



**INAUGURAL AFRICA GENDER EQUALITY MOOT COURT
COMPETITION 2021
ANGLOPHONE HYPOTHETICAL CASE**

*The Case of Amapia's Failure to Uphold State Responsibility for the Women and
Girls of Ube*

1. Amapia is an African State and a member of the United Nations as well as the African Union. Amapia is a notoriously poor country, the World Bank estimating an average per capita income of US\$500. Moreover, it is ranked as the 8th poorest country in Africa with 49% of the population believed to live below a dollar a day.
2. Amapia is a party to the African Charter on Human and Peoples' Rights (Banjul Charter). On 8 June 2008, it ratified the Protocol establishing the African Court, with a declaration in terms of Article 34(6), as well as the Charter on Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Amapia however issued a reservation while signing the Banjul Charter and the Maputo Protocol by unequivocally stating that the State shall realize socio-economic rights progressively as it does not have the necessary resources for the right's immediate fulfillment.
3. Amapia is also party to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Children (CRC), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR).
4. Amapia is administratively divided into 3 regions: The Northern Region known as Wesse, the Southern region known as Ube and the Central Region known as Sina. According to the National Census, Wesse, Ube and Sina constitute 20%, 31% and 49% of the population respectively. The census further revealed that Ube is the poorest region in Amapia with a majority of the people living on less than a dollar per day. The region's main activities include fishing, farming and tourism given Ube harbours the largest water mass in Amapia known as Lake Riviera. Ube further has a vibrant youth population but which suffers from inaccessible, unavailable and poor quality health services. In a report issued by a Non-Governmental Organization (NGO) known as 'Change for and by Women' (CW) in 2017, it stated that pregnant women in Ube suffer a great deal since they are unable to access medical services. CW interviewed a few women supposedly from the Ube region who

attested to the fact that they have to walk distances of 10-20 kilometers to access a health facility. The National Census also revealed that the Ube region has a high rate of school drop-out as only 40% of girls complete education at the secondary school level.

5. Amapia promulgated a new Constitution in 2012 which received praise from the international community due to its expansive Bill of Rights. The Bill of Rights in the Amapian Constitution is akin to the ICCPR, however it further includes the right to education as well as the right to the highest standard of mental, reproductive and physical health in line with the formulation of Article 12 and 13 of the ICESCR. The Constitutional Court is the highest domestic court of constitutional jurisdiction; each province has a High Court, and there are magistrates' courts in every district. Article 1 of the Amapian Constitution provides that the Constitution is the supreme law. Article 10 of the Amapian Constitution further provides that the general rules of international law and any treaty ratified shall form part of Amapian law.
6. In December 2018, an international NGO by the name 'Free Women and Children' (FWC) released a documentary which received international recognition, was nominated for prestigious awards and was screened at the Cannes Film Festival. The documentary, 'The Plight of Amapian Women and Children' raised issues revolving around sexual violence and traditional harmful practices against women and children in the Ube region of Amapia. The documentary estimated that 1 in 4 women are survivors of sexual violence in Ube and 1 in 3 women have undergone various forms of Female Genital Mutilation (FGM); many are forced to stay in the same environment as the perpetrator given there are no shelters for survivors.
7. The documentary showed that most of the girls undergo FGM at the hands of medical practitioners and only 'willing' girls undergo the cut. The documentary further alluded that sexual violence against adolescent girls in Ube was the main reason for the high rate of pregnancy among school going girls in Ube accompanied by high rates of maternal morbidity and mortality. Further, the documentary interviewed 15 girls aged between 14-19 who were unable to proceed with their education after being 'chased away' from

primary and secondary school due to their pregnancy. This was in furtherance to a policy developed in schools within the Ube region to ensure girls ‘study hard and avoid promiscuity.’

8. Amapia has a ‘Prohibition of Female Genital Mutilation Act’ which criminalises FGM. However, the Act has received criticism from civil society organizations due to its vague provisions. The Act does not define FGM and further insinuates that women and girls may proceed to undergo the cut if they have consented to it and it is done by a health practitioner. Surprisingly, Amapia has made significant gains with respect to FGM prevention and even received recognition by the Special Rapporteur of Women and Girls from the African Commission. It is estimated that only 19% of girls underwent the cut in 2019 as opposed to 38% in 2018 and 42% in 2017. When the Amapian Minister of Gender was asked to comment about FGM during the Women Summit of 2019, she stated: “When it comes to matters of culture, you cannot simply eradicate practices that have been there for decades immediately, you have to find compromise. That is what we are doing!”
9. In February 2019, Amapia received threats of trade sanctions from the international community if it did not commence investigations of the claims raised in the documentary in order to ensure protection of women and girls in Ube. Subsequently, the Amapian President, Hon. Khaleesi Doth issued a statement in June 2019, informing Amapians that the State had launched a Truth Commission to investigate the alleged violations of rights in Ube. She affirmed to Amapians that the claims were not true and in the event they were true, the perpetrators would be ‘dealt with’. She further informed Ubeans that her government would open up a total of 13 shelters for all survivors of sexual violence by the beginning of 2020 and ensure they are provided with dignity kits among other resources.
10. In September 2019, the Truth Commission began conducting investigations by visiting various sections of the Ube, conducting interviews, providing questionnaires and holding town hall meetings with Ubeans. FWC however conducted a wave of public protests in October and November 2019, claiming that the Truth Commission was merely ‘pretending’ to conduct investigations and had no intentions of prosecuting those liable.

11. In January 2020, the Amapian government issued a statement through the Vice President, Hon. Tyw Mphusa, that given that the coronavirus was spreading like wildfire and it was only a matter of time before it reached the African borders, Amapia would dedicate all of its resources into preventing the deadly virus from crossing into Amapia's borders and that **Amapia had withdrawn its ratification of the Protocol establishing the African Court.** He also stated that the Amapian government would only open 3 shelters in the meantime as they dealt with the coronavirus pandemic. Amapia proceeded to issue a letter dated 2 February 2020, to the African Union stating that it will not be in a position to 'implement' some of the regional treaties during the coronavirus outbreak.

12. The pandemic gravely affected Amapia's economy and the healthcare system was struggling to sustain the high infection rates thus leading to a rise in the mortality rates. The Ministry of Health issued a statement in March 2020 explaining that the Amapian health system has never been affected at such levels and thus they advised the government to issue a mandatory lockdown. Subsequently, the President declared a mandatory lockdown for the whole of Amapia- where persons were not allowed to leave their homes without authorization from the government. In line with this, the Courts were closed during the lockdown with no information as to when they would be operational.

13. In April and May 2020, many women and girls from Ube, through the help of Social Justice Centres wrote letters to the President in a campaign termed as 'From a Woman to a Woman' explaining that during the lockdown, the situation had become much worse. The letters stated that there have been rising cases of sexual and gender based violence, some girls have been abducted and sexually assaulted, many girls have been unable to access healthcare given the current state of Ube and there have been numerous reports of maternal morbidity and mortality (especially for adolescent girls) with lack of proper health care services being provided as hospitals are giving priority to COVID cases. Many women wrote about their inability to receive healthcare services given 'other problems' including maternal care, were termed as 'non-essential for the time being' to ensure all attention was given to COVID cases before other health problems. The letters further demonstrated that

the police were unwilling to take up matters revolving around SGBV given that they did not know how to 'deal with perpetrators as the courts were closed and the shelters were already full'. Many complaints were therefore directed to local chiefs, especially cases of domestic violence.

14. Many activists used social media to demonstrate against the national lockdown in July 2020 and also advocated that the closure of courts prevented access to justice to citizens of Amapia, including survivors of sexual violence and FGM, who deserved to be heard especially after the rising number of cases. The activists posted the letters on all social media platforms to demonstrate to the international community the current state of Ubean women and girls. The demonstrations were recognized internationally amidst the rest of the world's civil unrest against systemic violations. The demonstrations were marked as the 'We Have a Voice' Campaign. Due to this, High Courts in some provinces were opened and were operational only twice a week.
15. FWC proceeded to file a suit in August 2020 at the High Court against the Attorney General of Amapia for failure to uphold state responsibility by not adequately investigating sexual violence and female genital mutilation in Ube region. The Petitioners in the suit were TWF, HHI, ETF, WRG and ORT who were described as survivors of rape (1st -3rd Petitioner) and female genital mutilation (4th- 5th Petitioners). The 1st and 2nd Petitioners further stated in their witness statements that they were prevented from going back to school due to their pregnancies.
16. FWC also sought to hold the state responsible for their failure to protect their citizens from violation of their rights and fundamental freedom. The suit also included claims of violation of the following rights:
 - a) Right to freedom from discrimination;
 - b) Right to dignity;
 - c) Right to security of the person;
 - d) Right to health; and
 - e) Right to education.

17. Despite the coronavirus pandemic, the High Court proceeded to hear the suit filed by FWC as a matter of urgency virtually, due to the seriousness of the suit. The suit was however dismissed due to lack of sufficient evidence to justify violation of rights. The Court further upheld the Respondent's submissions that they had and were still taking steps to ensure the rights of women and girls of Ube are protected, respected and fulfilled especially given the ongoing pandemic.

18. FWC filed an appeal at the Constitutional Court in October 2020, however Amapia at the time was facing an upsurge of coronavirus cases. The workforce was also greatly impacted due to the high death toll. The government sought to provide a coronavirus stimulus package to all the men who had been gravely affected by COVID- as many advocated that men should receive the coverage given that they are the heads of the family.

19. Dissatisfied with the state of inaction at the Constitutional Court, FWC immediately submitted a complaint against Amapia to the African Court on Human and Peoples' Rights (African Court), seeking the following reliefs :

- a) A declaration that Amapia's withdrawal of its ratification of the Protocol establishing the African Court of Human and Peoples' Rights is unprocedural unlawful and untenable;
- b) A declaration that Amapia's inability to protect Ubean women and girls from sexual violence and female genital mutilation cases amount to violation of the Maputo Protocol; A declaration that Amapia's inability to promote, fulfill and observe Ubean women and girls' right to freedom from discrimination, security of the person, dignity, health and education violated the Maputo Protocol; and
- c) A declaration that Amapia's inability to investigate and prosecute cases of sexual violence and female genital mutilation violated national laws and the Maputo Protocol.

The matter is set to be heard by the African court on 17th and 18th May. Prepare memorials for both applicants and respondents on the following arguments :

- A. Jurisdiction and Admissibility; and
- B. The merits of the case.