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social justice in health

PROBLEM FOR THE 13TH ANNUAL NATIONAL INTER-UNIVERSITY CONSTITUTIONAL LAW MOOT COURT COMPETITION

THEME

"Reproductive and Gender Justice in Uganda: Navigating Constitutional Rights, Public Interest and Social Values"

FACTS

1. Ngetta is an East African State with an estimated population of seventy million (70,000,000) people. Its capital city, Erute, is located in the eastern part of the country. Ngetta attained independence from the United Kingdom on 31st October 2007 following more than seven decades of colonial rule. The country has enjoyed relative political and economic stability in the sub-region since its independence and attracts many migrants and refugees from neighboring countries. Two immediate neighbors of Ngetta include Tululu (to the North West) and Zamundacata (to the North) both of whom have been experiencing periods of political instability in recent years linked to terrorism, electoral tensions, and inter-ethnic conflict.

2. Following its independence, the State of Ngetta ratified several United Nations and African regional instruments including treaties and conventions relating to Sexual and Reproductive Health and Gender Justice. Ngetta's Constitution guarantees, among others, equality and freedom from discrimination, human dignity, life, protection of children, access to justice, and the protection of women. It further provides that fundamental rights and freedoms are inherent and shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

3. The State of Ngetta has a three-tier court system comprising the 'High Court' which exercises unlimited original jurisdiction in civil and criminal related matters as well as jurisdiction to enforce constitutional rights, the "Appeals Court" which hears appeals from the High Court, and the 'Supreme Court of Appeal' which is the final Appellate Court. Each district has a High Court whereas the Appeals Court and the Supreme Court of Appeal are located in the central business district.

4. The State of Ngetta operates a centralized system of government incorporating the principles of decentralization under its Local Governments Act. The country consists of five districts with Otino-Waa to the North, Okii-oyere to the East, Te-Ature to the West, Apedi to the South, and Okere pe kok in the Central business district which also doubles as its capital.

5. Ngetta has a Gross Domestic Product of 90 billion United States Dollars and it is a major producer and exporter of cocoa. The revenue from cocoa to regional and international markets is estimated to reach a total of 59 billion United States Dollars annually due to advanced methods of cocoa planting, large scale production,

and value addition. Ngetta is ranked as a high-income status country with advanced infrastructure in Okere pe kok and Apedi Districts including well-equipped hospitals on the continent as well as a modern transportation network. The best and highly profitable cocoa plantations are largely located in Te-Ature District alongside other lucrative business activities in Okere pe kok and Apedi districts contributing to the country's economic strength. By contrast, Okii-oyere and Otino-Waa are experiencing a high disease burden due to low household incomes, poor road infrastructure, and increasing levels of poverty due their continued reliance of unprofitable sugarcane trade.

6. Since 2015, the Government of the State of Ngetta has undertaken several initiatives aimed at enhancing public service delivery including provision of clean and safe water, construction and rehabilitation of roads in the districts, equipping health facilities with essential drugs and medicines, maintaining law and order as well as strengthening access to justice. Despite these initiatives, significant disparities in healthcare access have persisted, historically disadvantaged people continue to face systemic marginalization, the poor experience restricted access to legal rights, while rural household grapple with exclusion from formal education and political participation, particularly in Okii-oyere and Otino-Waa.

7. In 2020, the Government introduced District Community Health Barazas in Okii-oyere and Otino-Waa districts to empower community members in engagements with duty bearers on issues affecting healthcare delivery. Some of the challenges identified during the District Community Health Barazas include inadequate lighting and unreliable electricity at health facilities especially during emergencies, occasional shortages of essential medicines and medical supplies, long waiting times due to limited health workforce, the need for improved sanitation and hygiene around health facilities, as well as inadequate emergency referral services. The District Community Health Barazas equally provided an opportunity for districts to make promises to the people of the Government of Ngetta. District authorities consequently committed themselves to improving supervision and monitoring of health facilities, accountability in the management of medicines and health resources, community health education and public sensitization through Village Health Teams, and collaboration with development partners to address infrastructure deficiencies and human resource gaps.

8. During the consequent five years, Ngetta's health-sector allocation still remained at an average of 5% of the national budget. Following public outcry through the District Community Health Barazas and noting several commitments made through community-led accountability, the Government signed the 2001 Abuja Declaration with a goal of allocating at least 15% of their annual budget to the health sector, as a way of improving access to health care services across the country.

9. The geographical conditions in Okii-oyere and Otino-Waa districts make healthcare delivery particularly challenging with long distances to hospitals of over 170 kilometers. A Central Government Health Inspection was also done in mid- 2022 to assess the readiness of the health care facilities in Okii-oyere and Otino-Waa to handle health emergencies and it found serious deficiencies in the emergency healthcare services of both districts. It was discovered that ambulance and referral systems were dysfunctional and essential medicines such as Misoprostol were lacking in several healthcare facilities yet it is indispensable in treating pregnancy related postpartum hemorrhage, labor induction and miscarriage management.

10. In early January 2025, a follow-up inspection was conducted in Okii-oyere District and it was discovered that several recommendations made were implemented to sustain cocoa production unlike the case in Otino-Waa District. District officials attributed the delay principally to insufficient funding and competing Government expenditure priorities, including investment in the country's cocoa sector. It was further noted that Teli-Teli Health Centre IV, which served a large part of Okii-oyere, had access to only one ill equipped ambulance. Its electricity supply was unreliable, and the road connecting it to Okavango General Hospital was in poor condition without a clear plan for needed repairs.

11. Te-amadru is a fishmonger at Okii-oyere Central Market, which is about 120 kilometres from the city center, where she earns a very small income to sustain her family of four children. Her husband, Ye-madru, passed away after the birth of their last-born son. She has single handedly provided for the needs of her family and managed to educate her first born daughter - Awiti, up to Senior Four in secondary school. Awiti being the eldest, dropped out of school after completing senior four in 2025, at the age of 15 years, due to her mother's desire to ensure that the younger children are able to attain kindergarten education. At her former school, Awiti was a re-known netball player and she was the team captain for her school's team. Mr. Njeku, the Sports Master at Ojere Senior Secondary School, was her mentor and class teacher of her senior four class, roles through which she had extensive interaction with him giving her an opportunity to familiarize herself with his personal and professional attributes. Ever since the death of her father, Mr. Njeku offered assistance to the family and subsequently secured a bursary for her from the school to further her education and lessen the burden on her struggling mother.

12. Having received a bursary, she resumed her studies in senior five after four months at home. For five months so far, Mr. Njeku has been taking Awiti to school every morning and regularly updating the family on her academic performance. He regularly picks up Awiti on his way to school and as they ride to school, they tell stories and joke about many things. Over time, they grew fond of each other and for close to four weeks, Awiti returned home late after school carrying with her cakes, sugarcanes and mangoes that she had picked from Mr. Njeku's compound. Her mother, Te-amadru observed Awiti's conduct and she cautioned her about her closeness to Mr. Njeku and the need for her to avoid going to his home. But Awiti, driven by emotions, continued to spend time with Mr Njeku against her mother's advice and in total defiance of her family's guidance based on their Christian background.

13. Two weeks later, Awiti was concerned about the possibility of becoming pregnant and visited Teli-Teli Health Center IV seeking confidential contraceptive services. She was informed by Nurse Berna-Mutwe that she could not obtain contraceptive commodities at the health facility without consent or presence of her parents or guardian. Awiti never returned to the health facility because she was afraid of having that conversation with her mother. Six weeks later, Awiti started vomiting, complained of fever and a mild stomach-ache. She was moody and not socially active as she had always been. She was no longer interested in going to school and was at loggerheads with her mother, who was greatly disappointed by Awiti's failure to listen to her advice. Due to the extreme disappointment and betrayal, Te-amadru kicked her out of their home because as a family, they did not approve of her actions. Awiti sought refuge at a neighbour's home - Sister Dong-gweno, a registered Christian nurse, who accommodated her in the circumstances. Awiti discovered that she was pregnant after interacting with Sister Dong-gweno and she decided not to go to school because the school had a zero-tolerance policy against pregnancy.

14. Sister Dong-gweno, only accommodated Awiti for three weeks and requested her to return to her mother to make peace. When Awiti returned home, her mother gave her a thorough beating asking her to disclose the identity of the person responsible for the pregnancy. Upon revealing that Mr. Njeku was responsible for the pregnancy, Te-amadru slapped Awiti a few more times and she ran away from home. Due to stigma and fear caused by her mother, Awiti decided to terminate the pregnancy that was causing her great emotional pain and confusion. She consulted her older friend Avunia who was employed and had previously dealt with a similar situation at Namanga Traditional Herbalists. Awiti met Nurse Keti-felawo as the herbalist who had not completed her nursing education but gained some experience in handling obstetric procedures while working as a support staff at Okavango Hospital, about 120 kilometres from Okii-oyere central market. Upon discussing with Nurse Keti-felawo, Awiti was asked to pay 400,000 Ngetta shillings to terminate the pregnancy. Awiti could not afford the said money, and she left Namanga Traditional Herbalists feeling dejected and confused.

15. Due to her desperation to terminate the pregnancy, Awiti once again consulted Avunia on a remedy that was within her means. Avunia advised her to drink a concoction of household liquid bleach with shoe polish as a remedy. With no alternatives left at hand, Awiti drank a whole bottle of jik mixed with some kiwi shoe polish which caused her convulsions and bleeding through her mouth. After some time, she collapsed and her friend Avunia rushed her to Teli-Teli Health Center IV where she was stabilized. While at Teli-Teli Health Center IV, Awiti was disappointed that the jik and shoe polish mixture did not yield the outcome she expected. Avunia told her that she was joking about the concoction and did not expect Awiti to take her seriously. Disappointed, Awiti was later discharged from Teli-Teli Health Center IV, and she went to live with Avunia. Noticing her friend's disillusionment, Avunia encouraged Awiti to try again and referred her Nurse Keti-felawo with 400,000 Ngetta shillings. Nurse Keti-felawo gave her drugs that she took, and they made her very sick. Due to the sickness, Avunia rushed Awiti to Teli-Teli Health care Center IV where she requested Xhosa James, one of the nurses at the facility, to treat Awiti.

16. Xhosa convinced Avunia and Awiti that the required services can only be offered at Hens Medical Clinic which he runs as a private health facility. Avunia paid 200,000 Ngetta shillings and Xhosa proceeded to perform a medical procedure on Awiti but halfway through the operation, there was a power outage causing her condition to deteriorate. She started to wail and cry in pain. However, when power supply was restored, she had already lost a lot of blood and needed to be referred immediately. Awiti was moved from Hens Medical Clinic and returned to Teli-Teli Health center IV. Her condition became even worse and she was referred to Okavango Hospital where she could get more specialised services. However, the only ambulance available at Teli-Teli Health Center IV had transported an expectant mother the previous night and had not returned. Avuinia made desperate calls and finally the ambulance was able to return to Teli-Teli Health Center IV. Unfortunately, Awiti died on her way to hospital.

17. Distraught, Avunia ordered the ambulance driver to return back to Teli-Teli Health Center IV and upon arrival, Avunia rushed to Te-amadru and informed her about the unfortunate passing of her daughter. Te-amadru shocked with the news, lamented, "if only my daughter was allowed access to protection, she would be alive today". Heartbroken and depressed, Te-amadru painfully organized the funeral and burial of her daughter, Awiti. During Awiti's burial, Awiti was described as Ye-madru's first born biological daughter, a social, brilliant and interactive hard worker whose life was cut short by financial hardships that her family experienced. She was laid to rest near Ye-madru and the news of her passing broke all the mourners. One of the mourners, Babadiri, a young lawyer by profession, working with Erute Rights Center met Avunia who was wailing during the burial. Babadiri comforted Avunia and inquired about the circumstances that led to the death of Awiti. Avunia narrated Awiti's ordeal to Babadiri and he requested Avunia to visit Erute Rights Center three weeks after burial.

18. After the lapse of three weeks, Avunia jointly with Te-amadru, visited Erute Rights Center in a quest for justice. They narrated the course of events to lawyer Babadiri who was able to properly document their ordeal. Babadiri also received formal legal instructions from Avunia and Te-amadru to pursue their matter jointly with the Erute Rights Center. The parties deliberated over the matter and found that Awiti's ordeal raised constitutional and human rights related questions that required interpretation and enforcement by the Courts of Law. As such, Erute Rights Center, Avunia and Te-amadru petitioned the High Court of Okii-oyere against the Government of the State of Ngetta.

19. Erute Rights Center, Avunia and Te-amadru argued that:

a) Government of the State of Ngetta failed to provide emergency healthcare services to the people in Okii-oyere as evidenced by the presence of one insufficiently equipped ambulance at Teli-Teli Healthcare center despite having been repeatedly informed of deficiencies in emergency referral services.

b) The prolonged failure to enact a law governing young women and girls' access to reproductive health services, exposing them to foreseeable and preventable health risks thereby contributing to a high maternal mortality ratio in the State of Ngetta.

c) Failure of the Government to implement the recommendations of the central government inspection team due to insufficient funds despite committing itself to progressively improving allocation of resources for the healthcare systems by signing the 2001 Abuja Declaration.

d) Failure to construct proper road infrastructure which rendered emergency healthcare practically inaccessible to residents of Okii-oyere.

e) The blanket refusal to provide contraceptive information and commodities to persons below the age of 18 years violated rights.

20. Facts for the Attorney General of the Government of the State of Ngetta, in the High Court;

a) Denied any form of liability, including denying access to contraception and health commodities to teenagers because the State was entitled to impose age and parental-consent requirements on adolescents seeking contraceptive services in furtherance of child protection, parental responsibility, as well as religious and sociocultural values.

b) The Ministry of Health is still consulting various stakeholders and will subsequently develop national policies that promote adolescent access to reproductive health services.

c) The government has been committed to domestic financing for health. The budget was increased from 4.1% in FY2024/25 to 8.1% in FY2025/26 budget allocation to the health sector. Whereas financing in FY2026/27 has reduced to 6.2%, health outcomes can still be realised by investments made in the construction of roads and other sectors such as the Parish Development Model that capitalises the population to improve their capacity to develop and access services such as health.

d) Emergency medical services are primarily available at General Hospitals and Government could not reasonably be required to provide advanced emergency services at every health centre.

e) Given that Awiti passed on, courts cannot enforce the rights of a person who has since passed on. That Erute Rights Center has no locus standi in the matter.

FACTS BEFORE THE APPEALS COURT

21. The High Court ruled in favour of the Applicants - Erute Rights Center, Avunia and Te-amadru and awarded them costs.

a) The Court observed that: It is not enough for government to deny liability; the State's obligation to protect life and human dignity requires reasonable measures to ensure practical access to emergency healthcare. The provision of a single insufficiently equipped ambulance for the district of Okii-oyere compounded by poor roads that delayed access to the nearest General Hospital, rendered emergency healthcare substantially inaccessible. The Government's failure to address these deficiencies therefore violated its constitutional obligations to protect life and dignity".

b) The Court also held that "the adoption of laws and policies on reproductive and maternal health, without reasonable measures towards their implementation, does not discharge the State's constitutional obligations. Where persistent failures in the health system contribute to preventable maternal deaths, the matter transcends health policy and implicates the rights to life, dignity, equality and the protection accorded to women. The Government's failure to effectively implement measures intended to safeguard the reproductive health of women and girls therefore constituted a violation of these rights".

c) The Court further held that "insufficient financial resources cannot, without more, justify the Government's failure to implement recommendations addressing deficiencies that threaten life and health, particularly where Government had committed resources towards improving the health sector. While the Executive retains discretion over public expenditure, it must demonstrate reasonable and progressive measures towards fulfilling its constitutional obligations. A general assertion of inadequate funding cannot justify indefinite inaction".

d) The Court also held that "the blanket denial of contraceptive information and commodities to adolescents solely because they are below eighteen years is inconsistent with the Constitution. Although the State has an obligation to protect children, such protection must be guided by their best interests and cannot expose them to preventable risks of unintended pregnancy, HIV and sexually transmitted infections. Such blanket denial therefore violates the constitutional protections of dignity, equality and the rights of children".

22. Dissatisfied by the ruling of the High Court, the Attorney General appealed to the Appeals Court;

FACTS BEFORE THE SUPREME COURT OF APPEAL

23. On hearing the matter, the Appeals Court reversed the decision of the High Court and held in favour of the Appellant (Attorney General) on all grounds.

a) The Court held that, "However compelling the circumstances surrounding Awiti's death may be, the Respondents cannot enforce personal claims on behalf of the deceased without first establishing the requisite legal capacity to do so. The claims specifically founded upon the alleged violation of Awiti's individual rights are accordingly dismissed for want of locus standi".

b) The Court also held that "persons below the age of eighteen do not possess an unrestricted and independently enforceable right to access sexual and reproductive health commodities, goods and supplies, including contraceptives, without regard to age, consent and the existing legal and policy framework. Questions concerning the circumstances under which such services should be made available to adolescents involve complex matters of health policy, child protection and parental responsibility which are primarily within the competence of the Executive and Legislature. The Court therefore declines to recognize or enforce the broad right asserted by the Respondents".

c) The Court further held that it was "satisfied that the Government had demonstrated progressive measures towards improving healthcare financing. The Constitution does not require the immediate provision of an ideal health system irrespective of available resources. In the circumstances, the demonstrated increase in health expenditure constituted reasonable evidence of Government's progressive efforts towards improving access to healthcare, including sustainable investment in social determinants of health like roads, electricity power grids, and capitalizing the economy through the Parish Development Model, thereby facilitating access to health services".

d) The Court also held that "the ongoing consultations by the Ministry of Health towards developing policies to improve adolescents' access to reproductive health information and services constituted reasonable steps by the Government towards addressing the identified gaps. Matters concerning the formulation, content and implementation of such policies fall primarily within the mandate of the Executive. In the absence of unreasonable delay, bad faith or manifest failure to act, this Court finds no basis for judicial intervention and accordingly holds that the Government has not breached its obligations in this regard".

24. The Respondents being dissatisfied with the decision of the Appeals Court, appealed to the Supreme Court of Appeal.