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In Kenya, a Victory for Girls and Rights

By SALLY ARMSTRONG

There was something deliciously serendipitous about the power going off in northern Kenya on May 27 just as Judge J.A. Makau read his much-anticipated decision in a case could alter the status of women and girls in Kenya and maybe all of Africa.

But the lights did come on. And the judge in the high court in Meru declared: “By failing to enforce existing defilement laws, the police have contributed to the development of a culture of tolerance for pervasive sexual violence against girl children and impunity.”

Guilty.

An extraordinary story of tenacity and courage, wit and survival led to this victory.

Three years earlier, 160 girls between the ages of 3 and 17 sued the Kenyan government for failing to protect them from being raped. Now they’d made legal history: Through a constitutional challenge — holding the state accountable for the police treatment of defilement claims — the girls secured access to justice for themselves, and legal protection from rape for all 10 million girls in Kenya.

A child is raped every 30 minutes in Kenya. One of the reasons is the demented thinking of thousands of men in sub-Saharan Africa who believe that having sex with a little girl will cure you of H.I.V. and AIDS. In fact, the belief is that the younger the girl is, the stronger the cure will be.

Although there are adequate laws in the Kenyan criminal code to protect girls from what Kenyans call defilement, there is almost total impunity for the perpetrators. The laws are not enforced and the practice of defilement has been on the rise.

Ninety percent of the victims have been raped by people they know — fathers, uncles, brothers, neighbors, teachers, priests — the very people assigned the task of keeping children safe.

If the girl doesn’t die of her injuries, she faces being abandoned. No one wants to have anything to do with a defiled girl. She loses her chance to go to school. She’s likely sick with a sexually transmitted disease or H.I.V. She may be pregnant. Her childhood is over. She becomes poor, unhealthy and destitute.

It took the courage and tenacity of 160 girls to take on a system that failed them. On Oct. 11, when the case went to court in Meru, their lawyers marched through the streets from the shelter where the girls had been staying to the courthouse. The girls wanted to march as well but were told that their identity needed to be protected and that they must stay at the shelter. Nothing doing, they said. They marched beside their advocates chanting, “Haki yangu” — the Kiswahili words for “I demand my rights.”

The guards at the courthouse slammed the gates shut as the girls approached. But they climbed the fence still chanting “Haki yangu” and then started to laugh at the reversal in roles being played out in front of them.

“Look,” they called to each other. “These men who hurt us and made us ashamed are scared of us now!” Soon the gates were opened and the girls and their lawyers entered the court.

The case actually began when lawyers from Kenya, Malawi, Ghana and Canada got together at Osgoode Hall Law School in Toronto and their discussion turned to the alarming rise in rape in Kenya.

Canadian women had sued their government for failing to protect them and had won. The African women asked them how they achieved their victory, and when the Canadians explained the force of a constitutional challenge, they decided to go forward together.

The action was the brainchild of Fiona Sampson, a Canadian who runs an organization called the Equality Effect that uses international human rights law to improve the lives of girls and women. She teamed up with Mercy Chidi, director of a shelter in Meru called Ripples International. Together they knew it was time to tackle the problem: the impunity of rapists and the failure of the justice system to convict them.

The journey these children have taken is about girls daring to break taboos and speak out about sexual assault. It’s about women lawyers from two sides of the world supporting youngsters in their quest for justice. It’s about kids who were told they had no rights but insisted that they do. And it’s the pushback reaction that women and girls everywhere have been waiting for.

Within 48 hours of the court decision, Fiona Sampson had heard from people in half a dozen countries who want to undertake the same action. It’s as though the centuries-old jig is up.

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