



Center for Health Human Rights and Development (CEHURD) v. Attorney General

Constitutional Petition No. 16 of 2011

Country: Uganda

Region: Africa

Year: 2012

Court: Constitutional Court

Health Topics: Child and adolescent health, Health care and health services, Health systems and financing, Hospitals, Medical malpractice, Medicines, Poverty, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to health, Right to life

Facts

The petitioners claimed that the lack of provision of basic health maternal commodities in Government Health Facilities and the negligent, unethical behavior of health workers toward expectant mothers in those facilities resulted in violations of the Constitution of the Republic of Uganda (the "Constitution"). Specifically, the petitioners claimed violations of the right to health and the right to life as guaranteed in the Constitution. They also sought compensation for families who had suffered the loss of an expectant mother, and specifically for two families who joined in the petition.

According to the petitioners, the Government failed to commit adequate resources, including human resources and medicines, to providing for the needs of expectant mothers in Government health facilities. Uganda is a member of the World Health Organization's Safe Motherhood Programme, which developed the Mother-Baby package in 1994 to assist countries in developing appropriate levels of care to reduce maternal and newborn mortality. The minimum expenditure for the Government per capita established in the Mother-Baby package was US\$1.40. At the time of the petition, the Ugandan Government was spending only US\$0.50 per capita on maternal and newborn health care. The petitioners claimed that these circumstances amounted to a violation of the right of access to health services under Article 8A of the Constitution.

The petition also noted that the negligent, unethical treatment of expectant mothers in the health care facilities. The petitioners claimed that it was not uncommon for expectant mothers to be left unattended during birth, which led to deaths and therefore violated the right to life under Article 22 of the Constitution. The petitioners also claimed that expectant mothers were improperly treated in that they were subjected to insults, harsh handling or demands for money in exchange for services. They alleged such treatment was a violation of Article 24 of the Constitution, which prohibited inhuman, cruel and degrading treatment.

The petitioners sought several things from the Court, including declarations regarding violations of the right to life, right of access to health services, and the prohibition on inhuman, cruel and degrading treatment. The petitioners also sought a declaration that families of mothers who died because of the negligence in the health facilities were entitled to compensation and specifically sought compensation for the two families that joined the petition.

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Decision and Reasoning

The Court struck down the petition before it considered the merits of the case.

The respondent alleged that the issues presented to the Court were those that presented a political question and claimed that the "Court should not deal directly with questions that the Constitution has made a sole responsibility of another branch of Government." The Court agreed with the respondent that the separation of powers in the Constitution prevented the Court from entering decisions on matters delegated to the executive and legislative branches. The Court found that it fell to the other branches of Government to develop and

implement health policies and therefore it was not the Court's role to intervene here.

Decision Excerpts

“Much as it may be true that government has not allocated enough resources to the health sector and in particular the maternal health care services, this court is, with guidance from the above discussions reluctant to determine the questions raised in this petition. The Executive has the political and legal responsibility to determine, formulate and implement policies of Government, for inter-alia, the good governance of Uganda. This duty is a preserve of the Executive and no person or body has the power to determine, formulate and implement these policies except the Executive.” Page 25.

“The Court has no power to determine or enforce its jurisdiction on matters that require analysis of the health sector government policies, make a review of some and let on, their implementation. If this Court determines the issues raised in the petition, it will be substituting its discretion for that of the executive granted to it by law.” Page 25.

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