

# Endnotes

## Chapter 1: Introduction

- <sup>1</sup> See also Gladys Mirugi-Mukundi, “A human rights-based approach to realising access to sexual and reproductive health rights in Sub-Saharan Africa,” in Ebenezer Durojaye (ed), *Litigating Right to Health in Africa: Challenges and Prospects* (Ashgate, 2015) at 53.

## Chapter 2: Children and Adolescents

- <sup>2</sup> *Report of the International Conference on Population and Development, Program of Action*, A/CONF.171/13/Rev.1 (13 September 1994) para. 7.3 [ICPD, *Program of Action*].
- <sup>3</sup> *Nvumeleni Jezile v The State and 7 Others* (A 127/2014), [2015] ZAWCHC 31; 2015 (2) SACR 452 (WCC) (High Court of South Africa, Western Cape Division, Cape Town) [*Jezile*] see also case summary *supra* p. 23.
- <sup>4</sup> *W.J. & Another v Astarikoh Henry Amkoah & 9 Others* (Petition No. 331 of 2011), [2015] eKLR, (High Court of Kenya at Nairobi, Constitutional and Human Rights Division); see also case summary *supra* p. 36.
- <sup>5</sup> *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* (Case No. 73300/10) [2013] ZAGPPHC 1 (North Gauteng High Court, Pretoria); *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* (CCT 12/13) [2013] ZACC 35; (South Africa, Constitutional Court); see also case summaries *supra* p. 45, 49.
- <sup>6</sup> Samantha Spooner, “Legal ages of marriage across Africa” *Mail & Guardian Africa* (14 July 2014), online: Mail & Guardian Africa.
- <sup>7</sup> *Jezile*, *supra* note 3, at para. 56.
- <sup>8</sup> *Ibid.*, at para. 69.
- <sup>9</sup> UN General Assembly, *Child, early and forced marriage: resolution / adopted by the General Assembly*, 69<sup>th</sup> session, UN Doc A/RES/69/156 (22 January 2015).
- <sup>10</sup> African Union, *End child marriage now*, online: African Union, <<http://pages.au.int/cecm>>; United Nations Population Fund, *Africa launches historic campaign to end child marriage* (9 June 2014), online: UNFPA <<http://www.unfpa.org/news/africa-launches-historic-campaign-end-child-marriage>>.
- <sup>11</sup> African Union, *Outcome Statement of the First African Girls’ Summit on Ending Child Marriage in Africa* (November 2015), online: African Union <[http://pages.au.int/sites/default/files/Outcome%20Statement%20in%20English\\_0.pdf](http://pages.au.int/sites/default/files/Outcome%20Statement%20in%20English_0.pdf)>.
- <sup>12</sup> Nyasha Karimakwenda, “Jezile Ukuhwala Judgment Signals Progress and Continuing Challenges”, *Custom Contested Views and Voices* (29 April 2015), online: Custom Contested <<http://www.customcontested.co.za/jezile-ukuthwala-judgment-signals-progress-and-continuing-challenges/>>; Elizabeth Thornberry, “‘Ukuthwala’: Even living custom must be developed to comply with Constitution”, *Custom Contested Views and Voices* (5 August 2015), online: Custom Contested <<http://www.customcontested.co.za/ukuthwala-even-living-custom-must-be-developed-to-comply-with-constitution/>>; Elizabeth Thornberry, “Customary status of “ukuthwala” debated since 19th century”, *Custom Contested Views and Voices* (30 August 2015), online: Custom Contested <<http://www.customcontested.co.za/customary-status-of-ukuthwala-debated-since-19th-century/>>.
- <sup>13</sup> *Jezile*, *supra* note 3, at para. 104.
- <sup>14</sup> MJ Grant, “Girls’ schooling and the perceived threat of adolescent sexual activity in rural Malawi” (2012) 14:1 Culture, health & sexuality 73.

- <sup>15</sup> D Helitzer-Allen, *An investigation of community-based communication networks of adolescent girls in rural Malawi for HIV/STD prevention messages* (Washington, DC: International Center for Research on Women, 1994).
- <sup>16</sup> *Mudzuru & Another v Ministry of Justice, Legal & Parliamentary Affairs (N O) & Others* (Const Application No. 79/14) [2015] ZWCC 12 (Constitutional Court of Zimbabwe); see also case summary *supra* p. 20.
- <sup>17</sup> *Rebeca Z. Gyumi v The Attorney General*, Miscellaneous Civil Cause No. 5 of 2016 (High Court of Tanzania).
- <sup>18</sup> *Jessica Lenahan (Gonzales) and others v United States* (2011), Inter-Am Comm HR, No 80/11.
- <sup>19</sup> *R v Commissioner of Police & 3 others ex-parte Phylis Temwai Kiptey* (HC Misc Appl. 27 of 2008), [2011] eKLR (Kenya).
- <sup>20</sup> *C.K. (A Child) through Ripples International as her guardian and Next friend) & 11 Others v Commissioner of Police/Inspector General of The National Police Service & 3 Others* (Petition No. 8 of 2012) [2013] eKLR (High Court at Meru, Kenya) [*Ripples International*]; see also case summary *supra* p. 33.
- <sup>21</sup> *Ibid.*, at para. 56.
- <sup>22</sup> *Ibid.*, at para. 58.
- <sup>23</sup> *Ibid.*, at para. 90.
- <sup>24</sup> Laws of Malawi, Penal Code, c 7:01, s 138.
- <sup>25</sup> The Law Reform Commission of Tanzania, Report on Criminal Law as a Vehicle for the Protection of the Right to Personal Integrity, Dignity and Liberty of Women (Dar es Salaam, 1998) at 50, online: <[http://www.lrc.tz/download/reports\(2\)/CRIMINAL%20LAW%20%20Fin%20ps.pdf](http://www.lrc.tz/download/reports(2)/CRIMINAL%20LAW%20%20Fin%20ps.pdf)>.
- <sup>26</sup> *Head of Department, Department of Education, Free State Province v Welkom High School & Another; Head of Department, Department of Education, Free State Province v Harmony High School & Another* (CCT 103/12), [2013] ZACC 25, 2013 (9) BCLR 989 (CC) (South Africa Constitutional Court), see also case summary *supra* p. 54.
- <sup>27</sup> A Skelton, “Balancing Autonomy and Protection in Children’s Rights: A South African Account” (2015) 88 Temple L Rev 887, 904.
- <sup>28</sup> *Ripples International*, *supra* note 20, at para. 238.

### Chapter 3: Maternal Health Care and Services

- <sup>29</sup> ICPD, *Program of Action*, *supra* note 2, was the first international framework that expressly asserted the right of women to go through pregnancy and childbirth safely.
- <sup>30</sup> *Ibid.*, at para. 7.3.
- <sup>31</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13, Can TS 1982 No 31 (entered into force 3 September 1981), art. 12(1) [CEDAW].
- <sup>32</sup> UNGA, *Transforming our world: the 2030 Agenda for Sustainable Development*, 70<sup>th</sup> Sess, 21 October 2015, UN Doc A/RES/70/1, at 16 (Target 3.3).
- <sup>33</sup> *Ibid.*, at 14 (Target 5.6).
- <sup>34</sup> *Center for Health, Human Rights and Development and others v. Attorney General* (Constitutional Petition No. 16 of 2011), [2012] UGCC 4 (Constitutional Court of Uganda); see also case summary *supra* p. 58.
- <sup>35</sup> *Center for Health, Human Rights and Development and Three Others v Attorney General* (Constitutional Appeal No. 01 of 2013) [2015] (Supreme Court of Uganda at Kampala); see also case summary *supra* p. 61.

- <sup>36</sup> *Center for Health, Human Rights and Development and Four Others v Nakaseke District Local Administration* (Civil Suit No. 111 of 2012) [2015] (High Court of Uganda at Kampala); see also case summary *supra* p. 65.
- <sup>37</sup> *Ntsele v MEC for Health, Gauteng Provincial Government*, (2009/52394) [2012] ZAGPJHC 208; [2013] 2 All SA 356 (GSJ) (High Court of South Africa); see also case summary *supra* p. 72.
- <sup>38</sup> *Millicent Awuor Omuya alias Maimuna Awuor and Another v The Attorney General and Four Others* (Petition No. 562 of 2012) [2015] (High Court of Kenya at Nairobi, Constitutional and Human Rights Division); see also case summary *supra* p. 69.
- <sup>39</sup> World Health Organization, *Trends in maternal mortality: 1990 to 2015: estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division* (Geneva: World Health Organization, 2015).
- <sup>40</sup> African Commission on Human and Peoples' Rights, *Resolution 135: Resolution on Maternal Mortality in Africa*, 44<sup>th</sup> session, November 2008, online: African Commission on Human and Peoples' Rights <<http://www.achpr.org/sessions/44th/resolutions/135/>>.
- <sup>41</sup> Alfred Anangwe, "Health sector reforms in Kenya: User fees" in Martyn Sama & Vinh-Kim Nguyen (eds), *Governing health systems in Africa*, (Dakar: Council for the Development of Social Science Research in Africa, 2008) 44-59.
- <sup>42</sup> African Commission on Human and People's Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, online: African Commission on Human and Peoples' Rights <[http://www.achpr.org/files/instruments/economic-social-cultural/achpr\\_instr\\_draft\\_esc\\_rights\\_eng.pdf](http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_draft_esc_rights_eng.pdf)>.
- <sup>43</sup> See also Onyema Afulukwe-Eruchalu, "Accountability for non-fulfilment of human rights obligations: A key strategy for reducing maternal mortality and disability in Sub-Saharan Africa," in Charles Ngwena and Ebenezer Durojaye (eds), *Strengthening the protection of sexual and reproductive health and rights in the African region through human rights* (Pretoria, South Africa: Pretoria University Law Press, 2014) at 119, online: <[http://www.pulp.up.ac.za/pdf/2014\\_14/2014\\_14.pdf](http://www.pulp.up.ac.za/pdf/2014_14/2014_14.pdf)>.
- <sup>44</sup> UN Human Rights Council, "Preventable maternal mortality and morbidity," Resolution 18/2, UN Doc A/HRC/18/L.8 (28 September 2011).

## Chapter 4: Abortion and Fetal Interests

- <sup>45</sup> On the rape indication for legal abortion, see Simangele Mavundla and Charles Ngwena, "Access to legal abortion for rape as a reproductive health right: A commentary on the abortion regimes of Swaziland and Ethiopia," in Charles Ngwena and Ebenezer Durojaye (ed), *Strengthening the protection of sexual and reproductive health and rights in the African region through human rights* (Pretoria, South Africa: Pretoria University Law Press, 2014) at 61 ["Abortion regimes of Swaziland and Ethiopia"].
- <sup>46</sup> Organic Law N° 01/2012/OL of 02/05/2012 instituting the *Penal Code of Rwanda (Penal Code)*, art. 165 (1) (There is no criminal liability for a woman who commits abortion and a medical doctor who helps a woman to abort if one of the following conditions is met: 1° when a woman has become pregnant as a result of rape.)
- <sup>47</sup> *Ibid.*, at art. 190 ("Child defilement means any sexual intercourse or any sexual act with a child regardless of the form or means used.").
- <sup>48</sup> CG Ngwena, "Reforming African abortion laws and practice: the place of transparency" in Rebecca Cook, Joanna Erdman and Bernard Dickens (eds), *Abortion Law in Transnational Perspective: Cases and Controversies*. (Philadelphia, PA: University of Pennsylvania Press, 2014) 166 at 169.
- <sup>49</sup> Francoise Girard, "Death Sentence in Abortion Case Compounds Dangers for Kenyan Women" *Rewire* (2 October 2014), online: Rewire <<http://rhrealitycheck.org/article/2014/10/02/death-sentence-abortion-case-compounds-dangers-kenyan-women/>>.

- <sup>50</sup> Janie Benson, Kathryn Andersen, and Ghazaleh Samandari, “Reductions in abortion-related mortality following policy reform: evidence from Romania, South Africa and Bangladesh” (2011) 8 Reprod. Health 39.
- <sup>51</sup> Regarding abortion laws of Swaziland and Ethiopia in cases of rape, see “Abortion regimes of Swaziland and Ethiopia”, *supra* note 45.
- <sup>52</sup> Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Kenya*, UN Doc CRC/C/KEN/CO/3-5 (21 March 2016), <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/055/60/PDF/G1605560.pdf>> accessed 12 Oct 2016.
- <sup>53</sup> *Ibid.*, at para. 20.
- <sup>54</sup> Compare Frans Viljoen, “The African Charter on Human and People’s Rights/The Travaux Préparatoires in the Light of Subsequent Practice” (2004) 25 Hum Rts LJ 313 at 314 (noting that the drafters of the African Charter relied largely on the American Convention on Human Rights); *Draft African Charter on Human and Peoples’ Rights*, OAU Doc. CAB/LEG/67/1 (1979) art. 17, (adopting the language of art. 4(1) of the American Convention on Human Rights, but replacing “moment of conception” with the “moment of his birth”); *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, 2nd Ordinary Sess., Assembly of the Union, adopted July 11, 2003 (“Maputo Protocol”), art. 14(2)(c).
- <sup>55</sup> *AAA v Registered Trustees (Aga Khan University Hospital, Nairobi)* (Civil Case No 3 of 2013) [2015] eKLR at para. 18 (High Court of Kenya at Nairobi, Civil Division); see also case summary *supra* p. 90.
- <sup>56</sup> *Ibid.*, at para. 18.
- <sup>57</sup> *Ibid.*
- <sup>58</sup> *Ibid.*, at para. 23.
- <sup>59</sup> ICPD, *Program of Action*, *supra* note 1, para. 7.3.
- <sup>60</sup> *Maputo Protocol*, *supra* note 54, at art. 14 (2)(a).
- <sup>61</sup> The African Commission on Human and Peoples’ Rights (African Commission), *General Comment No 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Maputo Protocol*, online: African Commission on Human and People’s Rights at para. 55 <[http://www.achpr.org/files/instruments/general-comments-rights-women/achpr\\_instr\\_general\\_comment2\\_rights\\_of\\_women\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/general-comments-rights-women/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf)>.
- <sup>62</sup> Center for Reproductive Rights, *Failure to Deliver: Violations of Women’s Human Rights in Kenyan Health Facilities* (Center for Reproductive Rights and Federation of Women Lawyers – Kenya, 2007), online: Reproductive Rights <[http://www.reproductiverights.org/sites/default/files/documents/pub\\_bo\\_failuretodeliver.pdf](http://www.reproductiverights.org/sites/default/files/documents/pub_bo_failuretodeliver.pdf)>.
- <sup>63</sup> Kenya National Commission on Human Rights, *Realising Sexual and Reproductive Health Rights in Kenya: A myth or reality?* (April 2012), online: KNCHR <[http://www.knchr.org/portals/0/reports/reproductive\\_health\\_report.pdf](http://www.knchr.org/portals/0/reports/reproductive_health_report.pdf)>.

## Chapter 5: Adoption and Surrogacy

- <sup>64</sup> *Ex Parte WH and Others* 2011 (6) SA 514 (GNP) at para. 2; see also case summary *supra* p. 110.
- <sup>65</sup> See, e.g., *Convention on the Rights of the Child*, 20 November 1989 1577 UNTS 3 arts. 7-8 (entered into force 2 September 1990); African Union, *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 (2014). See generally, the approach to identity, birth registration and being able to trace one’s origins.
- <sup>66</sup> UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 31st Session, UN Doc CRC/C/15/Add.188, paras 31-32 (9 October 2002).

- <sup>67</sup> *Pratten v British Columbia (Attorney General)*, 2012 BCCA 480 at para. 56-61, online: CanLii <<http://www.canlii.org/en/bc/bcca/doc/2012/2012bcca480/2012bcca480.pdf>> See also, Jane Fortin, “Children’s Right to Know their Origins: Too Far, too Fast?” (2009) 21:3 Child and Family Law Quarterly 336.
- <sup>68</sup> *Adoptive Couple v Baby Girl* 398 S C 625, 731 S E 2d 550 (US Supreme Court), online: <https://www.law.cornell.edu/supremecourt/text/12-399>.
- <sup>69</sup> Aamer Jiwaji, “Kenya: The Baby Market,” *AllAfrica* (1 August 2013), online: AllAfrica <<http://allafrica.com/stories/201308052161.html>>.
- <sup>70</sup> OUJ Umeora et al, “Surrogacy in Nigeria: Legal, ethical, socio-cultural, psychological and religious musings” (2014) 13:2 African Journal of Medical and Health Sciences 105 at 109.
- <sup>71</sup> Lauren Wilson, “Baby Gammy case sparks international surrogacy trading concern” (8 August 2014), online: News.com <<http://www.news.com.au/lifestyle/parenting/babies/baby-gammy-case-sparks-international-surrogacy-trading-concern/news-story/0c16a95b16d49be8046c9b7137222817>>.
- <sup>72</sup> ICPD, *Program of Action*, *supra* note 2, para. 7.3.
- <sup>73</sup> Barbara Stark, “Transnational Surrogacy and International Human Rights” (2012) 18:2 ILSA Journal of International & Comparative Law 369 at 378.
- <sup>74</sup> Recognised in *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) art. 27; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art. 15(1)(b) (entered into force 3 January 1976).
- <sup>75</sup> Vida Panitch, “Surrogate tourism and reproductive rights” (2013) 28:2 Hypatia 274 at 286.
- <sup>76</sup> *Children’s Act*, (S Afr), No 38 of 2005, s 9.

## Chapter 6: Gender, Sexuality Women and Discrimination

- <sup>77</sup> A Miller, “Sexual but not reproductive: exploring the junction and disjunction of sexual and reproductive rights” (2000) 4 Health and Human Rights 68 at 83.
- <sup>78</sup> Matthew Waites, *The Age of Consent: Young People, Sexuality and Citizenship* (London: Palgrave Macmillan, 2005) 217.
- <sup>79</sup> Dianne Grant, “Sexin’ Work: The Politics of Prostitution Regulation” (2008) 2:1 New Proposals: Journal of Marxism and Interdisciplinary Inquiry 61 at 71.
- <sup>80</sup> *Ibid.*, at 67.
- <sup>81</sup> *Baby “A” (suing through her mother, E.A.) and The Cradle the Children Foundation v Attorney General, Kenyatta National Hospital, and the Registrar of Births and Deaths* (Petition No. 266 of 2013) [2014] eKLR at para. 47 (High Court of Kenya at Nairobi, Constitutional and Human Rights Division); [ *Baby “A”*]; see also case summary *supra* p. 129.
- <sup>82</sup> *RM v The Hon. Attorney General & 4 Others* (Petition no 705 of 2007), (2010) eKLR at para. 148 (High Court of Kenya at Nairobi, Nairobi Law Courts) [*RM*]; see also case summary *supra* p. 133.
- <sup>83</sup> *Baby “A”* *supra* note 81, at para. 66.
- <sup>84</sup> *Ibid.*, at para. 61.
- <sup>85</sup> *RM*, *supra* note 82, at para. 109.
- <sup>86</sup> *Ibid.*, at para. 124.
- <sup>87</sup> *Ibid.*, at para. 133.
- <sup>88</sup> UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Germany*, UN Doc CAT/C/DEU/CO/5 (12 December 2011) at para. 20.
- <sup>89</sup> UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/22/53 (1 February 2013).

- <sup>90</sup> RM, *supra* note 82, at para. 148.
- <sup>91</sup> See World Health Organization *Sexual Health, Human Rights and Law* (Geneva: WHO, 2015) at 24.
- <sup>92</sup> *Yogyakarta Principles (the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity)*, online: Yogyakarta Principles <<http://www.yogyakartaprinciples.org/>>.
- <sup>93</sup> United Nations Development Programme, *Discussion Paper on Transgender Health & Human Rights* (6 January 2014), online: UNDP <<http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/discussion-paper-on-transgender-health---human-rights.html>>.

## Chapter 7: HIV

- <sup>94</sup> Colin D. Mathers, Ties Boerma & Doris Ma Fat, “Global and regional causes of death” (2009) 92 British Medical Bulletin 27.
- <sup>95</sup> E Durojaye, “Advancing gender equity in access to HIV treatment through the Protocol to the African Charter on the Rights of Women” (2006) 6: 1 *African Human Rights Law Journal* 188.
- <sup>96</sup> P Eba “HIV-specific legislation in Sub-Saharan Africa: A comprehensive human rights analysis,” (2015) 15 (2) *African Human Rights Law Journal* 224-262.
- <sup>97</sup> Ebenezer Obadare and Iruka N. Okeke, “Biomedical loopholes, distrusted state, and the politics of HIV/AIDS ‘cure’ in Nigeria” 110:439 *African Affairs* 191.
- <sup>98</sup> *Ibid.*, at para. 34.
- <sup>99</sup> UNAIDS, *Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations* (Geneva: UNAIDS, 2013), online: UNAIDS <[http://www.unaids.org/sites/default/files/media\\_asset/20130530\\_Guidance\\_Ending\\_Criminalisation\\_0.pdf](http://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf)>.
- <sup>100</sup> UNAIDS, *Criminalization of HIV Transmission* (Geneva: UNAIDS, 2008), <[http://files.unaids.org/en/media/unaidss/contentassets/dataimport/pub/basedocument/2008/20080731\\_jc1513\\_policy\\_criminalization\\_en.pdf](http://files.unaids.org/en/media/unaidss/contentassets/dataimport/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf)>.
- <sup>101</sup> ICPD, *Program of Action*, *supra* note 2, at para. 7.3.
- <sup>102</sup> International Community of Women Living with HIV/AIDS, *The forced and coerced sterilization of HIV-positive women in Namibia* (London: International Community of Women Living with HIV/AIDS, 2009).
- <sup>103</sup> *LM and Others v Government of the Republic of Namibia*, [2012] NAHC 211 (High Court of Namibia). [*LM*].
- <sup>104</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/GC/23 (2 May 2016).
- <sup>105</sup> *LM* *supra* note 103.
- <sup>106</sup> Southern Africa Litigation Centre, *Equal Rights for All: Litigating Cases of HIV-related Discrimination* (Johannesburg, SA: SALC, 2011), online: SALC <<http://www.southernalitigationcentre.org/1/wp-content/uploads/2012/10/HIV-and-Discrimination-Manual-pdf.pdf>>.

## Chapter 8: Francophone Africa / L'Afrique Francophone

- <sup>107</sup> Tribunal de première instance [Court of First Instance], Yaoundé, 14 June 2010, Case spouses Mbahyong, n°09 B2 lun 1248 (Cameroon).
- <sup>108</sup> Avocats Sans Frontières [Lawyers without Borders], “La justice face à la banalisation du viol en République démocratique du Congo” (May 2012), online: <[http://www.uanet.org/sites/default/files/ASF\\_RDC\\_BanalisationViol\\_EtudeJurisprudence\\_2012.pdf](http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf)>.

- <sup>109</sup> Tribunal de grande instance, Uvira, 2 octobre 2010, RP 4049 (République démocratique du Congo); Tribunal de grande instance, Mbandaka, 8 octobre 2010, RP 9469 (République démocratique du Congo) ; Tribunal de grande instance, Uvira, 25 janvier 2008, RP 1577 (République démocratique du Congo).
- <sup>110</sup> Paraphrased translation of: Association Tunisienne de Droit de la Santé, online: (2013) 68 Bulletin d'information, online at: <http://www.atds.org.tn/b68.html>, summarizing *Tribunal de première instance [Court of First Instance], Tunis, 24 June 2013, No 88908 (Tunisia)*.
- <sup>111</sup> "Cameroon: Drop Charges Against 2 Transgender Youth" (17 May 2013), *Human Rights Watch*, online: <<https://www.hrw.org/news/2013/05/17/cameroon-drop-charges-against-2-transgender-youth>>.
- <sup>112</sup> Clár Ní Chonghaile, "Cameroonian lawyer urges world to join her in fight against anti-gay legislation", *The Guardian* (10 March 2015), online: <<https://www.theguardian.com/global-development/2015/mar/10/cameroon-lawyer-campaign-against-anti-gay-legislation>>.
- <sup>113</sup> Penal Code of Burundi, s 567; Penal Code of Tunisia, s 230.
- <sup>114</sup> Constitution of Burundi, s 17 and 21; Tunisian Constitution of 2014, s 23.
- <sup>115</sup> Constitution du Burundi, s 47; Tunisian Constitution of 2014, s 49.
- <sup>116</sup> [our translation] Ibrahim Salami, "La question préjudiciale de constitutionnalité sur l'adultère. Les cas du Bénin et du Congo" (2010-2011) 25 and 26 Dr & Lois R trimestrielle d'informations juridiques et judiciaires 18.
- <sup>117</sup> Constitution of Benin, s. 147.
- <sup>118</sup> Stéphane Bolle, "Le Code des personnes et de la famille devant la Cour constitutionnelle du Bénin. La décision DCC 02-144 du 23 décembre 2002" (2004) 4 Afrilex 315 at 339.
- <sup>119</sup> Tribunal de première instance, Yaoundé, 14 juin 2010, Affaire époux Mbahyong, n°09 B2 lun 1248 (Cameroun).
- <sup>120</sup> Avocats Sans Frontières, « La justice face à la banalisation du viol en République démocratique du Congo » (mai 2012), en ligne: [http://www.uanet.org/sites/default/files/ASF\\_RDC\\_BanalisationViol\\_EtudeJurisprudence\\_2012.pdf](http://www.uanet.org/sites/default/files/ASF_RDC_BanalisationViol_EtudeJurisprudence_2012.pdf).
- <sup>121</sup> Tribunal de grande instance, Uvira, 2 octobre 2010, RP 4049 (République démocratique du Congo) ; Tribunal de grande instance, Mbandaka, 8 octobre 2010, RP 9469 (République démocratique du Congo) ; Tribunal de grande instance, Uvira, 25 janvier 2008, RP 1577 (République démocratique du Congo).
- <sup>122</sup> Association Tunisienne de Droit de la Santé, (2013) 68 *Bulletin d'information*, en ligne: <<http://www.atds.org.tn/b68.html>>, résumant Tribunal de première instance, Tunis, 24 juin 2013, No 88908 (Tunisie).
- <sup>123</sup> « Cameroun: Les poursuites judiciaires contre les deux jeunes transgenres devraient être abandonnées » (17 mai 2013), *Human Rights Watch*, en ligne: <https://www.hrw.org/fr/news/2013/05/17/cameroun-les-poursuites-judiciaires-contre-deux-jeunes-transgenres-devraient-etre>.
- <sup>124</sup> Clár Ní Chonghaile, « Cameroonian lawyer urges world to join her in fight against anti-gay legislation », *The Guardian* (10 mars 2015), en ligne: <<https://www.theguardian.com/global-development/2015/mar/10/cameroon-lawyer-campaign-against-anti-gay-legislation>>.
- <sup>125</sup> Code pénal du Burundi, art. 567; Code pénal Tunisien, art. 230.
- <sup>126</sup> Constitution du Burundi, art. 17 et 21; Constitution tunisienne de 2014, art. 23.
- <sup>127</sup> Constitution du Burundi, art. 47; Constitution tunisienne de 2014, art. 49.
- <sup>128</sup> Ibrahim Salami, « La question préjudiciale de constitutionnalité sur l'adultère. Les cas du Bénin et du Congo » (2010-2011) 25 et 26 Dr & Lois R trimestrielle d'informations juridiques et judiciaires 18.
- <sup>129</sup> Constitution du Bénin, s. 147.
- <sup>130</sup> Stéphane Bolle, « Le Code des personnes et de la famille devant la Cour constitutionnelle du Bénin. La décision DCC 02-144 du 23 décembre 2002 » (2004) 4 Afrilex 315 à la p. 339.



Reproductive and sexual rights, which are guaranteed in constitutions and in international and regional human rights treaties, have no impact if they are not recognized and enforced by national-level courts. *Legal Grounds: Sexual and Reproductive Rights in Sub-Saharan African Courts Volume III* continues to provide much-needed information about whether and how national courts of African countries apply human rights laws in decisions that affect the rights of women and others. The case summaries and thematic highlights can be useful resources for advocates seeking to further develop litigation, advocacy, and capacity building strategies.

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The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental right that all governments are obligated to protect, respect, and fulfill.

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