

Maternal Health Rights, Politics & the Law

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Outline of Lecture

- Aim of the lecture: Tackling the problem
- Learning outcomes
- My law teaching journey
- Theoretical perspectives
- Maternal health rights (MHRs), obligations of the state and non-state actors
- Causes of non-realization of MHRs
- Conclusion and recommendations

The joy of motherhood!



Pregnancy yes, but.....?



Where are Our Men?



Aim of Lecture

- Build on background: MMR: 336 deaths per 100,000 births; 32% of women anemic; met need for EmOC-40%; 300,000 abortions, unsafe abortions contributing 26% of maternal deaths; low doctor-patient, nurse/midwife patient ratio
- To find out why realization of MHRs remains elusive, yet they are recognized in legal and policy frameworks
- To examine the structural causes of maternal mortality and morbidity

Learning Outcomes

- Understand the nature, scope and content of MHRs
- Understand the obligations of the state and non-state actors in the struggle to realize MHRs
- Move beyond the official narrative: Appreciate the structural causes of non-realization of MHRs
- Reassert academic freedom
- Get annoyed and demand accountability

My Law Teaching Journey

- I love teaching: 31 cool years by October 2017
- From focus on commercial laws to environmental law and policy; health law
- My aunt's influence: 'The poor do not fall sick'; embarking on LL.D; Health and the Law course; Fundamentals of Health Law in Uganda book
- Areas of research and publication: lecture is a continuation of law teaching career

Theoretical Perspectives

- **The lecture question:** Why does realization of MHRs remain elusive?
- The question transcends a purely juridical analysis: it is multifaceted, multifocal, multifarious and multidisciplinary and thus requires a holistic approach
- No single jurisprudential perspective can satisfactorily explain the many dimension to the question

Theoretical Perspectives Con...

- **The natural law perspective:** Human rights are from God; viewed through metaphysics and the supernatural; poverty, inequality and gender relations are natural, inevitable, biologically determined and God-ordained; male is naturally superior to the female. Note: most human rights derive origin from natural law. Thus, can utilize humanizing values

Theoretical Perspectives Con...

- **Legal positivism:** Legalistic approach to phenomena. Analyze legal concepts without inquiring into the interplay between law and social, economic and political forces. ESRs, including MHRs are not rights. Judges should enforce the law as it is but not as it ought to be. Strict adherence to law does not answer the question under inquiry because law can facilitate change or hinder it/promote oppressive social order

Theoretical Perspectives Con...

- **Sociological perspective:** Looks at law as a function of society. Advocates for the sociological study of law in preparation for law-making. Law as an instrument of social engineering and thus a facilitator for change. Does not adequately explain the root causes of non realization of MHRs, which are largely structural and systemic

Theoretical Perspectives Con...

- **Critical legal scholars:** Emphasize the open-ended character of the social and political context in which substantive law is shaped. They recognize the context in which the law is shaped. Some argue that social power rests with the state and not in the people. But African state is largely patriarchal and has retreated in the area of social welfare; increased role of non-state actors

Theoretical Perspectives Con...

- **Modernization perspective:** Favoured by the World Bank and IMF. Has a narrow and static perception of developmental issues. Creation of an enabling environment; those who are able survive. Underpinned by neo-liberalism, which advocates for supremacy of free-market forces. Reliance on the market exacerbates poverty and gender inequalities; promotes authoritarianism and benevolent dictatorship

Theoretical Perspectives Con...

- **Dependency perspective:** Influenced largely by Marxist-Leninist philosophy. Scope and content of rights are determined by the material living conditions of society. Law as part of the superstructure influenced by the economic base. Law is one form of politics, and law and the state are closely connected. Poverty and inequality are not natural but are determined by material conditions of society

Theoretical Perspectives Con...

- Dependency perspective: challenges neo-liberal globalization. However, the perspective seems to put all the blame for our problems on external forces: does not adequately question internal factors such as misallocation of resources, inequitable gender relations and sexual politics
- Human rights (HR) perspective has been sharply criticized: that it decontextualises social realities
- HR perspective can be empowering

Theoretical Perspectives Con...

- HR perspective useful tool for determining state responsibility and accountability. Rights 'trump' other claims or needs/goods. Analyzes problems as violations.
- Gender perspective: situates maternal health in context of every day life, be it law, economics, politics, religion and culture. But should not uncritically project the western concept of gender onto the Ugandan society.

Theoretical Perspectives Con...

- Theoretical perspective in which I situate, locate, view and examine MHRs, law and politics is integrative – a combination of dependence, human rights and gender perspectives within the parameters in the above discussion
- This integrated perspective will help us unravel the structural causes of non realization of MHRs

MHRs, Obligations of the State and Non-state Actors

- Understanding maternal health: unique maternal functions
- Maternal health as human rights
- State obligations: to respect, protect and fulfill; progressive realization; minimum core obligations; AAAQ of maternal health services
- Non state actors: primary responsibility is with the state but private actors have obligations

Immediate causes, interventions, Barriers to Access

- **Immediate causes of MMM:** Post-partum heamorrhage, hypertensive disorders, sepsis, prolonged or obstructed labor, complications of unsafe abortion, lack of EmOC, lack of access to critical components of MHC e.g. family planning and skilled health care personnel
- **Interventions:** access to family planning, access to EmOC, skilled health workers, access to safe legal abortion for those in need

.....Barriers con..

- **Barriers include:** formal and informal costs for facilities and services, drugs and equipment, transport to the facility, access, infrastructure, quality and sustainability of care, information deficit and attitudes; delay to seek care; delay in reaching health care facility; and delay in receiving care at the facility
- Poverty as a barrier to realization of MHRs: Why are women poor and vulnerable? Structural causes of poverty and inequality?

Ai..Ai! When do I reach?



At least this one!



TBA: You will be okay!



Structural Causes

- Neo-liberalism: dominance of the market and the market model
- Neo-liberalism and maternal health
- Social welfare interventions: From colonialism to the immediate post independence period
- Enter structural adjustment programmes (SAPs); PRSPs; debt burden; naked corruption; patrimonial, crony and kleptocratic state

Structural Causes con....

- Bloated public administration
- Benevolent dictatorship; suppressing and delegitimizing human rights practices
- Military expenditure; classified resources on jets; police equipment; formal and informal intelligence services
- Impact of the WTO intellectual property regime (TRIPS) and GATS

Military jets..women dying!



Structural Causes con....

- Lack of political will and focused leadership to marshal and direct the available internal and external physical, financial, human and other resources towards realization of MHRs
- Inequitable gender relations; negative customary practices in the face of uncompromising SAPs
- Neglecting infertility
- Using criminal abortion laws to undermine MHRs

Teenage sex; pregnancy; marriages



Conclusion

- Realization of MHRs is hampered by neo-liberalism which exalts market forces and private interests to the detriment of maternal health. Neo-liberal policies are antithetical to the realization of MHRs
- Inequitable gender relations and criminal abortion laws hamper the realization of MHRs
- Realization of MHRs will remain elusive unless structural causes are tackled

Recommendations

- Take MHRs seriously. Prioritize MHRs of the poor: Reverse the neo-liberal approach to maternal health. Increase budget for health to 15%; prudent, judicious and efficient use of resources
- Provide for free, EmOC to all women who develop complications
- Accelerate family planning information; availability, access, quality of contraceptives
- Increased human resource for maternal health
- Equip health facilities

Involve Men



More skilled health personnel



Recommendations con...

- Lobby other African and Third World governments to cancel or have the unsustainable external debt written off
- Tax the privileged and wealthy and use the proceeds to fund social services such as maternal health care
- Employ a gender perspective in all policies, programmes and practices, and in all spheres of life including family and community life

Recommendations con...

- Tackle inequitable gender relations head on: recognize the economic value of women's work; recognize a wife's contribution in form of domestic labour as contribution to family property; public awareness and sensitization strategies should target both women and men; encourage couples to discuss contraceptive options etc
- Tackle infertility: awareness and ARTechnologies
- Holistic approach to maternal health: preventive and curative approaches

Courts: Meet aspirations of women (arts 33 and 126)



Recommendations con...

- Legislative interventions: explicitly provide for the right to health in the Bill of Rights; article 33 on women's rights should provide for the right of access to EmOC; address the scourge of unsafe abortion by recognizing circumstances under which safe legal abortion may be allowed in addition to saving the mother's life
- Enforcing MHRs through the courts
- Towards a democratically reconstituted liberal pro-poor socialist state: regime change?

More pay for human resources for health



Less workshops: Action!



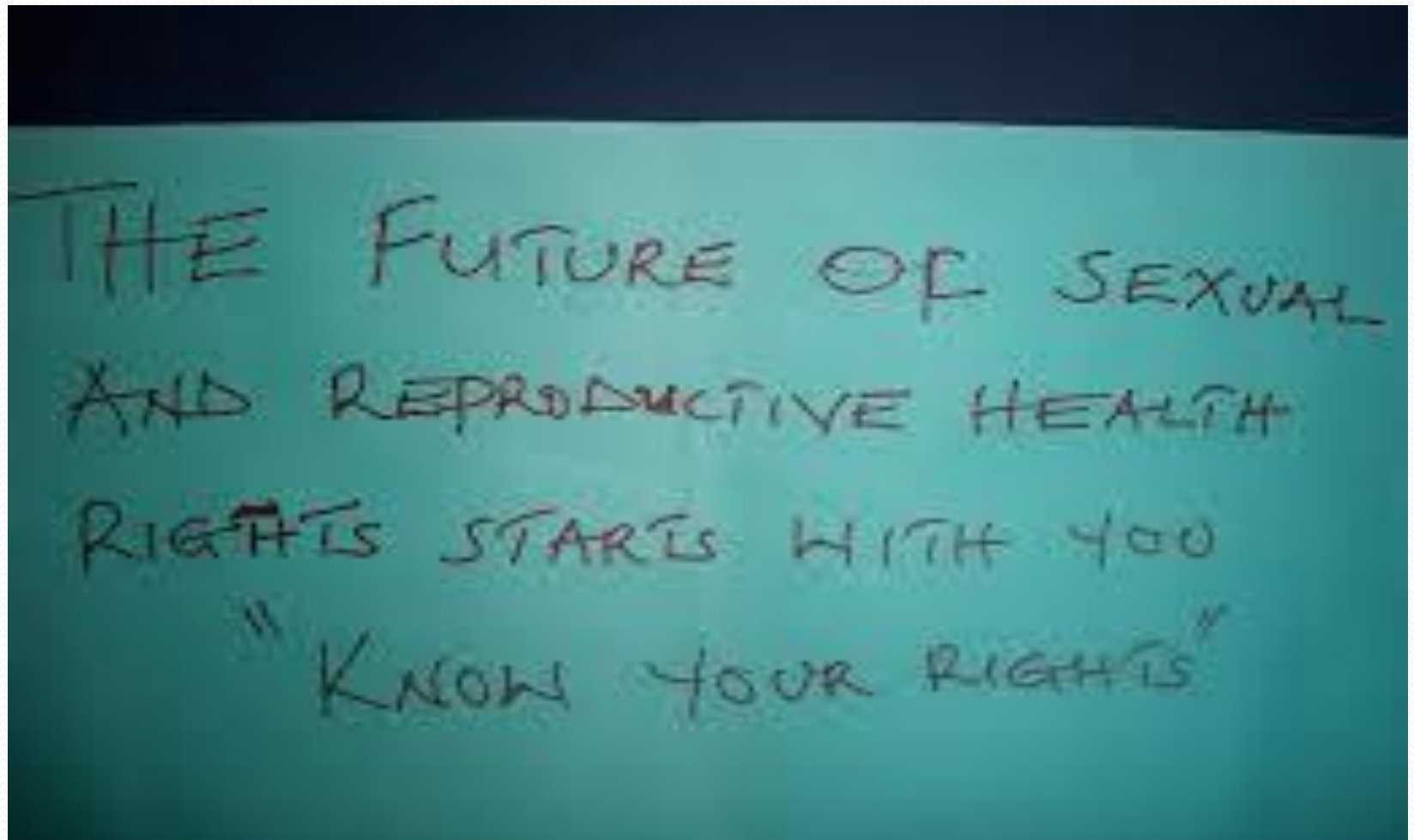
Women want more your Excellency!



Disgrace indeed!



Know and demand your SRHR



Avoidable death or injury, zee!

- No woman or girl should die or suffer injury due to avoidable maternal causes
- Have the learning outcomes been achieved?
- If yes, from hence forth, you may call me a Professor of Health Law.
- Read the booklet and references therein for more detailed information

“Thank you very much”