



## ANNUAL NATIONAL INTER-UNIVERSITY CONSTITUTIONAL LAW MOOT COURT COMPETITIONS

**“Enhancing Vaccine Equity in a Pandemic”**

### MOOT PROBLEM

1. Gora is a Coastal African Country and she is neighbored to the North by Jorge, Haram to the immediate South, Latuna to the East and the Atlantic Ocean to the West. She has maintained a good mutual relationship with all her neighbours premised on military cooperation and trade. Gora has four (4) major districts namely; Zenabu, Mia, Peza and Pomba, which are further divided into 79 towns and her capital city is Kembe. Gora has a total population of 47.9 million people, most of whom are living below the poverty line and are mainly resident in the districts of Peza and Pomba whereas the wealthy people who comprise the clergy and the ruling party, reside in the district of Zenabu.
2. Before her Independence obtained from the British on 25th December 1997, Gora applied the English Common Law system and to a limited extent, customary law was relied upon but after her independence, the English Common Law system was progressively phased out with the enactment of the 1997 Constitution. The Constitution established the Cabinet, the Parliament and Judiciary as the three arms of Government and it further employed a dualist system as opposed to a monist system while applying International Law. The Constitution required all international treaties to be ratified and domesticated by Parliament before they can be regarded as applicable. Additionally, Article 97 the Constitution of the Republic of Gora provides that, before any international convention, agreement or request for international aid is signed or made, on behalf of the people of Gora, the Parliament should first be mandatorily consulted.
3. The Court system established by the Constitution of Gora comprises; the High Court, Appeals Court and the Supreme Court. The High Court has original unlimited 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 Country's Constitutional Court and it has original unlimited Jurisdiction in handling matters that expressly call for 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 Constitutional Court.
4. The Country recognizes several regional and international human rights instruments and is a member of the World Health Assembly. It has endorsed some Global Declarations and Conventions such as the Abuja Declaration 2001, the Global Vaccine Action Plan (GVAP) in (2011-2020) [which has been succeeded by the Immunization Agenda 2030] and

the African Plan for Immunization, that call for increased health financing, contribute towards access of vaccines and immunization supplies to health centers on a regular basis. These instruments recognize concepts related to Vaccine Equity by focusing and enhancing access to vaccines and remove any barriers to full vaccination. This creates an environment where health and human rights are guaranteed through decreasing the disease burden by increasing equitable access to health services and uptake of the use of new and existing vaccines.

5. By 2005, Gora's neighbor to the South - Haram, had one of the fastest growing economies. The surrounding countries including Gora, would usually depend on the Haram Government for guidance and leadership in health crisis response efforts as Haram was very instrumental in managing infectious diseases and epidemics such as Ebola and HIV/AIDS. However, in 2020, Moabite, a highly infectious virus broke out in Haram, in a city called Dome and the virus quickly spread throughout Haram. The spread of the virus escalated into a global crisis that required immediate action by every country in the world. Highly contagious and transmitted through air, the Moabite virus crippled Haram's health system and her strong economy was brought to her knees.

6. The Government of Haram made no effort to coordinate responses among national governments around the world who had grown accustomed to Haram taking lead in times like these. The Moabite virus has a mortality rate of 9.4 per cent and many people who are infected need intensive care services because the disease badly damages the lungs rapidly. Many Haramians feared for their lives and opted to travel to other countries to avoid getting infected. Following the rapid spread of the virus, on 20th January 2020, the World Health Organization declared the Moabite virus a pandemic and issued guidelines aimed at minimizing the spread of the Moabite virus and these included social distancing, wearing face masks, washing and sanitizing hands regularly and travel restrictions.

7. The Government of Gora did not immediately respond to the Moabite virus scare which had been reported in Haram, Jorge, Latuna and other neighboring states as foreign travelers and tourists generated the highest revenue in the financial year 2019/2020. Gora also failed to procure Moabite virus test kits and temperature guns to ascertain the health of their citizenry and incoming travelers to the country at large. On 2nd June, 2020, Gora reported its first case of the Moabite virus but by this time, so many people were already infected. In a space of six months, Gora went on to record over four million cases and registered over 400,000 deaths.

8. The Government nonetheless, took steps to develop a vaccine and other supplies to protect her citizens from the pandemic. However, all the attempts to develop a vaccine were not successful due to the limited infrastructure such as research facilities, laboratories and experienced human resources. As a result, the Government of Gora sought to procure vaccines from international communities through COVAX, an initiative led by the WHO with an aim to accelerate the development and manufacture of Moabite virus vaccines, and to guarantee fair and equitable access for every country in the world.

9. Ruuta, a country in the South of the Pacific, successfully developed the Mimax and Fuke

vaccines which were verified by the Vaccine Safety and Efficacy Authority to be 94 per cent and 86 per cent safe and effective respectively, at preventing the Moabite Virus, Ruuta committed to supply 50 per cent of all its vaccines to the COVAX initiative. Days after receiving the said approval, the demand for the vaccines shot up and wealthy countries managed to grab the lion's share of vaccines leaving poor economies struggling to secure batches for their citizens. These shortages were not addressed by various producers due to the increased demand for the most efficacious vaccine by different governments.

**10.** The Ministry of Health of Gora researched and agreed that the Mimax vaccine was highly effective in the fight against the Moabite Virus and it agreed that the vaccine would be procured and made available in Gora. The Ministry presented a proposal to procure the Mimax Vaccines from Ruuta before Parliament due to the dire situation in Gora and the need to rely on international partners to ensure the vaccines were available in Gora and administered to its people. Given the bureaucracy of the Parliament, the Ministry of Health procured the Mimax vaccine for the good of the public without parliamentary approval and her intention was to ensure that the health workers in public and private facilities, support personnel, teachers, people with underlying health conditions, the elderly aged 50 years and above, and essential workers received the vaccine first.

**11.** Due to financial constraints, the Ministry of Health could not afford six million doses of the Mimax vaccine and it only managed to buy one million doses of the vaccine. This led to challenges in the distribution of vaccines in that some districts received the vaccine while others did not. Zenabu and Mia had the highest number of people affected while Peza had a moderate number of people affected and lastly, Pomba had the lowest number of people. Government authorities decided to distribute the vaccines by starting with the states which were most hit and these were Zenabu, Mia then Peza and later Pomba. However, the state of Pomba did not receive any vaccines because of this distribution method and hence, it was left out.

**12.** The Health Ministry had inadequate personnel who were ill-equipped and not sufficiently trained in handling, distributing and administering the vaccine and this resulted in delays in distributing and administering the vaccines. Limited facilities and infrastructure such as research laboratories, roads, and hospitals equally made it hard to ensure that there was sufficient distribution of vaccines. The inadequate emergency response by the health officials disabled vulnerable people from accessing the vaccine and this resulted into the deaths of several people including health workers.

**13.** In February 2021, Dr Derrick, a health worker stationed at Pomba General Hospital, struggled to manage and contain the spread of the Moabite virus alongside his fellow health workers. Pomba General Hospital received more than thirty cases per day. Dr Derrick worked for more than 17 hours a day and was able to attend to his patients and keenly monitored their progress. He was the most reliable health worker at the health facility and most of his patients had successfully recovered from the deadly virus. The facility was not prepared to handle the increasing number of cases and its health workers were not trained on how to control and

manage the fight against the Moabite Virus. The health workers also lacked Personal Protective Equipment (PPE) exposing them to infections and as a result some of the health workers got infected.

**14.** Dr Derrick received information that the Government had procured one million doses of the Mimax vaccine and that priority would be given to frontline health workers within Gora for free. He was informed that the vaccine had been distributed to several health facilities in Gora. He saw this as an opportunity to protect his family, his patients and himself from infection and death since he was in direct contact with so many infected patients. However, Pomba District had not received any vaccine. Anyone who wanted access to the vaccine therefore had to go to the neighboring states. Dr Derrick in quest of acquiring the vaccine, travelled to Zenabu Regional Referral Hospital where he was denied the jab despite having shown his medical ID. He proceeded to Mia Regional Referral Hospital which had a vaccination centre. He showed his medical ID but was still denied access to the vaccine.

**15.** Lastly, he went to Peza Regional Referral Hospital to acquire the vaccine but he was turned away. He travelled back to Pomba and wrote to the Gora Medical Association, the Parliament of Gora and the Ministry of Health demanding that vaccines be provided for the people within the District of Pomba. This plea was never responded to. Unfortunately, two weeks later, Dr Derrick developed a tightness in chest that made his breathing difficult. His temperature was very high and his family rushed him to Pomba General Hospital that had an overwhelming number of patients. When tested for the Moabite virus, he was found to be positive. His health greatly deteriorated and he succumbed to the virus within two days.

**16.** Mr Mazimaza heard about lawyers from Here for you Advocates Initiative (HAI), a Non-Governmental Organisation (NGO) operating in the Tukei County, West of Pomba District, who were conducting a legal aid clinic in Pomba. Mazimaza encouraged Somba, son of the Late Dr Derrick, to attend the said legal aid clinic as HAI Advocates were offering free legal aid services to people who had suffered from any health and human rights violations. They were also registering complaints for those that passed the test for legal support. Mr Somba and his sister Dema proceeded to the tent the next day to file their complaint. They interacted with Mr Gitta Ocen, a health rights advocate working with HAI, who interviewed them and was able to attain the relevant facts and interests of the complainants. Mr Ocen noted that it was unfortunate that the life of a life saver was lost under such unfair circumstances. He spelt out the rights that their father, Dr Derrick, had and the rights that had been violated such as the rights to life, health, and occupational safety, among others. He also pointed out the Government's obligation to provide quality vaccines and ensure that everyone is vaccinated. HAI offered to provide free legal representation to the family of the Late Dr Derrick and ensure that the ends of justice were met.

**17.** Somba and Dema granted HAI formal instructions to handle the matter and HAI prepared pleadings and filed a suit in the High Court of Gora against the Attorney General, the Medical Superintendent of Zenabu Regional Referral Hospital, and Gora Medical Association under Article 50 of the 1997 Constitution of Gora and the Human Rights Enforcement Act of Gora. HAI

argued that;

- a. The failure of the Government to ensure that there was equitable distribution of vaccines among the four states of Gora was a violation of the human rights guaranteed under Gora's Constitution.
- b. The failure of the Government to provide essential personal protective equipment during the Moabite virus pandemic was a violation of the human rights of health workers guaranteed under Gora's Constitution
- c. The failure of health workers from Zenabu Regional Referral Hospital to vaccinate a health worker without just cause, was a violation of the Human Rights guaranteed under Gora's Constitution.
- d. The failure of Gora Medical Association to oversee and advocate for equitable access to vaccines in all states of Gora and the rights of the health workers, was a violation of the Human Rights guaranteed under Gora's Constitution.

18. The Attorney General of Gora, denied the claim and argued that the Mimax vaccine was procured in phases for the people of Gora and was distributed to different health facilities in the most affected States. However, the vaccines were not enough and one district, Pomba was left out. The Government urged the priority groups provided for in the states that did not receive doses of the Mimax vaccine, to proceed to neighbouring states to access the vaccine. The Government further made an emergency call to ensure that free vaccines were accessible in order to ensure that the pandemic was kept in control through maximum resource mobilization and that they were not liable for the actions of the health workers who denied people access to the Mimax vaccine. The medical superintendent of Zenabu Regional Referral Hospital equally argued that they have never denied access of the vaccine to any health worker and only an ID was required while Gora Medical Association denied having any responsibility in the distribution and access to vaccines within the states of Gora.

## FACTS BEFORE THE APPEALS COURT

**1. The High Court dismissed the suit by HAI with costs. In its judgment, court held that;**

“Despite the lack of a specific international agreement for access to vaccines, 171 countries, Gora inclusive, already have legally binding obligations under the International Covenant on Economic, Social, and Cultural Rights (1966) to take steps, individually and through international assistance, to realise the right to health and the right to enjoy the benefits of scientific research and its applications, without discrimination. States are required to respect, protect, and fulfil these rights in terms of access to vaccines by ensuring that vaccines are available, accessible, acceptable, and of good quality, to the people in their states. The Government of Gora has taken reasonable steps to ensure that doses of the Mimax vaccine are available, acceptable and of good quality and therefore there is no liability on their part. When you give people food, are you supposed to go the extra mile into feeding it into their mouths? Absolutely not!”

**2. HAI, being dissatisfied with the ruling of the High Court decided to appeal to the Appeals Court challenging the entire judgment and orders therein.**

## FACTS BEFORE THE SUPREME COURT

1. The case was heard by the Appeals Court who passed judgment in favour of HAI. The Appeals Court held that;

“The 1st Respondent is at the top of the supply chain of goods and services and so are the other respondents in their respective capacities. Simply claiming lack of liability towards equitable vaccine access is vague and impractical. At this critical time, vaccine equity is the largest moral test amidst a pandemic which keeps upending lives and destroying economies. Vaccines can and will never deliver themselves. The respondents have a duty towards the citizens to take steps and measures to ensure that the Mimax vaccine was equally distributed among the 4 states within Gora during the pandemic. Failure to do this violated the rights of the people of Gora and therefore the judgment passed by the High Court is overturned.

2. The judgment was given in favour of the Appellant. Declarations were given and orders that the respondent pay damages and costs to the Appellant. The Attorney General was aggrieved with the decision of the Appeals Court and Appealed to the Supreme Court.