



Globe Editorial

Canadian group deserves praise for unique effort in Kenya

The Globe and Mail

Published Tuesday, Jun. 12 2012, 7:00 PM EDT

Last updated Tuesday, Jun. 12 2012, 7:23 PM EDT

Girls are so devalued in parts of Kenya that men routinely rape them in the belief that, by assaulting a virgin, they will be cured of HIV/AIDS. And despite tough laws in the African country that call for life in prison for child rapists, authorities are often unable or unwilling to investigate and bring the perpetrators to justice.

A Canadian human rights organization deserves praise for leading an international effort to bring justice to these girls – as well as hope and empowerment to a group in society that is heavily disenfranchised.

The lawsuit against the Kenyan government, to be filed this fall on behalf of 160 girls aged three to 17 who have allegedly been raped, will argue that the state failed to uphold the law by not investigating their claims, and violated the girls' constitutional right to equality, dignity and security of the person, and their rights as children.

“It is easy to build a school or buy a community a goat. But that feel-good gesture doesn't change life for girls. We need to get to the root source of inequality, and that is discrimination under the law,” says Fiona Sampson, the executive director of the Toronto-based Equality Effect. She is working with 35 lawyers around the world, including several in Kenya, to prepare the legal challenge, as well as with a shelter in Kenya that houses, educates and provides counselling for the girls.

The legal experts have the benefit of Jane Doe's historic 1999 victory in Ontario, when she successfully argued that the police had breached her constitutional right to equality and failed to provide her with access to justice. They will use this case law to help prepare the lawsuit.

Despite a progressive and modern constitution that is not yet two years old, Kenya still has a paternalistic culture, early marriages and female genital mutilation. This results in ingrained discrimination against women and girls, especially those who are poor, rural and orphaned.

The lawsuit is likely to be a highly effective way to help transform that culture, and to force authorities to uphold laws designed to protect girls, and children generally.

The challenges are immense: Kenya's judicial system is slow; many police are uneducated about constitutional equality rights, much less how to preserve physical evidence in sexual assault cases; corruption is often a problem; and victims can be unwilling to come forward.

However, the recognition that girls have the same rights as men under the law would still go a long way toward stopping the violence and degradation to which they are subjected. This is a legal challenge worth supporting.