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## SUMMARY OF ONGOING CASES LITIGATED BY CEHURD THROUGH ITS STRATEGIC LITIGATION PROGRAM

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### 1. PETITION 16:

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**Center for Health Human Rights & Development (CEHURD), Prof. Ben Twinomugisha, Rhoda Kkiriza, Inziku Valente versus Attorney General; Constitutional Petition No. 16**

**Brief facts:**

In 2011, CEHURD and others filed a petition before the Constitutional Court stating that the government is responsible for the provision of basic maternal health services to the people of Uganda including prenatal care during pregnancy, skilled birth attendance with options for management of normal deliveries and complications arising, emergency obstetric care to address the major causes of maternal death and post-partum care for the period of six weeks following.

That the omission of the government to fulfill its obligation to provide basic maternal health services has resulted in the preventable deaths of many women in Uganda including two women Sylvia Nalubowa who died from Mityana Hospital and Anguko Jennifer who died in Arua Regional Referral Hospital both due to the absence of basic maternal health commodities and the omission of the health workers to provide them with required maternal health care. The Attorney General raised a preliminary objection saying that the case presented a political question which could not be determined by the Constitutional Court and the justices agreed with her and thereby dismissed the petition.

On appeal at the Supreme Court, the petitioners challenged the decision of the constitutional court to dismiss the petition. The Supreme Court held that the petitioners had, as required by Article 137 of the Constitution, alleged that specific acts and omissions of the government and its workers were inconsistent with and violated the Constitution. As such, the petitioners had raised questions that the Constitutional Court should hear in order to determine whether the allegations mandated redress.

Additionally, the Supreme Court held that “the political question doctrine has limited application in Uganda’s current Constitutional order and only extends to shield both the Executive arm of Government as well [as] Parliament from judicial scrutiny where either institution is properly exercising its mandate, duly vested in it by the Constitution.” In a unanimous decision, the Supreme Court ordered the Constitutional Court to hear the petition on its merits and as such the petition was sent back to the Constitutional court for further management and determination.

**Issues;**

- 1) Whether 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 as read with Objectives XIV and XX of the National

Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda?

- 2) Whether 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 of the Republic of Uganda?
- 3) Whether the government's omission to adequately provide basic maternal health care services in public health facilities violates the rights of women and is inconsistent with and in contravention of Articles 33 (1), (2), (3) of the Constitution of the Republic of Uganda?
- 4) Whether the government's omission to adequately provide Emergency Obstetric Care services in public health facilities violates the rights of women and is inconsistent with and in contravention of Articles 8A, 22, 33 (1), (2), and (3), 45, 287 as read with Objectives XIV and XX of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda?
- 5) Whether the government's omission to adequately provide emergency obstetric care in public health facilities resulting into obstetric injury subjects women to inhuman and degrading treatment and is inconsistent with and in contravention of Articles 24 and 44 (a) of the Constitution of the Republic of Uganda?

**Status**

- 1) Scheduling completed
- 2) Awaiting fixing hearing date

**2. PETITION 22**

**Center for Health Human Rights & Development(CEHURD), Action Aid Uganda (AAU), Food Rights Alliance (FRA), SEATINI versus Attorney General; Constitutional Petition no. 22/2015**

**Brief facts**

CEHURD and others filed a petition in the Constitutional court challenging the legality of the Plant Variety Protection Act 2014 on the following grounds;

- 1) That the content and manner of legislation of the Plant Variety Protection Act is inconsistent and in contravention of Article 2(1) & (2), 8A, 26, 38, 88, 94 (1) and Principle II (i), XIV(b), Objective XXII (a) of the National Objectives and Directive Principles of State Policy of the Constitution of Uganda.
- 2) That the process and procedures of enactment of the Plant Variety Protection Act, 2014 on December 20, 2013 by the 9<sup>th</sup> Parliament is inconsistent with and in contravention of the provisions of the Articles 2(1) & (2), 88 and 94 (1) of the Constitution of the Republic of Uganda

and Rule 23 of the Parliamentary Rules of Procedure in as far as the speaker did not determine whether there was the prerequisite quorum.

- 3) That section 13(a) and (b) and section 15 (a), (b), (c) and (e) of the Plant Variety Protection Act, 2014 are inconsistent with the Principle of exhaustion of the rights and the right to property under Article 26 of the Constitution in as far as they prohibit the production and selling of reproductive material of plants of a plant variety.

#### **Issues**

- 1) Whether the passing of the Plant Variety Protection Act 2014 without determining whether there was a requisite quorum was inconsistent with and in contravention of Articles 2(1) & (2), 88 and 94 (1) of the Constitution of the Republic of Uganda and Rule 23 of the Parliamentary Rules of Procedure?
- 2) Whether the enactment of the Plant Variety Protection Act, 2014 without the participation of the communities to be affected by the Act was inconsistent with and in contravention of Principle XIV of the National Objectives and Directive Principles of State Policy and Article 8A and 38 of the Constitution?
- 3) Whether sections 13(a) and (b) and section 15 (a), (b), (c) and (e) of the Plant Variety Protection Act, 2014 are inconsistent with the Principle of exhaustion of the rights and the right to property under Article 26 of the Constitution of Uganda.
- 4) Whether the Petitioners are entitled to the declarations sought?

#### **Status**

- 1) Awaiting fixing for hearing
- 2) Judgment pending

### **3. MENGO CASE**

**Center for Health Human Rights & Development(CEHURD), Nantumbwe Ritah, Kitaka Ronald versus The registered trustees of Mengo Hospital , Medical Director Mengo Hospital, Dr. William Bukenya- Deputy Medical Director, Nassazi Sylvia, Namuli Sophie, Dr.Martha Namusoby ; HCCS No. 176/2015**

#### **Brief facts:**

Ritah Nantumbwe (second plaintiff) went to Mengo Hospital to deliver a baby by caesarian section. She was admitted in Albert Cook building and was informed by a nurse that she and the expected baby were in good condition. After the baby was born, the fifth defendant Ms. Namuli Sophie a student nurse who was not under supervision came to the admission room with two syringes.

She injected Rita's baby with the bigger syringe whereupon the baby turned blackish. The baby gasped and cried as the student nurse stood in bewilderment. The baby was rushed to emergency room and later the nursery where he died.

### **Issues to be determined by the court**

- 1) Whether the failure by the first, second and third defendants to ensure that the fifth defendant was supervised while administering treatment to the second plaintiff and the deceased baby is a violation and threat to the right to life guaranteed by Article 22(1) of the 1995 Constitution?
- 2) Whether the failure by the first, second and third defendants to ensure that the second plaintiff and the deceased baby receive the appropriate health care is a violation of the right to access quality health care contrary to Articles 8A and a violation and threat to the right to life guaranteed by Article 22(1) of the 1995 Constitution?

### **Status**

- 1) Pending Scheduling of the case
- 2) Hearing date fixed for 14th December 2016

## **4. MULAGO- LOST BABY CASE**

**Center for Health, Human Rights & Development(CEHURD), Mubangizi Micheal, Musimenta Jennifer versus The Executive Director Mulago Referral Hospital, Attorney General HCCS No. 212 /2013**

### **Brief facts:**

Jennifer Musimenta, the second plaintiff gave birth to twins at Mulago National Referral Hospital. The two babies were taken for weighing but only one was returned. After constant demands that the second baby be returned, Jennifer and her husband Michael herein the third plaintiff were given a body of a dead baby.

A DNA test revealed that Jennifer and her husband Michael had no biological relation with the baby given to them by the mortuary attendant. The plaintiffs argued that failure to return the baby violated the Jennifer and Michael right's to health, family and freedom from cruel, inhuman and degrading treatment and the lost baby's right to know and be cared for by parents.

### **Issues to be determined by the court**

- 1) Whether the defendants' acts and omissions violated the lost child's right enshrined in Article 34(1) of the Constitution?
- 2) Whether the defendant's acts and omissions violated the second and third plaintiff's rights to access health information and the right to health contrary to Articles 41(1), 8A, 45 and Objectives XX, XIV (b) of the Constitution?
- 3) Whether the defendants' acts and omissions violated the second and third plaintiffs' right to family enshrined in Article 31(4) and 31 (5) of the Constitution?

- 4) Whether the second and third plaintiffs were subjected to cruel, inhuman and degrading treatment as well as psychological torture contrary to Article 24 and 44 (a) of the Constitution?

**Status**

Awaiting Judgment

Judgment date 16<sup>th</sup> January 2017

**5. KIBOGA CASE-**

**Kasumba Simon Peter versus Kiboga District Local Government'**

**Uganda Human Rights Commission Complaint No. 32/2016**

This complaint is lodged by Kasumba Simon Peter against Kiboga District Local Government on behalf of his spouse Joyce Bundoli who is now deceased. On the fateful morning of 7<sup>th</sup> May 2015, Joyce was taken to Kiboga General Hospital for obstetric care and management to deliver a child.

As Joyce experienced labour pains, she requested the hospital attendant and mid wife to administer the IV drip and attend to her. The mid wife ignored Joyce's constant requests and took several hours without attending to her.

That evening Joyce felt something burst in her womb occasioning excruciating heat and pain in her lower abdomen. The midwife did not call in the doctor to examine Joyce till about 3am when her condition had worsened. The doctor requested that Joyce be referred to Hoima Hospital.

At Hoima hospital, Joyce was examined by a team of health workers who said that Joyce's uterus had ruptured, the unborn baby had died and Joyce's chances of survival were minimal.

Joyce later died at Hoima hospital.

**Issues to be determined by the court**

- a) Whether the failure by Kiboga General Hospital to provide adequate and timely emergency obstetric care to the deceased violated her rights to life and health contrary to Articles 20, 22(1), 24, 33(3), 31 (4) & (5), 34(1), 8A, 45 and Objectives XIV & XX of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda, S.30 (1) & (2) of the Health Service Commission Act and Sections 1, 4, 5, 13 & 14 of Ministry of Health Patients' Charter?
- b) Whether the actions and omissions of Kiboga General Hospital violated the rights of the complainant and his children's rights to a family contrary to Articles 31 (4) and (5) and 34(1) and Objectives XIV & XX of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda, S.30 (1) & (2) of the Health Service Commission Act and S. 1, 4, 5, 13 & 14 of Ministry of Health Patients' Charter?
- c) Whether failure by Kiboga District Local Council to ensure that health workers of Kiboga General Hospital immediately and urgently referred the deceased mother to Hoima Regional Referral Hospital upon request by family was a violation of her freedom from torture, inhuman and degrading treatment contrary to Articles 24 and 44 (a) of the Constitution of the Republic of

Uganda, S.30 (1) & (2) of the Health Service Commission Act and S.13 & 14 of Ministry of Health Patients' Charter?

- d) Whether the complainant is entitled to punitive and general damages?
- e) Any other legal remedy as the Commission may deem fit

### **Status**

Awaiting response from the Kiboga District Local Government

Awaiting hearing

## **6. BAMUTAKUDDE CASE**

**Center for Health, Human Rights & Development (Cehurd) Versus Mukono District Local Administration, National Environment Management Authority, China Communications Construction Company; HCCS No. 189/2015**

In 2012, the National Environment Management Authority (NEMA) approved the China Communications Construction Company (CCCC) to commence stone quarrying in the villages of Bamutakudde and Kiryamuli located in Mukono District.

As a result of the blasting, the natural water stream is contaminated, the landscape has become inaccessible, and the people in the community suffer health complications from inhaling the dust and drinking contaminated water.

### **Issues to be determined by the court**

- 1) Whether the defendants' acts and omissions violated the right to health, a clean and healthy environment of the communities in Bamutakudde and Kiryamuli contrary to Articles 8A, 45, 39 and Objective XIV of National Objectives and Directive Principles of State Policy of the 1995 Constitution and section 3 of the National Environment Act Cap 153?
- 2) Whether the first and second defendants' failure to preserve the environment and protect the natural water stream in Bamutakudde and Kiryamuli villages violated the right clean and healthy environment and the public trust doctrine contrary to Articles 39, 237(2) (b) and Objective XIII of the National Objectives and Directive Principles of State Policy of the 1995 Constitution of the Republic of Uganda?
- 3) Whether the parties are entitled to the prayers sought?

### **Status**

Pending hearing; hearing scheduled for 24<sup>th</sup> October 2016

Find a qualified person to test the water at the villages of Bamutakudde and Kiryamuli.

## **7. OBIGAH CASE**

**Center for Health, Human Rights & Development (CEHURD) and Rose Obigah versus International Medical Group; Civil Suit No.571 /2016**

### **Brief facts**

This case was filed by CEHURD and Rose Obigah (herein the plaintiffs) on behalf of Mr. Patrick Obiga. On the 4<sup>th</sup> day of August 2016, Patrick Obiga was admitted in the intensive care unit of International Hospital Kampala (IHK) at around 9 am after he was involved in a road accident.

His medical bills were periodically paid by family members to a tune of Ugx. 20, 134,000/= (twenty million one hundred thirty four thousand shillings). On 22<sup>nd</sup> day of August 2016, the second plaintiff was informed that Patrick had been successfully treated and could be discharged from the hospital.

The administration of IHK refused to release Patrick until he cleared the outstanding balance of the medical bills which was Ugx. 19, 514, 425 /= (nineteen million five hundred and fourteen thousand four hundred and twenty five shillings).

### **Issues to be determined by the court**

- 1) Whether the imprisonment and detention of Patrick Obiga pending the payment of the outstanding balance of the medical bill is in violation of his right to personal liberty under Article 23 of the Constitution of Uganda?
- 2) Whether the imprisonment and detention of Patrick Obiga pending the payment of the outstanding balance of the medical bill is in violation of his freedom from cruel, inhuman and degrading treatment under Article 24 and 44 (a) of the Constitution of Uganda?
- 3) Whether the imprisonment and detention of Patrick Obiga pending the payment of the outstanding balance of the medical bill is in violation of the Prevention of Torture Act of the Republic of Uganda?

### **Status**

Pending mediation

Pending Hearing; hearing date fixed for 24th November 2016

## **8. UMEME CASE**

**Center for Health, Human Rights & Development(CEHURD) Versus Attorney General, Electricity Regulatory Authority, UMEME Ltd Civil Suit No.1020 /2015** **for**

### **Brief facts;**

CEHURD instituted a case against the defendants for disconnecting power from Kiboga General Hospital. On 24<sup>th</sup> November 2015, the agents of UMEME (the third defendant) served Kiboga

Hospital with a disconnection notice and immediately disconnected electricity supply from Kiboga General Hospital.

When electricity was disconnected; delivery of health care services at Kiboga Hospital has been grossly interrupted. Machines including dental machines, CD4 machines, and oxygen concentrators were rendered redundant as they could not operate without electricity. The expectant women who went to the hospital could not access emergency obstetric care because there was no electricity supply to the theatre at Kiboga hospital.

#### **Issues to be determined by the court;**

- 1) Whether a declaratory judgment that disconnection of electricity from Kiboga General Hospital, a public health facility is a violation of the right to health, and life contrary to Articles 22(1), 45, 8A and Objective XIV (b) and XX of the Constitution of the Republic of Uganda, 1995?
- 2) Whether the omission of the Ministry of Health and the 1<sup>st</sup> defendant to ensure the constant and uninterrupted supply of electricity to Kiboga General Hospital is a breach of their obligation to respect, uphold and promote human rights contrary to article 20(2), and is a violation of the right to life under Article 22(1), Article 45, Article 8A and Objective XIV (b) and XX of the Constitution of the Republic of Uganda?

#### **Status**

- 1) Hearing date fixed for 1<sup>st</sup> November 2016
- 2) Awaiting hearing on 1<sup>st</sup> November 2016 at 12:00 PM

## **9. RABIES CASE**

**Center for Health, Human Rights & Development(CEHURD), Christine Munduru, Emmanuella Anzoyo (suing through next friend Christine Munduru) Versus Wakiso District Local Government , Medical Doctor Entebbe General Hospital; Civil suit No. 170/2015**

#### **Brief facts**

Emmanuella Anzoyo (the third plaintiff) was bitten by a stray dog and was rushed to Entebbe General Hospital-Public wing by her mother for medical care and treatment. She was examined by a health worker and diagnosed with rabies but was denied access to free rabies treatment.

The health workers advised that the treatment is a four-dose vaccine and each dose was availed at a cost of Ugx. 50, 000/= [Uganda Shillings Fifty Thousand only].

Christine Munduru (the second plaintiff) paid for the rabies vaccine to a tune totaling to Ugx. 250,000/= [Uganda Shillings Two Hundred Fifty Thousand only] on behalf of Emmanuella whose family was unable to afford the rabies treatment at Entebbe General Hospital

#### **Issues to be determined by the court**

- a) Whether the Wakiso District Local Government's failure to provide free rabies vaccine in Entebbe General Hospital (Public wing) is a threat and violation of the third plaintiff's right to access essential medicines contrary to Articles, 20, 21 (2), 22 (1), 45, 8A National Objectives XIV (b) and XX of the Constitution of the Republic of Uganda, 1995?



- b) Whether the second defendant's acts and omissions, neglect and failure to ensure availability of free rabies vaccine in Entebbe General Hospital, is a violation of the third plaintiff's right to access essential medicines contrary to Articles 20, 21 (2), 22 (1), 45, 8A, National Objectives XIV (b) and XX of the Constitution of the Republic of Uganda, 1995?
- c) Whether the unavailability of rabies vaccines as essential medicines in Entebbe General Hospital when the third plaintiff needed it urgently violated and threatened her right to emergency health care contrary to National objectives and Directive principles of state policy XIV, XX and Articles 34 of the Constitution of the Republic of Uganda, 1995?
- d) Whether the failure of the defendants to provide the third plaintiff with anti-rabies vaccine violated the Second, third and fourth plaintiffs' right to freedom from inhuman and degrading treatment contrary to Article 24 and 44(a) of the Constitution of the Republic of Uganda, 1995?

### **Status**

Hearing; 25<sup>th</sup> October 2016

## **10. BUTABIKA CASE**

**Center for Health, Human Rights & Development (CEHURD) and Kabale Benon versus Attorney General civil suit No. 94 /2015**

### **Brief facts;**

In October 2005 and November 2010, Kabale Benon (the second plaintiff) was a patient at Butabika National Mental Referral Hospital. During his treatment at the hospital, he was locked up in a seclusion room for more than twenty four hours without any supervision whatsoever.

At the hospital, Benon was undressed and locked up in a small cold dark room measuring about 2 square meters. The room did not have any windows, source of light, beddings, a toilet or urinal. This forced Benon to urinate and defecate in the same room where he slept and also lie on the concrete-raised platform during the period in which he was under seclusion. This posed a great risk of infections to him.

This case challenges violations of the rights of patients at Butabika National Referral Hospital who are subjected to harsh conditions in the seclusion rooms.

### **Issues for determination by the court**

- 1) Whether the lack of a toilet and other sanitation facilities in the seclusion rooms in Butabika National Referral Hospital is a violation of freedom from cruel inhuman and degrading treatment under Article 24 and 44, right to clean and healthy environment under Article 39 and under right to health under Article 45 of the Constitution of the Republic of Uganda?
- 2) Whether a lack of appropriate beddings in the seclusion rooms in Butabika National Referral hospital is a violation of the freedom from cruel inhuman and degrading treatment under Article 24 and 44 of the Constitution and the right to freedom from Torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012?

- 3) Whether the act of undressing patients before detention is a violation of their right to privacy under Article 24 and 44 of the constitution, and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012?
- 4) Whether the seclusion on the grounds of disability is a violation of freedom from cruel inhuman and degrading treatment under Article 24 and 44 of the Constitution and the right freedom from Torture under section 3 of the Prevention and Prohibition of Torture Act No. 3 of 2012?
- 5) Whether the detention of patients in seclusion rooms for long hours without supervision even when their violence has subsided is cruel, inhuman and degrading under Article 24 and 44 of the Constitution and is a violation of their right to personal liberty under Article 23 of the Constitution and the right to freedom from torture under section 3 of the Prevention and Prohibition of Torture Act No. 2012?
- 6) Whether the locking of patients in sealed off dark seclusion rooms without any visual or audio interaction with any person or the environment around them is a punitively unjust deprivation of personal liberty and is cruel, degrading and inhumane to extent that it violates the right to personal liberty under Article 23 of the Constitution and the right to freedom from torture under section 3 of Prevention and Prohibition of Torture Act No. 3 of 2012?

#### **Status**

- 1) Hearing at 9<sup>th</sup> November 2016 at 9:00 am

### **11).COMPLAINT TO UGANDA MEDICAL DENTAL PRACTITIONER'S COUNCIL (UMDPC)**

#### **Center for Health, Human Rights & Development (CEHURD) and Dr. Diana Nasike versus International Medical Group**

CEHURD lodged a complaint against the International Medical Group on behalf of Dr. Diana Stella Nasike who is a full time employee of the International Medical Center, Upper Kololo Terrace.

Dr. Diana was subjected to working in a poorly ventilated Consultation room labeled 'Room 2'. This room at the International Medical Center, Upper Kololo Terrace has no window but just a small hatch sized opening. Dr. Diana Stella Nasike was exposed to a tuberculosis infection prior to November 2015 as a result of working in a non- ventilated working environment.

Although Dr. Diana requested to be moved from the poorly ventilated room, she was told that there was no space as the alternate available office space was in use by the clinic's manager who needed to make a good impression on customers that regularly visited the clinic.

Dr. Diana's requests to human resource manager of IMC that she be moved to work in different room were futile even after she was diagnosed with active tuberculosis. In addition to being poorly

ventilated, the room violates privacy of patients as it exposes patients to outsiders who observe and listen in while patients are being treated.

### **Issues to be determined by the UMDPC**

- 1) Whether failure by International Medical Group to provide a well ventilated room violated the complainant's right to health and work in a clean and healthy environment as guaranteed in Article 8A, 39 and Article 45 of the Constitution?
- 2) Whether failure by International Medical Group to provide a well ventilated room threatened the complainant's right to life as guaranteed in Article 22(1) the Constitution?

### **Status**

- 1) Awaiting hearing

## **12) ACCESS TO INFORMATION REQUESTS**

### **CENTER FOR HEALTH HUMAN RIGHTS & DEVELOPMENT (CEHURD) VERSUS THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY, THE EXECUTIVE DIRECTOR, THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY, MISC.CAUSE NO.210 OF 2015**

On the 14<sup>th</sup> day of April 2015, the CEHURD (Applicant) together with a one Wakkaabu Geoffrey Kiwanuka filed three (3) Access to information requests to the second respondent under the Access to Information Act, 2005 for an Environmental Impact Assessment report, an Initial Environment Audit Report and public comments received prior to the issuing of the Certificate of Approval of Environment Impact Assessment No NEMA/EIA/4505 to China Communications Construction Company Ltd.

On the same day, the respondents acknowledged receipt of the Applicants' requests; but deliberately and without any reasonable excuse refused to answer the requests whatsoever.

When the Respondents failed or refused to respond to the Applicant's request; the Applicant through its lawyers' Dalumba Advocates (formerly Kabanda & co. Advocates) brought this application under section 37 of the Access to Information Act on December 4, 2015 against the Respondents requesting this Honourable Court to make the following orders that;

- a) The failure of the respondents to comply with the Access to Information requests made by the Applicant was unlawful,
- b) The documents requested by the Applicant are public documents which the respondents were obliged to provide upon request,
- c) The first respondent should immediately avail to the Applicant all of the documents requested and
- d) The first respondent should take immediate action to make all approved Environmental Impact Assessment reports readily available and accessible on their website.

### **Issues to be determined by the court**

- a) Whether the failure of the respondents to comply with the Access to Information requests made by the Applicant was unlawful?

- b) Whether the documents requested by the Applicant are public documents which the respondents were obliged to provide upon request?
- c) Whether the first respondent should immediately avail to the Applicant all of the documents requested?
- d) Whether the first respondent should take immediate action to make all approved environmental impact assessment reports readily available and accessible on their website?

**Status**

**Awaiting ruling;**

**Ruling fixed on 28<sup>th</sup> October at 3:00 PM**