

HIGHLIGHT

MATERNAL HEALTH CARE AND SERVICES

Challenges related to inadequate resources, lack of gender responsive budgeting in the health sector, and lack of a rights-based approach to reproductive health service provision and to maternal health litigation are clearly discernible from the five cases in this chapter. More importantly, the cases have brought to the fore the power of impact litigation in holding governments accountable for the implementation of the right to maternal health, including women's right to go through pregnancy and childbirth safely and free from rights violations.⁴³

The case of *Millicent Awuor Omuya alias Maimuna Awuor and Another v. The Attorney General and Four Others* validates long-standing arguments about the need for all sectors, including health, to pursue gender responsive budgeting (GRB) and address mistreatment of women during childbirth. The absence of GRB in the health sector is reflected in policy decisions such as those regarding user fees. When policy makers fail to consider and/or mitigate the impact of user fees on poor women (especially since women are the ones who constantly use health services as primary care givers and as child bearers), development cannot be inclusive.

As governments grapple with prioritising spending in the context of scarce resources and competing needs, the worst thing that can happen to efforts to achieve the full realization of maternal health rights is for courts to resist holding the executive branch accountable for the violation of relevant constitutional rights. This has been done under the guise of claims that the judiciary cannot scrutinise political or policy questions. Therefore, by reversing an earlier decision from a Constitutional Court, the Supreme Court of Uganda in *The Center for Health, Human Rights and Development and Three Others v. Attorney General* [2015] took an important step to clarify that the doctrine of separation of powers does not put any state organ above the duty to respect, protect, and fulfil constitutionally guaranteed rights. As Kutereele CJ opined, "there is no such thing as absolute separation of powers amongst arms of government since the Constitution provided for a system of checks and balances where the court had power to review the constitutionality of executive decisions."

The Chief Justice's perspective that the Ugandan case was an important opportunity for the Constitutional Court to determine on the content of law and application of the right to life and right to health does not only hold true for Uganda, but also for any country on the continent that desires to move solidly towards improving maternal health. However, the activism of organizations such as The Center for Health, Human Rights and Development (CEHURD) in Uganda (as demonstrated by their litigation of three of the five cases in this

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Chapter) is evidence that impact litigation is an indispensable advocacy tool for influencing substantive changes regarding maternal health care and services. Sadly, the African continent seems to lack a critical mass of non-profit organization that are working on this agenda in their respective countries.

The Human Rights Council has recognised that applying a rights-based approach to the reduction of maternal mortality and morbidity is key to achieving desired milestones.⁴⁴ Thus the continent should guard against maternal health rights violations that are reinforced by blindness to a human rights-based approach in health facilities, goods, and services. Both lawyers and courts have to be savvy about basing arguments and rulings on human rights standards in reproductive health jurisprudence. Though the cases had positive outcomes, some of the judgments, such as *CEHURD v Nakaseke*, and *Ntsele v. MEC for Health*, missed the opportunity to apply a more robust human rights analysis.

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