



**ANNUAL NATIONAL INTER-UNIVERSITY
CONSTITUTIONAL LAW MOOT COURT
COMPETITION**

Gender Discrimination: The Plight of Pregnant Girls in Schools

MOOT PROBLEM

- Oyanda is a landlocked African Country, bordered to the North by the Republic of Nakasa, the Federal States of Magonja in the South, Lindo in the East and Nyangwa in the West. Oyanda has a very good relationship with all its neighbours, sharing many traditional customs and a thriving regional trade system. The capital city of Oyanda, Kwerro, is located south of the state and banks the Konsa River. Oyanda has a total population of 43.6 million people. The World Bank 2021 estimates showed that about 47 per cent of the citizens of Oyanda live below the poverty line, while about 23 per cent live in abject poverty. The population in Oyanda is made up of about 45 per cent young people, 40 per cent middle-aged, and 15 per cent elderly.

country saw 10 years of heavy gun fighting and power struggles, especially between leaders of the Mpanda and Watu tribes. In 1999, after lengthy peace talks, the leaders entered into a war concession, deciding that the leadership of the country would be determined by a constitution. Through a referendum, the 2001 Constitution was enacted, establishing the Office of the President, which is ceremonial, and the Leader of Government (Prime Minister), elected through adult suffrage every five years. The Prime Minister appoints a Cabinet, with Cabinet Ministers who administer government business and have collective responsibility for all Cabinet decisions. The Constitution also established the Parliament and Judiciary as the other arms of Government and requires all international treaties to be ratified and domesticated by Parliament before
- Oyanda, a former British protectorate obtained independence on 13th October 1987. The

they can be regarded as applicable. It further requires that before any treaty, convention, or agreement is entered on behalf of the people of Oyanda, Parliament must first sanction it. Politics are still heavily militarised in the country. Lastly, the Constitution establishes a body of rights and systems for one to obtain justice.

3. The Constitution of Oyanda also establishes a court system of three major courts; the High Court, the Appeals Court and the Supreme Court. The High Court has unlimited original Jurisdiction to entertain all suits brought before it, whereas the Appeals Court only has Appellate jurisdiction from matters of the High Court. The Appeals Court also doubles as the Constitutional Court, with unlimited original jurisdiction in matters involving the interpretation of the Constitution. The Final Appellate Court is the Supreme Court and it has appellate jurisdiction in appeals emanating from the Appeals Court or the Constitutional Court.
4. Oyanda is a party to several regional and international human rights instruments and is a member of the World Health Organisation. It has also endorsed some Global Declarations and Conventions such as the World Programme of Action for Youth of 1995, and the Sustainable Development Goals, all of which recognise the need to protect children from teenage pregnancies, early marriages, and the effects they have on children in school. The State, however, entered a reservation on Article 6(b) and 14(2)(c) of the Protocol to The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The age of consent, as provided for under Article 7 of the Constitution of Oyanda is 16.
5. A UN Women Report in 2016 showed that more than 40 per cent of the girls in the state of Oyanda were not receiving formal education due to poverty and some cultural biases, especially among the Mpanda and Watu tribes.

The report also highlighted that about 33 per cent of all teenage school-going girls dropped out of school within two years of having their first period, owing to a cultural practice of marriage after a girl reaches puberty. The State, through the Ministry of Gender, Child and Social Welfare, established an education scheme which aimed at ensuring that the State paid the school dues for all teenage girls in all private and public schools. This programme has since 2015 been underfunded, and several girls continue to drop out of school, especially in the rural areas of the country. The Minister of Finance, Nachy Buka, announced on national television in 2016 that the State was going through an economic recession, and was unable to fund the education system.

The COVID-19 pandemic found the state of Oyanda, like many other Least Developed Countries, unprepared. After receiving its index COVID-19 case on the 29th of March 2020, the country was immediately put under mandatory lockdown, and all institutions of learning had to close within seven days. In the coming months, the state rolled out a programme to ensure that students would continue learning through radio and television, however, many rural households did not have these amenities. An initiative to provide radio sets to people in rural areas was brought to a stop when it was established by the Government Comptroller General that procurement procedures had not been followed

In February 2021, an Oxfam Report revealed that the conditions in the lockdown had adversely affected the rights of young women and adolescents, many of whom had hit puberty during the lockdown. Pen Is Mightier Initiative (PIMI), a non-governmental organisation (NGO) in Kwerro carried out extensive research on the effects of the lockdown on learner experiences. In its report of July 2021, the NGO found that there were increased cases of sexual violence during the lockdown (rape, incest, defilement) and the most affected were teenagers. There was also

an increase in child-to-child sex, while most of the young girls who had been going to school before the lockdown, had been married off, sometimes, even before they reached puberty. The marriage ceremonies involved hushed meetings between families and sometimes, falsified documents to show that the girls were of age at the time of marriage. Indeed, there was a proliferation of both teenage pregnancies and child marriages in this period, as the Report indicated.

8. Following these reports, Hon. Magandi Jenna, the cabinet minister in the Ministry of Finance and Economic Planning was hosted on the 'Speak Your Mind' programme on National Broadcasting TV. In this programme, he was quoted saying, "Our customs predate these colonial mindsets! Our women are very mature and strong, we feed them very well. The State should see no need to bend the knee to White people's tendencies. A Mpanda girl becomes a woman when she draws the first blood!" Two days later, Hon. Magandi in a separate interview on Giza Radio stated that the reports should not scare anyone, because the customs of the land are very pivotal in maintaining the "natural balance", so that the men can be very productive and build the society. There were a lot of backlash to these statements, and PIMI organised a march against the mistreatment of girls and women. The march was unfortunately stopped by the Police who advised PIMI not to take matters into their hands but rather use the right justice channels such as courts of law to air their concerns.
9. After a sustained reduction in COVID-19 cases, the State finally lifted the lockdown in August 2021 and a plan for the resumption of school was rolled out by the Ministry of Education. The learners returned to school a week later, starting with those in higher classes and university students. Many schools hiked their fees, claiming that operational costs were high, post the pandemic. Many parents complained about the high fees, and the Minister of

Education, Hon. Anna Kakunda promised that the State would release a stimulus package to assist parents and schools. However, this package is yet to be released to this day.

1. Ariana Kamisha was 15 years old, attending Kwerro High School, a government-aided school, in Senior Two when the schools reopened. Her mother, Ikendo Bunya is a single mother who operates a small retail shop on the outskirts of the Capital City, where she earns a living, caring for Ariana and her five siblings, three sisters and two young brothers. Ariana was enrolled in school on the government programme of girl child education, but her mother often struggles to raise her fees. She was a very bright girl, who for the past two academic years, studied on an academic bursary. Unbeknownst to her mother, Ariana had a boyfriend called Bazzir 'Baado' Zaidi attending the same school, in Senior Six. Both students were high performers and were often seen reading together in the school field in the evenings. However, after the pandemic, students were told to sit in different classes in their preparatory studies in the evenings, to prevent the spread of COVID-19. Ariana and Baado, being of different classes and sexes, sat in different buildings. There were, however, incidents where teachers, while supervising students, would select some students for 'extra lessons'. Oftentimes, the students returned from these sessions presenting with signs of trauma and withdrawal, with no interest in being enrolled for the extra lessons. However, no complaints were ever made about these phenomena.
 - . On the night of 15th August 2021, a week before her 16th birthday, Ariana received from Baado, a note inscribed on it; "*I hope the angels watch over you in your new age, my darling angel. Happy womb escape, in advance. Love with kisses, Baado*". As she read the note, Robert Keli, a teacher on duty who was supervising the classroom block, saw her. He called her and took her to his office, a

few blocks away, where he asked the terrified girl to read the note out to him. He then told her, 'Eh, now you're old? Even getting married in school? Let me show you what married people do!' Ariana trembled. He proceeded to undress her, there in his office and had unprotected sexual intercourse with her while fear kept Ariana quiet. When she got to the dormitory that night, Ariana was in pain, and confided in her best friend, Kiyom Gisha, about what had transpired. Kiyom, with other girls in the dormitory, advised her to keep it a secret, since the teacher was very vindictive and besides, many of the girls had already "done it" with some other teachers and some, with their "husbands" in higher classes.

12. In the weeks that followed, Ariana was called to Robert's office four times, in which instances, he had sexual intercourse with her. A month before the final exams of the term, Ariana discovered that she was pregnant, after a long fever in the school infirmary. The school nurse, Ms Christine Gwango, notified the headteacher, Mr Jean-Pierre Ekyiru, who then smirked asking, "Another one? Write a chit and send her home. These students think we run a school of sluts. Throwing themselves at every man." The nurse inquired from Ariana who was responsible for the pregnancy, and the girl informed her that it was Mr Robert Keli. She stated that she was keeping it a secret because Mr Keli had threatened to send her boyfriend home if she said anything. When Ms Gwango approached Robert about the allegations later that evening, the latter denied any wrongdoing, stating that it must be "that stubborn boy, Baado that she is always cavorting with!" After a week at the infirmary, Ariana was sent back home, but Baado was spared because he was in his final year. No investigation into the matter went further than the nurse's efforts. Robert Keli continues to teach at the school to this day.
13. On her way home, Ariana visited the local church, St Andrew's Church, and found the local priest, Rev. Fr Adriano Bungu. She told

him why she was coming from school and sought to live at the church premises for a few days as she thought of what to tell her mother. The priest told her, "The wages of sin is death. Be gone from these holy grounds, great Babylon!" That week, the priest preached a sermon on purity, and urged the congregation that girls who get pregnant while in school should not be allowed back to school until six months have passed after childbirth, because in addition to setting a bad example, they will distract their colleagues who are 'good students'. This sermon received a thunderous handclap from the congregants and was broadcast on the evening news on National Broadcasting TV.

- i. Frightened by the potential wrath of her mother, Ariana reached out to her friend Zara Akampu, who used to be their housemaid in the long past to whom she recounted her ordeal. Zara advised that they should visit a clinic and have an abortion done so as to keep in her mother's good books and resume her studies at school. They proceeded to Gweri Goodlife Clinic where they met Ms Edna Ziffu, a nurse to whom they explained Ariana's situation and expressed their desire to have an abortion done. "Such a thing is unacceptable. It is against our culture and religious beliefs as the people of Oyanda. Besides, that is a 'no-go' zone for us as health workers because the law will catch us!" exclaimed Ziffu, as she turned her back on them. Zara and Ariana left in disappointment. Mindful of the urgency of the cause, Zara mixed chilli peppers and liquid soap which she gave Ariana to drink during the night. The following morning, Ariana complained of stomach pain and was vomiting uncontrollably. Zara invited Ikendo with whom they rushed the girl to Busi Health Center III for treatment.
- i. The nurses at the facility established that Ariana needed Post Abortion Care (PAC) because she was very weak from vomiting and not feeling well; was experiencing pain and uncontrollable bleeding from her private parts;

had suffered an infection and was experiencing the onset of sepsis. They were, however, unable to provide the needed care because they were ill-trained to handle teenage pregnancies, post-abortion complications, and had no equipment at the hospital. They referred Ariana and her mother to the bigger referral hospital, 40 kilometres away which was better equipped to handle such cases. However, Ariana's condition worsened on the way to the hospital and she suffered cardiac arrest due to excessive haemorrhage and died. In the months that followed, Ariana's mother scared that her other daughters would suffer the same fate as Ariana, removed them from school. The events surrounding Ariana's death and pregnancy spread in the locality, and many parents removed their daughters from school. Some of the girls returned home pregnant and were sent to villages.

16. A few weeks after Ariana's burial, Ikendo, while at the market, met Ms Christine Gwango, the school nurse, who recognised her from a few visits she had made to the school. Ikendo narrated her misery stating that Ariana had passed on because she had failed to get emergency care. Christine advised Ikendo to take the matter to PIMI as they had done advocacy in this area before. PIMI agreed to represent Ikendo in her matter and she granted them formal instructions to handle the matter. PIMI prepared pleadings and filed a matter in the High Court of Oyanda against the Attorney General and Kwerro High School. PIMI argued that:

1. ***The failure of the government to ensure that girls were protected from harmful and predatory cultural and religious practices and beliefs, and archaic laws is a violation of human rights guaranteed under the Constitution of Oyanda and applicable laws.***
2. ***The failure of the government to pass and implement a School Health and Sexuality Education Policy is a violation of various human rights guaranteed under the Constitution of Oyanda and applicable law.***

3. ***The failure of the government to provide essential training and equipment to the government medical workers to enable them to handle issues arising out of teenage pregnancies was a violation of girls' rights guaranteed under the Constitution of Oyanda and applicable law.***
4. ***The failure of Kwerro High School to ensure a protective environment for students to study free from sexual exploitation was a violation of human rights guaranteed under the Constitution of Oyanda and applicable law.***
5. ***The failure of Kwerro High school to investigate and prosecute Robert Keli was a violation of Ariana's rights guaranteed under the Constitution of Oyanda.***

The Attorney General denied the claims, arguing that the State laws on marriage were clear and that the State was not bound by some of the laws that the applicants had relied on. He also argued that the cultural beliefs complained of were not inherently bad and they had not been proven so and that the statements of one Minister were only binding on him and not the entire state.

The Attorney General also argued that the State was not in a position to provide all the equipment needed because there was no money and that the whole world was still reeling from the effects of the COVID-19 pandemic.

The school argued that there was no realistic way in which they could have catered for several students. The school added that they had separated the students to prevent 'bad manners' and the spread of COVID-19 among them.

The school further argued that there was no evidence that Robert Keli was liable for any wrongdoing, as no student had reported him and there was no DNA evidence to prove that he was responsible for Ariana's pregnancy. The school noted that it would be prejudicial to justice to fire a teacher or expel a student with no evidence of wrongdoing.

FACTS BEFORE THE APPEALS COURT

1. The High court found in favour of the applicant PIMI, holding that it was not enough for the State to simply deny accountability since it is the main protector of human rights, therefore, it had to ensure that all persons within the State were respecting human rights. The court further found that the government had a duty to pass a School Health and Sexuality Education Policy. The court further held that the state had the obligation to ensure that the health facilities were well stocked, and the health personnel well trained, because teenage pregnancies were endemic in the state and it should have been prepared. The court further found that the school had the duty to ensure that all its students were protected from the exploitation of teachers and fellow students and that it ought to have taken any allegation of abuse, however slight, very seriously. The court awarded costs to PIMI.
2. The Attorney General and Kwerro High School were dissatisfied with the judgement and appealed it and the orders therefrom to the Appeals Court.

FACTS BEFORE THE SUPREME COURT

1. On hearing the matter, the Appeals Court reversed the decision of the High Court and held that:

“The law does not operate in a vacuum, but it must capture the heart and soul of the society which it serves, as the society does not serve the law, but the law serves the society. Even though the State is a primary protector of human rights, it is not an island that floats on a sea of obscurity, but it is assisted by the oars of the people, who also have the responsibility to protect rights, even as the State does. No person should ever find themselves accused with no witness or evidence, as this is fundamental to the integrity of the very edifice of justice itself.”