

Ugandan Constitutional Court judgment: Maternal health is a constitutional right

Congratulations to the Center for Health, Human Rights and Development (CEHURD), and three co-petitioners who, after nine years of dedication and perseverance, have received a favourable interpretation from the Constitutional Court of Uganda at Kampala.

The Center for Health Human Rights and Development (CEHURD) and 3 Others v Attorney General, Constitutional Petition No. 16 of 2011 (Constitutional Court of Uganda at Kampala). [Decision of August 19, 2020.](#)

This is the first decision of an African constitutional court finding a violation of the rights to health, life, gender equality and freedom from inhuman and degrading treatment, for the preventable deaths in childbirth of two women, Sylvia Nalubowa and Jennifer Anguko, who died in hospital due to unavailability of basic maternal commodities.

On August 19, 2020, the Constitutional Court of Uganda issued its long-awaited ruling. As lawyer Moses Mulumba of CEHURD gratefully informed supporters:

“The Constitutional Court agreed with our submissions and all judges accepted all the grounds of the petition. Through this judgement, the right to maternal health care (and the right to health broadly) has been granted a place in Uganda’s Constitution. The judgment recognises basic maternal health care services and emergency obstetric care.”

He also listed the Constitutional Court’s “**Declarations**”:

- a) That the government’s omission to adequately provide basic maternal health care services in public health facilities violates the right to health and is inconsistent with and in contravention of Articles 8A, 39 and 45 read together with objectives XIV and XX of the National Objectives and Directive Principles of state policy of the Constitution;
- b) That the government’s omission to adequately provide basic maternal health care services in public health facilities violates the right to life and is inconsistent with and in contravention of Article 22 of the Constitution;
- c) That the government’s omission to adequately provide basic maternal health care services in public health facilities violates the rights of women and is [in]consistent [. . .] and contravenes articles 33(1), (2) and (3) of the constitution.
- d) That the government’s omission to adequately provide emergency obstetric care in public health facilities violates the right to health, life and rights to women and is inconsistent and in contravention of article 8 (A), 22, 33 (1) (2) and (3), 45, 287 read together with objectives XIV and XX of the Constitution;

- e) That the Government's omission to adequately provide emergency obstetric care in public health facilities which results into obstetric injury subjects women to inhuman and degrading treatment and is inconsistent with and in contravention of Article 24 and 44 (a) of the Constitution
- f) In order to meet the constitutional obligation of the state to uphold the right of women and fulfil their reproductive rights, the government should in the next financial year prioritise and provide sufficient funds in the national budget for maternal health care
- g) The government of Uganda through the Minister responsible for health is directed to ensure that all the staff who provide maternal health care services in Uganda are fully trained and all health centers are equipped within the next 2 financial years (2020/2021 and 2021/2022)
- h) In order to maintain a consistent and deliberate effort to improve the status of maternal health care in Uganda, the government through the minister responsible for health is directed to compile and submit to parliament with a copy to this court an audit report on the status of maternal health in Uganda at the end of each of the next two financial years (2020/2021 and 2021/2022).
- i) The 3rd and 4th petitioners are awarded UGX 70,000,000/= each as general damages for the psychological torture, violation of the rights to life, health and cruel and degrading treatment of their loved ones.
- j) The 3rd and 4th petitioners are each awarded as exemplary damages of shs. 85,000,000/= for the loss suffered as a result of acts and omissions of the medical personnel at Mityana Hospital and Arua Regional Referral Hospital.
- k) The Attorney General is directed to submit a report at the end of the financial year 2020/2021 showing progress and implementation of the orders in (h)
- l) This being a public interest litigation in which the petitioners did not pray for costs, no order regarding costs have been made."

This historic constitutional ruling highlights the problem of preventable maternal deaths, not only in Uganda but in Africa and elsewhere. As Moses Mulumba concluded his letter to supporters, "Moving forward, we can work together to ensure that this judgement brings lasting change to [the] health system in Uganda, within the African region and globally."

BACKGROUND RESOURCES:

- Constitutional Court decision:
The Center for Health Human Rights and Development (CEHURD) and 3 Others v Attorney General [2012], Constitutional Petition No. 16 of 2011 (**Constitutional Court of Uganda** at Kampala). [\[Maternal health\]Decision of 2012 online](#). [Decision 2012 attached in PDF](#). [Case summary of 2012 decision](#). [NEW DECISION of AUGUST 19, 2020](#).

- Supreme Court decision:
The Center for Health, Human Rights and Development and 3 Others v Attorney General [2015], Constitutional Appeal No. 01 of 2013 (**Supreme Court of Uganda** at Kampala), Judgments by Kisaakye, JSC and Katureebe, CJ. [Uganda Supreme Court orders Constitutional Court to hear petition on maternal health rights violations.] [Decision online](#), [Decision scanned in PDF](#). [Case summary in *Legal Grounds III*](#).

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