



# Issue Paper Analysing Laws and Policies Affecting SRHR in Uganda

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## INTRODUCTION

At the heart of SRHR is the right to dignity and personal liberty which centres the autonomy of a person. Ideally every person should have the freedom to make independent decisions on their lives, free from coercion, intimidation and or fear. Equally freedom from non-discrimination and the right to equality are fundamental and critical to the realisation of SRHR. To a large extent, Chapter 4 of the 1995 Uganda Constitution espouses these core principles, freedoms, and rights, however, for many individuals, groups and communities in Uganda, protection of such basic human rights remains an unfulfilled promise. Negative biases attached to a person's HIV status, criminalisation of HIV, criminalisation of consensual sex between people of the same sex and criminalisation of critical reproductive health needs for women stand as significant impediments to the realization of human rights, particularly SRHR amongst young people, younger women, sex workers and communities that are generally marginalized. This policy brief considers the laws and policies affecting SRHR in Uganda and make recommendations that the country can adopt to ensure full enjoyment of these rights.

### Objective

This policy brief maps and considers the laws and policies affecting SRHR in Uganda and identifies the gaps that continue to deter the full realisation of SRHR in Uganda especially for young people and other marginalised groups.

### Methodology

This paper was developed through a qualitative process, relying mostly on a desk review of the laws and policies affecting SRHR in Uganda specifically looking at how they affect young people and other marginalised groups. This paper only considers the laws and policies that are currently in force.

## CONTEXT OF SRHR IN UGANDA

Uganda has a population of 45.75 million people with a growth rate of 3.2% per year, 75% of this population is under the age of 30 (UNFPA). The total fertility rate averages 5.4 children for every woman of childbearing age and the average age of sexual debut in Uganda is 16 (UDHS). The maternal mortality rate is at 336 for every 100,000 live births, 28% of which occur among girls between the ages of 15 to 24 years and unsafe abortion contributes 9% to the maternal mortality rate (UDHS). The unmet family planning need is at 32% with rural areas suffering the highest disparities, adolescent pregnancy rate stands at 25% among girls aged 15 to 19 years with 12% of adolescent girls married off, this contributes to 23% of school dropouts, more so during the Covid-19 period 644,955 teenage pregnancies were recorded (UBOS). HIV prevalence stands at 6.2% amongst the entire population with young women aged 15 to 24 years bearing the biggest burden since their infection rates are 4 times higher than the rest of the population (UDHS). Gender based violence remains endemic with 56% of

the female population reporting having experienced intimate partner violence and 22% reporting having experienced sexual violence of some sort (UNFPA). Also, a recent study conducted with boda boda riders shows that over 4% of them identified as homosexual and 12% identified as bisexual.


The biggest drivers for Uganda's SRHR indicators include poverty with reports showing that 65% of youth between 20 to 24 being unemployed and 21.4% of Ugandans living below the poverty line (UBOS), which limits economic access to SRH services, disproportionately affected by this are sexual minorities, women and girls who have even greater barriers to economic resources which affects their autonomy and agency. Contributing to this are systemic issues within our health care system like; lack of skilled staff, limited access to health services, commodity stockouts, poor adolescent responsive health systems and weak implementation of laws, policies and strategies which also escalate these SRHR indicators. Moreover there are deeply entrenched socio-cultural and religious beliefs that shape policies, social norms and practices and ultimately negatively influence SRHR separating it into visible issues which majority of people are willing to address as opposed to invisible issues which face great backlash, are heavily stigmatised and receive little to no government interventions. Worth noting is that the invisible SRHR issues are also usually affected by laws and policies where they are either criminalised or ignored.

### **LEGAL AND POLICY FRAMEWORK ON SRHR IN UGANDA**

A positive approach to SRHR should recognize the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall well-being. All individuals have a right to make decisions governing their bodies and to access services that support that right. Achievement of sexual and reproductive health relies on the realization of sexual and reproductive rights, which are based on the human rights of all individuals.

The impetus to develop the concept of SRHR and build consensus around it has been through effort made by a whole range of stakeholders including women's health advocates, feminists, UN processes, international health authorities and health providers, to develop an integrated approach to health needs related to reproduction, with women at the centre of the process. This is important because a major burden of disease is related to reproduction and women are by default disproportionately affected which creates gender differences in the burden of disease. Also, historically women are disadvantaged within the socio-economic sphere and inequality in health and access to health affects women more than men since they carry the burden of reproduction within society.

This joint effort in consensus building has led to several conventions being adopted at an international and regional level to support the realization of SRHR of which Uganda has signed onto and ratified several. Uganda has



also domesticated several of the rights that form part of the basket of rights in SRHR within the Constitution and several other laws and policies such as the rights of women, the rights of children, the right to access information, the right to health, the right to dignity, freedom from discrimination, the right to education, the right to life and several others. Our courts have also gone a step ahead to elucidate on several SRHR like on maternal health, sexuality education, child to child sex and so many other issues further clarifying on the environment.

Despite these positive steps, we see a clear divide between the SRHR that are implemented within the country and those that are outrightly rejected. This divide has caused SRHR issues to be divided into visible and invisible issues as listed in the above table. This divide is largely created by cultural and religious views which determine what is acceptable and what is not and these tightly held ideals have seeped into the laws and policies making the realization of SRHR in Uganda partial and not holistic. This means that on one hand where we have the visible SRHR issues, the country is making huge progress in the realization of these rights but when it comes to the invisible SRHR issues, Uganda prefers to ignore them and not program for these at all leading to poor indicators and lack of laws and policies around the same.

SRHR are a basket of rights which include the right of all people to.

- a. Have their bodily integrity, privacy and personal autonomy respected
- b. Freely define their own sexuality, including sexual orientation and gender identity and expression
- c. Decide whether and when to be sexually active.
- d. Choose their sexual partners.
- e. Have safe and pleasurable sexual experiences.
- f. Decide whether, when and who to marry.
- g. Decide whether, when and by what means to have a child or children, and how many children to have.
- h. Have access over their lifetime to the information, resources, services.
- i. Support necessary to achieve all the above, free from discrimination, coercion, exploitation and violence.

### **International framework**

Uganda has ratified and signed onto several international and regional instruments that recognise sexual and reproductive health and rights. Internationally we have the Universal Declaration of Human Rights (UDHR), the Convention to Eliminate all forms of Discrimination Against Women (CEDAW), the Convention on Civil Political Rights (CCPR), the Convention on Economic Social and Cultural Rights (CESCR), the Convention the Rights of Children (CRC) and the Convention on the Rights of People with Disabilities (CRPD). These are explained further by 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), General

recommendation No. 24: Article 12 of CEDAW (women and health), CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 and The Yogyakarta Principles which all expound on SRHR and emphasise the principle of non-discrimination and bodily autonomy.

### **Regional framework**

Regionally at the African and East African level Uganda has ratified and signed on to the African Charter, the Maputo Protocol, the African Children's Charter, and the African Youth Charter which recognise several SRHR but specifically Article 14 of the Maputo Protocol recognises the right to health including sexual and reproductive health of women which it says includes: the right to control their fertility, the right to decide whether to have children, the number of children and the spacing of children, the right to choose any method of contraception, the right to self-protection and to be protected against STIs, including HIV/AIDS, the right to be informed on one's health status and on the health status of one's partner, particularly if affected with STIs, including HIV/AIDS and the right to have family planning education. It also recognises the right to access an abortion where a pregnancy places a woman's life at risk, where there are foetal abnormalities and in cases of sexual violence unfortunately Uganda has placed a reservation, the article providing for access to safe abortion.

These regional instruments are further explained in the following documents

- a) General comments No. 1 on Article 14(1) of the Maputo Protocol.
- b) General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Maputo protocol.
- c) Joint general comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on ending child marriage.
- d) The Guidelines on combating Sexual Violence and its Consequences in Africa, Maputo Plan of Action 2007-2015,
- e) The Continental Policy Framework on Sexual and Reproductive Health and Rights
- f) East African Community Integrated Reproductive Maternal New-born Child and Adolescent Health Strategic Plan.
- g) ESA Ministerial Commitment.

### **National framework**

Nationally Uganda has domesticated several of the human rights that form part of SRHR within the Constitution of the Republic of Uganda, 1995, which codifies the bill of rights in chapter 4 including the rights to dignity, equality, privacy, access to health care, protection of minority groups and women and children's rights. We also have the Human Rights (enforcement) Act, 2019 which provides a procedure to enforce these rights through the court system. We also have laws that provide for specific SRHR issues like the

Prohibition of Female Genital Mutilation Act No. 5 of 2010 and the HIV Prevention and Control Act, 2014. In the same measure the law criminalises certain aspects of SRHR in the Penal Code Act cap 120 including rape, defilement, incest, abortion, child to child sex, same sex acts, sex work and so many others

We also have policies that guide on access to SRHR services like the Health Sector Development Plan 2015/16–2019/2024, National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights (2006), Consolidated guidelines for prevention and treatment of HIV in Uganda, 2016, Standards and Guidelines on Reducing Maternal Morbidity and Mortality from Unsafe Abortions in Uganda, 2015, and the Third National Development plan 2020/21 – 2024/25 all of which emphasise the provision of health services on for all on a non-discrimination basis.

There are also policies that guide access to SRHR information and services to adolescents like the National Adolescent Health Policy (2004), Adolescent Health Policy Guidelines and Service Standards (2012), National Youth Action Plan 2001, National Adolescent Health Strategy (2011-2015), National Sexuality Education Framework (2018), Revised guidelines for the Prevention and Management of Teenage Pregnancy in School Settings in Uganda, 2020 and the National Strategy to End Child Marriage and Teenage Pregnancy 2022/2023 – 2026/2027. All of this address the SRHR of adolescents recognising that they need these health services and age-appropriate information to facilitate their development.

## Considerations

### **a. Lack of a comprehensive law on SRHR**

There has been a struggle in realising SRHR in Uganda because we do not have a singular comprehensive law that addresses it in its entirety. As seen above in the mapping of the laws and policies on SRHR in Uganda the provisions are scattered and can only be found in different places, in fact sometimes the different documents contradict themselves which has made the implementation of the law and policy sporadic and uneven for example the age of consent to access contraceptives remains a point of contention with the 2006 SRHR guidelines allowing for adolescents of reproductive age to access short term contraceptives without parental or guardian consent but other policies demand for this consent.

There is an attempt to create a singular law through the EAC sexual and reproductive health bill but until this is passed and adopted the country will continue grappling with interpreting its laws and policies on SRHR. A look at the international and regional legal framework on SRHR shows that Uganda has comprehensively committed herself to respect, protect, promote, and fulfil the basket of rights that comprise SRHR at an international and regional level, save for reservations made on access to safe

and legal abortion it only remains for Uganda to holistically domesticate these international undertakings.

### **b. Feminisation of SRHR**

At an international level SRHR has been codified into specific instruments like CEDAW and the Maputo protocol which are specific to women's rights, and this has seen SRHR become feminised thus creating an impression that it is only a women's problem contributing to its lack of prioritisation. Uganda has followed suit and we see the major guarantees on SRHR within the constitution being put under Article 33 which is on women's rights. While it is true that women bear the brunt of reproduction in society and at the crux of SRHR is a duty to eliminate discrimination and guarantee the autonomy of an individual, men and other gender expansive people also need SRHR, and this feminisation has served to eliminate their voices.

### **c. Progressive policies Vs Backward laws**

A look at the laws and policies indicates that the policies on SRHR in Uganda are often more progressive than the laws themselves which has often led to conflict between the two. A case in point is the laws that allow for access to safe and legal abortion which is the Constitution and the Penal Code Act only permit it on grounds to save the life of a pregnant woman, but the 2006 guidelines on SRHR in Uganda expand the grounds to include allowing abortion in cases of rape, defilement, and incest. This has caused confusion as to whether the expanded grounds in policy can be defended in court in case of an arrest. This calls for revisiting the existing laws, which often are archaic, and bringing them into alignment with the existing policies and international instruments to make sure they are in harmony with each other to facilitate easy access to SRHR for all.

### **d. Legalised homophobia and transphobia**

A perusal of the laws and policies on SRHR reflect a deafening silence around issues of LGBTIQ+. The Constitution of the Republic of Uganda prohibits same-sex marriages. This was originally not part of the Constitution but was added during the 2005 amendment denoting the increasing demands and agitations of gay rights activists. The penal code act also criminalises sexual acts between people of the same gender using the infamous term of unnatural offences meaning it is too 'abominable' to be named. This criminalisation has led to arrests, blackmail, mob justice and the 'othering' of homosexuals in Uganda.

The populace relies on religion and culture to promote a culture of hatred against homosexuals, and this has since been adopted into the laws and policies where homophobia and transphobia have since been legalised and institutionalised which has led to the harassment of LGBTIQ+ persons by law enforcement officers and the community at large. It has also led to a



failure to program for sexual minorities to cater to their unique needs thus failing to realise their SRHR.

**e. Failure to consider the evolving capacities of minors**

The principle of the evolving capacities of minors takes young people as valued members of society who have agency. Within this, adolescents have a right to freely express their thoughts, views, and opinions, and participate in society particularly in the areas affecting them. Their voices must be seriously considered in line with their age and maturity which necessitates recognising the evolving capacities of children. The evolving capacities of children recognises that, as children acquire enhanced competencies, there is a diminishing need for protection and a greater capacity to take responsibility for decisions affecting their lives. The CRC also recognises that children in different environments and cultures, and faced with diverse life experiences, will acquire competencies at different ages, action is therefore needed in law, policy and practice so that the contributions children make and the capacities they hold are acknowledged.

The laws and policies on SRHR in Uganda do not adequately provide for the age of consent to SRHR services and the evolving capacities of minors which hinders their ability to access SRHR information and services. Other than provisions on the age of consent to marry which is often conflated with consent to have sex and promises to establish youth friendly corners at health facilities and community centres, the laws, and policies neglect to address and emphasise the issue of consent and the evolving capacities of minors to facilitate access to SRHR services and information.

**f. The tug between religious and cultural values and human rights**

There is an increased anti-gender and anti-SRHR rhetoric within the laws and policies on SRHR based on deeply ingrained negative socio-cultural and religious values that are against SRHR. This can be seen in the National Sexuality Education Framework which places itself as providing for values-based sexuality education and takes on the values of religion and culture. It recognises the rights of children as contained in Article 34 of the Constitution but puts a disclaimer that these rights are not being absolute, and the rights holder should respect rights of others while conforming to the cultural, religious, and ethical values in this country. In this way the guideline makes human rights subject to cultural, religious, and ethical values which are now seen as superior. This is a move increasingly being taken in policy and law making which addresses SRHR issues by way of reinforcing ideologies instead of programming based on statistics and need.



## RECOMMENDATIONS

- Uganda needs to align her international and regional undertakings with the national laws and policies in a singular holistic law on SRHR.
- SRHR should be considered and programmed for looking at all human beings including men and gender expansive persons.
- The divide between visible and invisible SRHR issues should be eliminated and SRHR should be considered in its entirety instead of only dealing with the issues that the country finds most comfortable dealing with.
- Streamline access to SRHR for adolescents by guaranteeing access to information and services within the law by making provisions for when such information and services can be accessed without parental or guardian consent.
- Align the national laws and policies with the principle of non-discrimination as interpreted within international human rights by decriminalising sex between people of the same gender and health care services that are specifically needed by women like abortion.
- Develop laws and policies that speak to the current realities of citizens by considering the data and statistics to address needs instead of developing laws and policies that merely reinforce ideological standards.

