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Canadians force Kenyan police to answer for 'inexcusably' neglecting reports of sexual abuse against girls

By Jake Edmiston

A group backed by Canadian lawyers helped compile a court case that demanded Kenyan police be held accountable for allowing rape reports to go...

After his eight-year-old daughter was gang-raped by three men in Central Kenya, John found her crawling home. He carried her to the police station. The officers wanted gas money for driving her to safety at one of the only shelters for raped girls in the country.

When the girl arrived at the shelter in Meru, Kenya, Toronto lawyer Fiona Sampson was there - accumulating evidence for what would eventually be a successful lawsuit against the Kenyan police.

John told Ms. Sampson that his reports to police had achieved nothing except elicit death threats from his daughter's alleged rapists. They were going to burn down his tea farm and kill his family, he told her.

"These are additional criminal code violations," Ms. Sampson told John. "It highlights the need for the police to make this a priority case."



That afternoon, assisted by a social worker from the shelter, John returned to the police - this time armed with advice from a lawyer.

The police agreed to issue an arrest warrant for one of the three men but told John he had to serve it himself - an unusual practice, compounded by the fact that John is blind.

Ms. Sampson was eating dinner when she heard what happened.

"I remember almost spitting my food out," she said in an interview on Friday. "He went out and he caught the lead perpetrator."

John is not the man's real name, only a moniker given by Ms. Sampson to protect his daughter's identity.



The girl's case, from January 2012, would become one of 11 affidavits presented in a constitutional challenge that saw the High Court of Kenya scold police this week for "unlawfully, inexcusably and unjustifiably" neglecting reports of sexual abuse against girls.

Backed by dozens of Canadian lawyers and law students, Ms. Sampson's group, the Equality Effect, helped local social workers compile a case that demanded police be held accountable for allowing rape reports to go uninvestigated.

"The [police's] ongoing failure to ensure criminal consequence," Judge A. Makau wrote in his decision on Monday, "has created a 'climate of impunity' ... As a result of which, the perpetrators know they can commit crimes against innocent children without fear of being apprehended and prosecuted."

The court ordered the Kenyan Commissioner of Police, the director of Public Prosecutions and the Minister for Justice to ensure police carry out investigations in cases of rape against children. The 11 children whose stories were included in the lawsuit will see their cases revisited.



It's a historic decision, says Ms. Sampson, whose team of Canadian lawyers donated more than \$3-million in pro bono hours.

"This was a bit radical because we were arguing that the police themselves were responsible for the rapes because they created this culture of impunity," she said "The fact that the judge adopted that is really quite historic."

After the Tumaini shelter in Meru reached out to Ms. Sampson's organization in 2010, the lawyer started work on a documentation system that would allow the shelter to produce evidence that would be "bullet-proof" in court.

Social workers at the shelter "risked their lives" responding to emergency calls, where they rescued children from often-violent situations, Ms. Sampson said. After the rescues, volunteer students from the University of Toronto and McGill law schools were sent to the homes to collect further evidence.



By last year, the group had documented 160 cases of police failing to properly investigate reports of defilement - the Kenyan legal term for child sex abuse.

"That's part of the problem," Ms. Sampson said of the "defilement" terminology. "It's an old Victorian legal term that traditionally applied to property."

Ms. Sampson's team and the founder of the Tumaini shelter, Mercy Chidi, whittled the 160 cases down to 11 affidavits, which they felt best represented the diversity of assaults against the girls.

As of this week, the 160 cases have ballooned to 240, despite the fact that several of the children died as a result of trauma inflicted during their rapes.



According to the affidavits submitted to the Kenya High Court, girls between the age of three and 17 were raped by neighbours, family and police. A 15-year -old reporting a rape was interrogated "loudly and in public."

In a celebratory parade last fall, the girls from the shelter travelled to the courthouse to submit their claim. But when they arrived, police closed the gates.

"[The girls] were taken aback at first. There was this collective gasp," Ms. Sampson said. "Then they started to laugh. I think they were surprised. ... The tables had turned, the police were afraid of them now."

Outside the gates of the Meru courthouse, Ms. Sampson turned to see the man she calls John disobeying her legal advice. The blind father who arrested his daughter's alleged rapist was speaking to reporters.

"What else can [the perpetrators] do to me? They've threatened my life, they've raped my daughter. I have to talk," Ms. Sampson recalls him saying.



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