

CONTROLLING WOMEN'S FERTILITY IN UGANDA

Sylvia Tamale

- *Perspectives on religion, law and medicine* •

ABSTRACT

Beginning with an examination of the impact of the contraceptive pill, Sylvia Tamale asks the question: Why Control Women's Sexuality? The author addresses, by using the Ugandan context as an example, the reasons why capitalist-patriarchal societies have sought to regulate the ability of women to be autonomous in terms of their reproductive choices. The author then examines the attitudes of the Abrahamic religions (Christianity and Islam) on contraception and family planning. She notes that despite conservative religious attitudes persisting, there are occasional glimmers of hope. Finally, Tamale looks at the role of the Law - both at the international and national level - in translating the religious norms that these dominant religions have designed into mechanisms of social control.

KEYWORDS

Contraception | Uganda | Reproductive rights

1 • Introduction

Without a doubt, one of the most revolutionary inventions of the 20th century was the birth control (oral contraceptive) pill in the 1950s, which was made publically available in the 1960s. That pill changed the world in the late 20th century in the same way that the Internet has changed the early 21st. Not only did the invention change science and medicine, it also signaled new heights for the protection of womenfolk around the world. Gender relations were never going to be the same; it is no exaggeration to say that modern contraceptive mechanisms re-wrote democracy. This is because modern birth control devices put women in control of their futures and their bodies for the first time. The seemingly simple fact of women's ability to enjoy sex freely without the fear of unwanted pregnancy marked a watershed moment in women's liberation struggles worldwide. The birth of the oral contraceptive pill drew a bold line that separated sex for pleasure from procreative sex.

Ironically, it was a Catholic obstetrician (Dr. John Rock) who, together with the scientist Gregory Pincus and feminists Margaret Sanger¹ and Katharine McCormick, was responsible for this wonder pill that reinvented sex for women by allowing them to have control of their fertility and reproductive capacities.²

Prior to the invention of modern contraceptive devices Africans used less effective methods of fertility control, some even posing health risks. For example, they relied on breastfeeding (which suppresses fertility), *coitus interruptus* (the withdrawal method), anal sex, and used plants with contraceptive and abortifacient properties. These are a far cry from the various birth control methods available today. Apart from the pill, women's sexual autonomy can be realised through other injectable or implantable hormonal methods or intra uterine devices (IUDs) as well as physical barriers such as condoms and diaphragms.

It is impossible to discuss fertility control and not talk about abortion. Indeed, when women abort they are in essence exercising their sexual autonomy by controlling their fertility. Today, modern contraceptive methods include medical abortion (as opposed to surgical abortion) with the invention of abortion pills such as misoprostol. Medical studies have shown medically-induced abortion is markedly safer than child-birth; the risk of death associated with child-birth is approximately 14 times higher than it is with abortion.³

Taking off from an examination of the impact of the contraceptive pill, this paper begins with a question: *Why Control Women's Sexuality?* It then proceeds to examine the place of the Abrahamic religions (Christianity and Islam) in relation to the phenomenon of contraception. I then conclude by looking at the role of the Law in translating the religious norms that these dominant religions have designed into mechanisms of social control.

2 • Why Control Women's Sexuality?

Fertility control for women is an issue of sexual and reproductive health and rights (SRHRs). When the pill was first introduced in Uganda in 1957, it was only available to married women and the Family Planning Association of Uganda (FPAU) required the written consent of the husband before they could access it.⁴ This policy remained in place well into the 1980s when I was an undergraduate student at university. I remember visiting the FPAU clinic at the national referral Mulago Hospital and the nurse asking me for a letter from my husband permitting me to take the pill. I excused myself, sat under a tree and scribbled a letter with a fake name of a non-existent husband and received the contraceptive pills! Today, many Ugandan women take modern contraceptives for granted and routinely enjoy sex without the looming fear of getting pregnant. And yet the Uganda Demographic and Health Survey (UDHS) of 2011 revealed some dismal statistics regarding women's sexual and reproductive health and rights. Teenage pregnancy rates remain high at 24 per cent in 2011. Only 30 per cent of married women aged between 15 and 49 use some method of contraception, the most common being the injectables, which are easy to conceal from partners.⁵

As heads of the family, most Ugandan men feel that it is their exclusive duty to decide if, when and how often their partners should have children. This explains why the injectable contraceptives are popular for women to covertly control their fertility. Such subversive acts of agency demonstrate the extent to which women will go in the exercise of sexual autonomy. In addition, Uganda has a maternal mortality ration of 438 per 100,000 live births, 26 per cent of these deaths being caused by unsafe abortions.⁶ The Ministry of Health estimates that approximately 400,000 unsafe abortions take place in Uganda annually with over 1,500 women losing their lives.⁷ The majority of those that die from unsafe abortions are poor, young and rural-based.⁸ The UDHS survey also linked low levels of contraceptive use to domestic violence. But we must remember that there are hundreds of thousands of women even today who cannot access these liberating devices.⁹

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. Some of you may wonder: what is wrong with the domestic arena? In Ugandan society, the domestic sphere is separated from the public arena where politics and the market reside. While the latter space is valued and its labour remunerated, the former is devalued and its work taken for granted.¹⁰ Indeed, many people will make statements such as "My mother does not work" simply because she is a stay-at-home mother. Domestic and child caring work done by the majority of women in their homes is neither valued nor rewarded with wages. The drudgery of domestic labour, defined in its repetitive, arduous and time-consuming characteristics bogs women down, leaving them with very little room to engage in the public arena. Most of us view the current gender roles as natural and God-given, completely missing the manner in which they are socially constructed. The fact is that men can equally care for children and when they do, the sky does not fall down!

There is considerable power reposed in the function of reproduction, which is the direct consequence of possessing a womb. Recognising this power, capitalist-patriarchal societies have worked hard to regulate and control it in many different ways. First, society links the direct function of women in the biological reproductive process to their gender roles. Hence society “naturalises” and “normalises” the role of nurturing and rearing children to women. 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. By so doing, religion and the law legitimate and institutionalise the control of women’s sexuality and reproductive capacities.

When the oral contraceptive pill was first invented it was so controversial that it was not marketed directly as a birth control device. This small pill defied all the principles of Natural Law, Religion, Patriarchy and capitalism.¹¹ Rock and Pincus knew that they would never get the requisite approval from the Food and Drug Administration (FDA) if they presented it as a birth control pill. Instead, they presented it as medicine for menstrual disorders or irregular menstrual cycles. The packaging then included a side warning: “The Pill is likely to prevent pregnancy.” American women flocked to pharmacies in droves to procure this liberating “magic” pill.¹²

The magical oral contraception allowed women to freely participate in the public sphere of politics and business. Now, they could advance their educational and professional careers without fear of unplanned pregnancies. The sky became the limit for women to realise their full potential without the burden of unwanted pregnancies and childcare responsibilities. As the primary labourers in the domestic arena, women constitute the cornerstone for the production and reproduction of society and its norms.

The need to control and regulate women’s sexuality and reproductive capacity is crucial in patriarchal-capitalist societies at two levels. First, as one of the central tenets of the institutionalisation of women’s exploitation, such control consolidates male domination through the control of resources and the establishment of men’s relative greater economic power over women. The patriarchal family engenders these economic relations whereby the man, as head of the family, exercises control over the lives of women and children who are virtually treated as his property.¹³ In Uganda, the principle of “man as head of the household” is institutionalised in the educational curriculum and cultural practice. In this way, heteronormativity forms one of the essential power bases for men in the domestic arena.¹⁴ Capitalism required a new form of patriarchy than that which existed in pre-colonial Africa – one that embraced a particular (monogamous, nuclearised, heterosexual) form of the family.¹⁵ Under such a structure it is essential that the property and wealth acquired by the man is passed on to his male offspring in order to sustain the system. Hence, it becomes important to control women’s sexuality in order to guarantee the paternity and legitimacy of children when bequeathing property. To this end, the monogamy of women is required without

necessarily disturbing men's polygynous sexuality. Such double standards are clearly reflected in family law: for example, applying the crime of adultery to women and not men. That same inconsistency is also seen in the offence of prostitution that penalises only the sellers (the majority being women) and not the buyers (read men) of sex.¹⁶

At another level, we have seen that capitalist-patriarchal societies are characterised by a separation of the "public" sphere from the "private" realm. The two spheres are highly gendered with the former representing men and the locus of socially valued activities such as politics and waged labour, while the latter is representative of the mainly unremunerated and undervalued domestic activities performed by women. This necessitated the domestication of women's bodies and their relegation to the "private" sphere, where they provide the necessities of productive and reproductive social life *gratuitously* (thus subsidising capital)¹⁷ and are economically dependent on their male partners.¹⁸

3 • Abrahamic Religions and Contraception

Prior to the introduction of the Abrahamic religions of Islam and Christianity in Uganda, African Traditional Religions (ATR) generally viewed abortion as an abomination. However, ATR was well aware of the benefits of child spacing to maternal and infant health. Africans employed various methods to prevent conception or enhance spacing, including herbal potions taken orally, for douching or used to plug the cervical mouth, prolonged breastfeeding, thigh and anal sex, *coitus interruptus*, condoms made from the bladder of a goat and polygyny.¹⁹

At the 1994 United Nations (U.N.) International Conference on Population and Development (ICPD) held in Cairo, issues of fertility control were firmly placed on the agenda. Some religious groupings, particularly Islam and Catholicism were vehemently opposed to any discussion of sexuality and contraception within the framework of human rights. The Saudi Arabian Ulama Council condemned the ICPD as a "ferocious assault on Islamic society",²⁰ while Pope John Paul II attacked the "contraceptive imperialism" implicit in the Cairo agenda.²¹

Sa'diyya Shaikh, a Muslim feminist scholar at the University of Cape Town brings to our attention the fact that the vociferous opposition to family planning in some Muslim communities "represents a fairly sharp contrast to the way in which Muslims have historically addressed the issue."²² She writes:

Even a cursory investigation into the Islamic intellectual legacy will demonstrate that eight out of nine classical legal schools permitted the practice of contraception and that the Islamic legal positions on abortion range from allowing various levels of permissibility of abortion under 120 days to prohibition.

Shaikh cites several Qu'ranic teachings that separate marital sex for procreation and sex for pleasure within marriage, which also recognises the spiritual dimension of sexuality. Her argument is that "this approach to sexuality is compatible with a more tolerant approach to contraception and family planning."²³ She contends that some of the key ethical and legal considerations in addressing abortion in Islam relate to understanding the nature of the foetus, the process of foetal development and the point at which the foetus is considered a human being. According to the Qu'ran and some hadiths, the sequential process of foetal development culminates in becoming a full human being when it is "ensouled", that is, the moment when the soul infuses the human embryo (i.e., approximately 120 days after conception).²⁴

The Catholic Church teaches that ensoulment happens at conception and therefore views abortion of an embryo or foetus as murder. It is also opposed to contraception methods save for the unreliable natural "rhythm" method of abstaining from sex during predicted ovulation days. In 1968 Pope John Paul VI issued his landmark Encyclical letter on *Humanae Vitae* (human life), reaffirming the total proscription of modern or artificial contraceptive methods by the Catholic Church. Therefore, John Paul II's response to the Cairo conference was in line with rules enunciated by his predecessors. The Church firmly believes in the Natural Law purpose of sex, which is procreation. Religion thus acts as an important counterweight to women's ability and right to control their fertility.

But these views are not cast in stone. Fast forward to 2015 where we see Pope Francis I shifting the focus from the "rules" to the principle behind the rules and suggesting a "common sense" approach to the rule and calling on the Church to be merciful and understanding. In 2013 and six months into his papacy, Pope Francis made some remarks that signaled a change in the Church's direction on abortion. He said that the Church had grown too "obsessed" with homosexuality, abortion and contraception.

*It is not necessary to talk about these issues all the time. The dogmatic and moral teachings of the church are not all equivalent. The church's pastoral ministry cannot be obsessed with the transmission of a disjointed multitude of doctrines to be imposed insistently... We have to find a new balance.*²⁵

Although Pope Francis fell short of repudiating the Encyclical *Humanae Vitae*, his words gave hope to thousands of women and left many feminists pleased that a new message seemed to be coming out of the Vatican on this vexed issue. In October 2015, Pope Francis told a Roman Catholic meeting on family issues that the faith was "not a museum to look at and save" but should be a source of inspiration and called on the synod to have the courage to change if that is what God wanted.²⁶ In November 2016 he shocked the world when the Vatican officially endorsed the absolution of abortion by Catholic priests worldwide.²⁷

The position of the Anglican Church on the issue of abortion is not as clear as that of the Catholic Church. Although it is also morally opposed to abortion, some

denominations of the Anglican Church are more liberal and permit abortion under certain restricted circumstances. Prior to 1930, the Anglican Church, like the Catholic Church, was totally opposed to artificial contraceptive methods. However, because of social pressures, the 1930 Lambeth conference flung the doors open to artificial contraception (e.g. the diaphragm or cervical cap) for married couples. It is thus clear that although religious institutions may appear on the face of it to be conservative, they also move with the times; it may be slow and long in changing, but “common sense” (to borrow from Pope Francis) often prevails.

4 • The Role of the Law

As we have seen, regulating and controlling women’s sexuality is essential for the survival of patriarchy and capitalism. It represents a vital and necessary way of instituting and maintaining the domesticity of Ugandan women. It works to delineate gender roles and to systematically disenfranchise women from accessing and controlling resources. Laws are used by patriarchal states as a mechanism of regulation and control. When I speak of “law” here, it includes written laws and customary laws (rooted in culture). But also relevant to Uganda’s legal regime are religious laws or natural laws, whose norms and principles are domesticated into written laws despite the Constitutional declaration that Uganda is a secular state.²⁸ Through the social control of women’s bodies and their sexuality, laws work to undermine their autonomy.

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.²⁹ Through the reproductive and sexual control of our bodies, our subordination and continued exploitation is guaranteed.

Since women who are in control of their sexuality and reproductive capacities provide a stark antithesis to the dominance of patriarchy, it is no surprise that issues relating to contraception and abortion will be fought tooth and nail by the patriarchal state. Written and customary laws, augmented by religion, work in tandem to nationalise women’s wombs. The Ugandan Constitution and the Penal Code criminalise abortion with the only exception being therapeutic abortion (i.e. where continued pregnancy threatens the life of the woman).³⁰ When Uganda ratified the Protocol on the Rights of Women in 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.³¹ The criminalisation of abortion represents a deliberate attempt by the state to force women into motherhood without any promise of help with the unwanted child. It signifies the forceful control and institutionalised violence against women’s bodies by the patriarchal state.

Given this policy context it was not surprising when in May 1999 the operations of the international sexual health non-governmental organisation, Marie Stopes, were temporarily

suspended by the Ugandan government “for allegedly administering abortions.”³² In addition, the adverse effects of the USAID “Global Gag Rule” on Ugandan women’s sexual autonomy cannot be underestimated. Introduced in 1984 by President Ronald Reagan’s Republican administration, the rule forbade all foreign non-governmental organisations (NGOs) receiving funds from the United States of America (U.S.) to advocate for abortion rights.³³ The NGO, Centre for Health, Human Rights and Development (CEHURD) has been at the forefront of advocating for women’s sexual autonomy. For example, in 2015 it received a favourable judgment in its strategic litigation case for women’s reproductive rights. In the case of *CEHURD & Ors v. Attorney-General*³⁴ the Supreme Court emphasised the justiciability of women’s maternal health issues as a constitutional right.

Imposing forced motherhood on women, and coercing them into bearing and rearing children, meshes perfectly with the gender roles that society has constructed for women, that is, childcare and homecare. It leaves little time and room for women to pursue goals outside the confines of domesticity. Thus the status quo of “private/domestic” women and “public/political” men is safely entrenched in Ugandan society.

The legal framework relating to abortion at the national level goes against the international and regional approaches, which emphasise a human rights approach to reproductive health. The International Conference on Population and Development Programme of Action (ICPD PoA) stated that,

*reproductive health...implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the rights of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law...*³⁵

While the ICPD PoA is a “soft law” instrument that is not legally binding, the Maputo Protocol is “hard law”. Thus, its legally-binding language in article 14(2)(c) is clear on the issue of abortion:

*States Parties shall take all appropriate measures 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.*³⁶

Efforts by women’s rights activists to have the Ugandan government lift its reservation on Article 14(2)(c) have not been fruitful thus far.

5 • The Way Forward...

It is quite clear that some people who wield political and religious power have instrumentalised the law (in its broadest sense) in order to control women's sexual and reproductive capacities. The power that men wield in family gender relations ensures that they have the last say in determining when and how many children his partner should have. Even where National Family Planning Policies³⁷ allow for the distribution of contraceptives to all women, they are limited by issues such as the conservative attitudes that deny young unmarried women access, the prohibition under President George W. Bush's administration of the use of U.S. President's Emergency Plan for AIDS Relief (PEPFAR) funds for contraceptive commodities, and so forth. While the Obama administration lifted this prohibition, it is not clear whether such a status quo will be maintained under Donald Trump's Republican administration. Most religions, as interpreted by patriarchal leaders, prohibit the use of modern contraceptive methods. Restrictive laws augment religious teachings on abortion by criminalising and punishing it.

Yet, even in Uganda common sense and the realities on the ground are bending the arc of history towards justice for women. Civil society has played a critical part in this process. In April 2015, the Ministry of Health launched the Standards and Guidelines for the Reduction of Maternal Mortality and Morbidity Due to Unsafe Abortion in Uganda – a progressive document that addresses women's empowerment. Attempts are currently underway by the government to draft a Termination of Pregnancy Bill. Although there is a push-back on the bill from fundamentalist quarters,³⁸ these developments indicate that Uganda is facing in the right direction on the new journey towards realising our pledge under the Maputo Plan of Action and the newly launched U.N. Sustainable Development Goals.

In this respect, the government of Uganda should heed the counsel of President Barack Obama:

[T]he religiously motivated translate their concerns into universal, rather than religion-specific values. It requires that their proposals be subject to argument, and amenable to reason. I may be opposed to abortion for religious reasons, but if I seek to pass a law banning the practice, I cannot simply point to the teachings of my church or evoke God's will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all.³⁹

Tunisia opened the way to safe legal abortions in Africa way back in 1973. Cape Verde followed a decade later and South Africa in 1996. In these three African countries, unrestricted abortion is legalised in the first trimester of pregnancy. In the 20th century, several other African countries have legally allowed conditional abortion in cases of sexual assaults or to preserve health.⁴⁰ The time is overdue for the Ugandan government to

revisit the country's legal framework on the termination of pregnancy in order to fully operationalise Article 22(2) of the Constitution and to synchronise it with the CEHURD 2015 Policy Guidelines, which propose 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.⁴¹ Only then would the government be able to satisfy its obligations to respect, protect and fulfil its international obligation towards women's sexual and reproductive health and rights.

NOTES

1 • Margaret Sanger collaborated with the British feminist Marie Stopes, who established the first birth control clinic in Britain in 1921.

2 • Jonathan Eig, *The Birth of the Pill: How Four Crusaders Reinvented Sex and Launched a Revolution* (New York: W. W. Norton & Company, 2014).

3 • These U.S.-based researchers reported that pregnancy-associated mortality rate among women who delivered live neonates was 8.8 deaths per 100,000 live births. The mortality rate related to induced abortion was 0.6 deaths per 100,000 abortions; see Elizabeth Raymond and David Grimes, "The Comparative Safety of Legal Induced Abortion and Child Birth in the United States," *Obstetrics and Gynecology* 119, no. 2 (2012): 215-9.

4 • Josaphat Byamugisha, "Emergency Contraception Among Young People in Uganda: User and Provider Perspectives" (PhD thesis, Makerere University, Uganda, 2007).

5 • Uganda Bureau of Statistics, *Uganda Demographic and Health Survey* (Kampala: UBOS, 2011): 234.

6 • "Abortion in Uganda: Fact sheet," Guttmacher Institute, January 2013, accessed November 13, 2016, <http://www.guttmacher.org/pubs/FB-Abortion-in-Uganda.html>.

7 • Ministry of Health (MoH), *Reducing Morbidity and Mortality from Unsafe Abortion in Uganda: Standards and Guidelines* (April 2015).

8 • Charles Ngwena, "Taking Women's Rights Seriously: Using Human Rights to Require State Implementation of Domestic Abortion Laws in African Countries with Reference to Uganda," *Journal of African Law* 60, no. 1 (2016): 110-40.

9 • Byamugisha, "Emergency Contraception Among Young People in Uganda," 2007.

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

11 • Of course, with the exception of the millions made by the big pharma industry from the sales of different contraceptive devices.

12 • Eig, *The Birth of the Pill*, 2014.

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

14 • The concept of 'heteronormativity' refers to the ideology that views heterosexuality as the normal and only legitimate socio-sexual arrangement of society; see Rosemary Hennessy and Chrys Ingraham, *Materialist Feminism: A Reader in Class, Difference, and Women's Lives* (New York: Psychology Press, 1997).

15 • Eli Zaretsky, *Capitalism, the Family and Personal Life* (New York: Harper and Row, 1976).

16 • Sylvia Tamale, "Paradoxes of Sex Work and Sexuality in Modern-Day Uganda," in *African Sexualities: A Reader*, ed. Sylvia Tamale (Oxford:

Pambazuka Press, 2011).

17 • Also by keeping women in a subordinate position, capitalism can justify and profit from paying women who work outside the home lower wages and employing them under worse conditions than men.

18 • Linda Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family* (New York: Columbia University Press, 1986).

19 • Ronald Walfe, "Traditional Methods of Birth Control in Zaire." Pathfinders Occasional Paper, 1978, accessed October 6, 2016, http://pdf.usaid.gov/pdf_docs/PNAAQ236.pdf.

20 • Christine Gorman, "Clash of Wills in Cairo," *Time Magazine*, Sept. 12, 1994, accessed October 5, 2015, <http://content.time.com/time/magazine/article/0,9171,981409,00.html>.

21 • John Conley, "John Paul II on Demographic Ethics," in *Prophecy and Diplomacy: The Moral Doctrine of John Paul II*, ed. John Conley and Joseph Koterski (New York: Fordham University Press, 1999).

22 • Sa'diyya Shaikh, "Morality, Justice and Gender: Reading Muslim Tradition on Reproductive Choices," in *African Sexualities: A Reader*, ed. Sylvia Tamale (Oxford: Pambazuka Press, 1999): 340.

23 • Ibid: 347.

24 • Ibn Qattun al-Jawziyya, *Al-Tibyan fi aqsam al-Qur'an* (Cairo: Fadak Books, 1933).

25 • Laurie Goodstein, "Pope Says Church Is 'Obsessed' With Gays, Abortion and Birth Control." *New York Times*, September 19, 2013, accessed November 20, 2016, www.nytimes.com/2013/09/20/world/europe/pope-bluntly-faults-churchs-focus-on-gays-and-abortion.html?pagewanted=all&r=0.

26 • Philip Pulella, "Pope says Church Can't be 'Museum', Must be Open to Change." *Reuters*, October 5, 2015, accessed October 6, 2015, <http://news.yahoo.com/pope-says-church-not-museum-memories-091737202.html>.

27 • See Elizabethta Povoledo and Liam Stack, "Pope Francis Extends Priests' Ability to Forgive Abortion," *The New York Times*, November 21, 2016.

28 • See Article 7 of the 1995 Constitution.

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

30 • In that sense the Constitution is restrictive but not proscriptive. See Article 22(2) of the 1995 Constitution, sections 141-143 and 224 of the Penal Code Act. Article 22(2) provides, "No person has the right to terminate the life of an unborn child except as may be authorised by law." This Constitutional provision envisages a law to authorise abortion.

31 • Ben Twinomugisha, *Fundamentals of Health Law in Uganda* (Pretoria: Pretoria University Law Press, 2015).

32 • See "Uganda: Marie Stopes Closed," *New Vision*, May 6, 1999, accessed November 13, 2016, <http://allafrica.com/stories/199905060077.html>.

33 • Note that this rule, also known as the "Mexico City Policy", was suspended by the Democratic Party administrations of Bill Clinton and Barack Obama. It is yet to be seen whether President Donald Trump will follow his Republican predecessors and reinstate the rule; Patty Skuster, "Advocacy in Whispers: The Impact of the USAID Global Gag Rule Upon Free Speech and Free Association in the Context of Abortion Law Reform in Three East African Countries," *Michigan Journal of Gender and Law* 11 (2004): 97-126.

34 • Constitutional Appeal No. 1 of 2013 (Unreported).

35 • Paragraph 7.2 of the ICPD Cairo Programme for Action.

36 • Article 14(2)(c) of the Maputo Protocol.

37 • E.g., see the "National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights," The Reproductive Health Division, Community Health Department, Ministry of Health, 2006, accessed November 20, 2016, <http://library.health.go.ug/publications/service-delivery-public-health/health-education/national-policy-guidelines-and-service>.

38 • The backlash narrative emanates from parliament, led by the newly appointed Minister of

CONTROLLING WOMEN'S FERTILITY IN UGANDA

Health, Jane Acheng and the Inter-Religious Council of Uganda (IRCU). Ironically, even the Minister of Gender, Janat Mukwaya is opposed to the bill.

39 • Stephen Mansfield, *The Faith of Barack Obama* (Nashville: Thomas Nelson, 2008): 89-90.

40 • Examples include Zambia, Benin, Botswana, Burkina Faso, Ethiopia, Ghana, Guinea, Liberia, Lesotho, Mauritius, Namibia, Rwanda, Seychelles,

Swaziland, Togo, and Zimbabwe.

41 • "The Case for Clarifying the Law on Termination of Pregnancy in the Revision of the Penal Code," CEHURD, July 2015, accessed November 13, 2016, <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>.



SYLVIA TAMALE – *Uganda*

Sylvia Tamale is a leading African feminist who teaches law at Makerere University in Uganda where she coordinates the Law, Gender, and Sexuality Research Centre. Her research interests include gender and sexuality, women in politics, and feminist jurisprudence. Tamale has published extensively in these and other areas, and has served as a visiting professor at several academic institutions globally and on a number of international human rights boards. She was the first female dean at the School of Law at Makerere. Tamale holds an LLB from Makerere University, an LLM from Harvard Law School, and a PhD in sociology and feminist studies from the University of Minnesota.

email: stamale@law.mak.ac.ug

Received in October 2016.
Original in English.



"This journal is published under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License"