



## Court orders police to serve and protect

by Clar Ni Chonghaile

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Fiona Sampson recalls the day she hiked through the Kenyan bush for 40 minutes to meet the family of an 11-year-old girl who had been raped by her HIV- positive grandfather. The Canadian lawyer spent the day with Emma's family, finding out more about an alleged crime that would ultimately send a small earthquake through the judicial system in this East African country.

"At the end of the day, [Emma's mother] took my hand in hers and locked her eyes on mine, and you could see the pain and frustration but also the keen sense of hope," Ms Sampson said by telephone from Toronto, where her international legal network, the Equality Effect, is based.

"She said to me, 'Don't go away and forget about us. Your plan will work. Your plan is what we need, and we need the police to do their job. You get us justice.'"

And that is just what Ms Sampson's organisation tried to do, working with Mercy Chidi, the fearless director of Ripples International children's charity, which runs the Tumaini rape shelter in Meru, some 240km north-east of Nairobi, Kenya's capital.

Together they launched the "160 Girls" legal initiative, named after 160 girls who have been raped in eastern Kenya, to achieve justice and protection against rape for all girls in the country.

On October 11th last year, the International Day of the Girl Child, the two charity groups filed a civil case on behalf of Emma and ten other girls, aged between 3 and 17, at the High Court in Meru. The 11 girls were a representative sample of the larger group.

The constitutional challenge was brought against the government for failing to protect the lives, liberty and security of these victims of rape and defilement, the legal term in Kenya for sexual assault of minors.

During the trial, the court heard that police often failed to investigate rape claims, or demanded bribes to open an inquiry. In one instance, officers locked a girl in a cell after she said a police officer had raped her. The police insulted or yelled at other girls.

In late May, the court ordered law enforcement officers to re-investigate the girls' allegations of rape and accused the police of creating a culture of tolerance around sexual violence. If police officers fail to obey the judgment, they could face prison sentences or fines.

The ruling marked a legal breakthrough in a country where a woman or girl is raped every 30 minutes, according to the Equality Effect. "We were thrilled with the court's decision because we made some radical arguments. We asked the court to find the police

responsible for the harm the girls had experienced resulting from police treatment of their defilement claims, but then we went a step further and asked the court to hold the police responsible for this climate of impunity that has resulted in these near epidemic rapes," Ms Sampson said.

"This decision is the high-water mark for girls' rights relating to sexual violence in the world," she added. "That makes Kenya the world leader now in terms of girls' rights jurisprudence." Ms Sampson said that a local magistrate in Meru told her that ten years ago a judge would not have been brave enough to stand up to the state in this way. "It's a huge moment to celebrate in terms of the Kenyan judiciary being able to undertake this kind of world-class decision-making."

However, the ruling is just a first step for activists seeking to change attitudes in a society where violence against women and children is too often tolerated. Around 45% of Kenyan women aged 15–49 have experienced physical or sexual violence, including "forced sexual initiation", according to the 2008–09 Kenya Demographic and Health Survey.

Although there was some initial improvement in police treatment of rape allegations in Meru when the court case was filed, there has since been a return to "generally unacceptable levels of enforcement", Ms Sampson said. Her group and Ms Chidi's will be closely monitoring developments in the reinvestigations, and will take further legal action where necessary.

"The long journey has just started and we are willing to move every mountain, climb every hill, walk every mile until the girls can access justice," said Ms Chidi, who has received death threats because of her work. "We are calling on all other stakeholders to team up so we can ensure the police can do their jobs. We are tired of mopping the floor, and we want to turn off the taps."

Activists say that changing entrenched attitudes about sexual violence and non-sexual domestic violence will require an interdisciplinary approach involving education, public advocacy and media. On the positive side, the Kenyan constitution, ratified in 2010, is a progressive document with strong sections on women's rights.

For Saida Ali, executive director of the Coalition on Violence Against Women (COVAW), the ruling is a welcome development, but it will be effective only if civil society keeps reminding the police of their duty to properly investigate rape cases. "The problem is to get the police to treat sex and gender crimes as important. Right now, there is a lot of trivialisation of these crimes. They are seen as women's issues."

Ms Ali points to a recent series of gang rapes in the Nairobi suburb of Dandora as another example of police ineptitude. The rapes have been reported in local media, but police have done little to investigate in a neighbourhood seen as a "no-go" area.

"They don't see it as something important. They do not intervene," Ms Ali said. COVAW wants the police to set up gender crimes units in stations to deal specifically with gender-based violence.

Claire Mc Evoy, a Nairobi-based researcher, said radical reforms are needed across the police service, whose members often demand bribes to investigate rapes, privileging wealthier victims. "Until any Kenyan woman or child can walk into a station and report a rape or defilement, and be treated equally and fairly and in line with the law, the system is not working," she said.

Last December the Small Arms Survey, an independent research group, published Ms Mc Evoy's report on violence against women in Nairobi—"Battering, Rape and Lethal Violence: A Baseline of Information on Physical Threats Against Women in Nairobi".

In it, she described Kenya's "profound societal crisis". The report found that Nairobi's women were most likely to be battered, raped and murdered by their former and current husbands and intimate partners; impunity was widespread; and the number of rapes reported to Nairobi's three biggest post-rape care medical providers was rising.

Ms Mc Evoy found that violence against women is widely tolerated. She blamed this on the low status of women in a society almost inured to violence; patriarchal values; and power structures focused on male dominance. "For a lot of males, sex is seen as a right, to be taken," she said. "When you want it, you get it with little thought for the consequences. That needs to be tackled. It is profoundly damaging for Kenyan society."

As for the police, many officers are unfamiliar with the law on sexual offenses, while their leaders have never shown any interest in curbing sexual violence. "So when police...ignore rape cases, ridicule people who come in to report them, ask for bribes, send victims home and ask them to reconcile with their rapists, absolutely nothing happens," Ms Mc Evoy said.

"You can blame a lack of training but personally I feel you can do all the training in the world at the station level, but if the leadership of the police is not on board, it's a waste of time," she added. "You need that message—that sexual violence needs to be dealt with meaningfully—coming down from the very top."

Ms Mc Evoy said the Meru case was very significant, but that follow-up was crucial. "The only way to force this government to take any action is by using the law. It's really the only tool you've got."

COVAW's Ms Ali plans to use the Meru ruling to bolster a case that rights groups filed in the High Court last February on behalf of six women and two men who were sexually assaulted in the violence that exploded after Kenya's disputed 2007 presidential election. Thousands of women were raped during that time, with many targeted because of their tribal affiliations. Men were also sexually assaulted.

Kenya's new president, Uhuru Kenyatta, is due to stand trial at the International Criminal Court in November for his alleged role in fomenting the violence. Mr Kenyatta has been charged, as an indirect co-perpetrator, with murder, deportation, rape, persecution and inhumane acts. He denies the charges.

In June, the World Health Organisation said violence against women across the world was widespread and endemic, describing the issue as a global health problem of epidemic proportions. In a report, it said that more than a third of women worldwide experienced sexual or physical violence, and that 38% of all women who were murdered were killed by their intimate partners.

There have been public outcries after brutal gang rapes leading to death in India and South Africa, among other countries. Ms Ali complained that sexual violence in Kenya, including the gang rapes in Dandora, failed to awaken such outrage. "What is the boiling point for Kenya? When women and girls are raped and killed, and that does not cause us to make noise?"

For Ms Mc Evoy, the problem is compounded by a dearth of credible statistics. "We don't know how many women and girls are being raped and murdered. Those bodies are being dumped. They are not being investigated. Without data, how can you address the problem?"

In August the Equality Effect plans to launch a similar "160 Girls" case in Malawi. Advocacy groups in the Democratic Republic of Congo, Somalia, Tanzania and Uganda have also approached the charity for help.

Ms Sampson said tackling the global rape problem was "epic but doable", although funding is an issue. "Funders are reluctant to engage in litigation because it is so radical. So it has been very challenging for us to be able to finance this work," she said, adding that her team had carried out more than \$1m of pro bono work.

One of the most uplifting and perhaps significant aspects of the Meru legal battle was how it emboldened the girls and women involved. On the day the case came to court last October, the girls and their families marched to the courthouse. "They had placards they had made, and they were singing freedom songs," Ms Sampson said. "This was their day and they wanted to stake their claim."

When they got to the courthouse gates, one 14-year-old girl, who had been raped and impregnated by a police officer, started chanting, "*Haki yangu*" ("I demand my rights" in Kiswahili). Everyone joined in, and the panicked police slammed the gates in the marchers' faces. The girls were taken aback at first, but then they started to laugh.

"(The 14-year-old girl) said that up until then she had been afraid of the police... but then, she said, the tables turned and the police were afraid of them," Ms Sampson said. She had redeemed her honour. "She said it was the best day of her life."