



Emberá-Chamá- Community FGM Case

Juzgado Promiscuo Municipal [Municipal Jurisdiction Court], julio 24, 2008, Radicación No. 66572-40-89-001-2008-00005-00 (Colom.).

Country: Colombia

Region: Americas

Year: 2008

Court: Juzgado Promiscuo Municipal de Pueblo Rico, Risaralda (Municipal Jurisdiction Court of Pueblo Rico, Risaralda)

Health Topics: Child and adolescent health, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of religion, Right to a clean environment, Right to bodily integrity, Right to due process/fair trial, Right to health, Right to life, Right to privacy

Facts

The Emberá-Chamá- community, which is located on the Río San Juan Embera-Chamá- native reservation, practices female genital mutilation. This consists of cutting and cauterizing the clitorises of newborn girls. The practice is customary for this community and appears to have two rationales: first, to prevent infidelity among adolescent girls and women, and second, to prevent the clitoris from developing into a male organ for copulation if it is not removed promptly. On January 10, 2008 the Civil and Criminal Judge of Pueblo Rico, Risaralda received a complaint of abuse of 16-day-old infants who had undergone genital ablation and were experiencing fever and vomiting from an acute infection. The petition sought the application of family violence laws to the case. Physicians and anthropologists became involved in the case and provided information about the origin and meaning of the custom and the health risks it presents.

Colombia is a multicultural society. The 1991 Constitution recognizes the autonomy of the nation's indigenous communities. Nevertheless, there is a broad consensus in the nation that any cultural practice that violates any of the four minimum fundamental rights (the right to life, right to physical integrity, right not to be enslaved and right to due process) must be changed, while respecting the indigenous communities' autonomy and providing support from the state institutions that are involved in these affairs.

Decision and Reasoning

The Court held that female genital mutilation violates the lives and personal integrity of girls and constitutes a violation of the national constitution and international humanitarian law. The State must adopt urgent measures to prohibit the practice. Although Colombian criminal and family violence laws cannot be applied to cases of female genital mutilation that occur within indigenous communities, this does not mean that the only possible alternative is to rely on intercultural educational measures aimed at changing the custom. These are too slow and inadequate.

The Court held that indigenous authorities were not doing enough to defend the life and the personal integrity of the female children in the community of Embera-Chamá-. Furthermore, the Court exhorted to the local and national authorities of Colombia, that they must forbid the mutilation of female organs. And to conclude with the sentence, the Court asked for help to NGO's which worked with the indigenous in the region, in order to develop a plan to nurture the communities in human and women rights.

Decision Excerpts

Given that the practice of FGM/A is an existing custom of the EMBERÁ-CHAMÁ- indigenous community in the department of Risaralda, and that it originated during the conquest and colonization, it cannot be seen as just an act performed by individual mothers and midwives in this community. Therefore, its treatment must not be governed by the regulations contained in Law 294 of 1996, the basis for article 42 of the Political Constitution and rules created to prevent, remedy and sanction intra-family violence. Nor is Colombian Criminal Legislation applicable, because it pertains to malicious or blameworthy behaviors that occur within the individual's environment and which are not present in these cases.

We have before us a community that has shared with the descendants of Africans and those of Antioquians

and Caucaans, the territory that makes up the Risaralda department for more than 400 years in an intense cultural exchange, which was practically eliminated by the nearly complete Catholic religious indoctrination of the past 50 years. Therefore, this is a society that has had profound "contact" with our own, and although it has preserved its cultural identity and many of its usages and customs, it is incomprehensible that it has preserved such a barbaric usage or custom as FGM/A, which might be "justifiable or faintly admissible" in a society with a lesser degree of intercultural "contact or reconciliation" with the modern world, as can be said of some of the world's African or Middle Eastern societies.

Because the practice of FGM/A, as we have said, endangers the lives and personal integrity of indigenous girls and therefore constitutes a failure to recognize fundamental constitutional rights that take precedence over the constitutional right to ethnic diversity, consideration of the indigenous community's autonomy is not appropriate with regard to the topic. The practice of ablation violates human beings' most sacred rights, which consist of the right to life and other constitutional rights in coordination with those rights that are recognized by international treaties.

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