



Law and Advocacy for Women in Uganda v. Attorney General

[2010] UGCC 4; Constitutional Petition No. 8 of 2007

Country: Uganda

Region: Africa

Year: 2010

Court: Constitutional Court at Kampala

Health Topics: HIV/AIDS, Sexual and reproductive health, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to health, Right to life, Right to privacy, Rights to the benefits of culture

Facts

Petitioner NGO brought a petition requesting that the Court declare that the act of female genital mutilation (FGM) was in violation of various articles of the Uganda Constitution. The Petitioner argued that FGM was practiced extensively by the certain Ugandan tribes, and that FGM was crudely carried out, involved excruciating pain, could lead to death, could cause urinary incontinence leading to social ostracism, and could increase the risk of transmission of HIV/AIDS. The Petitioner argued that there were no medical benefits to FGM and that it was violative of the Ugandan Constitution and international human rights conventions.

Decision and Reasoning

The first issue raised by the Court was whether the petition raised an issue of constitutional interpretation. The respondent attorney general did not contest the petition, which was taken as a concession on the first issue.

The second issue regarded the constitutionality of FGM. Although the respondent attorney general had not contested the petition, the Court held that the petitioner still bore the burden of proof and that the Petitioner had met this burden. The Court noted that Article 37 of the Constitution guaranteed an individual's right to enjoy cultural, language, tradition, creed, or religion. However, Article 44 of the Constitution provided that no other Article could deprive an individual of his or her freedom from torture and cruel, inhuman or degrading treatment or punishment. Further, the Court noted that respect for human dignity was enshrined in Articles 24 and 32(2) of the Constitution and that Articles 33(1) and 33(3) of the Constitution provided that women enjoy equal dignity and the same protections as men, and that the state would protect women given their unique status. Thus, the Court held that "any person is free to practice any culture, tradition or religion as long as such practice does not constitute disrespect for human dignity of any person, or subject any person to any form of torture or cruel, inhuman or degrading treatment or punishment." (p. 17, lines 9-12).

Decision Excerpts

"The meaning and effect of the above quoted provisions of the Constitution cannot be mistaken. Any person is free to practice any culture, tradition or religion as long as such practice does not constitute disrespect for human dignity of any person, or subject any person to any form of torture or cruel, inhuman or degrading treatment or punishment." (p.13, lines 8-12)

"We know that the practice of Female Genital Mutilation has existed in some communities for centuries. Does this constitutional provision permit such communities to continue such custom and tradition? We do not think so because article 44 of the Constitution provides: "Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms:-(a) Freedom from torture and cruel, inhuman or degrading treatment or punishment." (p. 16, lines 8-17)