

HIGHLIGHT

SEXUAL ABUSE, ASSAULT AND VIOLENCE

Sexual abuse, assault, and other forms of violence against women and children have been internationally condemned, and over the past ten years, landmark decisions from courts across Africa, including Kenya, South Africa and others, have established jurisprudence that advocacy groups across Sub-Saharan Africa and beyond can utilise to advance women's and adolescent girls' rights.

Jurisprudence has established that states and other duty-bearers are liable for the failure to effectively protect, respect, and fulfil women and girls' human rights by protecting them against assault, sexual abuse, and violence. For example, in the Kenyan case *C.K. (A Child) through Ripples International as her guardian and Next friend) & 11 Others v Commissioner of Police/Inspector General of the National Police Service & 3 Others*,²⁰ the court determined that the state and its organs could not hide behind common law to justify their failure to carry out an effective investigation into reported sexual abuse cases, and that this amounted to discrimination against the group of women and girls who were abused.

Allegations of defilement, according to the Court, should be properly investigated and perpetrators of such crimes should be prosecuted to deter others. Further, the Court held that state organs have a duty "to protect" their citizens from sexual abuse, harassment, defilement, and violence, regardless of their gender. The Court held the police responsible for not adequately protecting the interests of the vulnerable women and girls and therefore failing to ensure their safety.

In *W.J. & Another v Astarikoh Henry Amkoah & 9 Others*, the Kenyan Court affirmed the constitutional and fundamental rights of women and girls against assault and sexual violence. The Court upheld a petition by two minors and their guardians that school J, its regulatory body, and the state did not do enough to protect the petitioners against the first respondent, their teacher, who raped them. According to the Court, the first respondent should not have been entrusted with the petitioners and other children, given his previous history of sexual violence and assault which had led to his transfer to that school.

The Court held that the state is obliged by the Kenyan Constitution and international law to prevent violence against women and girls and to ensure that their fundamental rights to welfare and development; education; health, including reproductive and sexual health; and dignity were protected at all times. The Court also held that the employers of the First Respondent should be held accountable (vicariously) for their omission and that the law should not only focus on punishing the perpetrators of violence, in this case sexual abuse and assault against girls, but should also make provisions for victims and survivors' rehabilitation process and costs.

In conclusion, the decisions discussed herein affirm that the state and its organs can be held accountable in circumstances where they breach their constitutional duties towards their subjects or contravene their regional and international human rights obligations. In the instances discussed above, the police and educational institutions were held accountable for failing in their respective duties to effectively protect women and girls against sexual abuse and violence.

by Victoria Balogun