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## Toronto encounter leads to legal battle on behalf of Kenyan child rape victims

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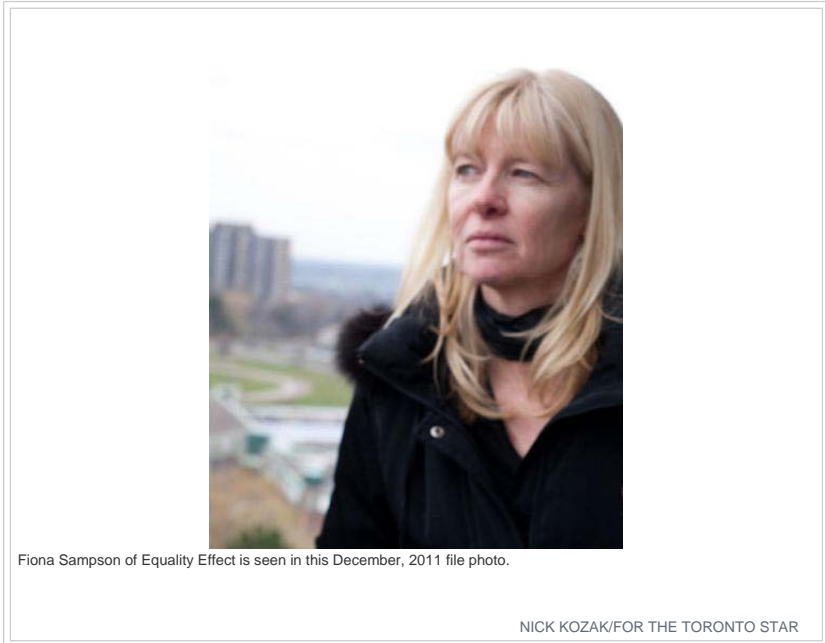
**Debra Black**  
Staff Reporter

A friendship that began in Toronto between a local human rights advocate and a Kenyan social worker has triggered a constitutional challenge that could make legal history — not just in Kenya but around the world.

The legal action — to be filed in Meru, Kenya, in the High Court on Thursday, Oct. 11 — argues that local police officers routinely violate the constitutional rights of young girls who have been raped because they refuse to enforce laws that require the police to investigate and charge rapists.

The constitutional challenge has its roots in a fortuitous friendship between Fiona Sampson and Mercy Chidi that began in the summer of 2010. The two were attending a workshop on human rights at the University of Toronto.

Chidi, a social worker who runs a shelter for young rape victims in her home community of Meru, was looking for guidance on what she could do to help the increasing number of young girls being raped.



Fiona Sampson of Equality Effect is seen in this December, 2011 file photo.

NICK KOZAK/FOR THE TORONTO STAR

She explained to Sampson, a human rights lawyer, that in her hometown young girls are raped, but when they take their stories to the police nothing is done.

The most recent police statistics in Kenya report 2,971 rapes and defilements in 2009 and 3,445 in 2010. But Chidi disputes those figures, suggesting the number of cases is under-reported because so many women refuse to report or seek medical assistance, or because their charges are ignored.

"In the last couple of years we've had an increase in children being abused sexually by parents, neighbors, family," explained Chidi in a phone interview with the Toronto Star from Meru. That's because many men falsely believe they can cure themselves of HIV/AIDS if they have sex with a young child.

"We have a law that protects against sexual abuse. But the girls don't get justice because police do a very shoddy job. Prosecution often fails because police fail to do their job."

After listening to Chidi, Sampson came up with the [160 Girls Project](#), a legal challenge in the Kenyan courts on behalf of the rape victims Chidi helps.

Through her human rights group the Equality Effect, Sampson assembled a group of Canadian and African lawyers and law students.

The team — 25 lawyers and one social worker — gathered research and devised strategies. They have spent two years — from 2010 to 2012 — building a database.

Frontline workers were sent with the girls to the Meru police station to report the crimes. They took notes as the police refused to investigate or even sometimes asked for bribes.

At first, the task seemed insurmountable. But Chidi — described as the "Erin Brockovich of Kenya" — and Sampson were determined. "You just have to keep going to ensure every girl child has access to justice. I can't sit here and do nothing. I run and I run. If I can't run, then I walk," Chidi said.

"If I cannot walk then I'll tap my feet. But I can't sit here and do nothing. We are committed to walk every mile, climb every mountain, move every hill until we can assure every girl accesses justice."

Protecting and fighting for the women and girls in her shelter, the [Tumaini Hope Center](#), is all-consuming for Chidi. She, her staff and the girls at the shelter are vulnerable to threats of rape and death.

Sampson has spent her legal career fighting for human rights, first with LEAF — Canada's Women's Legal Education and Action Fund — and now with the [Equality Effect](#) which Sampson founded in 2007 with colleagues from Africa.

"It is exhilarating and at the same time quite daunting," Sampson said of the legal fight. "It is a huge opportunity to effect meaningful change . . . But it is a huge responsibility too, and we have to get it right. It's the reason I went to law school. It feels like a big moment in history for all of us."

If the court sides with the challenge, police in Kenya will be instructed through a court order to follow the current defilement (rape) law and not ignore it. This, the group hopes, will create a climate of change.

Eleven girls, aged 4 to 17 years old, have been chosen as applicants, just a handful of the 232 cases.

Specific details of the applicants' stories cannot be discussed before the documents are filed in the courts, Sampson said. But she points to a case of a 6-year-old who sought shelter with Chidi. The young girl was lured to her neighbour's home with the offer of cookies and candies, said Sampson.

The neighbour raped her and left her for dead. When she eventually went to the police with Chidi, the police officers asked for money to investigate.

The team — which includes Kenyan constitutional lawyer Muthomi Thiankolu as lead counsel — will argue that these girls' international human rights and constitutional rights are being violated because the police are not exercising due diligence.

The lawyers will rely on the constitutional victory in Canada's Jane Doe case to help build their case, said Sampson. Jane Doe sued the Toronto Police for negligence and breach of her constitutional rights, and after 10 years of litigation, eventually won her case.

The hope is that the case will have a profound impact on defilement cases not only in Kenya, but also across Africa. If successful it will serve as a persuasive example of case law for others to use in their court systems. A win would also mean that similar constitutional challenges could be mounted in other parts of the world where the crime of rape is ignored by police.

"Once we fully initiate it in Kenya, we'll take it to Ghana and Malawi," said Sampson. "And we've been contacted by women's groups in the Congo, Rwanda, Sierra Leone, Pakistan, Afghanistan and Central America. People want us to bring this there because they see the potential it has to create change."