



**A LEGAL ANALYSIS OF THE UGANDA CONSTITUTIONAL COURT’S JUDGEMENT IN
THE CONSOLIDATED PETITIONS CHALLENGING THE LAWS CRIMINALISING
ABORTION**

24th November 2025

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1. Introduction

On Friday 14th November 2025, the Constitutional Court of Uganda delivered the long awaited decision in the consolidated petitions challenging the constitutionality of the laws criminalising abortion - *Human Rights Awareness and Promotion Forum v Attorney General and Center for Health Human Rights and Development, Prof. Ben Twinomugisha and Dr. Rose Nakayi v Attorney General, and Women’s Link Worldwide (amicus curiae)*, Constitutional Petitions No. 25 of 2020 and 10 of 2017. The Court in a 3 – 2 decision found the laws to be constitutional, and that there was no mandatory constitutional requirement for Parliament to put in place a law specifying exceptions to the prohibition of abortion. This decision has significant implications for the law in Uganda as well as the human rights of persons affected by abortion laws. Nevertheless, the dissenting judgment gave hope that the courts were alive to the challenges arising out of the enforcement of the current laws criminalising abortions. This is Human Rights Awareness and Promotion Forum (HRAPF)’s legal and human rights analysis of the Court’s judgment.

2. Background

The law in Uganda prohibits abortion in all circumstances, with only one narrow exception. Article 22(2) of the Constitution provides that ‘[n]o person has the right to terminate the life of an unborn child except as may be authorised by law.’ The Penal Code Act Cap 128 makes it an offence for anyone to assist a woman to have an abortion in section 130; criminalises a woman procuring her own abortion in section 131; and criminalises supplying drugs or anything to assist a woman to procure an abortion in section 132. Section 207 provides a defence for a skilled surgeon who undertakes an operation on an unborn child for the preservation of the life of the mother. There is no other law regulating abortion besides the Penal Code.

In 2016, HRAPF conducted a study which established that the criminal laws are actively enforced with women, girls, and health providers being harassed, arrested, prosecuted and imprisoned for

abortion related offences.¹ This leads many women to use unsafe methods to end unwanted pregnancies.² HRAPF relied on the study's findings to file a constitutional challenge to the law. The petition, *Human Rights Awareness and Promotion Forum v Attorney General*³ was filed in 2020 and challenged sections 130, 131 and 132 of the Penal Code for being unconstitutional as they violated the right to health, right to equality and non-discrimination, rights of women, and the right to dignity and freedom from cruel, inhuman and degrading treatment, which are protected in the Constitution of Uganda. Earlier, the Center for Health, Human Rights and Development (CEHURD) together with two Makerere University academics, Prof. Ben Twinomugisha and Dr. Rose Nakayi, had filed *Center for Health, Human Rights and Development, Prof. Ben Twinomugisha and Dr. Rose Nakayi v Attorney General*,⁴ challenging the failure of the Parliament of Uganda to enact a law clearly providing for the circumstances in which abortion services may be accessed, in accordance with Article 22(2) and Article 79 of the Constitution. The two petitions were consolidated by the Court on the motion of the parties and heard and decided together as they raised complementary issues. Women's Link Worldwide, an international Non-Governmental Organisation with expertise in international law and sexual and reproductive health rights, applied and was admitted as *amicus curiae*.

3. Issues framed for determination

There were five major issues framed in the consolidated petitions, and these are:

1. Whether sections 130, 131 and 132 of the Penal Code Act violate the right to health and are inconsistent with and contravene Article 45 read together with Objective XIV and XX of the National Objectives and Directive Principles of State Policy (NDPSP) and Article 8A of the Constitution of the Republic of Uganda.
2. Whether sections 130, 131 and 132 of the Penal Code Act violate and contravene Articles 21 and 33 of the Constitution of the Republic of Uganda 1995 as amended.
3. Whether sections 130, 131 and 132 of the Penal Code Act violate and contravene Article 22(2) of the Constitution of the Republic of Uganda 1995 as amended.
4. Whether sections 130, 131 and 132 of the Penal Code Act violate and contravene Articles 24 and 44(a) of the Constitution of the Republic of Uganda 1995 as amended.

¹ HRAPF, 'The Enforcement of Criminal Abortion Laws in Uganda and its Impact on the Human Rights of Women and Health Worker' December 2016, available at <https://hrapf.org/mdocs-posts/hrapf-r-on-the-implementation-of-criminal-abortion-laws-in-uganda/> (accessed 19 November 2025).

² Above.

³ Constitutional Petition No. 25 of 2020.

⁴ Constitutional Petition No. 10 of 2017.

5. Whether the omission by the State to formulate and pass a law regarding the termination of pregnancy is in contravention of Article 22(2) and 79(2) of the Constitution of Uganda.

4. Resolution of the issues

The Court was divided on the resolution of issues with Justices Moses Kazibwe-Kawumi, Hellen Obura and Dr. Asa Mugenyi resolving all the issues in favour of the respondent, thus finding the impugned provisions constitutional and not finding a mandatory obligation on parliament to pass a law regulating abortion. On the other hand, Justice Eva Luswata in a judgment with which Justice Frederick Egonda-Ntende concurred resolved all the issues in favour of the petitioners, finding the provisions to be unconstitutional. They also held that there was indeed an obligation upon parliament to pass a law regulating abortion.

The Court therefore upheld the constitutionality of the laws, and also made it clear that there was no constitutional obligation upon Parliament to pass a law regulating abortion in Uganda, but with a strong dissent from the other two justices. Below is a detailed discussion of how the justices resolved the issues in details:

i. Right to health

The majority acknowledged that the right to health was an established right in Uganda as was decided in the case of *CEHURD & 2 others v Attorney General*.⁵ Kazibwe-Kawumi JCC correctly pointed out that the petitioners contention was about abortion being an integral part of the right to health and that the petition was ‘a call for the liberalisation of abortion on the premise that women should have a right to control their fertility and to make personal life changing decisions.’⁶ He however decided all the issues basing on the principle that was espoused in the case of *P.K. Ssemwogerere and Anor v Attorney General*,⁷ that the entire Constitution has to be read together as an integral whole, with no particular provision destroying the other but rather sustaining each other. On this basis, he based on other National Objectives and Directive Principles of State Policy on protection of the family,⁸ cultural objectives,⁹ and the responsibility of citizens to promote responsible parenthood,¹⁰ to conclude that ‘Abortion or termination of pregnancies is against the values, norms and aspirations of the people.’¹¹ On the specific issue of health, he based on section 207 allowing doctors to carry out abortions if they are saving the life of the mother, to find that the law enabled health workers to do their job rather than inhibiting them. Similarly, Obura JCC was of the opinion that ‘the argument that abortion is part and parcel of women's right to health militates against Uganda's social, constitutional, and cultural context.’¹² She discussed at length a book by a US anti-abortion activist, Dr. Bernard N Nathanson, *Aborting America* (1979), which she used as evidence that the statistics on maternal mortality due to

⁵ Constitutional Petition No. 16 of 2011.

⁶ Judgment of Justice Moses Kazibwe-Kawumi, page 25.

⁷ [2004] UGSC 49.

⁸ Objective XIX.

⁹ Objective XXIV(a).

¹⁰ Objective XXIX(d).

¹¹ Judgment of Kazibwe-Kawumi JCC, n6 above, page 28.

¹² Judgment of Justice Hellen Obura, page 39.

unsafe abortion are exaggerated, and that activists such as the petitioners forge statistics to push their own agenda,¹³ but ironically discussed with approval studies suggesting that abortion has negative impacts on health.¹⁴

Mugenyi JCC on his part noted Uganda's reservation to Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol) on abortion, emphasising that this means Uganda is not obligated to provide for access to abortion services, and that Uganda is not party to any specific regional or international human rights treaty that actually mandate the state to ensure access to safe abortion services. He also noted that the state is not obligated to ensure everyone's health, as the established duty is simply to ensure the highest attainable standard of health,¹⁵ and that there are many other health priorities rather than abortion.¹⁶ He also advanced the argument that legal abortions may not actually be safe either since, even when performed in a safe, legal, and medically equipped setting, they may not necessarily be risk free.¹⁷ In a curious analysis, he weighed the 'right to life of an unborn child' with the right to health of the mother and found that right to life of an unborn child overrides the right to health of a woman.¹⁸

The minority decision by Luswata JCC, relied on the definition of abortion by the WHO to create a nexus with the definition of the right to health by the Committee on Economic Social and Cultural Rights in General Comment No. 12 on the Right to Sexual and Reproductive Health.¹⁹ Her takeaway from these international instruments was that '*...by definition, women's access to abortion should be considered as an integral component of the right to health, in this case, sexual and reproductive health and rights of women.*' On Uganda's reservation to Article 14(2)(c) of the Maputo Protocol, she pointed out that the reservation '*did not restrict the other provisions in Article 14, including the state's obligation to promote and respect women's right to determine whether to have children, the number of children and spacing of children, that are quite relatable to the right to abortion.*' The learned Justice cited the Kenyan High Court decision in *PAK and Anor v Attorney General*,²⁰ where the Court observed that access to abortion is linked to the protecting and upholding the human rights of women, girls, and other people who can be pregnant. Luswata JCC noted that the criminalisation of abortion has pushed it underground and many women and girls are forced to use crude and dangerous means of abortion in environments that do not conform to minimum medical standards. She emphasised that, apart from being a mere defence to a charge related to abortion, section 207 also limited professional interventions to surgical operations only, which deprived women of the benefit of a host of modern non-intrusive interventions that are effective and promote women's health and

¹³ Above, page 46.

¹⁴ Above, pages 48 - 53.

¹⁵ Judgment of Justice Dr. Asa Mugenyi, page 51.

¹⁶ Above, para 17.

¹⁷ Above, pages 20 - 21.

¹⁸ Above, page 42.

¹⁹ Committee on Economic Social and Cultural Rights, General Comment No. 12 on the Right to Sexual and Reproductive Health.

²⁰ Judgment of Justice Eva Luswata, page 64.

dignity.²¹ She also rejected the argument by the respondents that the petition would open up society to ‘*abortions on demand*’ since no evidence was advanced to suggest that women use abortions as a form of contraception.²² The learned Justice therefore held that the impugned provisions did violate the right to health.

ii. Right to equality and freedom from discrimination and rights of women

The majority held that the prohibition of abortion does not violate the right to freedom from discrimination, and neither does it violate the rights of women. Kazibwe-Kawumi JCC noted that, because the maternal function of birth is naturally restricted to women, discrimination cannot arise, since no different treatment is accorded to men in that respect.²³ Obura JCC agreed with the position that women are the only sex that have the biological capacity to conceive and carry a foetus,²⁴ and relied on, among others, the US Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organisation*,²⁵ where a similar argument was advanced. In that case, the US Supreme Court held that regulation of a medical procedure that only one sex can undergo does not trigger constitutional scrutiny unless the regulation is a mere pre-text designed to effect discrimination against members of one sex. Mugenyi JCC held that a law prohibiting abortion does not discriminate against women per se, but rather discriminates on the basis of the characteristics of women, which is a different thing, and that abortion is a question of choice, which men cannot make.²⁶

In the minority decision, Luswata JCC analysed sections 130 and 132 of the Penal Code, which impose sanctions on both men and women who attempt to procure an abortion for a woman or supply substance for the termination, and held that it was gender neutral and did not explicitly treat women differently from men.²⁷ In her analysis of section 131, she noted that it does target only women and girls, but that women and girls are biologically the only sex that can get pregnant, and therefore drew the conclusion that that section did not violate Article 21. However, she did note that the sanctions in sections 130 and 131 may contribute to systemic discrimination by limiting women’s access to safe health care.²⁸ With regard to Article 33, she held that the blanket ban on abortion prevents women, especially those who wish to terminate a pregnancy, from living a full dignified life in equality with men as provided in Article 33(1). Furthermore, she noted that requiring women or girls to carry the foetus to full term, irrespective of the cause of conception, health, and other needs, could prevent them from enjoying equal treatment with men or opportunities in political, economic and social activities under Article 33(4),²⁹ and she

²¹ Above, page 64.

²² Above, page 56.

²³ Judgment of Kazibwe-Kawumi JCC, n6 above, page 32.

²⁴ Judgment of Obura JCC, n 12 above, page 54.

²⁵ 597 U.S. (2022).

²⁶ Judgment of Mugenyi JCC n15 above, page 27.

²⁷ Judgment of Luswata JCC, n20 above, page 60.

²⁸ Above.

²⁹ Above page 62.

therefore found that the state has the obligation under Article 33(2) to provide facilities, including pre and post abortion care, to enable women to realise their full potential.

iii. Right to life

In discussing the issue of whether the prohibition of abortion contravenes the right to life, the majority emphasised the sanctity of life as enshrined in Article 22, including the protection of life of the unborn, and that legalising abortion would run counter to the spirit of the Constitution. Kazibwe-Kawumi JCC observed that Article 22 makes no distinction between the right to life of those born and those unborn.³⁰ Obura JCC considered Article 22 as a provision preserving life and prohibiting abortion, and therefore found it ironic that the petitioners were relying on the same provision to protect the right to abortion. She opined that legalising abortion would *'be going on a collision course with the Constitution as decriminalising abortion would give women the freedom to abort indiscriminately, contrary to the letter and the spirit of Article 22(2) of the Constitution.'*³¹ Mugenyi JCC discussed the issue of when life begins, relying on the European Court of Justice's decision in *Oliver Brustle v Green Peace*³² that any human ovum must, as soon as fertilised, be regarded as a 'human embryo', if that fertilisation is as such as to commence the process of development of a human being.³³ He emphasised that the Court must balance the state's interest in the life of the unborn and women's right to sexual and reproductive liberty and that, since the framers of the Constitution took a keen interest in the protection of the unborn, then the state's interest in the right to life of the unborn child took precedence over the woman's liberty and her right to her sexual and reproductive health.³⁴

In the minority judgment, Luswata JCC rejected the notion of an absolute right to foetal life in Article 22(2) that must unconditionally be protected by the State, and she stated that any abortion law that aligns to the tenets of the Constitution of Uganda should equally consider the fundamental rights of pregnant women which are directly or by implication, enshrined in the Constitution.³⁵

iv. Right to dignity

The majority considered the right to freedom from cruel, inhuman and degrading treatment from the torture angle rather than the human dignity angle, despite the fact that the pleadings of the petitioners did not refer to torture at all. In resolving this issue in the negative, Kazibwe-Kawumi JCC defined what amounts to torture using the Prevention and Prohibition of Torture Act, emphasising that torture means an intention of causing pain or suffering by a person acting in an official or private capacity,³⁶ and that the criminalisation of abortion is a question of law and policy, and was never envisaged in the formulation of the definition of what amounts to torture under the law. Obura JCC relied on the Constitutional Court's earlier decision in *Fox Odoi and 21*

³⁰ Judgment of Kazibwe-Kawumi JCC, n6 above, page 30.

³¹ Judgment of Obura JCC, n12 above, page 48.

³² Case No. C-34/ 10.

³³ Judgment of Mugenyi JCC, n15 above page 35.

³⁴ Above, Page 35 - 36.

³⁵ Judgment of Luswata JCC, n20 above page 43.

³⁶ Judgment of Kazibwe-Kawumi, JCC, n6 above, page 35-36.

others v Attorney General,³⁷ where the Court found that dignity has to be subjected to the social, political, and cultural context of a society, particularly their communal culture, norms and values.³⁸ She referred to the debates in the Constituent Assembly as Article 22 was being debated, which emphasised culture over dignity.³⁹ Mugenyi JCC found that the prohibition of abortion cannot amount to any form of torture, cruel, inhuman or degrading treatment or punishment, since the decision to have an abortion is one of personal choice.⁴⁰

In resolving this issue in the positive, Luswata JCC emphasised that the intentional curtailing of pregnant women's reproductive autonomy by denying her a chance to opt for termination could amount to cruel and inhuman treatment.⁴¹ This is because many pregnant women and girls are forced to use clandestine means of termination of pregnancies, which have even more adverse effects on their lives. She also noted that the denial of abortion services to victims of sexual violence also amounted to torture or cruel, inhuman or degrading treatment, because the need for an abortion in such cases could be inevitable.

v. The constitutional obligation to enact a law

In determining this issue in the negative, the majority considered Article 22(2), and noted that there was in fact a law - section 207 of the Penal Code Act, under which an abortion could be permitted. Kazibwe-Kawumi JCC observed that the Constituent Assembly was well aware of this section even at the time of the promulgation of the 1995 Constitution.⁴² Obura JCC and Mugenyi JCC further argued that the intention of the Constitution in choosing to use the word 'may' in Article 22(2) was to leave this formulation of a legal framework to the discretion of Parliament, and the omission was therefore not inconsistent with the Constitution. Obura JCC nevertheless advised Parliament '*to consider carrying out an independent study and making wide consultations with all stakeholders with a view of prescribing the limited grounds upon which abortion may be allowed pursuant to Article 22(2) of the Constitution.*'⁴³ Mugenyi JCC found that the 'right to abortion' was not recognised in any international and regional human rights instruments,⁴⁴ and emphasised that Uganda's position on the subject of abortion was well captured in the reservation to Article 14(2) (c) of the Maputo Protocol, and that a determination of whether the state's failure to provide access to safe abortion services within the confines of section 207 of the Penal Code Act should be a matter of enforcement of rights under Article 50 of the Constitution. Obura JCC also found that, in accordance with the decision in the US Supreme Court case of *Dobbs v. Jackson Women's Health Organisation*,⁴⁵ Parliament has the mandate to make laws through consultative processes, and the judiciary lacks this mandate and can therefore only interpret and apply the law as is, or at the most advise Parliament to consider an amendment of section 207 to widen the exceptions to the prohibition of abortion to cover the grounds that a study and wide consultation

³⁷ Consolidated Constitutional Petitions No. 14, 15, 16 and 85 of 2023.

³⁸ Judgment of Obura JCC, n12 above, page 33.

³⁹ Above, 34 - 35.

⁴⁰ Judgment of Mugenyi JCC, n15 above.

⁴¹ Judgment of Luswata JCC, n20 above, page 52.

⁴² Judgment of Kazibwe-Kawumi, n6 above, page 38.

⁴³ Judgment of Obura JCC, n12 above, page 57.

⁴⁴ Judgment of Mugenyi JCC, n15 above, page 41.

⁴⁵ 597 U.S. (2022).

may recommend.⁴⁶ Mugenyi (JCC) also emphasised that the doctrine of separation of powers requires that the legislature may pass this law on its own volition, and that the petitioners have a duty to prompt Parliament to pass the legislation without using the court as a middleman.⁴⁷

In the minority decision, Luswata JCC analysed the use of 'may' in the wording of Article 22(2) to determine whether Parliament had negated its obligation to formulate and pass a law on termination of pregnancy. Relying on the case of *Sitenda Sebalu v Sam Njuba*,⁴⁸ where the Court held that that the word 'may' ought to be construed as 'shall' whenever the rights of the public depend upon the exercise of the power or performance of the duty to which it refers, she therefore interpreted the word, 'may' as used in Article 22(2) as a mandatory directive to the Parliament to pass such a law. The learned justice also relied on an excerpt from the Constituent Assembly debate where it had been agreed by the framers of the 1995 Constitution that Parliament would remain with the obligation to come up with a legal framework on abortion.⁴⁹ She therefore held that the omission by the state to formulate a law on termination of pregnancy, which is its constitutional duty, contravened Articles 22(2), 79(1) and 79(2).

5. Legal implications of the decision

A number of legal implications arise from the decision and these are discussed below:

i. Clarification of the law on abortion

The judgment removes any ambiguity as to the law on abortion in Uganda. It is now clear that abortion is criminalised with the single exception of a skilled surgeon operating on an unborn child for purposes of saving the life of the mother, but that the Constitution foresees other exceptions. This has been the status quo, but the decision makes it very clear and removes ambiguity. This recognition confirms that termination of pregnancy is not absolutely barred under Ugandan law; rather, the Constitution creates a lawful window for abortion under circumstances to be prescribed by Parliament. This clarification is crucial because it directly addresses the long-standing assumption often reinforced by law enforcement that abortion is prohibited in all circumstances.

ii. Acknowledgement of the need for a law clarifying grounds for abortion

In addition to clarifying the law, all the justices affirmed that Article 22(2) requires any termination of pregnancy to be 'authorised by law,' providing a clear constitutional baseline for future legislative or policy discussions. Even among the Justices who dismissed the petitions, there was recognition that Uganda needs to put in place a law providing for more exceptions to the prohibition of abortion. Notably, Obura JCC's advice to Parliament to consider carrying out an independent study and making wide consultations with all stakeholders with a view of

⁴⁶ Judgment of Obura JCC, n12 above, page 43.

⁴⁷ Judgment of Mugenyi JCC, n15 above, page 46.

⁴⁸ Election Petition Appeal No. 26 of 2007.

⁴⁹ Judgment of Mugenyi JCC, n20 above, page 71.

prescribing the limited grounds upon which abortion may be allowed pursuant to Article 22(2)⁵⁰ of the Constitution demonstrates an acknowledgment of the urgent need for legislative action.

The reasoning of Luswata JCC that where the Constitution anticipates regulation of a right, Parliament must act in a manner that fulfils rather than frustrates constitutional guarantees gives credence to the expectation that Parliament should put in place a regulating law, rather than just the Penal Code. In *Center for Health, Human Rights and Development (CEHURD) v Attorney General*,⁵¹ the Supreme Court affirmed that the State has positive obligations to address maternal health and prevent avoidable deaths. The Court emphasised that constitutional rights impose both negative and positive duties on the State. Applying this logic, Parliament's failure to operationalise Article 22(2) frustrates women's rights to health, life, dignity, and equality. Comparable jurisprudence from the region supports this interpretation. In the *FIDA v Attorney General* case,⁵² the High Court held that legal and regulatory gaps around access to safe abortion violate women's rights to health and expose them to cruel, inhuman, and degrading treatment. Therefore, the Court's acknowledgment that Article 22(2) envisages a law providing for exceptions to the prohibition of abortion makes the law clearer, and also makes it clear that other grounds can be put in place. Luswata JCC also called upon the legislature to borrow from a number of jurisdictions when coming up with a legal framework for termination of pregnancies in Uganda.⁵³

The Maputo Protocol provides for 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 as grounds upon which an abortion can be carried out, and these can be some of the grounds for Parliament to consider. The Ministry of Health led the way in Uganda's abortion law reform journey by listing grounds upon which health workers can conduct an abortion. The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, 2012 provide for circumstances under which safe abortion services should be availed. These are: severe maternal illnesses threatening the health of a pregnant woman, such as severe cardiac disease, renal disease, severe pre-eclampsia and eclampsia; severe foetal abnormalities which are not compatible with extra-uterine life e.g. molar pregnancy, anencephaly; cancer of the cervix; HIV-positive women requesting for termination; and rape, incest and defilement.⁵⁴ The replacement Stanrads and Guideliens⁵⁵ also defined high risk pregnancies to include foetal anomalies or illnesses which, if coupled with continued foetal development, may endanger the woman's wellbeing without any benefit to the foetus, such as conjoined twins with poor prognoses, and also pregnancy resulting from rape, incest and other felonious intercourse.⁵⁶ However, these were shelved in December 2015, and as clarified by Luswata JCC, the Ministry of

⁵⁰ Judgment of Obura JCC, n12 above page 58

⁵¹ Constitutional Petition No. 16 of 2011.

⁵² Petition 164B of 2016.

⁵³ Judgment of Luswata JCC, n20 above, pages 75 - 78.

⁵⁴ Uganda Ministry of Health National Policy Guidelines and Service Standards for Sexual and Reproductive Rights (2012) 47.

⁵⁵ Ministry of Health *Reducing Maternal Morbidity and Mortality from Unsafe Abortion: Standards and Guidelines*, 2015.

⁵⁶ Above, X.

Health Standards and Guidelines are not law, and cannot override criminal law, thus an actual law on termination of pregnancies is required. In *FIDA–Kenya v Attorney General*,⁵⁷ the Court found that the State’s withdrawal of abortion guidelines breached the right to the highest attainable standard of health and the obligation to ensure access to essential reproductive health information and services.

The judicial acknowledgment of the need for a law across both the majority and the dissenting members of the panel has significant positive implications for future advocacy. First, it exposes the legal vacuum surrounding abortion regulation, creating formal judicial recognition of an issue civil society has raised for a long time. Second, it provides a foundation for demanding legislative reform, anchoring such advocacy in the Court’s own findings. Finally, by directing Parliament to consult widely, the Court opens the door for meaningful participation by women, healthcare workers, and human rights actors in shaping any resultant law.

iii. Recognition of the outdated legal framework governing abortion in Uganda

The Court’s explicit acknowledgement that Uganda’s abortion laws are inherited remnants of the 1950 colonial Penal Code is a critical analytical point with far-reaching constitutional implications. Kavuma-Kawumi JCC recognised that the Penal Code Act, which gained force of law on 15/06/1950, came before the promulgation of the 1995 Constitution, which implies that it is an outdated framework. Furthermore, Luswata JCC also noted that since this law came into force in 1950, it ought to be interpreted using the principles of English law pertaining at that material time,⁵⁸ recognising that these provisions were drafted in an era that neither reflected contemporary public-health realities nor respected women’s autonomy, thus underscoring the constitutional incongruity of relying on such outdated legislation to regulate reproductive rights today. The historical framing of these offences strengthens the argument that maintaining these antiquated provisions without revisiting or updating them in light of the 1995 Constitution amounts to a failure by the State to harmonise the legal framework with constitutional guarantees of dignity, equality, health, and bodily autonomy. This reasoning mirrors the approach adopted in *Uganda Association of Women Lawyers and others v Attorney General*, where the constitutional court nullified several provisions of the Divorce Act that were outdated.⁵⁹ The judgment affirmed that laws rooted in outdated socio-political contexts cannot supersede constitutional guarantees of equality and non-discrimination. Similarly, in the abortion petition, the Court’s acknowledgment of the colonial legacy of the Penal Code provisions supports the view that these laws fail to reflect the Constitution’s value system and must therefore be interpreted or reformed in a manner consistent with the rights and principles enshrined in the 1995 Constitution.

iv. Ratification of continued enforcement of anti-abortion laws

Studies have shown the impact of anti-abortion laws on women and their right to health, including a 2016 study by HRAPF. Luswata JCC based on these to find that the continued

⁵⁷ n52 above.

⁵⁸ Judgment of Luswata JCC, n20 above, page 57 – 58.

⁵⁹ Constitutional Petition No. 2 of 2003.

enforcement of the criminal abortion laws puts women at risk and yet the laws themselves are not effective in reducing abortions, but instead push women to have abortions in unsafe conditions.⁶⁰ The majority judgments chose to ignore this evidence, and in fact Obura JCC went as far as casting doubt on the evidence from these studies, relying on the views of an American anti-abortion activist, Bernard Nathanson. This argument was not advanced by the Respondent, who did not challenge the validity of the data in anyway, but was rather advanced by Obura JCC, of her own volition. The learned justice made the suggestion that the fact that one of the studies relied on was carried out by one of the petitioners means that the data could have been forged or exaggerated.⁶¹ The court's refusal to see the connection between the existence of the law and the human rights violations can in effect be construed as being in support of the continued enforcement of the law to the detriment of women, as was stated in the judgment of Mugenyi JCC that the mere fact that the women and girls who choose to break the law criminalising abortion may suffer some negative consequences does not in and of itself mean the law is the problem.

v. Entrenching of the US decision in Dobbs into Ugandan law

One of the outstanding decisions on abortion worldwide in recent times is the case of *Dobbs vs. Jackson Women's Health Organization*,⁶² which reversed the 30-year old case of *Roe v Wade*.⁶³ In *Roe v Wade*, the US Supreme Court had ruled that the US Constitution protected the right to have an abortion prior to viability of the foetus basing on the right to privacy.⁶⁴ This was overturned and that Court held that the US Constitution did not include a right to abortion, and that it was necessary to return the question of the permissibility of abortion and the limitations thereon to the people's elected representatives as demanded by the Constitution and the rule of law. The judges on the majority cited *Dobbs* with approval, thus effectively entrenching it into Ugandan law. It should be noted that *Dobbs* has already been relied on by the same Court to uphold Parliament's enactment of the repressive Anti-Homosexuality Act in the case of *Hon. Fox Odoi and 21 Others v Attorney General and 3 Others*.⁶⁵

vi. Continuation of the recent trend of subjecting individual rights and freedoms to community values

A cursory analysis of recent decisions by the Constitutional Court, particularly in cases that surround issues of morality, culture, and religion, reveals a trend of subjecting individual rights to communal values, which this decision simply continues. In *Hon. Fox Odoi and 21 Others v Attorney General and 3 Others*,⁶⁶ the Court held that cultural dignity can often be in conflict with individual dignity, and that when this happens, cultural dignity must take priority. Specifically,

⁶⁰ Judgment of Luswata JCC, n20 above, page 49 -50.

⁶¹ Judgment of Obura JCC, n12 above, page 46.

⁶² n26 above.

⁶³ 410 U.S 113.

⁶⁴ Above.

⁶⁵ n38, above.

⁶⁶ Above.

the Court found that there is a ‘conflict between individuals’ right to self-determination, self-perception and bodily autonomy on one hand; and the communal or societal right to its own self-determination,’⁶⁷ and that ‘*individual autonomy or the exercise of sexual autonomy ought not to override the national interest as set out in national laws that are anchored in non-repugnant socio-cultural sensitivities...*’⁶⁸ This sentiment was re-echoed by court in the abortion petitions where the 3 justices in the majority decision are also heavily relied on the argument that abortion is against morality, culture and religion.

The recent decision of the Court in *Innocent Ngobi Ndiko and Others v Attorney General and Another*,⁶⁹ also illustrates this trend in the decisions by the Constitutional Court. In the lead judgment, Obura JCC, noted that the ‘*The norms, values, and aspirations of the people of Uganda, as plainly stated in the Constitution, protect and preserve the family, marriage, and children.*’ This is a replica of the assertion that the learned justice also makes in the consolidated abortion petitions, clearly marking a trend by the courts in coming to many of these decisions which is tied to culture, morality, family and religion, and subordinating individual rights to communitarian values.

Unfortunately, this trend is a misrepresentation of the correct position of human rights law and principles of constitutional interpretation. Whereas culture and majoritarian values are important, minority rights are protected through entrenching the Bill of Rights in such a way that it requires a supermajority to be amended, and through giving the judiciary powers to overturn statutes that contravene the Constitution through the system of checks and balances. In failing to uphold constitutionalism and toeing the line of the majority opinions, the Judiciary renders itself unable to protect the rights of minorities. Whereas culture is a communal right, individuals have the right to opt out of certain aspects of culture – the individual is a human being first, before being a cultural being.⁷⁰ While the majority judgments continually reiterated the principle that the Constitution must be read as a whole, it is worth noting they did in fact prioritise some provisions over others, to the extent of having the National Objectives and Directive Principles of State Policy override substantive provisions of the Constitution.

vii. Undermining the doctrine of precedent

One of the key tenets of English common law, to which Uganda subscribes, is the doctrine of precedent, which is important for the organic development of the law. A court can only depart from its own decision by overturning it or distinguishing it, but the Constitutional Court has shown a trend of going against its earlier decisions without overturning or distinguishing them – a phenomenon that Kabumba refers to as ‘*the ghost of Ngobi Ndiko.*’⁷¹ A case in point is Court’s

⁶⁷ Above, para 228.

⁶⁸ Above, para 263.

⁶⁹ Constitutional Petition No.23 of 2020.

⁷⁰ For a thorough discussion of this, see S Namwase ‘Culture versus homosexuality: Can a right ‘from’ culture be claimed in Ugandan courts?’ in S Namwase & A Jjuuko (eds) *Protecting the rights of sexual minorities in contemporary Africa* Pretoria University Law Press, 2017, 52.

⁷¹ B Kabumba ‘Expunging the ghost of innocent Ngobi Ndiko: An appraisal of the Constitutional court’s decision on ‘no fault’ divorce in Uganda Part 2’ *The Observer*, 27 August 2025.

decision in the case of *Jjuuko Adrian v Attorney General*,⁷² where the Court made it clear that protection of individual rights override discrimination based on majoritarian grounds. In that case, Egonda-Ntende JCC held that ‘*In a society governed by the rule of law, and according to human rights principles, steps to protect the public from potential future harm – no matter how potentially serious it may be – should always take place within a framework which also protects the human rights of the individual whom it is feared may be capable of doing such harm.*’ Similarly in the more recent decision in *Women’s Probono Initiative v Attorney General*,⁷³ the Court in dismissing the challenge to the constitutionality of polygamy decided to leave issues of marriage to individual choice rather than community values. A few short weeks later, the same court, in considering the abortion question, then relies on communitarian values without any apparent reason, thereby undermining the doctrine of precedent and its own integrity and legitimacy.

viii. Paving the way for the abortion issues to get to the Supreme Court and perhaps beyond
The narrow margin of 3-2 shows that the abortion issue is far from settled. The powerful dissent of Luswata JCC paves way for an appeal to the Supreme Court, the highest court in the land to also have its say on this issue. While the majority ultimately dismissed the Petitions, the combined reasoning of all five Justices, particularly the robust dissenting opinion, creates meaningful jurisprudential openings and a strong basis for appeal. Notably, all the Justices unanimously affirmed that the Petitions were rightly brought before the Constitutional Court and raised valid questions for constitutional interpretation under Article 137. This consensus provides a solid platform for continued litigation. It is interesting what the Supreme Court would say in light of recent developments in different jurisdictions, including the US on the conservative side, and the progress made by African countries such as Rwanda, Ethiopia and Tunisia in the protection of women’s rights to choice as regards abortion. It will also be interesting if the case got to the African Commission on Human and Peoples’ Rights, which interprets the Maputo protocol, to have its take on the extent of Uganda’s reservation to article 14(2)(c) of the Maputo Protocol.

ix. Reinforcement of the role of international law in Uganda

The judgment makes a valuable contribution by clarifying and reinforcing Uganda’s dualist approach to international law while recognising the essential role that international human rights standards play in constitutional adjudication. Although Uganda follows a dualist model, meaning treaties require domestic legislation to have direct legal effect, the Justices nonetheless engaged extensively with the international and regional instruments to which Uganda is a party. This approach reflects an emerging judicial understanding that constitutional interpretation cannot occur in isolation from the global human rights framework. Luswata JCC’s judgment is particularly notable for its detailed discussion of Uganda’s obligations under key treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Maputo Protocol. Her reliance on these

⁷² Constitutional Petition No. 1 of 2009.

⁷³ Constitutional Petition No.12 of 2021.

norms underscores their persuasive value in giving meaningful content to rights such as dignity, health, equality, and freedom from cruel, inhuman, or degrading treatment.

This judicial engagement with international law aligns with existing Ugandan jurisprudence that recognises treaty provisions as important interpretive tools even within a dualist system. In *Attorney General v Susan Kigula & 417 Others*,⁷⁴ the Supreme Court applied international human rights standards to interpret the scope of the right to life and the prohibition of cruel punishment. Likewise, in *CEHURD and 2 Others v Attorney General*,⁷⁵ the Court emphasised that the State's obligations towards maternal health must be understood in light of international commitments. By drawing from this body of jurisprudence, the Justices situate their analysis within a broader legal tradition that views international norms as guides for fulfilling, rather than restricting, constitutional rights. Their interpretation reinforces the principle that domestic law must evolve in harmony with the human rights commitments Uganda has voluntarily undertaken.

However, there were some suggestions in the decisions of the majority, particularly the judgment of Mugenyi JCC, that Uganda is only bound by those international law provisions that align with its Constitution, as the Constitution is the Supreme law of the land.⁷⁶ This approach conflicts with Articles 123 and 287 together with Objectives XXVIII (b) of the Constitution of the Republic of Uganda as amended, which require the state to respect and fulfill international law and treaty obligations to which it is bound. It also goes against Article 27 of the Vienna Convention on the Law of Treaties, which requires that '*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation,*' and also goes against the principle of *pacta sunt servanda* under Article 26 of the Vienna Convention, which requires treaty obligations to be fulfilled in good faith. Indeed, Article 2 of the ICCPR requires that, where there are inconsistencies between domestic law and the Covenant, domestic law or practice should be changed to meet the standards imposed by the Covenant's substantive guarantees.⁷⁷

x. Re-affirming the dangers of the reservation that Uganda has on Article 14(2)(c) of the Maputo Protocol

It is not in doubt that Uganda has a reservation on Article 14(2)(c) of the Maputo Protocol.⁷⁸ The implications of this reservation are far reaching as many interpret it in the same way that the majority decision in the abortion petitions did – that it entirely absolves Uganda from the duty to protect human rights in matters to do with abortion. What is important to note is that the reservation is not on the entire article 14, which is on sexual and reproductive health and rights, but rather on the specific part that requires states to make provisions for abortion in situations of 'sexual assault, rape, incest, and where the continued pregnancy endangers the mental and

⁷⁴ Constitutional Appeal No. 03 of 2006

⁷⁵ n4 above 6.

⁷⁶n 15 above, page 12 - 14.

⁷⁷ CCPR General Comment 31 on The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, para 13.

⁷⁸ Ministry of Foreign Affairs, AOG 238/01, 'Instrument of Ratification Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (July 21 2010).

physical health of the mother or the life of the mother or the foetus.’ The Ministry of Health in its guidance to health workers actually includes these grounds in its definition of high risk pregnancies.

Two schools of thought have emerged over time about this reservation: one is that the reservation prohibits abortion except on grounds listed in Uganda law, while the second one is that the reservation is to no effect, since the rest of Article 14 already covers the obligation to ensure sexual and reproductive health rights for women, which essentially includes access to comprehensive abortion care services. The majority took the view that the reservation was decisive, while the minority felt that the reservation did not exclude the obligations to provide sexual and reproductive health services for women, which includes abortion services. The fact that the majority judgments all relied on this reservation to find that women have no right to access abortion care services in Uganda highlights the dangers of this reservation. This is why the African Commission on Human and Peoples’ Rights recently called upon states to remove reservations on some provisions of the Protocol, as ‘*certain reservations made to the Protocol undermine its fundamental purpose and essence, thereby impeding its capacity to provide effective and substantial safeguarding of women’s rights throughout the continent.*’⁷⁹

6. Human rights implications

Besides the legal implications, there are also human rights implications of the decision, and these are as follows:

i. Condoning further violations to the right to health of women and girls in Uganda

By upholding the penal provisions on abortion, the judgment excuses the continuing violation of the right to health for women and girls in Uganda. The continued criminalisation of abortion sustains a legal environment that pushes women, particularly young girls, survivors of sexual violence, and those in socio-economically vulnerable situations toward unsafe clandestine procedures. This directly contributes to Uganda’s already high rates of preventable maternal mortality and morbidity, contrary to the State’s obligations under Article 12 of the ICESCR, which requires States to ensure access to reproductive health services and eliminate barriers that hinder women’s enjoyment of the highest attainable standard of health.⁸⁰ The majority judgment also exacerbates the climate of fear within the healthcare sector. Available data indicates that health workers, wary of criminal liability and professional sanctions, tend to delay or refuse to provide essential services such as post-abortion care or emergency treatment for complications. This undermines Uganda’s obligations under international and regional human rights instruments, including the Article 14 of the Maputo Protocol, which expressly calls upon States to protect reproductive rights by authorising medical abortion in specific circumstances and ensuring access to adequate, affordable, and accessible health services. Moreover, global and regional jurisprudence affirms that restrictive abortion laws violate women’s rights to health, dignity,

⁷⁹ African Commission on Human and Peoples’ Rights ‘Resolution on the need to Raise Awareness for States to withdraw Reservations on some Provisions of the Maputo Protocol - ACHPR/Res.632 (LXXXII) 2025’ <https://achpr.au.int/en/adopted-resolutions/632-achprres632-lxxxii-2025> (accessed 12 November 2025).

⁸⁰ CESCR General Comment No. 22 on Sexual and Reproductive Health and Rights.

privacy, and freedom from cruel, inhuman, or degrading treatment. In cases like *Mellet v. Ireland*,⁸¹ and *Whelan v. Ireland*,⁸² the UN Human Rights Committee held that denying access to safe abortion and forcing women to seek services abroad constituted violations of the ICCPR. Similarly, the African Commission on Human and Peoples' Rights in General Comment No. 2 on Article 14 of the Maputo Protocol underscores that criminalisation of abortion leads to systemic rights violations and imposes disproportionate burdens on marginalised women and girls.

In light of these standards, the Court's decision not only disregards Uganda's international obligations but also entrenches a legal regime that actively harms women and girls. Rather than promoting public health and gender equality, the judgment reinforces structural discrimination, limits bodily autonomy, and perpetuates cycles of preventable suffering.

ii. Affirming the continued violation of the right to dignity and freedom from inhuman and degrading treatment

The Court effectively affirms a legal environment that infringes on women's and girls' constitutional right to dignity and their protection from cruel, inhuman, or degrading treatment. The threat of criminal sanctions, combined with societal stigma and the clandestine nature of unsafe abortions, exposes women to profound psychological, physical, and social harm.⁸³ It should be noted that freedom from cruel, inhuman and degrading treatment is an absolute right,⁸⁴ which is not subject to the limitation clause under the Constitution.⁸⁵ Such treatment is inherently degrading and reinforces structural inequalities that undermine the equal status and worth of women, which is protected under the Constitution.

This situation is in direct tension with Article 24 of the Ugandan Constitution, which guarantees inherent dignity and the right to be free from cruel, inhuman, or degrading treatment, and which aligns with Article 7 of the ICCPR, which prohibits torture and cruel, inhuman, or degrading treatment or punishment. International and regional jurisprudence reinforces that restrictive abortion laws perpetuate violations of dignity. In the *Mellet v. Ireland*⁸⁶ case, the Human Rights Committee recognised that forcing women to continue pregnancies or seek unsafe procedures constitutes a breach of their dignity and exposes them to inhuman and degrading treatment. Similarly, the African Commission in its General Comment No. 2 on Article 14 of the Maputo Protocol emphasises that, '*State parties must ensure that women are not treated in an inhumane, cruel or degrading manner when they seek to benefit from reproductive health services such as...safe abortion care*'.⁸⁷ Moreover, the Court's decision risks entrenching fear and social marginalisation among

⁸¹ CCPR/C/116/D/2324/2013.

⁸² CCPR/C/119/D/2425/2014.

⁸³ HRAPE, n 1 above.

⁸⁴ Article 44 of the Constitution.

⁸⁵ Article 43 of the Constitution.

⁸⁶ n 81 above.

⁸⁷ African Commission on Human and Peoples' Rights 'General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights' 28 Nov 2014 para 36.

women seeking reproductive healthcare. Women and health workers alike may avoid hospitals or medical services due to fear of legal repercussions, leaving women vulnerable to harm and reinforcing systemic discrimination. By failing to challenge the Penal Code provisions, the judgment implicitly condones a regime where women are treated as morally culpable for exercising reproductive autonomy, further eroding their dignity and subjecting them to degrading treatment.

iii. Perpetuation of inequality and discrimination against women and girls

By upholding the criminalisation of abortion, the Court effectively entrenches systemic discrimination against women and girls, violating their constitutional right to equality under Article 21 of the Ugandan Constitution. Luswata JCC in her dissenting judgement emphasises that sections 130 and 131 could perpetuate systemic discrimination of women and girls in Uganda.⁸⁸ The law disproportionately affects women, particularly those in vulnerable groups such as adolescents, survivors of sexual violence, low-income women and sex workers, who face heightened barriers to accessing safe reproductive health services. Men are not similarly constrained by the law, illustrating the gendered impact of criminalisation and reinforcing structural inequalities that limit women's autonomy, health, and dignity. Regional jurisprudence underscores that such differential treatment constitutes a violation of the right to equality. In the *FIDA-Kenya v Attorney General* case,⁸⁹ the Kenyan High Court found that restricting access to safe abortion services disproportionately impacted women, breaching their rights to equality and non-discrimination under both domestic and international law. The CEDAW Committee in its General Recommendation No. 35 on gender-based violence explicitly recognises that restrictive abortion laws constitute discrimination by denying women the ability to make autonomous reproductive choices. Domestically, the Court's decision perpetuates these inequalities by leaving women vulnerable to criminal liability while denying them safe, legal, and dignified options for terminating pregnancies. By failing to provide clear constitutional guidance or legislative remedy, the judgment maintains a legal framework that inherently discriminates against women, undermining the Constitution's commitment to substantive equality and the elimination of systemic barriers to women's full enjoyment of rights.

iv. Endangering the right to life of women and girls

The judgment's affirmation of criminalisation of abortion directly jeopardises the right to life guaranteed under Article 22(1) of the Constitution. The CEDAW Committee has recognised clandestine abortions as a major cause of high maternal mortality rates in Uganda.⁹⁰ By maintaining the penal provisions, the Court perpetuates conditions in which women and girls are exposed to severe health risks, including haemorrhage, infection, and death, thereby directly undermining the constitutional guarantee of the right to life. Internationally, the right to life has

⁸⁸ Judgement of Luswata JCC, n20 above, page 139.

⁸⁹ n54 above.

⁹⁰ CEDAW Committee, Concluding Observations, Uganda, para. 35 CEDAW/C/UGA/CO/7 (2010).

been interpreted to include obligations of the State to take proactive measures to prevent avoidable maternal deaths.

The UN Human Rights Committee, in cases such as *Whelan v. Ireland*⁹¹ recognised that restrictive abortion laws that force women to continue unsafe pregnancies or seek unsafe procedures violate their right to life. By failing to reconcile the Penal Code with these constitutional and international standards, the Constitutional Court leaves women exposed to preventable death and morbidity. The decision signals that the State may prioritise punitive measures over life-saving healthcare, perpetuating systemic neglect of women's health.

7. Conclusion

The consolidated abortion petitions represent a nuanced and mixed legacy. On the positive side, the judgment achieved several significant outcomes. Luswata JCC's dissenting opinion affirmed that the blanket criminalisation of abortion infringes fundamental constitutional rights, including the rights to health, dignity, equality, and protection from cruel, inhuman, or degrading treatment. The Court clarified that Article 22(2) of the Constitution anticipates lawful exceptions to abortion, creating a constitutional window that, if operationalised, could protect women's reproductive autonomy. Additionally, even among the Justices who dismissed the petition, there was acknowledgement of the absence of a coherent regulatory framework, with advice to Parliament to undertake research, consult widely, and consider comparative legal models demonstrating recognition of the urgent need for legislative reform. However, the judgment also carries significant negative implications for women and girls. By upholding the colonial-era Penal Code provisions, the Court maintained a legal environment that drives women toward unsafe abortions, perpetuating preventable maternal morbidity and mortality, and instilling fear among health workers who may hesitate to provide post-abortion or emergency care. It entrenches violations of dignity and reinforces structural inequalities that disproportionately burden women, violating their constitutional right to equality. The decision further endangers the right to life of women and girls by leaving them exposed to preventable health risks. These outcomes highlight the tension between judicial recognition of constitutional and international standards and the practical enforcement of outdated laws that continue to harm women. The judgment therefore underscores both the progress achieved in recognising women's reproductive rights and the urgent need for legislative and policy reform to translate constitutional promises into tangible protections for women and girls in Uganda.

⁹¹ n82 above.