

RELEASE IN FULL

From: Mills, Cheryl D <MillsCD@state.gov>
Sent: Thursday, October 6, 2011 1:30 PM
To: H
Subject: FW: UGANDA: CIVIL SOCIETY SUES UGANDA OVER MATERNAL DEATHS
Attachments: StateSeal.gif

FYI – see yellow

From: Anderson, Laura E
Sent: Wednesday, October 05, 2011 8:52 AM
Subject: FW: UGANDA: CIVIL SOCIETY SUES UGANDA OVER MATERNAL DEATHS

Flagging this cable on a possibly precedent-setting case of African civil society challenging government health policy in the courts. There was a NY Times article in June about maternal mortality in Uganda that drew a lot of attention to this issue: <http://www.nytimes.com/2011/07/30/world/africa/30uganda.html?pagewanted=all>

Laura

This email is UNCLASSIFIED.

From: SMART Core
Sent: Wednesday, October 05, 2011 07:28:33
To:
Cc: Peterson, Ellen T; Driano, Susan J; Wycoff, Karl E; Collins, Connie V; Hruby, Laura P; Cohrs, Marisa N; McClanahan, Julie A; Anderson, Laura E; Walker, Steven C
Subject: UGANDA: CIVIL SOCIETY SUES UGANDA OVER MATERNAL DEATHS

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Info Office: PRIN, UGANDA, KENYA

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Date/DTG: Oct 05, 2011 / 051127Z OCT 11
From: AMEMBASSY KAMPALA
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: PHUM, PGOV, PREL, SOCI, EAID, AID, UG
Subject: UGANDA: CIVIL SOCIETY SUES UGANDA OVER MATERNAL DEATHS

1. Summary: In March, a start-up NGO comprised of several young Ugandan lawyers sued the Ugandan Government for failing to prevent maternal deaths. The lawsuit - which was filed by the Center for Health, Human Rights, and Development (CEHURD) and may be the first of its kind in Africa – argues that maternal deaths attributable to Uganda's

failure to provide essential services in government health centers violate constitutional rights to life and health. On September 30, CEHURD Director Moses Mulumba told PolOff that creative legal challenges are the quickest and most effective way to force policy changes, criticized Ugandan Government attempts to prosecute individual health workers as bureaucratic blame-shifting, and expressed optimism that Uganda's Constitutional Court – which has an independent streak and is comprised of three men and three women – will ultimately rule in CEHURD's favor. This is a joint State-USAID cable. End Summary.

Two Maternal Deaths Among Many

2. In March, CEHURD filed what may be the first case of its kind in Africa. CEHURD's lawsuit asks the Constitutional Court to declare maternal deaths attributable to the "non-provision of essential maternal health commodities" in government health facilities "an infringement on the rights to life and health." The petitioners are CEHURD, a Dean from the Makerere University Law School, and surviving family members of Sylvia Nalubowa and Jennifer Anguko who both died while giving birth in Ugandan government hospitals. Nalubowa bled to death in August 2009 in Mityana District Hospital after she paid approximately \$2.40 for rubber gloves and razor blades but was unable to pay \$24 for cell phone minutes needed to call an emergency doctor. Anguko, a local government official in northern Uganda, bled to death over a period of 12 hours in Arua hospital in December 2010.

3. In its 230-page submission to Court, CEHURD argues that "unacceptable higher maternal deaths in Uganda...due to government's non-provision of the basic minimum maternal health care packages and the non-attendance and improper handling by the health workers to expectant mothers" violate constitutional provisions and international conventions guaranteeing the right to life, health, and freedom from inhumane, cruel, and degrading punishment. Uganda's 2006 DHS survey estimated maternal mortality at 435/100,000 live births, newborn mortality at 29/1000, and infant mortality at 76/1000. CEHURD's court petition also notes that the Ugandan government spends only \$0.50 per capital on maternal and newborn health care instead of the minimum \$1.40 per capita set in the World Health Organization's Mother-Baby Package, and that Uganda's static per capita health expenditures over the past decade have not kept pace with population growth. The Ugandan Government's three-page defense dismisses CEHURD's "allegations" as "speculative" and without merit, argues that "allegations regarding the supposed unethical standards of health workers...can ably be handled by the Discipline Committee of the Nurses and Midwives Council," and that the "alleged few isolated acts and omissions cited by the Petitioners...cannot be used to dim the untiring efforts being made in the Health Sector to better the well-being of Ugandans."

Litigation as Policy Tool

4. During a September 30 meeting with PolOff, Mulumba and CEHURD legal counsel David Kabanda said legal challenges like theirs are the quickest and most effective way to force policy changes, and that CEHURD is also considering lawsuits aimed at promoting disability rights and universal access to medicines. They stressed the miserable nature of each maternal death, with women who know they are dying pleading for medical attention for up to 10 to 15 hours, and said many deaths from normal deliveries could be avoided through the provision of \$10 to \$15 "mama kits" containing basic medical and surgical supplies. These kits, which are supposed to be free in public clinics, are often in short supply and the few that are for sale outside the public sector are priced beyond the reach of most Ugandan families.

5. Mulumba noted that working through policy and legislative channels to force the government to provide "mama kits" or take steps to improve maternal care could take years. A creative, well-researched and public court case, on the other hand, can compel government to respond within weeks. Before CEHURD filed its petition, Mulumba could not even secure a meeting with Ugandan health officials. After CEHURD filed, the Health Minister made several positive statements, ordered an investigation into the conditions of the hospitals where Nalubowa and Anguka died, and invited CEHURD to join the Ministry's working group on human rights and gender. On October 1, Health Minister Christine

Ondoa announced that, starting in 2012, the Ministry will provide to government health facilities and local village health teams free "mama kits" (gloves, razor blades, soap, gauze pads, sanitary towels, cotton wool, a polyethylene sheet, and a suction bulb) for normal deliveries.

Bureaucratic Blame-Shifting

6. Mulumba criticized the Attorney General's cavalier dismissal of CEHURD's lawsuit and questioned whether state lawyers have the health-related expertise needed to craft a competent legal defense. He also criticized Ugandan Government efforts to hold individual health workers criminally liable for maternal deaths as an thinly veiled attempt to shift blame away from governmental obligations to uphold basic rights to life and health. In addition to investigating health workers in Mityana and Aura, on September 19 police arrested six health workers in the eastern town of Mbale following the death of primary school teacher Cecilia Nambozo. According to local media reports, Nambozo bled to death on September 6 from a ruptured uterus over the space of 10 hours. Nambozo purchased basic surgical supplies but was unable to come up with an additional \$120 demanded by health care workers for a cesarian. Nambozo and her 5.2 kg baby died while her husband tried frantically to sell belongings in return for cash.

7. Nambozo's death also inspired the Ugandan Women Parliamentary Association (UWOPA), a bipartisan caucus of women parliamentarians, to draft a Maternal Deaths Audit Bill intended to hold individual health workers accountable. Mulumba noted that the burden of proof for criminal negligence is extremely high, and that it is almost impossible to hold health workers who lack even the most basic equipment and supplies responsible for maternal deaths. He explained, for instance, that in the case of Nalubowa's death in Mityana, even if Nalubowa's family paid the \$24 nursing staff requested for cell phone minutes, neither the hospital nor the nursing staff possessed a working phone and it was not clear who they would have called for help if a phone were available. "Why are health workers asking for money?" asked Mulumba rhetorically. "Because the system has failed." Trying to reduce maternal mortality through criminal prosecution of individual health workers, he warned, will only further undermine Uganda's failing health network.

Justice Deferred But Not Yet Denied

8. On September 28, the Constitutional Court postponed hearing CEHURD v. the Attorney General for lack of a quorum. The seven-member Court currently has only six judges, and five are required for a hearing. This is the second postponement since March for lack of quorum. The Court has also issued two postponements in response to government requests for more time. Mulumba stressed that Court's adjournments do not indicate lack of interest in the case. After the first adjournment for lack of quorum, for instance, Deputy Chief Justice Alice Mpagi-Bahigeine invoked a little used rule to try to compel her fellow justices to hear the case on a weekend. On September 29, CEHURD and several dozen members of Uganda's civil society Coalition to Stop Maternal Morality urged Justice Mpagi-Bahigeine to schedule a hearing before the Court adjourns for the year on October 14. The coalition noted that CEHURD's petition is a "public interest case" with amicus briefs from the World Health Organization and the UN Office of the High Commission on Human Rights, that "these are matters of life and death," and that the case cannot wait until next year because "more than 2,000 pregnant mothers will die between now and end of January 2012 alone." On October 3, the Court indicated that it may hear CEHURD's petition on October 12.

Comment

9. CEHURD's case is about much more than maternal deaths; it is a test of civil society's ability to shape policy through legal recourse. Recent steps by the Health Ministry to incorporate CEHURD's recommendations and provide "mama kits" suggest the strategy is already paying off. Court cases alone, however, will not reduce Uganda's high rate of maternal mortality. Only 41% of Ugandan women deliver in a health facility, meaning that by the time women develop

labor complications at home and report to a health center, they are already in grave danger. Women who deliver in health centers do so among chronic shortages of staff, medicines, and equipment. Approximately 44% of Uganda's required health worker positions remain vacant, and only about 40% of the resources needed to meet Uganda 2010-2015 Health Sector Strategic and Investment Plan targets are available. Gaps in staffing and funding, along with mismanagement and corruption, translate into overtaxed health workers, a completely dysfunctional referral system for high levels of care, and shortages of medicines and equipment. The increased public provision of "mama kits" – if it happens – marks a positive but small step forward for a health sector struggling to provide adequate maternal care for more than 1 million births a year.

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