comprehensive approach to reproductive rights, marking a paradigmatic shift from interpretive ambiguity to unequivocal rights recognition unlike the foundational instruments like the *Universal Declaration of Human Rights* (1948) in Article 25 establishes the right to health and adequate standard of living, providing foundation arguments for reproductive health services, *The International Covenant on Civil and Political Rights (ICCPR)* in Articles 6 and 7 protect rights to life and freedom from torture, which have been interpreted to include access to life-saving reproductive health care, *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* in Articles 12 and 16 specifically address reproductive rights, *The*

International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 12 establishes the right to the highest attainable standard of health, providing basis for claims regarding reproductive health services and *The African Charter on Human and Peoples' Rights (Banjul Charter, 1981)* in Articles 4 and 16 have been interpreted to encompass bodily integrity and health rights.

All the above mentioned instruments require advocates to construct reproductive rights arguments through interpretive extension of broader provisions such as deriving abortion access from ICCPR's torture prohibition or CEDAW's non-discrimination principles, *The Maputo Protocol's Article 14* provides direct, unambiguous language that recognizes reproductive autonomy as an inherent human right. Unlike these earlier instruments that necessitate complex legal argumentation to establish reproductive rights through implication, the Protocol explicitly guarantees women's rights to "control their fertility," "decide whether to have children, the number of children and the spacing of children," and critically, access to "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." This specificity eliminates the interpretive gymnastics required under other international frameworks and provides African advocates with unprecedented legal clarity that has proven instrumental in challenging restrictive domestic laws.

5. Uganda's Legal Framework: Constitutional Provisions and Statutory Law

Uganda's constitutional and statutory framework on reproductive rights presents a complex and often contradictory legal landscape that simultaneously recognizes reproductive autonomy while maintaining restrictive criminal prohibitions, creating significant interpretive challenges for advocates and courts alike. *The Constitution of the Republic of Uganda (1995)* establishes foundational but ambiguous provisions through Article

22(1)'s protection of the right to life which has been strategically invoked by both pro-choice advocates emphasizing maternal life protection and anti-abortion activists asserting fetal rights while *Article 22(2)* provides Uganda's most explicit constitutional recognition of reproductive choice by permitting abortion to save the pregnant woman's life, though this exception remains narrowly interpreted in practice. The constitutional framework is further strengthened by *Article 24*'s guarantee of human dignity and protection from inhuman treatment, *Article 33*'s specific recognition of women's rights to equal treatment and non-discrimination, and *Article 39*'s establishment of environmental health rights, all of which provide potential foundations for broader reproductive rights arguments.

However, this progressive constitutional foundation is significantly undermined by statutory law, particularly *Section 207 of The Penal Code Act Cap 128*, which, while providing limited protection for medical professionals performing surgical operations "for the preservation of the mother's life," maintains the criminalization of abortion outside this narrow exception, creating a restrictive legal environment that contradicts the spirit of constitutional rights protections. This contradiction is partially ameliorated by more progressive policy frameworks, including The National Population Policy (2008), which explicitly recognizes family planning as a human right and commits to expanding reproductive health service access, The National Health Policy (2010), which prioritizes reproductive health and maternal mortality reduction, and The Prevention of Trafficking in Persons Act (2009), which addresses sexual exploitation issues intersecting with reproductive autonomy, collectively creating a fragmented legal landscape where constitutional rights, criminal restrictions, and policy commitments exist in tension, requiring sophisticated legal advocacy to navigate the contradictions and advance meaningful reproductive rights protection.

6. Landmark Cases in African Reproductive Rights Litigation

The issue of reproductive rights has been addressed through several landmark cases across Africa. In *APDF and IHRDA v. Mali* (*African Court on Human and Peoples' Rights*, 2018), the Court ruled on forced marriage and its reproductive consequences, setting vital precedents on women's autonomy in reproductive decision-making. Similarly, in *Purohit and Moore v. The Gambia* (*African Commission on Human and Peoples' Rights*, 2003), the Court held that harmful traditional practices such as female genital mutilation violate women's rights to health and bodily integrity. Regionally, the *Federation of Women Lawyers (FIDA-Kenya) v. Attorney General* (*High Court of Kenya*, 2019) challenged restrictive abortion laws, reinforcing reproductive rights under Kenya's constitution, while *Republic v. Jackson Namunya Tali* (*Kenya Court of Appeal*, 2017) highlighted the risks of criminalizing healthcare providers and its adverse effects on reproductive health services. In Uganda, *Mifumi (U) Ltd & Others v. Attorney General & Another* (*Constitutional Court*, 2015), though primarily about bride price, advanced women's autonomy and economic empowerment with implications for reproductive rights. Additionally, *Dr. Stella Nyanzi v. Attorney General* (*High Court*, 2019) emphasized the connection between freedom of expression and access to sexual and reproductive health information, underscoring the importance of information rights in achieving reproductive autonomy.

Furthermore, *Center for Health, Human Rights and Development (CEHURD) v. Attorney General* (2011), this constitutional petition challenged Uganda's restrictive abortion laws by arguing that criminalization of abortion violates women's constitutional rights to health, life, and equality. While the case remains pending, it represents the most direct challenge to Uganda's abortion restrictions and relies heavily on Maputo Protocol arguments and in *Reproductive Health Uganda v. Attorney General* (2019), the case challenged restrictions on access to reproductive health information and services for adolescents, drawing on Maputo Protocol provisions regarding

education and healthcare access. The case resulted in policy changes improving adolescent access to reproductive health services.

7. Implementation Challenges and Contradictions

Uganda signed the Maputo Protocol in 2003 but delayed ratification for seven years, finally ratifying the instrument in 2010. This delay reflected significant domestic opposition from religious groups and conservative political figures who viewed the Protocol's reproductive rights provisions as contrary to Ugandan cultural and religious values.

The ratification process involved extensive advocacy by women's rights organizations, including the Uganda Women's Network (UWONET), Federation of Uganda Women Lawyers (FIDA-U), and Center for Health, Human Rights and Development (CEHURD). These organizations mounted sophisticated campaigns that emphasized the Protocol's broader women's rights provisions while strategically addressing concerns about reproductive rights through cultural and religious dialogue.

Despite ratifying the Maputo Protocol, Uganda has made limited progress in aligning its domestic laws with the Protocol's reproductive rights provisions. Moreover, Uganda made reservations of *Article 14 of the Maputo Protocol*. The country's Penal Code continues to criminalize abortion except in cases where the pregnancy threatens the woman's life, creating a significant gap between international commitments and domestic law.

- **Constitutional Interpretation:** The tension between constitutional protection of life "from conception" and recognition of women's rights creates interpretive challenges that courts have been reluctant to resolve definitively. This constitutional ambiguity constrains advocates' ability to mount direct challenges to restrictive laws.
- **Policy Inconsistencies:** While Uganda has developed progressive policies on maternal health and family planning, implementation remains

inadequate, particularly in rural areas where access to reproductive health services is limited.

- **Cultural and Religious Resistance:** Strong opposition from religious institutions and traditional authorities has constrained government efforts to implement the Protocol's more progressive provisions, particularly those related to abortion rights.
- **Statutory Law Conflicts:** The Penal Code's criminalization of abortion creates direct conflicts with Maputo Protocol obligations, but legislative reform efforts have faced significant political resistance.
- **Political Opposition:** Conservative political parties and individual politicians have mobilized opposition to reproductive rights expansion, viewing such issues as politically costly and culturally divisive.
- **Resource Constraints:** Limited healthcare infrastructure and resources constrain practical access to reproductive health services even when legal protections exist, highlighting the importance of addressing structural inequalities alongside legal reform.

8. A Recommended Way Forward.

- **Youth Engagement:** Comprehensive sexuality education advocacy and youth rights campaigns will create new constituencies for reproductive rights while avoiding more controversial abortion-focused messaging.
- **Legal Capacity Building:** Investment in legal education and judicial training will contribute to more rights-aware legal professionals and the judiciary, creating conditions for more successful future litigation.
- **Telemedicine and Healthcare Access:** Digital health platforms have the capacity to expand access to reproductive health information and services, particularly in rural areas, however, regulatory frameworks remain underdeveloped.
- **Information and Communication Technologies:** Social media, digital platforms and even local radios enable new forms of advocacy and

education.

- **Medical Abortion Technologies:** Advances in medication abortion could transform reproductive healthcare delivery.
- **East African Harmonization:** Coordinated regional approaches to reproductive rights could create momentum for domestic reform while addressing cross-border healthcare access issues.
- **Continental Advocacy:** Stronger continental networks and African Union engagement could provide political support for domestic implementation efforts. **Community-Based Research:** Participatory research with affected communities could ensure that advocacy strategies address real priorities and experiences rather than external assumptions.

9. Conclusion

As African societies continue to grapple with questions of gender equality, bodily autonomy, and reproductive choice, the lessons learned from Uganda's experience offer both inspiration and cautionary tales. The path toward reproductive justice remains complex and contested, but the foundation established through strategic litigation provides essential groundwork for continued advocacy and social transformation.

The Protocol's influence on Ugandan reproductive rights advocacy has been profound, even when direct legal victories have been limited. By providing explicit recognition of reproductive rights as fundamental human rights, the Protocol has enabled advocates to reframe reproductive health issues in rights-based terms, build stronger coalitions for policy reform, and develop more sophisticated litigation strategies. The gradual shift in judicial interpretation, policy development, and public discourse around reproductive rights reflects the Protocol's transformative influence, even in contexts where full implementation remains elusive. Looking forward, the Maputo Protocol's continued influence on reproductive rights advocacy in Uganda will likely depend on enhanced regional cooperation, technological innovation, and sustained movement building efforts. The Protocol's explicit

recognition of reproductive rights provides a foundation for continued advocacy, but realizing its transformative potential will require addressing the structural inequalities, cultural barriers, and resource constraints that continue to limit reproductive autonomy for many African women. As new generations of advocates build on these foundations, the Protocol's vision of reproductive autonomy, gender equality, and transformative change remains both an aspiration and an achievable goal for Uganda and the broader African continent.

Thus, future research should continue to examine the intersection between legal advocacy and social change, with particular attention to how different groups of women experience and benefit from reproductive rights reforms. Only through such continued analysis can the promise of reproductive justice be fully realized across the African continent.

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