**HEALTH POLICY AND THE LAW IN UGANDA**

*“20 years of Health Policy and the Law: Celebrating milestones in Health and Human Rights work in Uganda”*

**Keynote Address Presented By:**

**HIS LORDSHIP RTD. HON. CHIEF JUSTICE BENJAMIN ODOKI,**

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**Welcome**

Ladies and Gentlemen, in your distinguished capacities,

I am deeply honored to stand before you today, on the invitation of the Center for Health, Human Rights and Development (CEHURD) as we celebrate remarkable progress in the field of Health Policy and the Law in Uganda.

Allow me to begin by expressing our collective appreciation for this significant milestone. The past two decades or so, have been marked by dedication, resilience, and a shared vision for a healthier, more equitable Uganda.

1. **Introduction**

The connection between law and health commences with the definition of these two concepts. According to the World Health Organization (WHO), 'health' is defined as a state of complete physical, mental, and social well-being, and not merely the absence of disease and infirmity.' On the other hand, 'law' is described as 'the system of rules recognized by a specific country or community to regulate the behavior of its members and enforceable through the imposition of penalties.' When these two definitions are brought together, we arrive at the concept of 'Health and the law,' which pertains to the set of enforceable regulations established by governments and applied to individuals to foster a healthy society.

Courts have discussed the right to health as it goes beyond medical negligence and general provision of health care[[1]](#footnote-2) to include the determinants of health, which include livelihoods, education, access to food, safe and clean water, clean and healthy environment, et cetera.

Although there is an existing legal framework that provides for redress against medical negligence in the form of civil and criminal law, it is rather complicated for victims to succeed on claims of medical negligence against a medical professional let alone extract payment of damages from the government.

The sure option then rests in the enforcement of one's claim as a human right. It gives one a better chance at success given the positive and negative obligations of the state in the protection and fulfillment of human rights.

1. **The development of Health Policy and the Law in Uganda**

The journey we celebrate today, began with the introduction of a Health and the Law course at Makerere University School of Law, by Her Lordship Dr. Esther Mayamba Kisaakye, and picked up by Pro. Ben Kiromba Twinomugisha has since evolved into a transformative force in our healthcare landscape, touching the lives of countless individuals across the nation. Driven by passion, students from the course have set up nonprofit institutions such as CEHURD, Uganda Network on Law, HIV and AIDS (UGANET), which have played a pivotal role in advancing and advancing the healthcare landscape in Uganda through research, litigation, and advocacy over the past two decades. Indeed, the institution has been at the forefront of creating jurisprudence on health especially in the areas of maternal health, gender-based violence sexuality education, and mental health, among others.

In Uganda, enforcement of health-related violations was not recognized as human rights violations until recently. This area of law was largely embedded within the law of tort under medical negligence, constitutional law under quarantines for reasons of public health and safety, and criminal law under imposing sanctions on health workers for committing negligent acts[[2]](#footnote-3).

Just like the case is with all other Economic, Social, and Cultural Rights, recognition of health as a human right has been a product of a struggle.

Until recently, the right to health in Uganda was only recognized in the National Objectives and Directive Principles of State Policy (NODPSP). Through litigation advocacy, the constitutional court has now [declared](https://www.cehurd.org/publications/download-info/judgement-to-the-constitutional-petition-no-16-of-2011-maternal-health-case-decided-in-the-affirmative/) NODPSP justiciable which effectively recognizes the provisions therein on an equal footing with the rights enshrined in the Bill of Rights in the 1995 Constitution of the Republic of Uganda.

1. **Legal Framework on the Right to Health**

Uganda is a party to various international and regional human rights instruments that recognize the right to health.

1. *International Level*

The Universal Declaration of Human Rights (UDHR) provides that everyone has the right to a standard of living adequate for the health of himself and his family, including food, clothing, housing medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control[[3]](#footnote-4).

The International Convention on Economic, Social, and Cultural Rights (ICESCR), provides for the right of everyone to the highest attainable standard of physical and mental health[[4]](#footnote-5).

The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) specifically deals with women's human rights and encourages state parties to take all appropriate measures to eliminate discrimination in the field of health care to ensure, based on equality of men and women, access to health care services, including those related to family planning[[5]](#footnote-6).

1. *Regional Level*

The African Charter on Human and People’s Rights (ACHPR) guarantees the right to the best attainable state of physical and mental health. The ACHPR obliges state parties to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick[[6]](#footnote-7).

The Protocol to the African Charter on Human and People’s Rights, i.e., the Maputo Protocol, is the only treaty that specifically deals with African women’s human rights. It enjoins state parties to ensure women's right to health, including sexual and reproductive health rights (SRHR)[[7]](#footnote-8).

The African Charter on the Rights and Welfare of the Child (ACRWC) guarantees every child the right to enjoy the best attainable state of physical, mental, and spiritual health. It enjoins state parties to take measures to reduce infant and child mortality rates in addition to the provision of appropriate health care for pregnant women and nursing mothers[[8]](#footnote-9).

1. *National level*

The Right to Health is not provided for in the Bill of Rights enshrined in the constitution. The Constitution contains several provisions that have a relationship with or a bearing on the right to health[[9]](#footnote-10). The constitution stipulated that Uganda shall be governed based on principles of national interest and the common good enshrined in the national objectives and directive principles of state policy[[10]](#footnote-11). The constitution also recognizes the Right to Health in so far as it provides to the effect that the rights, duties, declarations, and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in the Bill of Rights are not regarded to exclude other rights not specifically mentioned therein[[11]](#footnote-12).

*National Objective and Directive Principles of State Policy*

* The state is enjoined to promote the social well-being of the people and in particular to ensure that all Ugandans enjoy rights and opportunities and access, amongst other things, to education, health services, clean and safe water, food security, and adequate housing[[12]](#footnote-13).
* The state is also enjoined to take all practical measures ‘to ensure the provision of basic medical services to the population[[13]](#footnote-14).
* The state is enjoined to promote a good water management system at all levels[[14]](#footnote-15).
* The state is obliged to encourage and promote proper nutrition through mass education and other appropriate means to build a healthy State[[15]](#footnote-16).

Health can also be found in acts of Parliament which include the Public Health Act (as amended), Insurance Act 6 of 2017, the Medical and Dental Practitioners Act Cap 272, the Nurses and Midwives Act Cap 274, the Allied Health Professionals Act Cap 268, The Mental Health Act, 2028, National Medical Stores Act Cap 207 and various policies and strategies passed by government ministries.

1. **CEHURD: A Key Player for Health Policy and the Law**

*a. Pioneering the Right to Health*

The story of Health Policy and the Law in Uganda would be incomplete without acknowledging the pivotal role played by CEHURD.

Founded in 2009, CEHURD is a non-profit, research and advocacy organization that is pioneering the justiciability of the right to health.

The founding Executive Director Moses Mulumba, is a former student of Health and the Law class under the stewardship of Prof. Ben K Twinomugisha at Makerere University, who actualized his classroom knowledge and passion for social justice in health by establishing the organization.

CEHURD uses strategic litigation to address health system gaps and expand access to justice for victims of health rights violations. In addition, CEHURD utilizes Alternative Dispute Resolution (ADR) mechanisms like mediation to settle complaints relating to health rights violations out of court.

The organization also compliments government programming by working with entities including; the Uganda Human Rights Commission (UHRC), Equal Opportunities Commission (EOC), Uganda Law Society (ULS), Health professional bodies and associations, academia, private law firms, legal aid service provider networks and Civil Society Organizations (CSOs).

Due to the volume of work, CEHURD builds and strengthens the capacities of communities to effectively recognize the right to health, identify violations, and demand their rights from their duty bearers on their own. In addition, the organization conducts national-level advocacy on policies, and budget allocation for the health sector all in furtherance of the right to health.

*b. Health and the Law Cluster – Uganda Law Society*

CEHURD spearheaded the conceptualization and operationalization of the health and the law cluster of the ULS. In its first year of existence, the cluster was nominated for an award of the Cluster of the Year 2017. Largely, the cluster is focused on building bridges between legal and health practitioners, demystifying the laws, policies, and practices affecting health. The cluster has also continued to train lawyers on health and the law through Continuing Legal Education seminars and provided legal opinions to Parliament on health-related laws like the Public Health (Amendment) Act of 2022, Uganda Human Organ Donation and Transplant Act of 2023, The Mental Health Act of 2018, the Traditional and Complimentary Medicine Act of 2019, among others.

1. *Annual National Inter-University Constitutional Law Moot Court Competition*

For the past 10 years, CEHURD has convened Annual National Inter-University Constitutional Law Moot Court Competitions to establish a cohort of young lawyers who can litigate and advocate for the right to health. Since 2014, the Center for Health, Human Rights and Development (CEHURD) has convened the Annual National Inter-University Constitutional Law Moot Court Competition. The moot court competition has been graced by an ever-growing number of law schools in Uganda who meaningfully participate. The main objective of the Moot is to train students in practical aspects of litigating health and human rights within Uganda’s Courts of Law. This kind of arrangement helps bring out lawyers who understand key constitutional and health issues beyond what they are taught in class. The Moot specifically aspires to build a cohort of young lawyers with knowledge and the capacity to advocate for the right to health.

1. **Advancement in Jurisprudence in Health**

The journey of Health Policy and the Law in Uganda has been marked by significant achievements in healthcare jurisprudence. There have been landmark court rulings and judgements that have not only protected the rights of countless individuals but have also set a foundation for a more just and equitable healthcare system. Legal precedents have been established in critical areas such as maternal health, gender-based violence, sexuality education, and mental health. They include the following;

1. **Constitutional Petition No. 16 of 2011, CEHURD and Others vs. Attorney General**

The case challenged inter alia the non-provision of basic indispensable maternal health commodities in government health facilities. At first instance in the Constitutional Court, the petition was struck out on account of raising political questions. The Court opined that issues of maternal health care are questions of budget allocations in line with government prioritization which is not a prerogative of the judiciary. On appeal, the Supreme Court[[16]](#footnote-17) overturned the decision and referred the case back to the Constitutional Court to be heard on its merits.

Upon determination of the case, the Court found that the Government’s failure to adequately provide basic maternal health care services in public health care facilities—as highlighted by the high mortality rate due to pre- and post-partum complications—violated the right to health and the right to life.

The judgment recognizes the right to health and access to basic maternal health care despite the same not being expressly recognized under the 1995 Constitution of the Republic of Uganda. As a result of implementation, the Ministry of Health is conducting maternal health audits across the country. Noteworthy, according to the Uganda Demographic Health Survey (UDHS), the maternal death rate has reduced from 336 per 100,000 in 2016 to 189 per 100,000 live births in 2022.

1. **CEHURD and Others vs. Executive Director Mulago National Referral Hospital, Civil Suit No. 212 of 2013**

This case challenged the failure of Mulago Hospital to account for the disappearance of the couple's baby. In its judgment, the court found the defendants to have subjected the couple to cruel, inhuman, and degrading treatment and violated their right to health and access to information. The court directed Mulago National Referral Hospital to take steps to ensure and enhance the respect, movement, and safety of babies in the facility, dead or alive, access to psychological care services by the family, Police to conclusively investigate the disappearance of the child, CEHURD to have access to the hospital to oversee the implementation, the midwife who handled the delivery to be held accountable and the couple were awarded damages.

In compliance with the judgement, the hospital now has standard operative guidelines, installed security measures in the new Mulago Specialized Women and Neonatal Hospital, provided psychological care to the couple, and committed to writing to pay damages awarded to the couple. CEHURD also developed a case digest and policy brief of the case for dissemination and future advocacy.

1. **CEHURD and 3 Ors V Buyende District Local Government and Attorney General High Court Civil Suit No. 137 of 2017**

In this case, Perez Mwase, a 12-year-old boy with autism failed to get services in his district, Buyende District. The applicants filed a case against Buyende District Local Government and the Attorney General in the High Court of Uganda at Jinja challenging the Government’s failure (through Buyende District Local Government) to provide outreach services and early detection services to Perez hence denying him access to health services for early detection of his condition at an early stage of his life. The case also challenged the State's failure to provide medical expertise, rehabilitation, and rehabilitation centers that are easily accessible by persons with disabilities which violates the right to Health, equality, and freedom from discrimination.

In its 2022 judgment, the High Court found that the failure of the defendants to provide medical expertise, rehabilitation, and rehabilitation centers that are easily accessible by persons with disabilities is a violation of the right to health, right to equality, and freedom from discrimination. The judgement emphasizes that it is high time the State of Uganda through the responsible duty bearers provides early detection and management services for persons with neurological disorders at the primary health care level.

1. **HIV Constitutional petition no. 24 of 2016**

Uganda Network on Law, Ethics and HIV/AIDS (UGANET), Ben Twinomugisha of School of Law – Makerere and Lilian Mworeko, Executive Director, International Community of Women Living with HIV Eastern Africa (ICWEA), filed the HIV petition on behalf of the People Living with HIV and HIV Law coalition to challenges sections 18(e), 41, 43, and 44 of the HIV Prevention and Control Act, 2015

The petitioners opined that the Act put stringent punishments for HIV nondisclosure, exposure, and transmission, which the community of People Living with HIV and CSO HIV law coalition found unfair and, if not addressed by the court, would hinder people from accessing HIV-related services – and this will have a far-reaching impact on attaining the global HIV goal of ending AID by 2030.

The case signifies that it is important to note that HIV is a disease like any other, with thousands of children and young people facing the daily fears of living with a disease they were born with, but also with the hope that the fight against HIV is making huge milestones that could lead to finding a permanent cure, and prevent its further spread if the right attitudes at all levels are employed.

1. **CEHURD and Others vs. The Registered Trustees of Mengo Hospital and Others, Civil Suit No. 176 of 2015.**

This case challenged the practice of allowing unsupervised student nurses/medical interns to administer treatment without supervision. This practice led to the death of the couple's baby who died after being injected with an unknown drug by an unsupervised student nurse. CEHURD and others sought redress for enforcement of rights including; the right to quality health care, right to life, freedom from cruel, inhuman, and degrading treatment, right to access health information, and general damages. This matter was settled out of Court in 2018. The hospital compensated the family and it was directed to follow national internship guidelines while engaging medical interns/student nurses.

1. **Constitutional Petition No. 46 of 2016, BAT Vs. Attorney General and CEHURD**

CEHURD together with other tobacco control advocates contributed to the enactment of the Tobacco Control Act of 2015. This law was challenged by British American Tobacco and CEHURD was joined by the Constitutional Court as a respondent together with the Attorney General.

The Court found that the Petition appeared to have been misconceived or brought in bad faith as part of a global strategy to fight tobacco control legislation. The challenged provisions upheld by the Court include provisions: requiring 65% or larger picture health warnings; banning smoking in all indoor public places and workplaces, on all means of public transport, and in specified outdoor public places; banning all tobacco advertising, promotion, and sponsorship, including product displays at points of sale; prohibiting the sale of tobacco products in specified places (health institutions, schools, prisons, and other places); prohibiting the import, manufacture, distribution, and sale of electronic nicotine delivery systems, and shisha, smokeless, and flavoured tobacco; banning the sale of tobacco products through vending machines and remote means of sale.

In this case, CEHURD's main interest was to emphasize the public health impact of tobacco.

1. **Constitutional Petition No. 10 of 2017, CEHURD and Others vs. Attorney General**

This petition challenges the failure of the Government to enact a law regulating termination of pregnancy as required by the Constitution. The petitioners seek the court to declare that failure to enact a law on termination of pregnancy contravenes the Constitution, order Parliament to make a law on termination of pregnancy within two years of judgment, and report every six months on the steps taken to implement the order. The Attorney General filed a reply to the petition. The case has been heard and is now awaiting judgement.

1. **Constitutional Petition No. 29 of 2018, CEHURD and 2 Others Vs. Attorney General**

According to Uganda Police Crime reports, defilement and rape are the leading crimes in Uganda. However, there is no existing public shelter where survivors of sexual violence can seek refuge, counselling, and rehabilitation services. This petition was therefore filed to challenge the failure of the government to establish shelters where survivors of sexual violence can receive psychosocial support after suffering trauma and other complications. This matter also challenges discriminative penalties for forceful and unauthorized carnal knowledge categorized as rape, defilement, and aggravated defilement. The case is pending a ruling.

During the litigation of the case, CEHURD filed **Constitutional Application No.26 of 2018** seeking an order from the Court to redact the identity of the deponents to affidavits sharing experiences of sexual violence by using initials of their names instead of the full names for purposes of the SGBV Petition. This application was granted. In effect, this application has set a useful precedent to protect the survivors of sexual violence from the stigma associated with sexual violence.

1. **Civil Appeal No. 155 of 2016, CEHURD and Another vs. Attorney General (arising out of Civil Suit No. 94 of 2015)**

This case challenged the practice of seclusion of patients with mental illness at Butabika National Mental Referral Hospital. Applicants sought redress for violation of the right to health, freedom from torture, cruel, inhuman, and degrading treatment, right to liberty, and right to a clean and healthy environment. The Court determined the matter in favour of the Government and found that there is no violation of human rights when seclusion rooms are used to treat persons with mental disabilities. The case is on appeal.

1. **CEHURD vs. Attorney General and Family Life Network, High Court Miscellaneous Cause No. 309 of 2016**

This matter was filed to challenge the ban on comprehensive sexuality education in schools by the Parliament of Uganda and the inordinate delay and omission by the Ministry of Education and Sports in issuing a policy on sexuality education.

The High Court recognized the obligation of the government to provide sexuality education to promote the well-being of adolescents and to specify key features of that education in accordance with the 1994 Programme of Action of the International Conference on Population and Development (ICPD). Sexuality education is crucial for gender relations and equality, violence against adolescents, responsible sexual behavior, contraception, family life, STIs, HIV and AIDS prevention[[17]](#footnote-18).

1. **Rosemary Namubiru v. Uganda HC Crim. Review No 50/2014**

The accused, an HIV+ nurse, was charged with negligently injecting a toddler with a cannula contaminated with her blood knowing or having reason to believe that this could likely cause the spread of HIV infection. The High Court upheld the conviction for the offence by a trial magistrate court but in light of mitigating factors sentenced her to the period of imprisonment served

The decision signifies that the transmission of HIV is a public health concern, and this case revolves around exposure to HIV due to an act of professional negligence. It demonstrates that the law can be used to protect the public from the risk of transmission or exposure to HIV by criminalizing acts and behaviour that expose others to HIV. However, the criminal provisions are at times too broad and result in penal sanctions that are disproportionate to the aim of preventing transmission.

To mention but a few.

1. **Reflecting on Progress on the Right to Health.**

As we celebrate, it is incumbent upon us to take stock of the progress made. Over the past two decades, we have witnessed legislative reforms, policy developments, and improved access to healthcare services. Communities that were once underserved have seen positive changes, and individuals have found hope in the protection of their rights. However, it is equally important to acknowledge the persistent challenges relating to policy reform, litigation processes, and the priorities of the government in a developing country such as Uganda. Resource constraints, disparities in access to healthcare, and emerging health threats such as the COVID-19 pandemic, the effects of Climate Change, and emerging technologies serve as reminders that our work is far from complete**.**

We must therefore be alert and prepared at all times. Continuous research and capacity building of individuals and organizations is crucial in ensuring preparedness and ensuring the sustainability of the advocacy work on the law and policy regulating health as a human right.

1. **Charting a Course for the Future**

As we conclude this celebration, let us look to the future with renewed commitment and vision. What lies ahead for Health Policy and the Law in Uganda? It is our collective responsibility to chart a visionary course; one that ensures every Ugandan, regardless of their background or circumstances, enjoys access to quality healthcare.

The journey leading up to the right to health in Uganda has been one of creation, transformation, dedication, and commitment to the struggle. It is a testament to the power of education and advocacy to effect meaningful change in our society. As we stand at the threshold of a future filled with possibilities, let us remember that our work is far from over. The curtain may soon draw on the forefathers of this journey, it is now up to the young generation to take up this mantle of shaping a future where no one is left behind, and where justice prevails.

Thank you for your attention.

1. See the cases of CEHURD & 3 Ors vs Nakaseke District Local Administration Civil Suit No. 111 of 2011 and CEHURD & 2 ORS vs Attorney General Civil Suit No. 212 of 2013; which discuss the right to health and medical negligence [↑](#footnote-ref-2)
2. Ruth A, (2019). Understanding Health and the Law in Uganda. <https://www.cehurd.org/understanding-health-and-the-law/> Accessed 21 September 2023 [↑](#footnote-ref-3)
3. Article 25 [↑](#footnote-ref-4)
4. Article 12 [↑](#footnote-ref-5)
5. Article 12 (1) CEDAW [↑](#footnote-ref-6)
6. Article 16 (1) and (2) ACHPR [↑](#footnote-ref-7)
7. Article 14 (1) Maputo Protocol [↑](#footnote-ref-8)
8. Articles 14(1) and (2) ACRWC [↑](#footnote-ref-9)
9. Ben K Twinomugisha, (2015). Fundamentals of Health Law in Uganda. Pretoria University Law Press (PULP) Pg 27 [↑](#footnote-ref-10)
10. Article 8A [↑](#footnote-ref-11)
11. Article 45 [↑](#footnote-ref-12)
12. Objective XIV of the NODPSP [↑](#footnote-ref-13)
13. Objective XX of the NODPSP [↑](#footnote-ref-14)
14. Objective XXI [↑](#footnote-ref-15)
15. Objective XXII (ii) [↑](#footnote-ref-16)
16. Center For Health, Human Rights & Development (CEHURD) & Ors v The Attorney General Constitutional Appeal No.01 Of 2013 [↑](#footnote-ref-17)
17. See A/65/162, 2010. Report of the United Nations Special Rapporteur on the Right to Education [↑](#footnote-ref-18)