

# 10<sup>TH</sup>

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

*“Advancing Reproductive Health and Gender Justice in Uganda”*

MOOT PROBLEM | 2023

1. The Federal Republic of Nsiikye is a Constitutional Republic located in Eastern Africa. It is bordered by the Kingdom of Katete to the North, the Republic of Ruti to the West, River Rwizi to the East, and to the South. The country shares a long history with its northern neighbour, and indeed, the predominant tribes in both countries are the Entumwa, who make up 62% of the total population of Nsiikye, according to the last National Population Census of 2016. The capital city of Nsiikye, Jovoka, is located near the coast, and houses over 2 million people of the 39 million people in Nsiikye. The World Bank estimated that by 2022, 42% of Nsiikyelese lived in poverty and 16% in abject poverty. The country is designated as a developing country and has had an average growth rate of 4% per year, since 2000, according to the International Monetary Fund Report of 2016. The population of Nsiikye predominantly follows the Kaaboro faith. According to traditional folklore, Kawumpuli, the supreme creator, passed down this faith to the Entumwa people, when he descended the Mwizi mountains in the image of a very fair-skinned girl. He left a very specific set of rules, by which the Entumwa have lived for centuries, albeit with a few modifications over the years.
2. On obtaining independence after the 1970 guerrilla war against the British, the young state faced a lot of war and conflict, as the three predominant tribes in Nsiikye each wanted to form an independent government. The Entumwa, the Abakachayi, and the Omujuma tribes fought for 7 years among themselves until the 1978 Treaty for the Cessation of Hostilities was signed between the parties. The Treaty was the basis for the establishment of a



Federal Republic, where each of the regions, which were divided along tribal lines, had semi-autonomy over its affairs, but united under one Presidency. The treaty provided for the negotiation of a national Constitution, which was concluded in 1982. The newly promulgated Constitution provided for a tiered system of government, where laws are debated by federal senates, then submitted to the National Congress, where they are reviewed. At this point, a law that passes such review is submitted to the President, who may sign it into law, if they find no defect with it or send it back to the Congress with comments on correction. This action can, however, happen only twice. The third time a bill is rejected, the Congress may unilaterally pass it with two thirds majority. Under Article 44 of the Constitution, all treaties and international instruments are reviewed by Congress before they are ratified, but once they are, they become binding on the state and all its institutions. The Constitution also establishes the Judiciary and Executive arms of government. The Constitution, under Article 272, also provides for a consultative process between Congress and Civil Society Organisations (CSOs) on key legislations before they are passed. Many CSOs have participated in this process, however, such participation has waned in the past two decades owing to allegations of espionage by the state.

3. The Constitution of Nsiikye establishes a court system of three major courts; the High Court, the 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 Constitutional Court, with original unlimited jurisdiction in matters involving the interpretation of the Constitution. Matters with constitutional implications may, however, originate in the High Court where the constitutionality of such matters is not a central point of concern in such a case. 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. Nsiikye is 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 such as the International Technical Guidance on Sexuality Education World Programme of Action for Youth of 2018, and the Sustainability Development Goals, all of which recognize



the need to provide age-appropriate accurate and updated information on sexuality and Sexual and Reproductive Health to youth and young people. 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. The age of consent, as provided for under Article 7 of the Constitution of Nsiikye is 18. The education system in the country is strictly monitored by the Ministry of Education and Sports, which is responsible for curriculum development and updating for all institutions of learning in the country. There has not been a curriculum change in the country since 1992 when the last revision was made.

5. The Entumwa tribe has a very busy calendar year, with many holidays and celebrations throughout the year. However, the most prominent of these is the Ekinihiiro Rujabura Ntongo, or the "Grab the Meat Festival", which is an annual celebration held to end the dry season and usher in the wet season of March to July each year. The celebration is a tribute to the Entumwa god, Kawumpuli's descent down the Mwizi mountains, establishing the Entumwa people, and it is celebrated by public processions led by light-skinned virgin girls, carrying calabashes of holy brew. It is a public secret that the ritual precludes any girl who is not a virgin from participating in the procession, lest she incurs the wrath of Kawumpuli. Between the years of 2014 and 2021, however, a report by Social Order and Health Advocacy Development Initiative (SOHADI) found that a number of teen pregnancies arose after these celebrations. This was visibly noticeable among teenagers who were light-skinned whose teenage pregnancy rate increased by over 70%. The instances of sexual violence against girls with albinism also skyrocketed during this time. The report, despite receiving a fair amount of media attention, was dismissed by the Omuhoozi (supreme cultural leader) of the Entumwa, who, in a public statement, highlighted that Kawumpuli wills everything and that he wills that those who bear his likeness would bring blessings to those who 'know' them in the sacred period of the Ekinihiiro Rujabura Ntongo. He also warned that interfering with the cultural institutions of the Entumwa would decrease public trust in the state and may cause instability.

6. In February of 2020, the country received its index case of COVID-19, and joined the rest of the world that had been reeling with the pandemic for months. In response to the pandemic, the Ministry of Health enacted a number of regulations to curb the spread of the disease, the first of which was issued on 14th February 2020, mandating a country-wide lockdown on all public services and movement. However, a number of human rights activists highlighted that the lockdown was a preface for human rights abuses. None of these claims were proven at the time, however, in response to the high levels of sexual abuse that were highlighted in a report by the World Health Organisation (WHO) on the country, in September 2020, the Congress of Nsiikye drafted the Prohibition of Certain Sexual Acts Bill (PCSA) in 2021. The Bill, among others, provided for strict measures to prevent the sexualization of minors and sexual abuse. During consultations by the Congress, SOHADI proposed that the Bill should contain additional clauses that would allow young people to learn more about sexuality, in accordance to international standards, but this suggestion was not followed, and no such clauses were added, although the Bill was revised twice since. The Bill received heavy backlash from the Entumwa senate, which argued that Congress had no power to legislate on a matter that “could be discerned by even a child of Kawumpuli.” The legislators have since resolved to boycott the Bill and it has not been passed into law.
7. SOHADI runs a shelter on the outskirts of the Capital city, called “Home of the Brave Children.” The shelter cares for children who are at risk of child abuse, such as homeless children and orphans. Since the shelter does not have an education licence, the children study at two different schools within the city. Champion Ogudo High School caters for children in secondary school, while those in primary school study at Jovoka Parents Junior Academy. The two schools are neighbours and there are often interactions between the students from either school, often in co-curricular activities.
8. The Consortium of Headteachers of Nsiikye Elite Schools (COHONES) is an umbrella organization for all heads of schools, both primary and secondary, in Nsiikye. It is a very influential organization, that shapes discourse on the matters that affect schools and education in the country. The organization’s work is carried out in project groups, that are created and divided according to the subject area and level of education. The Sciences Project group of

COHONES oversees the direction of teachings in science-related subjects, such as biology, physics, chemistry, and mathematics. The Humanities Project Group oversees subjects such as social studies, and literacy, among others. In the 2020 Annual General Meeting of COHONES, the Humanities Project Group presented a report that showed that the students in schools in Nsiikye lagged behind their colleagues by international standards in the understanding and articulation of matters to deal with sexuality education. The report showed that over 85% of students at high school level could not answer basic questions on issues such as anatomy and could not demonstrate basic application of such knowledge in day-to-day situations.

9. Following this report, COHONES entrusted a review of the curriculum with the aim of making recommendations, to the Humanities and Sciences Project Groups. The work on this review began in February 2021 and a report was made at the first quarterly meeting of the Board of Directors of COHONES in May 2021. One of the highest hurdles that the report recognized was the lack of policy direction and will from the Ministry of Education and Sports to have a curriculum revision. The other was the lack of learning materials that could be used in this exercise. The report recommended that COHONES may work with independent and private sector partners to introduce more up-to-date materials that would augment the learning materials that the schools had. SOHADI was identified as a key partner that could be approached and collaborated with in order to realize this end.
  
10. Earlier, in October 2020, SOHADI received a consignment of educational materials that included books and pedagogical tools for different levels of education, from its donors in the United Nations. This followed the promulgation of its campaign dubbed, “Know Yourself,” through which they would carry out teaching and instruction exercises to different groups of young people in the community on the prevention of Sexually Transmitted Illnesses and Diseases. Part of their campaign would take them to different schools, establishing Know Yourself Clubs, where the students in such clubs would meet periodically to share factual information and knowledge on sexuality and childhood development, instructed by a facilitator from SOHADI and a teacher. On 12 January 2022, SOHADI leadership met with representatives of COHONES, to discuss the program and possible



collaboration, ahead of the first term opening of the new year. While the meeting was successful and targets were set, the Executive Director of COHONES received a letter from the Ministry of Education and Sports, three days later, in which the leadership of SOHADI was copied. In the letter, the Ministry highlighted that it had learnt of the impending collaboration between the two entities, and it advised that such an endeavour had to be carried out by the Ministry itself, and not these private organizations. They advised that proceeding with the arrangements shall impede the further licencing of all schools under COHONES. The project was abandoned and has never been taken up again. However, SOHADI's licence was not renewed in early 2023, when the organization sought to renew it.

11. In an open letter to the Minister of Education and Sports, Dr. Norah Moo Cissy, the leader of SOHADI made recommendations for a curriculum review, to allow the teaching and dissemination of age-appropriate material to young people in schools. This letter was published in the Daily Eye Newspaper in March 2022. However, the Minister responded to the letter in a Congress Committee Meeting that the Ministry was unable to implement the recommendations made by SOHADI, as they had big financial implications, and the State was unable to procure all the learning material needed. In addition, Ms. Martinah Nasempa, the representative of the Entumwa cohort in the Congress, stated that the cultural norms of the people of Nsiikye were against, "spoiling young ones with knowledge about matters of adults." This response received loud applause from the other committee members, one of whom took the microphone and argued that "No one taught me how to shake my waist. When I got married, it came naturally. Why do we need to show our children the secrets of a marital bedroom?" This response also received loud applause and "Aye, aye" from around the committee. The Committee Chairperson, Mr. Kamanda Alaku, further advised that the Prohibition of Certain Sexual Acts Bill was still before Congress and the congressmen and women would know what to do with the suggestions being made by SOHADI. No further comment has been made on the matter since.
12. The first term for all primary and secondary schools in Nsiikye broke off on the 25th of March 2022, a week before the Ekinihiro Rujabura Ntongo celebrations began. There was a lot of excitement in that period, given that



the planting rains had started early, and there was promise of plentiful rains in the coming days. At the children's shelter, a group of children from the Entumwa tribe sought permission to attend the festivities in the city center, since they were of the age required by Entumwa tradition to attend and participate in the ceremonies, as a show of respect to Kawumpuli, lest they be struck with calamity. The older teens at school had also intimated that it would be fun. However, the custodian of the shelter, Ms. Awilo Willow refused the younger ones from leaving, only admitting those in secondary school to attend the festivities, with a very strict curfew. As such, on the 2nd day of April 2022, nine children left the shelter for the city. Of these, seven were girls, two of whom had albinism. After a long day of festivities, the group returned to the shelter.

13. Ms. Awilo Willow, while attending to her duties, three weeks after the festivities, was approached by one of the younger children, who had walked in on an older child bleeding profusely in one of the bathrooms. She rushed to the aid of the teenager, who was bleeding through her vagina, and rushed her to the infirmary near the shelter. There, she was informed that the girl was having a haemorrhage from a botched abortive procedure, where she had tried to use a knitting needle to terminate a pregnancy. The clinic was unable to handle her matter, as it lacked the necessary tools and equipment to prevent further harm, and she was referred to a bigger hospital 12 kilometers away. On the way to the hospital, the girl died. An autopsy revealed that she had suffered hypovolemic shock which had led to multiple organ damage and her eventual death. The autopsy also revealed that the girl had in fact, not been pregnant at the time of her death.
14. On return to the shelter, Ms. Awilo Willow found out that the deceased girl, together with the other six girls had engaged in sexual intercourse when they went for the Ekinihiro Rujabura Ntongo celebrations. The girls had been, apparently, convinced by a group of boys they knew from school, that they had to have unprotected sex, lest their vaginas would fall out from the chemicals in condoms. They were also discouraged from taking contraceptive pills, as they would make them grow hair around their nipples. They had also been told that sex during the ceremony attracted blessings from Kawumpuli. The girls with albinism had been forcefully defiled by four boys, all of whom claimed that it would bring blessings to them. Fearful



that she would be excommunicated from the shelter, the deceased girl had attempted to procure an abortion when her period was late in coming. However, it was discovered that four of the other girls had gotten pregnant from the encounters, including both girls with albinism, who were also discovered to have contracted HIV/AIDS. Two boys had also contracted genital herpes and syphilis, from their encounter at the celebrations.

15. Upon discovering what had transpired at the celebrations, Ms. Awilo Willow rushed the girls to hospital but was informed that the window period within which Post Exposure Prophylaxis (PEP) would be effective had since passed since the girls had not sought it, as they did not know the procedure of protection in case of rape or defilement. She was also informed that, that notwithstanding, such medication was not administered without a police reference number for the crime committed against the victims. Ms. Awilo Willow then went to open a police file, but found difficulty in her endeavour, due to the lack of evidence of the defilement, as it was discovered that the girls had already washed their clothes and showered. When asked why they had not reported immediately, they responded that they had been advised by their peers that they should keep everything to themselves and that all the pain would pass away after a while. Upon examination, Ms. Awilo Willow was also informed that the window period within which an emergency contraceptive would be efficient for the pregnant girls had since passed, as the girls had not sought it either, fearing that they would grow hair around their nipples.
16. The news of the death of the girl from the shelter spread quickly in the neighbourhood. Although the police commenced investigations, no arrests have been made to this day, even as the involved teenagers were known. One of the girls who had become pregnant attempted to procure an abortion by swallowing crushed charcoal, as she had been advised by some colleagues at school, but medical intervention was sought immediately and she did not suffer any complications. The girls with albinism, however, have been on psychiatric evaluation since the incident and have since become very withdrawn. These matters were reported to the local police; however, no intervention has been attained to-date. The shelter has spent a lot of money on their rehabilitation and treatment. It also emerged that 16 students from three schools in Jovoka had contracted STIs and nine girls had been defiled





following their participation in the Ekinihiro Rujabura Ntongo celebrations. Following these events, Ms. Awilo Willow, COHONES, Home of the Brave shelter which housed the four affected girls, together with four parents of the affected students and girls who had been defiled, brought an action against the Attorney General of the Federal Republic of Nsiikye in the High Court at Jovoka and argued that:

- The failure of the State to provide access to information through Age-Appropriate Sexuality Education was a violation of the constitutional rights of citizens, especially young people, and the international obligations of the State under applicable instruments.
- The failure of the State to pass a policy on Sexual and Reproductive Health and Rights to protect vulnerable groups of people from harmful cultural myths and practices was a violation of the human rights guaranteed under the Constitution and applicable law.
- The failure of the State to provide and ensure the essential training and information to girls, young women and vulnerable groups and institutions on Sexual and Reproductive Health and Rights was a violation of the human rights guaranteed under the Constitution and applicable law.
- The failure of the state to investigate and prosecute the violators of the Sexual and Reproductive Health and Rights of the girls and to provide healthcare services for the victims was a violation of the girls' rights guaranteed under the Constitution and applicable law.

17. The Attorney General denied the claim, arguing that matters related to Sexual and Reproductive Health and Rights were a preserve of the legislature, which was in the process of passing a law on the same. Judicial intervention would tantamount to an abuse of the balance of power doctrine. He also argued that the cultural practices complained of were not inherently bad and they had not been proven so, and that some of the cultural beliefs held by the people in Nsiikye were necessary to influence positive sexual practices, and pivotal in maintaining public morality. He also argued that the State was not in position to provide all the training and equipment needed due to a shortage of funding and resources that would be needed for the purpose of implementing sexuality education programs. He further argued that the state was still conducting investigations into the people culpable for

the harm suffered by the girls, and that the lawsuit was premature in that regard.

### **Facts before the Appeals Court**

1. The High Court found in favour of the applicants, 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. This way, Congress could not be excused for delaying the passing of a law to protect young people from sexual exploitation. The court further held that the State had the obligation to ensure that the educational and health facilities were well stocked, and the teachers well trained, because sexual abuse of young people was prevalent, and being so, the State should prepare such young people to make informed choices on their sexuality. The court further found that the State had the duty to ensure that all citizens were protected from harmful cultural practices, in line with international standards and state obligations. The court made orders that the state should enact and pass a policy on sexual and reproductive health within a year from the judgement, and disseminate it, among other appropriate orders.
2. The Attorney General was 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:
2. “The journey is not the destination on matters of the law. The principle of separation of powers is very well established in our jurisdiction and the Congress would best be placed to make certain decisions. Courts of law only monitor such decisions. 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. The State is not run on a bottomless fuel tank of resources but often has to ration these very

scarce resources, which, unfortunately, means that some sectors may have to wait longer than others before they can be replenished. In this regard, the State must ensure that the people maintain high levels of morality using the means available to them through their cultural ethos. When an accusation is made, the accused should not suffer arrest before the facts have been established through a thorough investigation.”

3. The judgement was given in favour of the appellants, and the court reversed the orders made by the lower court. The Respondents were aggrieved by the decision of the Appeals Court and appealed to the Supreme Court.

