

# Malawi women challenge "sexist" rape law in Constitutional Court

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NAIROBI, Nov 25 (Thomson Reuters Foundation) - Three women who say they were raped and the husband of a woman who died after an alleged rape filed a claim in Malawi's Constitutional Court on Wednesday seeking to overturn an 18th century law they say stops women getting justice for sex crimes.

The defendants in all four cases - involving girls aged 13 and 14 and two adult women - were acquitted because of the corroboration rule, which requires the women to provide a witness or medical evidence to gain a conviction.

Rape is widespread in Malawi but is rarely reported due to stigma, lack of access to the judicial system and a lingering belief that sex crimes should be dealt with privately.

Girls are often raped in the southern African nation, one of the poorest in the world, because of the belief that sex with a virgin can cure HIV/AIDS and make a man wealthy.

"Courts need to believe rape victims," said Fiona Sampson, a lawyer with The Equality Effect, a Toronto-based international legal rights network supporting the case.

"There's this huge mythology that's become entrenched, I think, in sexual assault culture that women lie ... The cops, the society, the courts, everybody starts from a place of disbelief."

### FALSE ALLEGATIONS

The corroboration rule is an English common law principle created by Chief Justice Lord Hale in 1736 which required a witness to back up a woman's testimony because of the risk she might lie and send an innocent man to jail.

It has been repealed in many countries, including the United States, Britain, Kenya, Namibia and South Africa.

"The rule on corroboration is outdated, based on sexist rationales and does more harm than good," former magistrate Bernadette Mulunga, a law lecturer at the University of Malawi, said in her expert submission in support of the claim.

False allegations of rape are no more common than those for other crimes, at two to eight percent, Sampson said.

In Malawian culture, women are unlikely to lie about rape because of the stigma attached to it, Mulunga said. "A woman who decides to testify may be ostracised by society or at times blamed for being sexually assaulted," she said.

The principle that convictions require evidence beyond reasonable doubt already protects rape suspects, she added.

Rape usually occurs in private, without witnesses.

Getting medical evidence is difficult in many developing countries as people do not know they need to seek help before washing or changing and facilities are often not equipped to collect and preserve evidence.

One applicant said the 50-year-old pastor of her church raped her in her home when she was 14. The pastor said the sex was consensual.

Another woman said she was seized by two men on her way home from work, beaten and gang-raped repeatedly overnight. The men were arrested but the case was discharged because the hospital said it had lost the woman's medical report.

The husband representing his dead wife said she was gang-raped by a group of men who broke into her house and tied her up, demanding money.

"(Her) medical report indicated that she had been raped, and noted semen on her private parts, and bruises on her face," the submission said.

She had said she recognised the men as acquaintances of her husband, but the court acquitted them because there was no witness to corroborate her evidence.

"If the police start by believing her, if the courts start by believing her, then that creates the shift and then women will report, women will get justice, perpetrators will get held accountable and the climate of impunity gets addressed," said Sampson.

"This is the first step of that whole chain reaction."

(Reporting by Katy Migiro, editing by Tim Pearce. Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women's rights, corruption and climate change.)

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