

Assessment of Justice Delivery for Victims of Defilement in Uganda

TABLE OF CONTENTS

Acronyms.....	4
Acknowledgments.....	6
Executive Summary.....	7
I. Introduction.....	11
II. Methodology.....	15
III. Legal, Policy and Institutional Framework.....	20
A. Legal Framework.....	20
B. Policy Framework.....	34
C. Institutional Framework.....	35
IV. Justice Sector Response – Research Findings.....	37
A. INVESTIGATION, PROSECUTION AND TRIAL OF DEFILEMENT CASES	37
<i>Cross-cutting issues</i>	37
1. Challenges in the investigation of defilement cases.....	39
A) CONSTRAINED CAPACITY OF JUSTICE SECTOR ACTORS	39
B) EVIDENTIARY CHALLENGES	44
C) PROTECTION OF WITNESSES	48
2. Challenges in prosecution of defilement cases.....	50
A) CONSTRAINED CAPACITY OF JUSTICE SECTOR ACTORS	50
B) EVIDENTIARY CHALLENGES	51
C) PROTECTION OF VICTIMS’ RIGHTS	53
3. Trial of defilement.....	54
A) CONSTRAINED CAPACITY OF JUSTICE SECTOR ACTORS	54
B) EVIDENTIARY CHALLENGES	55
C) PROTECTION OF VICTIMS’ RIGHTS	59
V. Conclusion.....	64
VI. Recommendations.....	65
A. POLICE	65
B. ODPP	66
C. JUDICIARY	66
D. PARLIAMENT	67
E. MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT	67
F. NAWJU AND OTHER CSO ACTORS	67
G. DEVELOPMENT AGENCIES	68
VII. Annexes.....	68

List of Figures

Figure 1: Number of defilement cases reported to police (2007-2020)..... 12
Figure 2: Number of defilement cases dismissed (2015-2020).....46
Figure 3: Number of convictions (2015-2020).....53
Figure 4: Number of Acquittals (2015-2020).....58

List of Tables

Table 1: Breakdown of Key informants16
Table 2: Breakdown of Focus Group Discussions.....18
Table 3: Summary of methodology.....19

Acronyms

ACDO	Assistant Community Development Officer
ACRWC	African Charter on the Rights and Welfare of the Child
CBOs	Community-Based Organizations
CBSD	Community Based Services Department
CDO	Community Development Officer
CJP	Community Justice Program
COVID 19	Coronavirus Disease
CPC	Child Protection Committees
CRC	Convention of the Rights of the Child
CSA	Child Sexual Abuse
CSO	Civil Society Organization
DCDO	District Community Development Officer
DGF	Democratic Governance Facility
DNA	Deoxyribonucleic Acid
DPP	Director of Public Prosecutions
DRDIP	Development Response to Displacement Impacts Project
DVA	Domestic Violence Act
DYCA	Department of Youth and Children Affairs
FGDs	Focus Group Discussions
FIDA	Uganda Association of Women Lawyers
GBV	Gender-Based Violence
GBVRC	Gender-Based Violence Recovery Center
GoK	Government of Kenya
GBVRC	Gender Violence Recovery Center
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference of the Great Lakes Region
IDLO	International Development Law Organization
JLOS	Justice, Law and Order Sector
KNH	Kenyatta National Hospital
KPSPSV	Kampala Protocol on the Suppression and Prevention of Sexual Violence
LASPNET	Legal Aid Service Providers Network

LC	Local Council
LDUs	Local Defence Units
MCA	Magistrates Court Act
MoGLSD	Ministry of Gender, Labour and Social Development
MoH	Ministry of Health
NAWJU	National Association of Women Judges and Magistrates in Uganda
NGOs	Non-Governmental Organizations
OCHCR	Office of the United Nations High Commissioner for Human Rights
ODPP	Office of the Director of Public Prosecutions
PCA	Penal Code Act
PCAA	Penal Code Amendment Act
PPSSVWG	Protocol on the Prevention and Suppression of Sexual Violence against Women and Girls
PSWO	Probation and Social Welfare Officer
PTPA	Prevention of Trafficking in Persons Act
REC	Research and Ethics Committee
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
SOA	Sexual Offences Act
SOB	Sexual Offences Bill
STDs	Sexually Transmitted Diseases
TASO	The Aids Support Organization
ToR	Terms of Reference
UCHL	Uganda Child Helpline
ULS	Uganda Law Society
UNCST	Uganda National Council of Science and Technology
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPF	Uganda Police Force
UWONET	Uganda Women's Network
VAW/G	Violence Against Women and Girls
WHO	World Health Organization

Acknowledgments

The study was led by Dr Josephine Ndagire, on behalf of the National Association of Women Judges Uganda (NAWJU), with support from the International Development Law Organisation (IDLO).

Special thanks to judges Henrietta Wolayo, Elizabeth Alvidza, Susan Okalany and Her Worship Naigaga Winfred Kyobiika of NAWJU, whose insights and feedback shaped this study.

Thanks to IDLO staff for providing comments and feedback to the drafts.

Thanks to the research assistants: Catherine Awidi, David Kasibante, Doreen Watsemba, Esther Nankya, Israel Wabwire, Moses Lyaazi, Musa Musasizi, Nancy Atim, Rachael Zalwango, Timothy Wasilwa and Vicky Atala.

The victims who boldly told their stories are greatly appreciated.

Many thanks to the justice sector actors – police, state attorneys and judicial officers, and civil society actors who were interviewed for this study.

Thanks to officials from the Ministry of Health (MoH) and the Ministry of Gender, Labour and Social Development (MoGLSD) for their insights, and probation officers, welfare officers and community development officers for providing useful information.

Special thanks to Her Worship Mastullah Mulondo, Chief Magistrate, Mityana district, Juliet Ayoo Ojore, Human Rights and Rehabilitation Center, Tororo district and Ritah Asiimwe, Justice Centers, Tororo district, who provided invaluable information that greatly enriched the study.

Executive Summary

This study, commissioned by NAWJU, in partnership with IDLO assesses justice delivery for defilement victims in the past 13 years (2007 – 2021). The study focuses on amendments in the law of defilement enshrined in the Penal Code Amendment Act (PCAA) of 2007, which are now incorporated in the Penal Code Act (PCA) and the justice, law and order institutions, namely, the Uganda Police Force (UPF), Office of the Director of Public Prosecutions (ODPP) and the judiciary, that have the mandate to investigate, prosecute and adjudicate defilement cases.

It must be emphasized from the onset that the use of the term 'victims' is only intended to align the study with terminology in the legislative framework, and its usage in the criminal justice system. It is not intended to disempower or stigmatize those that have experienced defilement. The term 'victims' in criminal justice is defined as persons against whom crimes are committed.

In the Ugandan context, all sexual activity with persons below the age of 18, is illegal and technically termed 'defilement'. There have been several reforms of the law proscribing defilement over the years, beginning in 1990. PCAA, enacted in 2007, is the most recent, with more reforms anticipated in the Sexual Offences Bill (SOB), 2019. Despite these legal reforms and other efforts at the institutional level in the justice sector, the incidence of defilement remains high across the country. Data from annual crime reports of the Uganda Police Force (UPF) for the past 13 years shows an initial decline of reported cases in the immediate aftermath of enactment of the PCAA (2007-2013) but an increase in subsequent years (2014 to 2016). Data on reported cases between 2017 to 2019 is inconclusive, but certainly higher than the immediate aftermath of the enactment of the PCAA. According to the 2020 Annual Crime report, there was a 3.8% increase in the number of reported cases in 2020, up from 13,613 cases in 2019 to 14,230.

The increase in reported cases in 2020 was reportedly due to the Covid-19 pandemic and the concomitant national lockdown, which made children vulnerable to predators. The Uganda Child Helpline (UCHL), an initiative of MoGLSD reported that sexual abuse accounted for 20.1% of child abuse cases, with girls representing 98.9% of 4,443 children (4,394 female and 49 male) in March 2020. The report further revealed that 17% of the perpetrators were family members. A multi-agency report published in 2020 indicated that 60% of respondents had observed an increase in sexual violence against children during the lockdown in 2020. It was also reported that thousands of girls were impregnated during that period.

The main objective of the study is to assess the response of the justice, law and order sector to defilement throughout the justice chain in the last decade, and the role the legal framework has played in facilitating or impeding the actions by the sector.

The study covers a 13-year period (2007-2021), which is the time between the enactment of the PCAA and May 2021, when the study was completed. A feminist approach, which places girls' experiences at the center, forms the basis of the analysis. This approach recognizes the universality of female subordination in all spheres of life. This recognition informed formulation of the research problem, questions, and data analysis.

The study was conducted in Mbale, Tororo, and Kamuli (Eastern region); Mityana and Rakai (Central region); Kabarole (Mid-Western region); Mitoma (South Western); Nebbi (West Nile) Amuru and Dokolo (Northern); and Napak (Karamoja) districts.

Qualitative research methods were adopted for the study. Primary data collection methods were individual and group interviews with key informants (including victims above 18 years) and focus group discussions (FGDs).

Summary of the Findings

Across justice sector institutions, it is widely believed that the 2007 amendment created an offence termed simple defilement. And yet, neither the PCA nor the PCAA use the phrase 'simple defilement.' In essence, the PCAA only introduced factors that aggravate defilement. The construct of defilement as 'simple', has had devastating consequences, such as reluctance to investigate 'simple' cases, an increase in extra judicial settlements, refusal of witnesses to testify or cooperate with investigating authorities, recidivism and low sentences.

The study shows that the chain of justice delivery for victims is broken at the investigation stage, for several reasons, that include, internal and external factors. Internally, police lack technical capacity to investigate defilement; and are understaffed and overwhelmed with cases. Some police posts do not have female police officers, Sexual and Gender Based Violence (SGBV) and Gender units and lack basics, such as, stationery to record cases and resources to carry out investigations. Police Form 3A (PF3A), which serves as a medical report, is highly monetized and therefore not readily available to victims. The form is sold at a minimum of 50,000/= Uganda

Shillings. As a consequence, victims are unable to meet the cost of the form and in some cases, investigation costs are disenfranchised.

In all the study districts, state attorneys were few compared to the workload and geographical coverage. In one instance, a state attorney worked in two districts. State attorneys grapple with a wide range of challenges ranging from incomplete files to disappearance of witnesses. In addition, the ODPP does not receive ample notice on when High Court SGBV sessions will held. As a result, state attorneys are forced to prosecute cases when witnesses and victims are not readily available.

Judicial officers are generally cognizant of the limitations of both police and the ODPP and take judicial notice of facts such as the difficulty of obtaining a medical report, after defilement. The courts have therefore largely interpreted the law in a manner that not only affords victims of defilement access to justice but also, enhances gender equality. For decades, the courts required corroboration of the evidence of a victim's defilement and other sexual offences. In 2018, however, the Supreme Court, in a groundbreaking decision, affirmed that the requirement to specifically corroborate evidence of victims of sexual violence was discriminatory, and had no backing in law. This notwithstanding, the courts are faced with several challenges in defilement trials, such as, the lack of mechanism to identify serial offenders, lack of powers to protect vulnerable children and the absence of a victim and witness protection program.

In light of the findings, namely, lack of technical capacity of police to investigate defilement cases, inadequate resources to carry out investigations, as well as, understaffing and the inability of the ODPP to ensure thorough investigations; more needs to be done to improve justice delivery for victims of defilement. The judiciary as an institution at the tail end of the justice chain can only do so much with the available evidence. While it may progressively interpret the law to promote equality and ensure justice for both the victim and the accused person, the bulk of the work remains at the investigation level.

Recommendations

The recommendations are targeted and cut across policy, normative and structural reforms, and include the following:

1. Establish an information management system to ease reporting and ensure accuracy in data compilation;
2. Establish a national sexual offenders register in order to reduce the prevalence of defilement among persons in authority over children, and to ease identification of serial offenders;
3. Establish an integrated service facility that offers holistic services to victims that include legal and medical services, as well as, psychosocial support;
4. Establish a victim and witness protection program to ensure safety and cooperation of victim and witnesses in defilement cases;
5. Continuous capacity building for justice sector actors to challenge distorted views of the law;
6. Strengthen human resource in all justice institutions; and increase in funding for police and the ODPP to enhance efficiency of investigations and prosecution of defilement;
7. Take tough and decisive action against officers who sell PF3A forms and participate in other corrupt practices, such as, encouraging negotiation/settlements under the pretext of receiving commissions, brokering deals with bush lawyers, knowingly tampering evidence and intimidating victim/witness and their families.
8. Exempt defilement and other SGBV cases from the session system. Defilement cases should be heard whenever they arise, as soon as possible;
9. Develop standard operating procedures or guidelines to support the coordination and cooperation with other actors during an investigation of defilement, particularly, first responders; and
10. The punishment imposed on convicts of defilement should be commensurate with the gravity of the offence and in accordance with the law.

I. Introduction

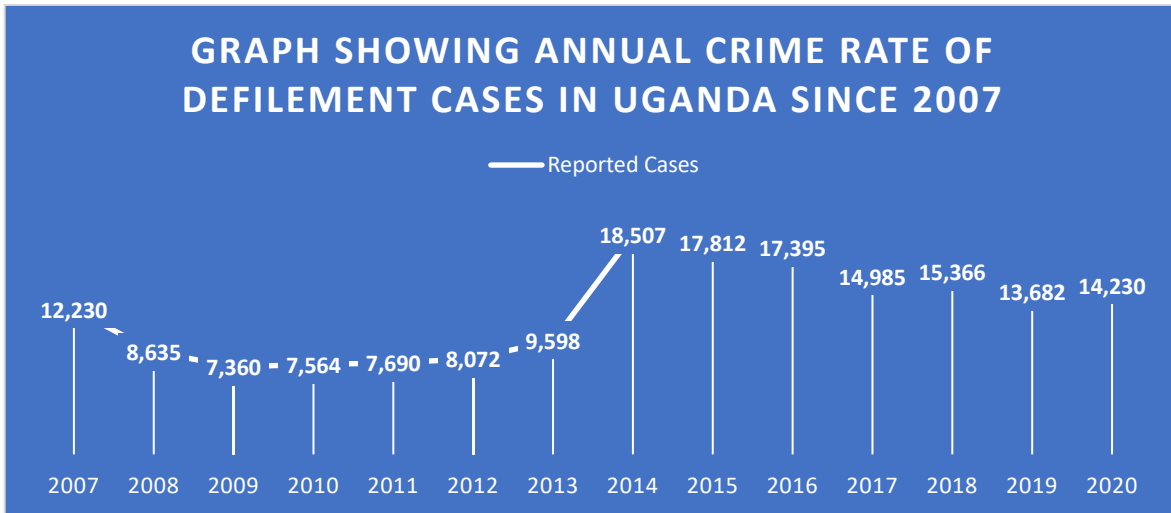
The study was conceived under the IDLO Community Justice Program (CJP) (2018-2023), which, *inter alia*, “...seeks to enhance the accessibility, quality and sustainability of justice services ... for rural, vulnerable and marginalized communities” at all levels in Uganda. CJP interventions are two pronged and empower both the users and dispensers of justice, including police, ODPP and the judiciary. The study is therefore an effort to enhance justice for victims of defilement through an audit of justice sector responses, including the police, prosecution and courts, to defilement in the past 13 years (2007 – 2021), the post amendment period of the PCA.

The wide scope of what amounts to a sexual act ensures the punishment of all forms of molestation against children. In the past – before the penal code amendment in 2007, the scope was very limited, and in fact, restricted to ‘carnal knowledge’ – the legal term for sexual intercourse. This notwithstanding, the vast majority of cases before the courts relate to carnal knowledge. Of the judicial officers interviewed, none had encountered sexual acts involving the use of objects to penetrate, or penetration of a sexual organ with a body part or organ. Some had heard of such instances, but they are few and far in between.

Defilement cases are heard by magistrates’ courts, while defilement with aggravating factors is heard by the High Court. This development was introduced by the PCAA. Before its enactment, all defilement cases were heard by the High Court. Cases are reported to a nearby police post in the jurisdiction where the offence was committed. The UPF has specialized units, such as, the child and family protection, gender, and SGBV units. Defilement cases are typically handled by any one of these units, in police posts where they exist.

Despite an initial decline after the enactment of the PCAA, the cases have remained high in recent years. The figure below illustrates the number of defilement cases reported to police in the past thirteen years.

Figure 1 Number of defilement cases reported to police from 2007-2020



Source: Uganda Police Force

In 2008, soon after the enactment of the PCCA, the number of reported cases dropped from 12,230 in 2007 to 8,635 in 2008. The reported cases remained within the range of 8,000 to 9,500 between 2008 and 2013 but increased exponentially to 18,507 in 2014 and have remained within the range of 14,000 cases since. These figures show that defilement of girls persists regardless of legal reforms to protect victims and strengthen law enforcement.

Context

The PCA defines defilement as sexual acts with persons under 18 years.¹ A child/children are defined as persons under 18 years of age.² It is important to note that sexual acts, are broadly construed and for the most part, encompass several acts of sexual abuse.

More than half of Uganda's population of about 44.27 million comprises children. 56% of the population is below age 18, while 48.7% are below age 15.³ A high percentage of children are vulnerable to defilement for various reasons. It is estimated that 63% of children live with caregivers that are not biological parents,⁴ and live in poor households.⁵ 55% of children under five years are affected by poverty, 24% of whom live in extreme poverty.⁶

Poverty is largely responsible for early marriages and is an exacerbating factor because girls with the permission of parents or caregivers are repeatedly defiled over a long period.⁷ Vulnerability causes susceptibility to early sexual encounters. About 22% of adolescent girls were reported to have engaged in sexual activity in 2016.⁸ At the time, 10% of sexually active adolescents, were reported to have first experienced sex before age 15.⁹

¹ Section 129, *Penal Code Act*.

² Article 257 (1) (c), *Constitution of the Republic of Uganda*, 1995, as amended.

³ Uganda Bureau of Statistics, National Population and Housing Census 2014 – Main Report, 2016, available at: https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf, accessed, May 4, 2021. See also, National Housing and Population Census Report, 2014, available at: <http://library.health.go.ug/publications/policy-documents/national-population-and-housing-census-2014-revised-edition>, last accessed, May 4, 2021.

⁴ Ministry of Gender, Labour and Social Development, Orphans and other Vulnerable Children Situational Analysis, Report, 2010.

⁵ Uganda Bureau of Statistics, Uganda National Household Survey, 2016/17, 2017, available at: https://www.ubos.org/wp-content/uploads/publications/03_20182016_UNHS_FINAL_REPORT.pdf, last accessed, May 6, 2021.

⁶ MGLSD, UNICEF and EPRC, Situation Analysis of Child Poverty and Deprivation in Uganda, 2014, Technical Report in SSRN Electronic Journal, June 2014 DOI: 10.2139/ssrn.2463210.

⁷ Uganda Bureau of Statistics, Uganda National Household Survey, 2016/17, 2017, available at: https://www.ubos.org/wp-content/uploads/publications/03_20182016_UNHS_FINAL_REPORT.pdf, last accessed, May 6, 2021.

⁸ Ministry of Health, Adolescent Health Risk Behaviors in Uganda: A National Cross-sectional Survey, 2016, available at: <http://library.health.go.ug/publications/adolescent-health/adolescent-health-risk-behaviors-uganda-national-cross-sectional>, last accessed, May 10, 2021.

⁹ Ministry of Health, Adolescent Health Risk Behaviors in Uganda: A National Cross-sectional Survey, 2016, available at: <http://library.health.go.ug/publications/adolescent-health/adolescent-health-risk-behaviors-uganda-national-cross-sectional>, last accessed, May 10, 2021.

Inevitably, the number of child mothers is high, with one in four adolescent girls pregnant or having given birth, in 2016/2017.¹⁰ The 2018 National Cross-Sectional Study of National Violence against Children Survey (NVACS), found that 35% of girls between the age of 18 and 24, and 17% of boys the same age, experienced some form of sexual violence during childhood.¹¹ Similarly, 25% of girls aged between 13 and 17, and 11% of boys the same age, reported sexual violence in 2017.¹² The same survey revealed that approximately 25% of girls and boys who were sexually abused in childhood, experienced the first incident of sexual abuse at or before age 13. This normalization of defilement has a domino effect in the justice chain as this study shall show later, through extra judicial settlements and half-hearted investigations of reported cases.

Defilement has life-altering consequences and has led to the loss of education and future economic wellbeing. About 23% of girls who fall pregnant drop out of school.¹³ The National Child Policy prioritizes the elimination of harmful practices including, early sexual initiation, teenage pregnancy, and child marriage, all of which amount to defilement, as defined by the PCA.¹⁴

Objectives and Purpose

The overarching objective of the study is to assess the response of the justice sector to defilement in the past 13 years; and the role of the legal framework in facilitating or impeding the actions by the sector. More specifically, the study aims to:

- a) Analyze data from formal justice institutions, including the police, prosecutions and judiciary on the extent of reporting, investigation and prosecution of defilement cases in Uganda since 2007 (including a sex disaggregation analysis) to understand the trend;
- a) Undertake a comprehensive analysis of the legal and institutional framework relating to defilement in Uganda, including the level of implementation of the law of defilement (as amended in 2007), and how the legal and institutional framework

¹⁰ Uganda Bureau of Statistics, Uganda National Household Survey, 2016/17, 2017, available at: https://www.ubos.org/wp-content/uploads/publications/03_20182016_UNHS_FINAL_REPORT.pdf, last accessed, May 6, 2021.

¹¹ MGLSD and UNICEF, Uganda National Violence against Children Survey, 2018.

¹² MFLSD and UNICEF, Uganda National Violence against Children Survey, 2018.

¹³ Global Partnership for Education, Fighting for girls' education in Northern Uganda, 2016, available at: <https://www.globalpartnership.org/blog/fighting-girls-education-northern-uganda>, last accessed, May 12, 2021.

¹⁴ National Child Policy, p. 31.

has facilitated or impeded reporting, investigation and prosecution of defilement cases; and

- b) Make recommendations on possible solutions towards better justice outcome in defilement cases including policy and institutional reform recommendations, tailor-made for different stakeholders.

Research questions

The study was guided by the following research questions:

- a) Do the legal and institutional frameworks on defilement enable/support justice for victims of defilement?
- b) How has the Penal Code Amendment of 2007 impacted the delivery of justice for victims of defilement?
- c) How can justice delivery for victims of defilement be improved?

II. Methodology

Scope of study

The study covers a 13-year period (2007-2021), which is the time between the enactment of the PCAA to May 2021.

The study was conducted in select districts, particularly, those with a high and low incidence of defilement. In order to have representative findings, a deliberate effort has been made to have a geographical/regional balance, as categorized by the Uganda Demographic Health Survey, 2016.¹⁵ The rationale was to have varied views from regions representative of the various ethnic groups. The study was conducted in 11 districts spread throughout the regions of the country and identified through sampling. The districts include: Northern, Eastern, West Nile, Central, Karamoja, Mid-Western, and South Western. The study was conducted in Mbale, Tororo, and Kamuli (Eastern region); Mityana and Rakai (Central region); Kabarole (Mid-Western region); Mitoma (South Western); Nebbi (West Nile); Amuru and Dokolo (Northern); and Napak (Karamoja) districts.

Two sub-counties – urban and rural, were selected in each district, as follows: Rakai— Rakai Town Council and Lwamaggwa; Mityana – Mityana Town Council and Kikandwa; Amuru – Amuru

¹⁵ Uganda Bureau of Statistics, Uganda Demographic Health Survey, 2016, January 2018, available at: <https://dhsprogram.com/pubs/pdf/FR333/FR333.pdf>, last accessed June 23, 2021.

Town Council and Lamogi; Dokolo – Dokolo Town Council and Kangai; Nebbi – Akworo and Nebbi Town Council; Mbale – Wanal and Industrial Division; Tororo – Mulanda and Mukujju; Kamuli — Kamuli Town Council, Butansi; Napak — Lotome and Matany; Kabarole – Ruteete and Buhesi; and Mitoma – Kiyanga and Mitooma Town Council.

Data collection

The study is qualitative and relied on both primary and secondary methods of data collection. Primary methods included individual and group interviews with key informants (including victims above 18 years) and focus group discussions (FGDs). Interviews were held with officials at ODPP, Justice Law and Order Sector (JLOS), MoGLSD, and Ministry of Health. Other key informants were international organizations, NGOs, and CBOs.¹⁶ A total of 197 key informants were interviewed as shown in the table below.

Table 1 A breakdown of the key informants interviewed for the study

Key informants	Male	Female	Total
Judges	03	09	12
Magistrates	03	05	08
State Attorneys	07	09	16
Police Officers	24	12	36
Probation and Social Welfare Officers	08	03	11
District Community Development Officers	03	04	07
Community Development Officers	13	03	16
Religious leaders	10	01	11
Cultural leaders	05	00	05
Local Council leaders	18	01	19
Health Inspectors	02	00	02
Chief Administrative Officer	01	00	01
Victims	01	27	28
International Organisations	02	05	07
Non-Governmental Organisations	01	13	14
Total	101	92	192

¹⁶ Some of the organisations, include, UN Women, Save the Children, Raising Voices, Uganda Women's Network (UWONET), Uganda Child Rights Network (UCRNN), Uganda Association of Female Lawyers (FIDA), Justice Centers, Center for Health Human Rights and Development (CEHURD), Uganda Women Lawyers Association, FIDA, PLAN International, Action Aid Uganda, OTAL Child Development Centre, Rukungiri Women Integrated Development Fund, Mitooma Child Development Center, Catholic Relief Services, Uganda Women's Effort to Save Orphans, Mildmay, UN Women, Save the Children, Public Interest Litigation Law Clinic, Human Rights and Peace Center.

Twenty-two FGDs were held with parents, guardians and caregivers of victims of defilement. Two FGDs were held in each district as shown in the Table below.

Table 2. A breakdown of FGDs held in various districts

District	No. of FGDs	Specific Areas	Male	Female	Total
Amuru	2	Amuru Town Council	1	5	6
		Lamogi Sub- County	6	1	7
Dokolo	2	Dokolo Town Council	2	6	8
		Kangai Sub- County	2	5	7
Kabarole	2	Ruteete Sub-County	7	2	9
		Rutoma Sub-County	6	3	9
Kamuli	2	Kamuli Town Council	2	6	8
		Butansi Sub-County	7	1	8
Mbale	2	Industrial Division	2	6	8
		Wanale Sub- County	1	8	9
Mitooma	2	Mitooma Town Council	4	2	6
		Kiyanga Sub-county	5	4	9
Mityana	2	Mityana Town Council	2	5	7
		Kikandwa Sub-County	2	4	6
Napak	2	Lotome Sub-County	3	4	7
		Matany Sub-County	4	3	7
Nebbi	2	Nebbi District Headquarters	3	3	6
		Akworo Police Station	3	4	7
Rakai	2	Rakai Town Council	2	4	6
		Lwamaggwa Sub-County	2	4	6
Tororo	2	Mukuju Sub-County	1	11	12
		Mulanda Sub-County	3	6	9
TOTAL	22		70	97	167

Secondary methods included document and literature review of documents, as well as legislative and case analysis. Secondary sources included, relevant literature, such as, reports, position papers, newspapers, institutional policies and strategies. In total, 30 key documents were reviewed.¹⁷

¹⁷ See, Inception Report, Justice Delivery for Victims of Defilement, February 2021, p. 15-20.

Table 3 Summary of Methodology

Source of Data	Method of Collection	Tools
Victims (above 18)	Interviews	Interview Guide
Key Informants	Interviews	Interview Guide
Parents, caregivers	FGDs	FGD Guide
Legislation, policies, strategies	Analysis	Laws, policies, strategies
Cases	Analysis	Judgments
Literature	Review	-
Field Observations	Observation	-

Data analysis

Data was carefully analyzed to ensure evidence-based conclusions. Every assertion and conclusion is supported by data generated through FGDs, interviews and document/literature. Data was cross-referenced to ensure consistency and deduction of cross-cutting issues and generally applicable conclusions. The reliability of the evaluation was considered in terms of equivalence and consistency. Data was analyzed using the following methods:

- i. Quantitative analysis, particularly, in relation to statistics or figures from the justice sector. Data was triangulated.
- ii. Content analysis of literature and documents, specifically, in relation to case law and commentary;
- iii. Description of context, specifically, in relation to the context at the village, community and district level (e.g., the nature of society and prevailing cultural practices, such as, early marriage within a particular community); and
- iv. Comparative analysis for purposes of establishing best practice in institutions.

All FGDs and interviews were transcribed verbatim into scripts and translated into English.

Study Assumptions

The study was premised on the following assumptions:

- i. The experience of communities with criminal justice processes informs the decision to engage or disengage;
- ii. Victims' perceptions on defilement will provide insight on why defilement is not reported;

- iii. Defilement is generally accepted, which explains the persistence of early marriage, early motherhood and forced child marriage in some communities.

Limitations

With respect to limitations, the researchers were unable to interview some key respondents due to the Covid-19 pandemic. Several stakeholders do not have regular work hours, some work remotely, while others were either apprehensive about having physical meetings or close whenever an employee tests positive with corona virus. In addition, some key informants offered appointments that were outside the scope of fieldwork. In response, only stakeholders who were willing to be interviewed and readily available during the limited timeframe for the data collection were interviewed either in person, by telephone or via Zoom.

Several respondents in the justice sector did not feel authorized to speak and were not willing to do so on record, for fear of reprimand. It was therefore challenging to access information from public institutions. Data collection was constrained by limited access to statistics from the institutions in the justice value chain, thereby leading to gaps in the findings.

Ethical Considerations

This study was approved by the Uganda National Council of Science and Technology (UNCST) (registration number: SS744ES). The data collection tools were pre-tested and consent forms were translated into six local languages. In accordance with ethical practices, the study strictly followed the UNCST guidelines on research involving human participants. The research assistants (field teams) were carefully selected, trained and sensitized on ethical issues during data collection. IDLO staff carried out spot checks to offer guidance where necessary, and to ensure that participants, particularly victims, were unharmed. The research assistants were informed of possible reactions and the need to refer participants for psychosocial support, where necessary. Respondents were provided with adequate information about the study and informed about the significance of their participation. All respondents made an informed decision to participate in the study. In addition, participants were allowed privacy, and information was kept confidential.

III. Legal, Policy and Institutional Framework

A. Legal Framework

1. International Legal Framework

Efforts to end defilement are supported by a comprehensive set of international, regional, and sub-regional frameworks to which Uganda is a party, including, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention of the Rights of the Child (CRC).¹⁸ In light of the aforementioned instruments, Uganda has to protect children from all forms of sexual abuse and exploitation, including, defilement.¹⁹ These duties are reiterated in the African Charter on the Rights and Welfare of the Child (ACRWC),²⁰ and International Conference of the Great Lakes Region (ICGLR) Protocol on the Suppression and Prevention of Sexual and Gender -Violence against Women and Children and the ICGLR Kampala Protocol on the Suppression and Prevention of Sexual Violence (KPSPSV), which also underscores the need to end impunity integrate sexual and gender-based violence in national planning frameworks, improve access to justice for victims, and to set up user-friendly recovery centers that are accessible to the most vulnerable groups, including children.²¹

The Protocol on the Prevention and Suppression of Sexual Violence against Women and Girls (PPSSVWG) is a pact between member states of the International Conference of the Great Lakes Region (IGGLR). The PPSSVWG calls upon members states to ensure that criminal proceedings are “sensitive to the emotional state of the victims and survivors,” and that their evidence is given “in camera, or by video links, and they shall neither be compelled nor required to give evidence in open criminal proceedings.”²²

In addition to several other Sustainable Development Goals (SDGs) that reference the wellbeing of the child, SDG 5 targets violence against girls, call for an end to all forms of discrimination against all women and girls everywhere, elimination of all forms of violence against all women

¹⁸ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3; Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), ratified by Uganda on August 17, 1990.

¹⁹ Articles 34-37 and 39 Convention on the Rights of the Child.

²⁰ Articles 16 and 27, African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), ratified by Uganda on August 17, 1994.

²¹ Articles 5 -7, ICGLR Kampala Protocol on the Suppression and Prevention of Sexual Violence (PPSSVWG), available at: <https://www.icglr-rtf.org/publication/view/kampala-declaration-2011/>, last accessed July 16, 2021.

²² Article 6, PPSSVWG, 2006.

and girls in the public and private spheres, and elimination of all harmful practices, such as child, early and forced marriage and female genital mutilation. The SDGs further call for an “end to abuse, exploitation, trafficking, and all forms of violence against and torture of children.”²³ The high prevalence of defilement and its ripple effects undermine the SDGs and could prevent their attainment.

2. National Legal Framework

The Constitution of the Republic of Uganda, 1995 (Constitution), provides for the rights of children.²⁴ The Children’s Act, as amended, embodies a legal framework, for the protection of children and procedures for handling those in conflict with the law. The Domestic Violence Act (DVA) defines domestic violence as sexual abuse and other forms of behavior.²⁵ The DVA criminalizes violence in the context of a domestic relationship, which includes, “family members related by consanguinity, affinity or kinship.”²⁶ This law envisages defilement perpetrated by a family member. The SOB was passed by Parliament on May 4, 2021. However, the bill was sent back to Parliament by President Yoweri Kaguta Museveni in August for review. The bill substitutes the death penalty for defilement with aggravating factors with imprisonment for life,²⁷ and lowers the maximum sentence for all other forms of defilement from life imprisonment to 18 years.²⁸

2.1 Definition of defilement

The comprehensive law on defilement is the PCAA, which is now incorporated into the PCA. Defilement is a “...sexual act with another person who is below the age of eighteen years.”²⁹ This definition is gender-neutral and envisages the defilement of both boys and girls. Defilement is a felony, and a convict is liable to life imprisonment.³⁰ An attempt to defile is proscribed, and an offender is liable to a maximum penalty of 18 years in prison upon conviction.³¹

²³ Target 16.2, Sustainable Development Goals, 2030.

²⁴ Section 129 (3) *Penal Code Act*.

²⁵ Section 2, *Domestic Violence Act*.

²⁶ See Sections 2 and 3, *Domestic Violence Act*.

²⁷ Clause 14, *Sexual Offences Bill (SOB), 2019*.

²⁸ Clause 13, *SOB*.

²⁹ Section 129 (1), *Penal Code Act*.

³⁰ Section 129 (1), *Penal Code Act*.

³¹ Section 129 (2), *Penal Code Act*.

A sexual act is defined as penetration of the “**vagina, mouth or anus, however slight, of any person by a sexual organ,**” or the “**unlawful use of any object or organ...on another person’s sexual organ**” [emphasis added].³²

In essence, physical invasion of a child's vagina, mouth, and anus with a sexual organ (penis) or the unlawful use of any object (such as, gun muzzles and sticks) or organ (for example, finger, breast, and tongue) on a child's sexual organ are construed as defilement. The definition further envisages oral sex, anal sex, and non-penetrative forms of sexual contact. Broadening the definition was partly intended to extend legal protections to very small children for whom penetration of the vagina is not possible. A sexual act, therefore, encompasses oral sex performed on babies and toddlers and anal sex involving children.

The law envisages a range of circumstances that may aggravate defilement.³³ In such instances, the offender commits a felony termed aggravated defilement, and is on conviction by the High Court, liable to a death sentence.³⁴ The aggravating factors are sexual acts with a disabled child or a child below the age of 14, an offender who is HIV positive, a serial offender, or an offender who is a parent, victim, guardian, or person in authority.³⁵

Disability refers to a limitation in daily activities which is substantial or functional, affecting life and causing barriers towards the full enjoyment of life.³⁶ Categorizing sexual acts with disabled children as aggravated defilement reinforces their vulnerability, and upholds the rights of children with disabilities. An attempt to commit aggravated defilement is punishable by a life sentence on conviction by the Chief Magistrates Court.³⁷

2.2. Proof of Defilement

Matters relating to evidence in all civil and criminal proceedings are governed by the Evidence Act.³⁸ Defilement may be proved by the testimony of the victim and/or other witnesses, medical and circumstantial evidence.³⁹ The Evidence Act does not require any specific number of

³² Section 129 (7), *Penal Code Act*.

³³ Section 129 (4), *Penal Code Act*.

³⁴ Section 129 (3), *Penal Code Act*.

³⁵ Sections (129) (3) and (4), *Penal Code Act*.

³⁶ Section 129 (7), *Penal Code Act*.

³⁷ Section 129 (5), *Penal Code Act*.

³⁸ Section 1, *Evidence Act*, Chapter 6.

³⁹ Lillian T. Ekirukubinza, *Sexual Assaults and Offences against Morality*, 2005.

witnesses to prove a fact.⁴⁰ Corroboration is a rule of practice.⁴¹ Until 2018, the trial judge had to warn himself and the assessors about the dangers of entering a conviction based on the uncorroborated evidence of a victim of SGBV.⁴² Convictions without this caution were set aside. In *Ntambala vs Uganda*,⁴³ the Supreme Court established that corroboration of the testimony of victims of sexual violence is not a prerequisite for conviction. However, the case did not render corroboration of other forms of evidence, such as, expert opinions, unnecessary. Corroborating evidence may be circumstantial and could include the behavior/conduct of the accused person, such as disappearance from the crime scene or the distress of the victim.⁴⁴

Medical evidence in defilement cases can only be submitted through Police Form 3 A (PF3A) and Police Form 24 A (PF 24 A). The former contains findings of medical examination of the victim, while the latter contains findings of a medical examination of the offender. Until 2012, PF 3A could only be filled by a police surgeon (this term is no longer in use in Police). The form was revised in 2012, to make provision for graphic evidence, and to permit clinical officers, registered medical officers, and midwives to undertake a medical examination.⁴⁵ These changes were intended to enhance access to justice for defilement victims by easing the process of obtaining medical services.⁴⁶

According to one police officer, there are two ways of obtaining medical evidence.⁴⁷ The first is where a victim reports to the police. The police officer fills Part (a) of the form and the victim is escorted by an officer of the same sex to a health facility to undergo a medical examination. The rationale is that the police officer could offer guidance to the medical practitioner based on his/her findings at the scene of the crime (such as blood stains and signs of scuffle).⁴⁸ Secondly, whatever samples are retrieved from the crime scene cannot be handed over to the victim.⁴⁹ The second process is where a victim reports to a nearby healthcare facility or clinic.⁵⁰ The Ministry

⁴⁰ Section 133, Evidence Act.

⁴¹ *Remegious Kiwanuka vs. Uganda*, Criminal Appeal No. 41/1995.

⁴² *Remegious Kiwanuka vs. Uganda*, Criminal Appeal No. 41/1995.

⁴³ *Ntambala Fred vs. Uganda*, Criminal Appeal No. 34/2015.

⁴⁴ See, *Remegious Kiwanuka vs. Uganda*, Criminal Appeal No. 41/1995 (conduct of the accused) and *Nsubuga Daniel vs. Uganda*, Criminal Appeal No. 69/ 1997 (distress of the victim).

⁴⁵ KII, Police Officer, Uganda Police Force (UPF).

⁴⁶ Ndagire, J., *National Redress for 'Gendered' International Crimes: Uganda, Germany and the International Justice System*, Verlag Dr Kovac, Hamburg, 2015.

⁴⁷ KII, Police Officer, UPF.

⁴⁸ KII, Police Officer, UPF.

⁴⁹ KII, Police Officer, UPF.

⁵⁰ KII, Police Officer, UPF.

of Health (MoH) provides forms at healthcare facilities, and once the form is filled, the victim goes with it to the police.⁵¹

The prosecution must prove each element of each offence beyond reasonable doubt.⁵² Put differently, the prosecution must prove that the victim is either below 18 years (defilement) or under 14 years (aggravated defilement). The age of the victim is proved through either birth registration documents (birth certificate), medical report, court's observation, or oral testimony of the victim or their parents. Likewise, the age of the offender and their HIV status are proved through a medical examination and indicated on Police Form 24. The offender must be a person above 18 years of age. The prosecution must also prove that an offender is a person in authority, guardian, or parent and that a sexual act took place.

2.3. Sentencing practice

Judicial officers exercise discretion during sentencing. Sentences should, however, be appropriate and not unnecessarily severe.⁵³ When exercising jurisdiction, judges are guided by the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions (Sentencing Guidelines), 2013 and precedent.⁵⁴ With regards to defilement, the Sentencing Guidelines list several circumstances that could warrant the imposition of the death penalty.⁵⁵ The circumstances include repetitive defilement, gang defilement, offender previously convicted of rape or defilement, the purposive transmission of HIV/AIDS by the offender, repetitive defilement by the primary caregiver, and sustenance of serious injuries arising from the infliction of grievous bodily harm. Under Part, I of the Third Schedule of the Sentencing Guidelines, the minimum sentence for 'aggravated' defilement is 35 years, while the maximum sentence is death. After consideration of mitigating or aggravating factors, the sentencing range is between 30 years to death.

In defilement cases void of aggravating factors, the Penal Code Act prescribes life imprisonment as the maximum penalty. Part IV of the Sentencing Guidelines recommends 15 years to life

⁵¹ KII, Police Officer, UPF.

⁵² Section 105, *Evidence Act*.

⁵³ *Uganda vs. Kiwalabye Mohammed*, Criminal Case, No. 20/2013.

⁵⁴ Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions (Sentencing Guidelines), 2013, available at: <https://www.jlos.go.ug/index.php/document-centre/sentencing-guidelines/264-sentencing-guidelines>, last accessed July 16, 2021.

⁵⁵ Paragraph 22, Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 (Sentencing Guidelines).

imprisonment as a sentence range, and three years to life imprisonment after consideration of aggravating and mitigating factors. It is recommended that judicial officers take into account the number of years that an accused person has spent on remand during sentencing.

The age of an accused is a relevant factor in sentencing. The Court of Appeal has stated that when applying the Sentencing Guidelines, judicial officers should take precedents into account, particularly where the facts are familiar.⁵⁶ Paragraph 9(4)(a) of the Sentencing Guidelines discourages courts from imposing custodial sentences where the offender is above the age of 75 years. In *Uganda v Olega Muhamad*,⁵⁷ the accused person was 100 years old and a repeat offender (defilement). In this particular case, he inserted his finger in the victim's sexual organ. The Judge faced a dilemma in strictly applying the Sentencing Guidelines in relation to repeat offenders *vis-à-vis* elderly convicts, and ultimately sentenced the accused to 3 years in prison.

2. Case law on defilement

The courts have largely interpreted the law in a manner that not only affords victims of defilement access to justice but also, enhances gender equality. Although, for decades, the courts required corroboration of the evidence of a victim's defilement and other sexual offences, this position changed in 2018. The Supreme Court, in a groundbreaking decision, affirmed that the requirement to specifically corroborate evidence of victims of sexual violence was discriminatory, and had no backing in law. Similarly, the Court stated that the time the victims spend with the accused, even in the dark, is sufficient for them to identify the latter by voice or scent, thereby, relaxing the rules of identification. This judgment, essentially eased proof of defilement, wherefore, courts could rely on the victim's evidence, alone.⁵⁸

Uganda vs. Kusemererwa⁵⁹

Principle

Children below the age of 18 years of age are defiled, not raped.

Brief Facts

The accused was indicted with one count of rape contrary to sections 123 and 124 of the Penal Code Act. It was alleged that on 6th June 2013, the accused had unlawful carnal knowledge with the victim aged 16 years without her consent. The accused had wanted to plead guilty to rape

⁵⁶ *Ninsiima vs. Uganda*, Criminal Appeal, No.0180/2010.

⁵⁷ *Uganda vs. Olego*, Criminal Case, No. 56/2012.

⁵⁸ *Ntambala Fred vs. Uganda*, Criminal Appeal No. 34/2015.

⁵⁹ *Uganda vs. Kusemererwa*, Criminal Case No. 65/2015.

and bargain for a sentence of imprisonment for 10 years, but his Counsel raised a preliminary objection. The prosecution submitted that the definition of rape in Section 123 of the Penal Code Act included the word “girl”

Issue

Whether the law under Section 123 of the Penal Code Act also applied to girls?

Holding

Rape charges were rejected, and the State Attorney was ordered to charge the accused with defilement under 129(1) of the Penal Code Act. The trial judge stated that it was a question of an omission, or poor legislative draftsmanship, or poor cross-referencing not to delete the words "or girl" from the definition of rape. He found that the word “girl” in that section is redundant and meaningless. He stated that rape ceased to apply to girls in 1990, having been replaced by the offence of defilement at the time. The two offences in the PCAA are distinct and distinguishable by age, criminal jurisdiction, and difference in the prescribed punishments.

Significance

A girl below 18 years can only be defiled. Rape is only applicable to females above 18 years because children cannot give consent, which is a key element of rape.

Ntambala Fred vs. Uganda⁶⁰

Principles

- The cautionary rule that required courts to corroborate a victim’s testimony in sexual offences is discriminatory against the women, who are the majority of victims in sexual offences.
- Evaluation of evidence in sexual offences must be the same manner as other cases.
- Courts can convict on the evidence of the victim as a single witness provided, he/she is reliable and truthful.
- Courts should consider the quality of evidence and not the quantity of evidence.

Brief Facts

The victim aged 14 years was the daughter of the appellant and lived with him in the same house. At around 4 pm on March 26, 2006, village children who believed that the appellant was having sexual intercourse with his daughter threw stones at his house. In retaliation, the appellant came out of the house with a panga (machete) and threatened to hack them. Onlookers gathered and

⁶⁰ *Ntambala Fred vs. Uganda*, Criminal Appeal No. 34/2015.

some entered the house and found used condoms. He was arrested and subsequently indicted with aggravated defilement. The High Court convicted and sentenced him to 14 years imprisonment. He appealed against both the conviction and sentence, but the Court of Appeal dismissed his appeal.

Ground of Appeal

The main ground of appeal was that the evidence of the victim that she was defiled by the appellant was not sufficiently corroborated to warrant a finding that the appellant committed the offence.

Holding

The Court stated that previously, courts were as a matter of practice required to warn themselves of the danger of acting on the uncorroborated evidence of a complainant in a sexual assault case, otherwise, the conviction would be set aside. This cautionary rule was based on an archaic belief that women and girls are naturally prone to malice and mendacity and fabricate stories that are difficult to refute. The Court interpreted the Evidence Act to mean that no particular number of witnesses is required to prove any fact. The cautionary rule is neither logical nor scientific and discriminates against girls and women.

Significance

Courts can now convict an accused person based on the testimony of a victim of defilement (and other sexual offences) alone – provided the victim is credible/reliable and truthful.

Uganda vs Yawe⁶¹

Principle

In the absence of a victim's oral testimony, a medical report is crucial to the success of the prosecution's case.

Brief Facts

The accused was indicted for aggravated defilement contrary to Section 129(3) and (4) PCA. It was alleged that on May 14, 2014, the accused had performed a sexual act with the victim aged two years. On May 15, 2014, the victim was examined, and the medical officer did not see any bruises, abrasions, or tears on the victim's genitals. The mother stated that on May 14, 2014, the victim left the house for five minutes. When the mother looked for her, she emerged from the accused's room walking 'abnormally' and staggering. The mother then checked her private parts

⁶¹ *Uganda vs Yawe* [2018] UGHCCRD 80.

and saw some semen on the victim's private parts and knickers. The victim was immediately taken to a clinic where a medical officer confirmed that she had been defiled. On May 15, 2014, the Police recovered the knickers with the sperms, had the accused and victim medically examined, and took statements from the witnesses. The accused is said to have confessed to defilement in a charge and caution statement, but changed his statement at the dock, and denied having defiled the victim. He set up an alibi.

Issue

Whether there was proof of defilement.

Holding

The prosecution did not prove its case beyond reasonable doubt and as such, the accused was acquitted for the following reasons:

- a. There was no documentary evidence from the clinic that conducted the medical examination was submitted. The examining officer was not called as a witness.
- b. Police Form 3A did not show any evidence of semen on the body of the victim or any signs of penetration yet it [medical examination] was carried out the following day. It would logically follow that since the first examining officer saw signs of penetration (defilement), the second examining officer who examined the victim the following day should have observed the same.
- c. The knickers were not exhibited in Court and no evidence was adduced to show that they had been forwarded to the Government Analytical Laboratory for forensic examination.

Significance

In the absence of a victim's oral testimony, medical reports are critical.

Uganda vs Sekajija Asuman⁶²

Principle

The absence of a medical report is not prejudicial to the prosecution case provided there is strong direct evidence upon which the court can rely.

Brief Facts

The accused was charged with the offence of aggravated defilement contrary to sections 129 (3) and (4) (a) PCA. The accused allegedly defiled an eight-year-old girl. On a material day, she had been summoned by the accused into his house. The victim's mother went to the house and found the door locked from inside. The victim's sandals were at the door to the accused's house. She

⁶² *Uganda vs. Sekajija Asuman*, Criminal Case No. 87/2012.

forced the door open and saw the accused naked. The victim was lying naked on the accused's bed, covered with a sheet. The accused was arrested, and the victim was taken to hospital for medical examination, but no medical report was adduced as evidence. In her statement to police, the victim's mother stated that when she entered the house, the victim told her that she had been defiled by the accused. At the police station, the victim denied having been defiled by the appellant. In court, she said she was defiled. At the hospital, she denied having been defiled by any man. She stated that it was medical personnel who told her mother that she had been defiled. During cross-examination, the victim admitted to lying to the police by saying that neither her skirt nor knickers were removed. She said she told her mother the truth when they returned from the hospital.

Issues

The three issues for determination were: the age of the victim (whether she was aged below 14 years), whether a sexual act was performed on her, and participation of the accused in the crime. These were to be proved beyond reasonable doubt.

Holding

The court found that a charge of defilement can be proved without medical evidence as long as there is strong direct evidence. The court was of the view that as much as corroboration by a medical report is not a requirement, in the circumstances of the present case and view of the numerous contradictions on record, a medical report should have been produced to resolve those contradictions.

Significance

While medical evidence is advisory, it is important in the face of inconsistencies.

Uganda vs Joseph Baluku⁶³

Principle

In the event of a conflict between the evidence of an expert witness and a victim's evidence, the evidence of the former must be accorded greater weight.⁶⁴

Brief facts

The accused was charged with the offence of aggravated defilement contrary to sections 129(3) and (4)(a) PCA. The accused allegedly performed a sexual act on an eleven-year-old girl. The prosecution called three witnesses – the victim, her aunt, and a medical doctor who carried out

⁶³ *Uganda vs Joseph Baluku*, Criminal Session No. 0015 of 2012.

⁶⁴ This principle echoes sections 43 and 44 Evidence Act, Chapter 6, Laws of Uganda. See also, The Evidence (Statement to Police Officer) Rules, Statutory Instrument, 6-1.

the medical examination. The victim's aunt testified that the victim went to the chicken house as instructed and saw the accused person at a distance. She assumed that he was going to a nearby pit latrine, but he threw her down as she passed by and defiled her. The aunt responded to screams and saw the accused running with an unzipped trouser. Medical examination showed that the victim was subjected to a sexual act and her hymen was ruptured. The doctor who examined the victim reiterated this evidence. The accused denied the charges, attributed the prosecution to a grudge, and raised an alibi. A relative of the accused stated that he was with the accused at the time in question. The defence argued that the doctor's finding that the hymen was ruptured the day before the examination was inconsistent with the victim's evidence of a previous sexual encounter, thus raising doubt as to whether the victim was defiled at all.

Issue

What happens where expert evidence contradicts and the testimony of the victim?

Holding

The court judge was of the view that more weight should be given to the expert medical evidence than the victim's oral testimony. The court found that the prosecution had proved the offence of aggravated defilement against the accused beyond reasonable doubt and found him guilty of aggravated defilement contrary to section 129 (3) and (4) of the Penal Code Act, and convicted him.

Significance

In situations where there are varying opinions, the court will rely on the evidence of the expert.

Uganda vs Dimba Pascal⁶⁵

Principle

- A "person in authority" is any person acting in *loco parentis* (in place of a parent(s)).
- Identification of a perpetrator may be by voice and not strictly sight.

Brief Facts

The accused, a grandfather of the victim was indicted with aggravated defilement of a girl under his care. The victim alleged that the accused entered her room in the dark and had sexual intercourse with her, whilst threatening to burn the house down if she made any noise. The victim stated that she recognized the accused through these utterances. The accused denied the charges and claimed that he was being framed by the victim's paternal uncle over a piece of land.

⁶⁵ *Uganda vs. Dimba Pascal*, Criminal Case No. 0089/2014.

Issue

Whether the accused was a person of authority over the victim?

Holding

The Court held that:

...a person in authority” is not defined by the Penal Code Act. Applying the purposive approach to statutory interpretation, for purposes of section 129 (4) (c) of the Penal Code Act, a person in authority means any person acting in **loco parentis** (in place of parent or parents) to the victim, or any person responsible for the education, supervision or welfare of the child and persons in a fiduciary relationship, with the child i.e. relations characterized by a one-sided distribution of power inherent in the relationship, in which there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith with regard to the interests of the child reposing the confidence...⁶⁶

Significance

- This case defines “a person in authority” – a phrase that is not defined in the PCA. This includes offenders who may not be parents or guardians but are in positions of influence over a child, such as teachers, local leaders, religious leaders, sponsors, among others, who do not escape justice as aggravated defilers.
- The case contributes to the jurisprudence of equality especially for blind women and girls in so far as it recognizes that identification of a perpetrator may be by voice, establishing equality insofar as similar (although not strictly identical – for practical reasons) criteria apply for visual identification.

Uganda vs Mawadri⁶⁷

Principle

It is the quality of evidence that matters and not its quantity; quality is measured by reliability and truthfulness of a witness.

Brief facts

The victim was on her way back home at night from a confirmation ceremony when the accused accosted her, threw her onto the ground, tore her panties off, and had sexual intercourse with her. The following day, she reported the incident to her brothers, and the accused was arrested

⁶⁶ *Uganda vs Dimba Pascal*, Criminal Case No. 89/2014.

⁶⁷ *Uganda vs Mawadri*, [2018] UGHCCRD 67.

a day after. The medical report stated that there were no bruising or tear in the genitalia of the victim or tell-tale injuries associated ordinarily with sexual assault.

Issue

Whether the medical report is the sole proof of whether defilement happened or not?

Holding

The trial judge applied Section 133 of the Evidence Act which refers to the quality of evidence instead of the quantity of evidence. Even though medical evidence did not indicate existence of sexual assault, other body injuries were consistent with how the alleged sexual assault happened. The accused was convicted.

Significance

The case challenges stereotype that once a girl has been defiled, there must be signs and marks of sexual struggle and rupture of the hymen.

Uganda vs Okoku Ochikuyo⁶⁸

Principle

Penetration of a child's sexual organ with another body part is defilement.

Brief Facts

The accused was charged with one count of aggravated defilement contrary to Section 129 (3) and (4)(a) of the Penal Code Act. It was alleged that the accused inserted his finger into the victim's genitals which caused her pain as a result of which she began crying. The mother who had gone out of the house to collect water returned and found the accused placing the victim down from his laps. The mother then noticed that the victim had blood oozing from her genitals.

Issue

Whether a sexual act was performed on the victim?

Holding

To constitute a sexual act, it is not necessary to prove that there was deep penetration, the use of a sexual organ, the emission of seed or breaking of the hymen, but the slightest penetration is sufficient. He also further articulated that Section 129 (7) (b) of the Penal Code Act includes the unlawful use of any object or organ by a person on another person's sexual organ and as such, the use of fingers fits the description.

⁶⁸ *Uganda vs. Okoku Ochikuyo*, [2017] UGHCCRD 8.

Significance

This case affirmed that all other body parts or objects can be used to penetrate a sexual organ.

Uganda vs P.C Ogwang⁶⁹

Principle

A conviction or acquittal is based on the evidence on record, whether or not it includes a victim's testimony.

Brief Facts

The victim aged 16-years-old went to the Ministry of Works to sell snacks. The accused person, a police officer, who was fully armed, grabbed her, kissed her by force and when she tried to resist, he pulled her towards the toilet, held her mouth and when she tried to make an alarm, she overpowered her and forcefully had sexual intercourse with her although she was crying. When he was done, the accused dressed up, picked his gun, and left the victim in the corridor, where his colleague found her and called her a prostitute. The victim reported to her boss who was assisted by a crime preventer to report the case to police. After undergoing a medical examination, the victim left her job and went back to the village and was not present at the trial.

Issue

Whether the absence of the victim's testimony prejudiced her case.

Holding

Sexual intercourse or penetration is proved either by direct or circumstantial evidence. It is not a hard and fast rule that the victim's evidence must be adduced in every case to prove sexual intercourse, although it is desirable.

Significance

Courts can convict in the absence of a victim's testimony.

⁶⁹ *Uganda vs. P.C Ogwang* [2021] UGHC 19.

B. Policy Framework

The legal framework on defilement is supported by an impressive number of policies. These include the National Action Plan for Child Well-being 2016-2021, which *inter alia*, focuses on developing a coordinated response plan for the Violence Against Children Survey (VACS); and the National Policy on Elimination of Gender-Based Violence in Uganda 2016, which highlights the widespread child sexual practices, such as, early marriage due to cultural practices.

The National Disability Inclusive Planning Guidelines for Uganda 2017 broaden the definition of disability to include not only visible physical disability but also sensory and mental impairments. The rationale is to enable inclusive planning in various aspects, for instance, access to justice for blind victims of defilement.

The National Child Participation Strategy 2017/18 aims to break the silence and amplify the voices of children across all spheres of decision-making that have an impact on their lives. Child participation in access to justice is key if key players are to realize the goals and objectives of this strategy. Access to justice by a victim of defilement cannot be fully realized if victims are not allowed to participate in the process, by expressing their views.

The National Child Policy, 2020, establishes a child protection system, defined therein, as a system that addresses, among others, risks faced by children.⁷⁰ Three sub-sectors constitute the formal child protection system. These include the childcare/ social protection sub-system, which focuses on issues of vulnerability (probation and social welfare actors); the law, order and justice sub-system which focuses on legal protection, law enforcement, and dispensation of justice (police, courts, prisons, etc.); and the basic social service sub-system that includes health and educational services (schools, hospitals, among others).

⁷⁰ National Child Policy, 2020, Protecting the Rights of all Children in Uganda, vi, available at: <https://www.unicef.org/uganda/reports/national-child-policy-2020>, last accessed July 15, 2020.

C. Institutional Framework

Several other ministries carry some form of child protection mandate. The Department of Community Health at the Ministry of Health, for instance, is responsible for supporting cases of gender-based violence (GBV), including defilement, by strengthening the capacity of health officers who carry out medical examinations on victims.⁷¹ The Gender Unit in the Ministry of Education and Sports is charged with gender mainstreaming in the education sector. In 2011, the Unit commissioned a survey on the re-entry in school of previously pregnant students.⁷²

The institutional framework for child protection is fragmented and includes structures at the community, sub-county, district, and national levels. The National Child Policy partly seeks to coordinate interventions by various players to enhance service delivery for children.⁷³ The overall responsibility for children's affairs at the national level falls within the precinct of the Ministry of Gender, Labor and Social Development (MoGLSD), specifically, the Department of Youth and Children Affairs (DYCA). The DYCA is *inter alia*, responsible for the review and dissemination of relevant laws and policies and inclusion of disadvantaged youth and children in the development process.

At the community level, the Local Council (LC I) Chairperson is charged with the responsibility to set up an Executive Committee, which among other things, handles the welfare of children including protection from abuse, working with community-based Child Protection Committees (CPC).⁷⁴ Child protection structures at the sub-county level include the Community Development Officer (CDO) and the Assistant Community Development Officer (ACDO), who carry a child protection mandate. The CDO reports to the District Community Development Officer (DCDO), who heads the Community-Based Services Department (CBSD). The CBSD has the overall mandate for child protection at the district level, which is executed through the Probation and Social Welfare Office and is headed by the Probation and Social Welfare Officer (PSWO).

⁷¹ See, World Health Organization, Strengthening the health response to violence against women in Uganda, Lessons learned from adapting and implementing WHO guidelines and tools, available at: <https://apps.who.int/iris/bitstream/handle/10665/336168/9789240010543-eng.pdf?sequence=1&isAllowed=y>, last accessed, June 23, 2021.

⁷² Gender Unit, Ministry of Education and Sports, available at: http://www.education.go.ug/wp-content/uploads/2019/07/gender_Report-on-Girls-Re-ntry-in-school.pdf, last accessed February 10, 2021.

⁷³ National Child Policy, 2020, 2.

⁷⁴ Section 25, Local Governments Act, Chapter 234.

Despite a solid policy and institutional framework, defilement remains highly prevalent. According to the 2020 annual crime report, there was a 3.8% increase in the number of defilement cases reported in 2020, from 13,613 cases in 2019 to 14,230 cases.⁷⁵

⁷⁵ Uganda Police Force, Annual Crime Report, 2020.

IV. Justice Sector Response – Research Findings

A. Investigation, prosecution and trial of defilement cases

Cross-cutting issues

Respondents across sectors generally regard the law on defilement as adequate, particularly, the broad scope of a sexual act.⁷⁶ The wide scope of what amounts to a sexual act ensures the punishment of all forms of molestation against children. In the past – before the penal code amendment in 2007, the scope was very limited, and in fact, restricted to ‘carnal knowledge’ – the legal term for sexual intercourse.⁷⁷ A judge elaborated thus:

The Amendment was very helpful in a way that older men in this area would use younger girls for “kachabali” [a sexual act where the man just rubs his penis on the vagina of the girl without entry] and now they can be prosecuted.⁷⁸

This notwithstanding, the vast majority of cases before the courts relate to carnal knowledge. Of the 12 judicial officers interviewed for this study, none had encountered sexual acts involving the use of objects to penetrate, or penetration of a sexual organ with a body part or organ. Some had heard of such instances, but they are few and far in between.

Only one respondent, a health practitioner had encountered the use of an object to penetrate a girl. She stated that she removed two cassava stamps from the vagina of an 11-year-old girl.⁷⁹ In a like manner, none of the respondents had encountered a case of defilement of a boy. Sexual acts, other than carnal knowledge are difficult to detect, and there seems to be a general unawareness that it amounts to a sexual act, and thus may not be reported.⁸⁰

With respect to the definition of ‘defilement’, there is a widely held view among police, ODPP, and judiciary that the PCAA split the offence of defilement into simple and aggravated defilement. When asked to define defilement, several justice sector actors alluded to ‘simple’ defilement. A police officer at the Gender Desk stated:

⁷⁶ FGD participant, Napak district.

⁷⁷ KII, Judge, High Court.

⁷⁸ KII, Senior Resident Judge, Fort Portal district.

⁷⁹ KII, staff, Reproductive Health Uganda, Mityana.

⁸⁰ KII, Justice Sector Actor.

I understand defilement was broken down into categories; one being simple defilement which affects victims between the age of 13 to 17 years committed by an adult, aggravated defilement cuts across HIV Positive persons, a person in authority, parent or guardian or caregiver defiling a person below the age of 12 years and also child to child sex is sex between two children below the age of 17 years.⁸¹

The 2007 Amendment has been useful in that it elaborated on many gray areas that would always need a lot of evidence in the past, such as the definition of a sexual act, and the categorization of defilement as simple and aggravated.⁸²

As illustrated in the subsequent sector specific findings below, this interpretation of the amendment is not only inconsistent with the law but has also adversely affected justice delivery for victims.

There is no consensus on the ages that correspond to each form of defilement. For instance, a justice of the Court of Appeal was of the view that defilement is a sexual act committed with children between 15 and 17 years.⁸³ Some respondents believed the age for defilement to be 14 and 17, and aggravated defilement to 0-13 years. The majority of respondents in the justice sector perceive girls over 14 years as old enough to engage in sexual relations.

Regardless of the varied perceptions of what constitutes defilement, the cross cutting perception is that the gravity of the offence of defilement is informed by the age of the victim and not the atrociousness of sexual acts with girls who have not attained the age of majority. The focus on age informs justice actors responses across the justice chain, which partly explains why fewer cases are prosecuted compared to those cases reported to police.

In Tanzania, the Sexual Offence Special Provisions Act does not distinguish between "aggravated" cases and those that are not. While simple to administer, this approach does not allow the courts any room to impose a lower sentence based on the specific circumstances of the case. Thus, it appears from the statute that a case of consensual sexual intercourse involving a nineteen-year-old with his fifteen-year-old girlfriend would carry the same minimum sentence as the gang rape of a seven-year-old girl.

⁸¹ KII, Police Officer, Gender Desk, Dokolo Central Police Station.

⁸² KII, Resident State Attorney, Rakai district.

⁸³ KII, Justice of the Court of Appeal.

Finally, the study found that in Napak district, the absence of courts and ODPP hampers justice delivery for victims who have to travel all the way to Moroto or Kotido to give evidence. Another cross-cutting finding is the stigma associated with defilement as well as the value attached to harmonious co-existence. These two attitudes are key drivers of extra-judicial settlements of defilement cases.

1. Challenges in the investigation of defilement cases

a) Constrained capacity of justice sector actors

(1) Few investigators

All institutions in the justice chain are critical to the delivery of justice to victims of defilement.

This notwithstanding, the role of the police is central to both victims' access to justice in a broad sense as well as, substantive justice.

Police are generally understaffed and therefore, constrained. Few police posts have specialized units. According to one police officer, police are unable to investigate all reported cases, and where they do, the investigations are not completed.⁸⁴ In other instances, investigations take a long time to complete because investigators are overwhelmed with cases.⁸⁵

In addition, while the majority of victims are girls, the ratio of female to male police officers is low, which compounds the staffing deficit.⁸⁶ Relatedly, the majority of medical practitioners who carry out examinations on defilement victims are male, which retraumatizes victims in some cases.⁸⁷ 13-year-old Victim L, recalled being re-victimized by a male medical practitioner. She narrated:

A male doctor inserted his fingers in my womanhood, and it felt like he was doing a sexual act. He would occasionally ask whether that was what the perpetrator had done.⁸⁸

Section 30 of the Kenya Sexual Offences Act mandates every convict of defilement to disclose their conviction when applying for a job which will place him or her in a position of authority or care of children. This would apply to people like doctors, nurses, teachers, child protection officers, amongst others. The disclosure aims to ensure that they do not perpetuate their offensive conduct to unsuspecting children.

⁸⁴ FGD participant, Kamuli district.

⁸⁵ KII, Justice Sector Actor.

⁸⁶ KII, Head, Gender Unit, Mityana district.

⁸⁷ KII, staff at National Association of Women Organisations in Uganda, Tororo district.

⁸⁸ KII, Victim, L, Mitooma district.

(2) Limited resources

Police are poorly facilitated. Police receive about two million Uganda shillings (about 708 USD) per quarter, a sum that is insufficient.⁸⁹ One police officer said that in most instances, police cannot carry out investigations.⁹⁰ They are required to travel very long distances, without adequate facilitation.⁹¹ Accessing the crime scene and key witnesses is therefore difficult especially in rural areas.⁹²

(i) Lack of forensic kits and other equipment

Police investigation units are ill-equipped forensic departments and lack forensic kits and basics, such as, swabs to collect deoxyribonucleic acid (DNA) evidence (semen), and other equipment to hold and preserve the evidence during transportation. A judge explained:

Forensic evidence is lacking in the aspect of its collection, preservation, and the long delay in being taken to Kampala where the Forensic Laboratory is located. Grave mistakes are done during this time and these mistakes work in the favor of the accused person. DNA would be the best kind of evidence in defilement cases more so when the accused is caught in the act but because of lack of these facilities, the investigations are hindered on this very aspect.⁹³

(ii) Lack of transportation to go to the crime scene

The long distances between police posts and crime scenes render investigations impossible due to lack of transportation and/or fuel.⁹⁴ Some cases are left unattended because of the inability to reach the crime scene due to a limited budget allocated to the SGBV Unit of police.⁹⁵

The distance, defilement cases here are handled in Nwoya district, district, so the moment a defilement is reported in Lotwe, a person finds it difficult to go and testify. Those are the few words I have."⁹⁶

⁸⁹ Judicial officer, Internal study review meeting.

⁹⁰ KII, Anonymous police officer.

⁹¹ KII, Anonymous, Police Officer.

⁹² KII, Anonymous, Police Officer.

⁹³ KII, Resident Judge, Fort Portal district.

⁹⁴ Participant, FGD, Kamuli district.

⁹⁵ KII, CID, Amuru district.

⁹⁶ KII, District Directorate of Criminal Investigations, Amuru district.

In some cases, specimen collected decomposes due to lack of transportation to the laboratory for analysis.⁹⁷

There is also limited logistical facilitation for the investigative unit of the police to conduct concrete and conclusive investigations in such cases. This puts the investigators in compromising situations and even when they are not compromised, the quality of the investigation carried out is poor hence producing poor results.⁹⁸

A district development officer explained the police habitually ask complainants to cover investigation costs.⁹⁹ Only a small percentage of victims' families, who are typically vulnerable and poor, can afford to meet facilitation costs.¹⁰⁰ A victim explained, *"...when we went to police, my grandmother was told to pay money for the medical examination for both the man who slept on me and myself, we went back home because the money wasn't there, they have never called us up to now."*¹⁰¹ A probation and social welfare officer echoed the same view, *"... some of the impediments include lack of evidence by the prosecution, expensive medical fees of 30,000 shs required from peasants..."*¹⁰²

(3) Corruption

Due to corruption, It is not uncommon for files not to be forwarded to the prosecutor, despite victims' parents or caregivers providing money to buy fuel for police vehicles.¹⁰³ In such instances, police obtain money from both the victim and offender.

Case study

Mrs O's 14-year daughter was defiled by the neighbor's tenant. Mrs O reported the case to LC1. The perpetrator was detained in the police cell and police asked her to report every day for six days. Mrs O started receiving death threats from the boy's relatives through phone calls. One day after reporting to the police for 6 days, she saw the perpetrator back home. He was released by police after she spent 120,000/= Uganda Shillings.¹⁰⁴

⁹⁷ Judicial Officer, Internal study review meeting, judicial officer.

⁹⁸ KII, Resident State Attorney, Nebbi district.

⁹⁹ KII, District Community Development Officer, Kabarole district.

¹⁰⁰ KII, Anonymous, State Attorney.

¹⁰¹ KII, Victim L, Mbale district.

¹⁰² KII, Probation and Social Welfare Officer, Mitooma district.

¹⁰³ Volunteer, Tydan Youth Voices and Action Network, Uganda, Tororo Youth Center, Tororo Municipality, Tororo district.

¹⁰⁴ FGD participant, Nebbi district.

One community worker further observed:

There is too much corruption, we don't have evidence, but we get testimonies from communities that they have been asked money to fasten [sic] the case process, if you don't give money, they won't show interest in your case.¹⁰⁵

In some instances, after police is compromised, victims, parents, or caregivers are misguided when making a statement to frustrate the process. Key information is deliberately left out.¹⁰⁶ If the parents are illiterate, police record statements on their behalf.

In health facilities [including police clinics], medical practitioners are bribed to falsify findings on PF3A.¹⁰⁷

The legal framework is adequate, but it is made ineffective by systematic challenges such as corruption and poverty in the justice sector and the community.¹⁰⁸

(4) Limited technical capacity

Several officers in the specialized units have either not been trained or have received inadequate training. One respondent stated: “[T]rainings for gender-sensitive units happen, but not regular. We have no meaningful technical support.” Another respondent added, “[W]e went through a training with the UN Women on Maputo Protocol Guidelines in 2014 but since then, I haven’t had any training.”¹⁰⁹

There is therefore a general challenge in taking and recording statements due to a lack of forensic expertise.¹¹⁰ By way of example, during investigations, HIV tests are taken too early – before it is possible to detect the virus. The test is done to check a box with little thought about its evidential value.¹¹¹ A respondent observed: “Bedsheets and panties are stored in store without any analysis on the link to the accused person. Police have no clue what they are investigating.”¹¹²

¹⁰⁵ KII, Program Officer, Lango Child and Community Development Foundation.

¹⁰⁶ Volunteer, Tororo Youth Center, Tydan Youth Voices and Action Network, Uganda, Tororo Municipality, Tororo district.

¹⁰⁷ KII, Resident State Attorney, Kabarole district.

¹⁰⁸ KII, Resident State Attorney, Rakai district.

¹⁰⁹ KII, Officer in Charge, Criminal Investigation Division, Dokolo district.

¹¹⁰ Anonymous, Police Officer.

¹¹¹ KII, staff at Justice Centers, Tororo district.

¹¹² KII, staff at Justice Centers, Tororo district.

Additionally, it is common for vital information such as key elements of an offence to be omitted from the statement. Other important information includes the specifics of the sexual act, when it was committed, where, how, and by whom? Oftentimes, the files forwarded to the DPP/state attorney are void of some of this information. A DCDO stated:

... the investigative arm of the Police is very weak and incapacitated in terms of human and financial resource to adequately run conclusive and unquestionable investigations...some of these investigations stretch over 6 months, this cannot amount to a proper investigation in these defilement cases.¹¹³

(5) Inadequacy of referral pathways

While there is a memorandum of understanding between stakeholders on how to handle referrals, it is not implemented.¹¹⁴ In all the districts in which the study was undertaken, there was no feedback mechanism between first responders and police. A probation and social welfare officer complained that her office is overlooked in defilement cases as parents and police always want to settle cases.¹¹⁵ One health worker stated that she examines and treats several defilement victims, but police neither contact her to assist with investigations nor provide feedback about the progress of the case.¹¹⁶ This sentiment was echoed by a religious leader who counsels victims of defilement and several NGOs.¹¹⁷ Police investigations could be enriched by information from first responders.

¹¹³ KII, District Community Development Officer, Kabarole district.

¹¹⁴ Judicial officer, internal study review meeting.

¹¹⁵ KII, Probation and Social Welfare Officer, Kabarole district.

¹¹⁶ Health Worker, Reproductive Health Center, Mityana district.

¹¹⁷ KII, Anonymous religious leader.

b) Evidentiary challenges

(1) Extra judicial settlements

Several respondents stated that police encourage out-of-court settlements or 'negotiations' between the victim's and offender's families. Police are reportedly motivated by monetary rewards because, most times, they take a higher percentage of the settlement than the victims or their families.¹¹⁸ J, 30 years old stated, "*...my parents reported her to the police which took action and arrested her....but they, later on, held a meeting for both parties where negotiations were conducted, she [the perpetrator] paid a fine to Police and my parents, and the file was closed.*"¹¹⁹

One respondent revealed that, "[I]f the victim is pregnant, they are told [by police] to choose between provision [of necessities] and prison".¹²⁰ Wealthy and well-to-do offenders are seldom prosecuted. A volunteer community worker explained:

When police realize that the offender is well to do, they dissuade the victim's family from pursuing the case. Parents are told that they will spend much more time and benefit much less than they will gain.¹²¹

The study found that offenders tend to be poor – not because they are the only ones that commit defilement, but because they lack the means to settle out of court.¹²² While some negotiations are initiated by police, it is also usual for the victim's family to initiate the 'negotiation' process.¹²³ 'Negotiations' are illegal.

Police revealed that victims' families are motivated to report a case so that they can obtain a police reference number, which is then used to compel offenders to settle the case.¹²⁴ In areas where child marriages are practiced, parents report defilement cases to compel the 'husband' to pay bride price.¹²⁵ Once this end is achieved, the parents – who are key witnesses, withdraw

¹¹⁸ KII, Victim J, Nebbi district.

¹¹⁹ FGD participant, Rakai district.

¹²⁰ Executive Director, Tydan Youth Voices and Action Network, Uganda, Tororo Youth Center, Tororo District.

¹²¹ Gender Coordinator, Tydan Youth Voices and Action Network, Uganda, Tororo Youth Center, Tororo District.

¹²² Lead researcher's observation during data collection and analysis.

¹²³ KII, Chairperson, Kikandwa, Mityana district.

¹²⁴ KII, Police Officer, Mityana district.

¹²⁵ KII, staff at Justice Centers, Tororo district.

cooperation with the police.¹²⁶ In these situations, the actual victims have no say and do not stand to benefit from the settlement.

Sometimes, victims are helpless ... family not cooperative. Not ready to support the process. One parent stated that the child would rather die than sending the husband to jail; no breadwinner for other children ... no school fees for them.¹²⁷

In some situations, victims are chastised and vilified by the community for reporting cases. Victim W stated that “... *it would have been bearable had my sister not brutally told me of how I got an innocent man imprisoned, she wasn't there, she doesn't know what happened, was I just supposed to keep quiet, those people even didn't share the same plates with me for years...*”¹²⁸

A police officer, summed up the problem as follows:

The biggest challenge is, the same people who report the case, they go and sit down and compromise. How do they compromise? They go and negotiate and when they negotiate you have nothing. Some of them come and report the cases and never come back again, some them report the cases and never bring the victim so if am to list for you the challenges, my friend, you are going to take back a whole note of books of the challenges. They compromise, they hide the victim, they even fail to lead you the scene, when they report they never come back, some of the victims when they are defiled, they want to get married off, they will not admit being defiled even when the medical examination confirms they are being defiled. The relatives of the suspect approach the victim's parents even the victim's parents are not interested they approach. Witnesses do not come to testify; cases are thrown away.¹²⁹

Where witnesses withdraw from the case, police in Mityana district said that they charge the family members with aiding and abetting defilement or conspiracy to defile. Where a local council leader is involved in negotiations, they too are arrested and charged with aiding and abetting defilement or conspiracy to defile.

¹²⁶ KII, staff at Justice Centers, Mityana district.

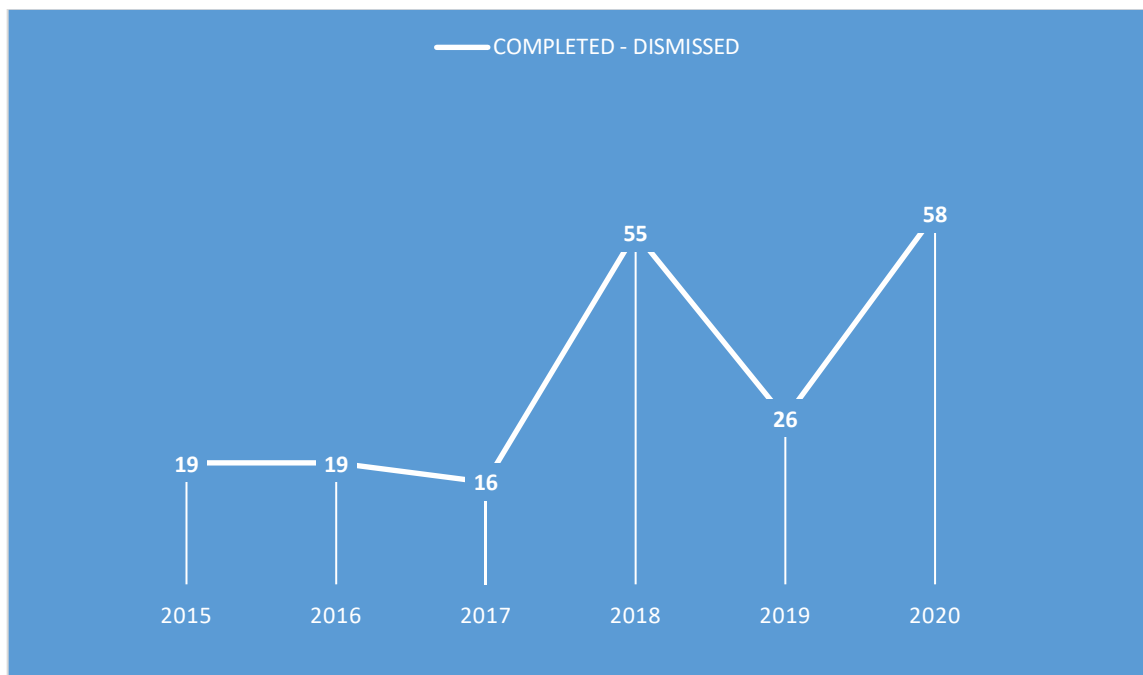
¹²⁷ KII, Religious leader, Tororo District.

¹²⁸ KII, W 25 years, Kabarole district.

¹²⁹ KII, District Criminal Investigations Department, Amuru district.

Save for cases involving child marriage, it appears that charges of aiding and abetting defilement or conspiracy to defile might not succeed because the purported acts of aiding and abetting, occur after the commission of the offence. The appropriate offence, in the circumstances, would be accessory after the fact of defilement.¹³⁰

Figure 2 A graph showing the number of dismissed cases in the High Court 2015-2020



Source: Judiciary of the Republic of Uganda

There was a 24 fold increase (243%) in the number of defilement cases dismissed from 16 to 55 cases from 2017 to 2018 and a 52% decrease between 2018 and 2019. The number of dismissed cases increased again by 12 fold (123%) from 26 to 58 cases.

(2) Difficulty in proving the age of victim and offender

Birth registration is not mandatory. It is therefore difficult to prove the age of both the victim and offender. Some accused persons take advantage of this systemic gap by obtaining forged birth certificates. A Sub-County Chief in Tororo district narrated:

¹³⁰ Section 393 (accessory after the fact), *Penal Code Act*.

A 12-year-old was defiled by a 24-year-old. The case mysteriously changed from defilement to child-to-child sex. The offender's age had been reduced. The victim was pregnant. I intervened and the case was reinstated to defilement.¹³¹

Relatedly, police generally estimate the ages of both the victim and offender based on height, weight, and other physical attributes, instead of carrying out a medical examination. It is therefore easy to alter the age of either the victim or the offender.¹³² Once the age is altered, a defilement charge cannot stand, and the case is discontinued.

(3) Monetisation of Police Form 3A

Police are reportedly availed with only 50 PF3A forms, in each region.¹³³ Respondents in all the districts narrated that police sell PF3A forms at a minimum of 50,000/= Uganda Shillings. These costs are prohibitive and turn victims away. When asked, a senior police officer in Kampala refuted the claim, stating that, enough forms are availed.¹³⁴ Several sources indicated that police officers run photocopying businesses near most police posts, and sell the forms to generate profit.¹³⁵

It was also observed that there are at least two versions of the PF3A in circulation and use.¹³⁶ When contacted, police stated that the forms are printed by different companies, which sometimes print a non-official version.¹³⁷ The official version has a notice at the bottom, which reads that the form must be filled by clinical officer, registered midwife, or medical personnel.

In practice, police reject forms and reports filled by medical practitioners, other than a 'police surgeon'.¹³⁸ This position changed around 2012. The police are either unaware that all approved medical practitioners can undertake an examination, or deliberately disregard other medical reports so they can sell PF3A.¹³⁹ Some state attorneys also seem to believe that only a police 'surgeon' can carry out a medical examination. One state attorney explained, "*We lack trained*

¹³¹ KII, Sub-County Chief, Osukuru Parish, Tororo District.

¹³² KII, Sub-County Chief, Osukuru Parish, Tororo District.

¹³³ KII, Probation and Social Welfare Officer (PSWO), Mitooma district.

¹³⁴ KII, Senior Police Officer, Kampala.

¹³⁵ KII, staff at Justice Centres, Tororo district.

¹³⁶ Observation by lead researcher.

¹³⁷ KII, Anonymous.

¹³⁸ KII, staff at Justice Centers, Tororo district.

¹³⁹ Volunteer, Tydan, Tydan Youth Voices and Action Network, Uganda, Tororo Municipality, Tororo district.

medical practitioners on the rank of Police Surgeon in the district and those available ask for money before they can handle any matter.”¹⁴⁰

The Ministry of Health in Uganda has developed a manual on the clinical management of gender-based violence survivors.¹⁴¹ The manual provides guidelines to all health workers on how to deal with victims of sexual gender-based violence.¹⁴²

The Department of Pathology at Mulago National Referral Hospital in Kampala has an examination unit for sexual violence. The medical examination is free of charge. Children are escorted by police officers. Upon completion of the medical examination, children are referred for further services such as, counselling and legal aid.

c) Protection of witnesses

(1) Lack of procedure for younger victims

There are no special investigation procedures for young victims. As such, where a victim is too young to speak, investigators rely on family members.¹⁴³ This fact complicates the investigation process if there were no witnesses at the time the defilement took place, or where there are multiple suspects.¹⁴⁴ In addition, there is lack of specialized training of police officers on child sensitive investigation techniques. One respondent stated, *“I think we have no good mechanisms of interviewing victims who are very young.”¹⁴⁵*

(2) Lack of privacy for victims

Due to space constraints, it was observed that police do not provide privacy to victims of defilement when recording statements, and the information provided is not confidential.¹⁴⁶ In the majority of police stations, victim statements are taken at the reception desk of the police post, in full view and hearing of other complainants, police officers and bystanders. When asked, police explained that there is not enough room to record statements in private.¹⁴⁷ Inevitably, victims are

¹⁴⁰ KII, Resident State Attorney, Rakai district.

¹⁴¹ KII, SGBV Unit, Ministry of Health

¹⁴² KII, SGBV Unit, Ministry of Health

¹⁴³ KII, Police Officer, Kampala district.

¹⁴⁴ KII, Police Officer, Kampala district.

¹⁴⁵ KII, Resident State Attorney, Mitooma.

¹⁴⁶ Lead Researcher’s observation, Mityana Central Police Station.

¹⁴⁷ Head, Gender Unit, Mityana.

humiliated and stigmatized by the community and tend to disengage from the process as a consequence.¹⁴⁸

In a similar fashion, interviews are carried out in a gender insensitive manner, with little regard to physical and emotional harm suffered by the victim. Due to a heavy workload, police officers hurriedly take statements and show little or no sympathy for the victim and their wellbeing.¹⁴⁹

The police officer in charge of the Gender Unit at Mityana police station said that statements of victims of defilement are recorded in privately in his office. Other people are asked to leave before a victim makes a statement. Information is kept confidential.

In sum, the following factors constrain successful investigations by the police: understaffing; limited technical expertise to interview young victims; absence of special procedures to record statements from young victims; lack of privacy while interviewing victims and the attendant trauma; absence of referral pathways and extra judicial settlements.

¹⁴⁸ Tydan Youth Voices and Action Network, Uganda, Tororo Youth Center, Tororo Municipality, Tororo district.

¹⁴⁹ KII, Resident State Attorney, Mitooma district

2. Challenges in prosecution of defilement cases

a) Constrained capacity of justice sector actors

(1) Understaffing

State attorneys are overwhelmed with cases. State attorneys are overwhelmed. The districts have one to two prosecutors who must peruse files, prepare for cases and attend court for all criminal cases, not just defilement.¹⁵⁰ Over 101 courts do not have full time prosecutors.¹⁵¹ For several years, one state attorney worked in both Tororo and Malaba.¹⁵² Both are large districts with a significant number of other criminal cases, not just defilement.

The long period between investigations and prosecution often leads to the loss of exhibits, which are not well stored.¹⁵³ It is also more difficult to trace the investigating officer when the trial commences. Even when traced, it is quite difficult to remember specifics about the offence.¹⁵⁴ State attorneys interviewed explained the delays as follows:

These delays are largely caused by workload issues and limited human resources. Also, some delays are caused when the files are sent back to Police stations for further investigations. This could be because the age of the victim is not certain and in instances where the victim says he or she was not defiled yet the medical reports say he or she was defiled and vice versa.¹⁵⁵

The delays in sanctioning files is a result of the need to do further investigations on a particular case some being fishing expeditions. For example, some parents fake birth certificates of their children to either fit within the defilement age or look older than their age to compromise the case.¹⁵⁶

It is very true, a delay comes in when these people have been compromising themselves, the relatives of the suspect and the victim.¹⁵⁷

¹⁵⁰ KII, Resident State Attorney, Mbale district.

¹⁵¹ Judicial Officer, External Validation Meeting, August 23, 2021.

¹⁵² KII, State Attorney, Malaba/Tororo district.

¹⁵³ KII, Justice Sector Actor.

¹⁵⁴ KII, Justice Sector Actor.

¹⁵⁵ KII, Resident State Attorney, Rakai district.

¹⁵⁶ KII, Resident State Attorney, Dokolo district.

¹⁵⁷ KII, Resident State Attorney, Amuru district.

b) Evidentiary challenges

(1) Poor investigations

Several prosecutors (state attorneys) stated that the quality of investigations is generally poor. Some stakeholders indicated that the police and DPP are bureaucratic institutions that have failed to coordinate efforts to deliver justice for defilement victims. A district community development officer explained the situation thus:

The Police and the ODPP are always playing syndicated games with the DPP blaming Police for inconclusive investigations and withholding the files while the Police are always on the defensive about not having enough evidence. The bureaucracy in these institutions has paused these cases for so long that a person who is diligently following up his or her case can be overwhelmed when he or she is told to come back numerous times without tangible solutions.¹⁵⁸

(2) Problems with medical forms

According to state attorneys, poor quality investigations are mainly due to poorly filled medical reports that tend to be similar especially when the medical examination is performed by the same medical practitioner.¹⁵⁹ Secondly, the forms (filled out by both police and a medical practitioner) tend to omit vital information, which would enable the court to establish that the occurrence of a sexual act.¹⁶⁰

Victims are not thoroughly examined, sometimes, not at all.¹⁶¹ It is common to find evidence on the form, which necessitates a re-examination. Re-examination is done by the police clinic by the police clinical officer.¹⁶²

The state attorneys state that the investigation procedure is lacking... this is largely attributed to the fact that the doctor's findings on medical reports are confusing and this is based on lack of forensic evidence.¹⁶³

¹⁵⁸ KII, District Community Development Officer, Kabarole district.

¹⁵⁹ KII, staff at, Justice Centers, Tororo district.

¹⁶⁰ KII, State Attorney, Malaba/Tororo district.

¹⁶¹ KII, staff at Justice Centers, Tororo district.

¹⁶² KII, Staff at Justice Centers, Tororo district.

¹⁶³ KII, Resident State Attorney, Kabarole district.

(3) Weak evidence

Police make no follow-up on leads, and the DDP rarely sends files back to police to request more information.¹⁶⁴ Some police posts are too understaffed that Local Defence Units (LDUs) (paramilitary entity), investigate defilement cases.¹⁶⁵ LDUs do not receive training in investigation which includes, search the crime scene, recovery and handling of evidence, marking and storing exhibits, among others. As such, their participation compromises the evidence and the case, itself.

(4) Extra judicial settlements

There were reports that the ODPP, supports settlement (negotiation) of defilement cases.¹⁶⁶ When asked, one state attorney revealed that the ODPP takes into account the after-effects of each case.¹⁶⁷ He stated, “ I may support negotiation where there is insufficient evidence on file.”¹⁶⁸ Where a case is settled at the police level, files are closed/kept. In other instances, police forward file with falsified facts to prevent a case from going to trial.¹⁶⁹

(5) Requirement of physical evidence

In some instances, fewer cases are prosecuted than those reported because state attorneys insist on having 'hard evidence' such as sheets, knickers, or clothes stained with blood. A police officer stated that it is difficult for a case to progress without such evidence.¹⁷⁰ This sentiment was echoed by a worker at a community-based organization – which works with victims of defilement. She stated that, "DPP still require dramatic evidence, such as bleeding and scratches."¹⁷¹ The insistence on having such evidence is contrary to both the PCA and case law. The PCA envisages penetration of the mouth and anus or use of a finger, tongue, or other body organ or objects to penetrate.¹⁷² It may be difficult for victims to bleed, if they have been defiled before (hymen already ruptured) or when penetrated in the mouth.

¹⁶⁴ KII, Justice of the Court of Appeal, Kampala.

¹⁶⁵ Tydan Youth Voices and Action Network, Uganda, Tororo Youth Center, Tororo Municipality, Tororo district.

¹⁶⁶ KII, Justice Sector Actor.

¹⁶⁷ KII, Justice Sector Actor.

¹⁶⁸ KII, Justice Sector Actor.

¹⁶⁹ KII, Anonymous, State Attorney.

¹⁷⁰ KII, Justice Sector Actor.

¹⁷¹ Volunteer, Tororo Youth Center, Tydan Youth Voices and Action Network, Uganda, Tororo Municipality, Tororo.

¹⁷² Section 129, *Penal Code Act*.

The situation is not helped by the content of PF3A. The form only has images of sexual organs. While the images allow children, particularly, those that are traumatized to point at body parts,¹⁷³ plausible objects and other body parts, such as fingers, tongue, breasts, and mouth are excluded. A child who is defiled with an object or a body part other than a sexual organ cannot make use of the form.

Be that as it may, the courts have consistently opined that forensic/medical evidence is not critical and have convicted in its absence on various occasions.¹⁷⁴ The PF 3A also requires details such as the physical condition of the victim, state of clothing, injuries, and material/sample for analysis. As stated earlier, the "pictogram for examination of a victim of sexual assault", only illustrates male (penis) and female sexual (vagina) organs. Other body organs are not illustrated.

c) Protection of victims' rights

(1) Exclusion of victims from process

Save for prosecution-led investigations, the ODPP relies on investigations conducted by police and makes no follow-up with victims and other witnesses until the trial. Victims generally claimed to have been excluded from the entire court process. Victims X and Y narrated that they never met with the state attorney and the only time they ever went to court was when judgments were being delivered and they were not asked to say anything. They both felt excluded from the process.¹⁷⁵

Insistence on hard evidence by prosecutors; poor investigations, delayed prosecutions, extra judicial settlements, exclusion of victims from the process and human resource constraints are some of the barriers that constrain justice delivery at the stage of prosecution.

¹⁷³ KII, Judge, High Court.

¹⁷⁴ KII, Judge, High Court, Mbale district.

¹⁷⁵ KII, victims X and Y, Napak district.

3. Trial of defilement

a) Constrained capacity of justice sector actors

(1) Corruption through bush lawyers

Courts around the country, including those in the districts where the study was conducted, have a challenge of "bush lawyers." The term is used to describe middlemen/brokers on court premises who purport to be a go-between and agent of a judicial officer and negotiate deals on their behalf with the public, victims, and litigants. Bush lawyers tend to be court clerks, interpreters, and another staff member. In Tororo district, all respondents highlighted this problem. A human rights activist narrated that there are situations where the court sets high bail, even where the accused qualifies for mandatory bail.¹⁷⁶ She explained that "[P]art of the bail is deposited in courts while the rest is pocketed."¹⁷⁷ Bush lawyers are responsible for falsifying birth certificates in defilement cases, intending to either make the victim appear older or the offender younger to evade culpability.¹⁷⁸ Birth certificates from the sub-counties are produced on the spot and the courts do not verify the documents.¹⁷⁹ In Tororo district, Chief Magistrate Mastullah Mulondo got rid of bush lawyers upon receiving the reports but the situation returned after her departure.¹⁸⁰

(2) Limited resources

In law, witnesses can be compelled to testify. In practice, however, there are no funds to compel witnesses. A court can convict without victims, but it is difficult. Victims are sometimes threatened or prevented from reporting, particularly, where a family member is an offender.¹⁸¹ In most cases, medical personnel do not answer questions on the PF3A form directly.¹⁸² Therefore, where a key witness or victim does not testify, such a PF3A is insufficient.¹⁸³ Unfortunately, medical personnel do not usually testify, therefore, while their reports are admitted, the evidence contained therein is insufficient.¹⁸⁴ While SGBV sessions are donor-funded, in other instances (regular sessions), police lack the means to compel witnesses.¹⁸⁵

¹⁷⁶ KII, Coordinator, Human Rights Rehabilitation Center, Tororo district.

¹⁷⁷ KII, Coordinator, Human Rights Rehabilitation Center, Tororo district.

¹⁷⁸ KII, Coordinator, Human Rights Rehabilitation Center, Tororo district.

¹⁷⁹ KII, Coordinator, Human Rights Rehabilitation Center, Tororo district.

¹⁸⁰ KII, Coordinator, Human Rights Rehabilitation Center, Tororo district.

¹⁸¹ KII, Justice of the Court of Appeal.

¹⁸² KII, Justice of the Court of Appeal.

¹⁸³ KII, Justice of the Court of Appeal.

¹⁸⁴ KII, Justice of the Court of Appeal.

¹⁸⁵ Chief Magistrate, Mityana district.

(3) Prolonged delays

At the High Court, defilement cases are heard during the SGBV Session, whereas at the magisterial level, cases are generally heard throughout the year.¹⁸⁶ Victims of aggravated defilement take long to get justice.¹⁸⁷ They have to wait for High Court sessions on SGBV which are irregular and based on availability of funds. As time passes, reconciliation takes place and cases fail to take off. After about 3-5 years, witnesses lose interest or leave.

By the time cases reach court, there is reconciliation for several reasons, like a victim is pregnant and the perpetrator is ready to take responsibility; victim's family not ready to take care of the victim and the unborn child. The offender's family offers to take the girl back to school. In other cases, money is involved.¹⁸⁸

b) Evidentiary challenges

(1) Lack of sufficient evidence

A *nolle prosequi* is entered in a considerable number of defilement cases.¹⁸⁹ A *nolle prosequi* is a legal term that means that the prosecution is no longer willing to prosecute the case. This situation comes about as a result of significant delays between investigations and prosecution of the case.¹⁹⁰ During this period, witnesses are compromised, lose interest in the case or leave the area.¹⁹¹ A state attorney stated that when files are sanctioned (ready for prosecution), police fail to produce suspects because in most cases, they grant bond which is jumped.¹⁹² He stated that when that happens, police must produce sureties and a statement from the area LC to confirm the whereabouts of the suspect.¹⁹³ The ODPP asks for sureties and request police to produce a statement from area LC about the whereabouts of the suspect to no avail.¹⁹⁴

Police is notorious for deliberately "killing files" and failing to arrest the sureties.¹⁹⁵ A local council leader explained that: *"There has been a lot of compromise in work ethics by the police mostly since they tamper with evidence and there have been fewer lessons to draw from court because*

¹⁸⁶ KII, Chief Magistrate, Mityana district.

¹⁸⁷ KII, Chief Magistrate, Mityana district.

¹⁸⁸ KII, Chief Magistrate, Mityana district.

¹⁸⁹ KII, Judge, High Court.

¹⁹⁰ KII, Judge, High Court.

¹⁹¹ KII, Judge, High Court.

¹⁹² State Attorney, Malaba/Tororo district.

¹⁹³ State Attorney, Malaba/Tororo district.

¹⁹⁴ State Attorney, Malaba/Tororo district.

¹⁹⁵ KII, Justice Sector Actor.

of the long trials.”¹⁹⁶ One respondent explained that when compromised, police replace the name of the sub-county where the offence was committed with another, and do not provide reference numbers so as to frustrate persons follow up on the case by interested parties.¹⁹⁷

These investigations are inconclusive because the police officers conducting these investigations are compromised and as such, they hide some of the critical evidence which would have been very useful to the case.¹⁹⁸

Figure 3 A graph showing the number of defilement cases resulting in convictions in the High Court 2015-2020



Source: Judiciary of the Republic of Uganda

Convictions increased by 69% between 2015 and 2016, from 31 to 102 cases, and decreased by 72% between 2017 and 2018, from 111 to 31 cases. The number of convictions increased again by 490% (about 5 fold increase) between 2018 and 2019, and decreased by 39% between 2019 and 2020.

According to some judicial officers, the reasons for acquittal in defilement cases are varied and include: inconsistencies in evidence;¹⁹⁹ non-appearance of witnesses, particularly, where the

¹⁹⁶ FGD, Local Council Chairman 1, Kiyanga Sub-County, Mitooma district.

¹⁹⁷ KII, Staff, Uganda Women’s Network, Tororo district.

¹⁹⁸ KII, Resident Judge, Fort Portal district.

¹⁹⁹ KII, Judge, High Court.

offender is a family member or caregiver of the victim;²⁰⁰ and failure to call the investigating officer as a witness.²⁰¹ Victim O, recalled, "*...my biological father wanted to cut me with a panga, he wanted to kill me for ashaming his family ... it was all my fault, I should have run away in the first place, I shouldn't have reported.*"²⁰²

One judge explained:

... where the parent was the perpetrator, the victims tended to have faint hearts and because of absence of protective structures put in place to get the victims out of the homes of these perpetrators, the victims shied away from telling the truth. This is worsened where there are no in-camera trials and the victim has to face the perpetrator, the body language tells that victims always feel intimidated.²⁰³

There are situations where the victim and family may both be willing to testify against a relative, such as, "*... where the father is the accused person, and he is the only breadwinner of the family. ... [victims] are likely to adduce evidence freely in cases where he does not support the family.*"²⁰⁴

When asked, state attorneys explained that acquittals are largely due to extra judicial settlements between the parties.

Those acquittals happen because the complainants have already compromised themselves, or someone is not going to Court, or the victim has failed to testify...²⁰⁵

The reasons why there are more acquittals than convictions include: the parents often reconcile with the families of the perpetrators and suspects and then seek to have the matter withdrawn else they refuse to testify, and the matter abets. Some victims, usually those above the age of 14, usually shy away from the proceedings and often refuse to give testimony against the accused, because, they claim, that they are their lovers. Sometimes, the evidence is not strong enough, especially when it has been tampered with before trial. The societal perceptions of defilement, whence many members of the

²⁰⁰ KII, Judge, High Court.

²⁰¹ KII, Justice, Court of Appeal.

²⁰² KII, Victim O, Kabarole district.

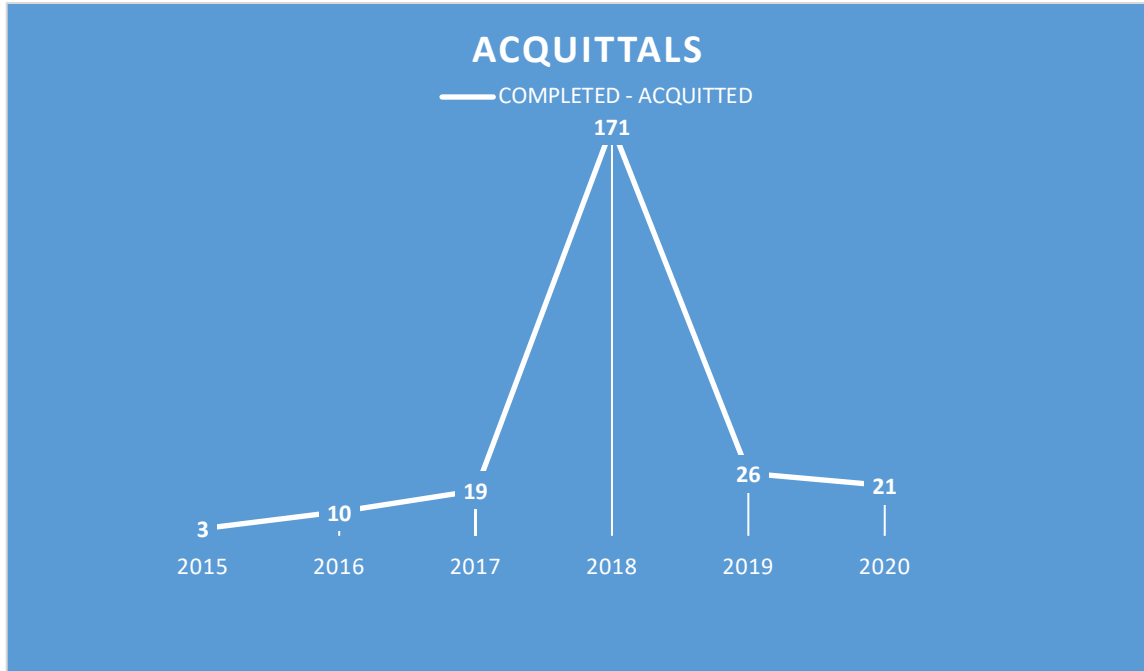
²⁰³ KII, Resident Judge, Mbale district.

²⁰⁴ KII, Magistrate Grade 1, Mitooma district.

²⁰⁵ KII, Resident State Attorney, Amuru district.

community do not believe in having their matters prosecuted in courts and would rather prefer that they settle them out of court.²⁰⁶

Figure 4 A graph showing the number of cases resulting in acquittals in the High Court 2015-2020



Source: Judiciary of the Republic of Uganda

There was an 8 fold increase (800%) in acquittals between 2017 and 2018, from 19 to 171 cases, and 84% decrease in acquittals between 2018 and 2019, from 171 to 26 cases.

(2) Inconsistent application of legal standards

Overall, there is inconsistent application of legal standards and sentencing guidelines. On one hand, the courts have held that the absence of medical evidence is not detrimental to a case, whereas on the other hand, state attorneys are insistent on having 'hard' evidence, such as, soiled sheets, bruises, ruptured hymen, and the like. This situation is not helped by the PF3A, which does not cater to sexual acts other than physical invasion of organs. Similarly, there different interpretations on what defilement is and some confusion about the range of ages that fall under defilement and defilement with aggravating factors. Finally, the Court of Appeal regards sentences issued by the High Court as excessive, even though these are generally in conformity with the PCA and Sentencing Guidelines.

²⁰⁶ KII, Resident State Attorney, Rakai district.

(3) Inability to give evidence through audio-visual links

The experience of recollecting and repeating sexual acts is traumatic for children.²⁰⁷ Visual-audio technology was introduced in 2016 by the Judicature (Visual-Audio Link) Rules. However, visual audio links are only installed in a few courts, such as High Court, Kampala. In most cases, children give their testimony in court.²⁰⁸ The trauma often causes victims to remain silent.²⁰⁹

Section 31, Sexual Offences Act of Kenya provides for the protection of vulnerable witnesses such as children. It provides that a court may declare a child vulnerable. A child can therefore give evidence under protective cover, in camera (private), or by talking through another person called an intermediary.

c) Protection of victims' rights

(1) Low sentences

At one Chief Magistrates Court, the process where a suspect pleads guilty of committing defilement was described as follows:

Accused persons who plead guilty are convicted. At the mitigation stage/hearing, if the victim is not pregnant, the sentence is suspended. If the victim is pregnant, after a guilty plea is entered, the offender is convicted. The offender is then asked to commit in writing the specifics of care he/she will provide. Orders that include a monthly payment are made.²¹⁰

Another Chief Magistrate elaborated as follows:

In passing judgment to the accused, circumstances are considered such as; the perpetrator may be taking care of the girl at his home and the girl may be pregnant, when such a perpetrator pleads guilty, he may be sentenced to community service for 2 months and instructed to continue taking care of the girl and child [if any]; away from her, he is instructed not to continue staying together with the victim so that defilement does not continue; tougher judgment is given where the girl is not pregnant and in school.²¹¹

²⁰⁷ KII, Judge, High Court.

²⁰⁸ KII, Judge, High Court.

²⁰⁹ KII, Judge, High Court.

²¹⁰ KII, Chief Magistrate, Mityana district.

²¹¹ KII, Chief Magistrate, Nebbi district.

To explain the inconsistent application and interpretation of the law, a judicial officer reasoned:

There is a gap when it came to implementation vis-a-vis enforcement. What amounts to justice on the side of the victim? Some of the victims have conceived and there are no structural systems put in place to help these young mothers hence looking up to the perpetrators themselves for help. Therefore, the Amendment focuses more on enforcing punitive measures instead of focusing on helping the victims socially, mentally and health-wise.²¹²

A suspended sentence for defilement is incredibly low, and so are the orders for compensation, without a custodial sentence. A parent has to provide for their children regardless of whether they defiled or raped the mother. Low sentences adversely impact victims, who generally feel that justice is not served. 24-year-old Victim G explained: *"I was only 11 years old when he defiled me, by 16 years, I was seeing him again out of prison, I was not even a woman yet, I was still a girl but he was out."*²¹³

Interestingly, the Court of Appeal, has tended to reduce sentences of defilement and aggravated defilement, despite trial judges following the recommendations outlined in the Sentencing Guidelines.²¹⁴ When asked, a justice of the Court of Appeal explained that the ranges of punishment for defilement in the Sentencing Guidelines are too high, which is why the Court of Appeal reduces the sentences.²¹⁵

While it is quite easy to establish aggravating factors of defilement such as, the disability and age of the victim (below 14), HIV status of the offender and the offender's relationship to the child, it is difficult to establish whether the offender is a serial offender because there is no register of convicts.

²¹² KII, Chief Magistrate, Fort Portal district.

²¹³ KII, Victim G, Nebbi district.

²¹⁴ KII, Judge, High Court.

²¹⁵ KII, Justice of the Court of Appeal.

Regulation 7, Sexual Offences Regulations, 2008 of Kenya, requires the Registrar of the High Court to maintain a register as the Register of Convicted Sexual Offenders. The register contains the name and alias(es) sexual offenders, date of birth, place of birth, nationality, physical description, including, sex, height, and other attributes, passport photograph, a set of fingerprints, physical address, the offence, and sentence, previous conviction, and age of the victim and relationship to the convict. The register is accessible to legal practitioners (judges and lawyers), investigators, probation and child officers, the prisons department, and other relevant agencies.

The major barriers to justice delivery by the courts as found by the study include: the very real fear of re- traumatization prevents victims from coming to court to testify; insufficient evidence; low sentences that do not deter would be offenders; integrity issues and high incidence of acquittals.

(2) Inability to verify birth documents

Proof of the age of both the victims and perpetrators is rendered difficult by the absence of a mandatory birth registration system. Whereas birth certificates are produced in court, on occasion, the documents are often falsified, and the courts lack the means and capacity to verify. In situations where parents are part of 'negotiations', they state the wrong age or refuse to testify altogether. A resident state attorney explained:

... Another problem that we face at times ... the parents are very uncooperative we tell them to produce evidence of record of birth, some of them do not produce this and at trial the defense may be insisting that we need proper evidence to show that this person is below age by way of showing birth certificates and at times most of this parent either due to negligence or something we do not know, they normally do not want to produce some of these documents...²¹⁶

(3) Lack of a victim and witness protection program

The lack of a victim/witness support program through financial support, relocation of witnesses, change of identification, among others, greatly hinders access to justice for defilement victims because of apprehension of being targeted as witnesses. As a result, most cases are

²¹⁶ KII, Resident State Attorney, Amuru district.

discontinued because witnesses are not willing to co-operate while unprotected.²¹⁷ In instances where the accused has been granted court bail, the investigations are compromised. This is attributed to either fear for the victim and witnesses' lives or because money is involved and the key witnesses are paid off. In some instances, after the accused gets bail, victims disappear and are either hidden by the families involved (perpetrator and victim's families).²¹⁸

Through causing arrest of the perpetrator, the victim is assured of this protection. However, in instances where the perpetrator gets bail, there is no assured protection for the victim. In some instances, the police officers offer temporary shelter to the victim but this cannot be done for long. In other instances, neighbors offer shelter but this is also temporary.²¹⁹

Section 15 of the Victim Protection Act of Kenya, protects child victims and requires the court to handle them with sensitivity to facilitate access to justice. Survivors of sexual violence have a right to separate waiting for spaces and holding facilities before court appearances and witness protection.

The lack of safe houses where victims can be sent to receive protection from the perpetrators in is a major challenge. Once a victim realizes that he or she might not receive the necessary shelter required, they disengage from the process.

In case we are sure that the victim is not safe, we look for relatives to take responsibility for the child.²²⁰

We do not have a special shelter to keep victims of defilement, and this forces us to arrest the perpetrator and investigate the case later when he is already in our custody especially if the perpetrator is a primary caregiver or parent of the victim. We do this to protect the victim from them and also stop the perpetrator from running away.²²¹

²¹⁷ KII, Protection and Social Welfare Officer, Amuru district.

²¹⁸ KII, Harriet Aduango, Resident State Attorney, Kabarole district.

²¹⁹ KII, Officer in Charge, District Directorate of Criminal Investigations, Mbale district.

²²⁰ KII, Officer in Charge, District Directorate of Criminal Investigations, Nebbi district Police Headquarters.

²²¹ KII, Officer in Charge, District Directorate of Criminal Investigations, Dokolo district.

The victims are protected from perpetrators through Action Aid Uganda because they have a shelter, the victims are kept there for a short while as Police looks for a responsible relative to the victim to take care of the victim in a safe place.²²²

In Kenya, the Sexual Offences Act (SOA) protects children defiled in a family setting by relatives and provides for removal orders of any accused person living with a victim until the matter is concluded. The court has the power to declare such a victim as a child in need of care and protection and make protective orders under the Children Act. This provision is cognizant of the vulnerability of children who live with abusers, such as, parents, extended relatives, and guardians.

(4) Lack of psychosocial support

The absence of moral, psycho-social and financial support for the victims of defilement has greatly hindered justice delivery for victims. Given the adversarial nature criminal proceedings, victims are intimidated by the trial process, more so, cross examination. Victims who breakdown are not offered professional assistance and are large and by on their own after the trial. Psychological trauma affects the quality of the victim's testimony. A victim may not appear untruthful due to memory lapses, fear and anxiety.

There is no mental, psychological, cultural, or spiritual support given to the victims in preparation for trial because the prosecutors are focused so much on the trial and such jobs are meant for people who are exclusively trained in psycho-social support. The only protection offered is the one in-camera or in chambers which is also not so effective when it comes to the victim's mental health.²²³

The Government of Kenya (GoK) and the International Center for Reproductive Health, established the Gender-Based Violence Recovery Center (GBVRC) at Kenyatta National Hospital (KNH). The services include medical care and filling PF3, psychosocial care, legal services, referral to relevant and specialized actors. Similarly, the Gender Violence Recovery Center (GVRC) of Nairobi Women's Hospital, provides integrated services for SGBV victims. The GVRC provides free psychosocial and medical support and runs a digitized data management system of SGBV. While treating victims, the GVRC collects evidence that is used to prosecute offenders.

²²² KII, Police Officer, Police Child and Family Protection Unit, Nebbi District Police Headquarters.

²²³ KII, Resident State Attorney, Kabarole district.

V. Conclusion

The findings of the report are based on a comprehensive review of relevant literature, policies, laws; and interviews with 197 respondents from justice sector institutions including police, ODPP and judicial officers; MoH, MoGLSD, international organisations, CSOs; as well as, cultural and religious leaders, victims and parents/guardians of victims.

Based on the findings, defilement is widespread. There is a wide disparity between the law and the perceptions and attitude of justice sector actors, and the broader community. While the law regards defilement a felony, the majority practitioners regard sexual acts with children between 14 and 17, a less serious offence. These perceptions manifest in form of low reporting rates, a high rate of extra judicial settlements, absence of support structures for defilement victims, failure to meet or update victims on cases, parents' refusal to cooperate with authorities, low sentences, among others. On the whole, qualitative data demonstrates awareness of the law on defilement and procedure of investigation among justice sector actors and other service providers.

However, the process of obtaining justice is characterized by difficulties for all involved. Police is underfunded and lacks the means to conduct meaningful investigations. This burden is shifted to the victims, who oftentimes, cannot afford. As a consequence, reported cases are discontinued at a very early stage. Several others are discontinued due to extra judicial settlements and hundreds more end as *nolle prosequi* due to mainly poor investigations. The majority of cases that make it through the system face challenges, that are sometimes, insurmountable, such as corruption, prolonged delays and disappearance of witnesses.

On the whole, while the jurisprudence emerging out of the courts is progressive and promising, the study clearly shows that the overall response to defilement of the justice, law and order sector has denied the majority of victims justice, especially those from poor backgrounds and older children, due to a focus on age, instead of the gravity of sexual acts with children.

It is therefore important to address both the normative and structure challenges highlighted in this study, to enhance access to justice for victims to defilement.

VI. Recommendations

A. Police

- Develop standard operating procedures or guidelines to support the coordination and cooperation with other actors during an investigation of defilement, particularly, first responders. Resource constraints in the short term will be mitigated by cooperation with other actors. Civil society organisations (CSOs) have good relations and links in the community and could ease access to witnesses and information.
- Align PF3A with the Penal Code by including diagrams of other body parts and questions on other sexual acts envisaged by the law so that all punishable acts are captured. The alignment should be done in consultation with the ODPP and judiciary.
- Ensure that only the official version of the PF3A form is in circulation and increase the number of PF3A forms at each police post/station to prevent corruption. In the long term, purchase a photocopier for at least each central police station.
- Once revised, PF3A and PF24 should be fully utilized by investigation officers to improve the quality of evidence.
- Take tough and decisive action against officers who sell PF3A forms and participate in other corrupt practices, such as, encouraging negotiation/settlements under the pretext or receiving commissions, brokering deals with bush lawyers, knowingly tampering evidence and intimidating victim/witness and their families.
- Sensitize police officers about the validity of medical examinations carried out by qualified and approved medical practitioners.
- Create an information management system to ease reporting and ensure accuracy in data compilation. Data should be harmonized with the judiciary and ODPP.
- Ensure the involvement of female police officers in defilement cases, per best practice. At least each police post should have a female officer, whose responsibility includes the investigation of defilement since the majority of victims are female.
- Enhance the knowledge of investigating officers through training on investigation of defilement, including gender and child sensitivity. Investigators should establish the elements of defilement during an investigation.
- Establish safe spaces for interviewing and taking statements from victims of defilement, to ensure privacy for victims.

B. ODPP

- Double down on prosecution led investigations to guarantee the quality of investigations.
- Follow up on cases returned to police for further investigations and work together to ensure that files are complete before prosecution commences.
- Evoke the law on compelling witnesses more regularly to reduce impunity.
- Budget for resources to support victims of defilement with court related expenses.
- Recruit more state attorneys in the regions and districts to reduce the workload and to ensure efficiency. The number of state attorneys should be determined by the caseload.
- Hold regular trainings for state attorneys on defilement, to challenge misconceptions of the law.
- Provide leadership and technical expertise during the revision of PF3A.

C. Judiciary

- Defilement cases should be heard and concluded within six months. This will tremendously improve justice delivery for defilement victims.
- Judicial officers should highlight prosecution weaknesses during cross-examination in their reports and send recommendations to the ODDP.
- Consult with police and the ODPP before scheduling SGBV sessions, to allow for adequate preparation of all cases to reduce cases ending as *nolle prosequi* and dismissals.
- Equip all courtrooms with audio-visual technology and have victims in a separate space while the accused persons are in the courtroom to avoid retraumatizing victims.
- The punishment imposed on convicts of defilement should be commensurate with the gravity of the offence in accordance with the law.
- Establish a sexual offenders register, to curb the prevalence of defilement among persons with authority over children, and to ease identification of serial offenders.
- Balance the rights of the victims with those of the accused person to ensure that victims obtain justice; the primary focus should not only be on the number of years the accused has spent on remand, but also, the physical, emotional and psychological consequences of their crime on the victim.
- Train judicial officers on consistent application of the law and sentencing guidelines to enhance justice delivery for victims.
- Develop guidelines for response to very young victims, victims with disabilities, such as, deaf and dumb children, to ensure inclusivity in justice delivery.

- Develop and widely disseminate protocols or standard operating procedures on investigation of defilement.

D. Parliament

- Amend Section 129 PCA to include a non-exhaustive list of serious Sexually Transmitted Diseases (STDs).
- Amend the law to provide for psychosocial support to vulnerable victims, particularly, those living with perpetrators.
- Establish a Fund to enable victims to access medical services, including, psychosocial support and transport costs to court. In the interim the government should provide the ODPP with resources to support victims with case related expenses.

E. Ministry of Gender, Labour and Social Development

- Enforce mandatory registration of all children at birth, to enable the availability of accurate information on age.
- Strengthen coordination of social protection structures to ensure efficiency in the execution of mandates and to reduce duplicity.
- Establish shelters for children victims of defilement who are living with offenders, or who face a threat of further abuse.

F. NAWJU and other CSO actors

- Undertake a study on the correlation between child sexual abuse and defilement, in order to establish how the law could be aligned. For instance, are child marriage, child prostitution and commercial sexual exploitation, aggravating factors of defilement?
- Undertake a study on the success of defilement cases in magistrates' courts, in light of bail and possible implications on witnesses.
- Undertake a study on the accuracy of data on defilement, given that the police use a manual system to record cases.
- Develop a case database of defilement cases, particularly, recent cases, to serve a reference point for judicial officers.
- Simplify and disseminate the law on defilement and the mandates of justice sector actors among communities for ease of reference.
- Develop a case database that encompasses information such as, age and sex of the victim, name and age of the offender, date and place where offence was committed, offence charged, verdict, length of sentence, reasons for acquittal, dismissal, etc., to obtain accurate data on the judicial response to defilement.

- Provide regular trainings for justice sector actors and first responders to challenge attitudes and distortions of the definition of defilement, to foster empathy for victims.
- Advocate for a government sponsored integrated service facility(ies) for SGBV victims, including, children, in order to provide holistic services to victims.
- Sensitize communities and parents in areas, such as, Bududa district where defilement is highly prevalent.
- Sensitize the media on its role in preventing defilement.
- Develop a strategy for implementation of recommendations in this study and disseminate policy briefs amongst stakeholders.

G. Development Agencies

- Provide regular funding for SGBV criminal sessions to ensure frequency of sessions. Long spells re-traumatize victims. Defilement cases must be tried within a year.

VII. Annexes

Annex I: Service Map for Victims

Annex II: Consent Form for Victims

Annex III: Consent Form for Focus Group Participants

Annex IV: Consent Form for Key Informants

Annex V: Data Collection Tools

Annex 1 Service map for survivors

DEFILEMENT CASES SERVICE MAP



Annex II. Consent Form for Victims

ASSESSMENT OF JUSTICE DELIVERY FOR VICTIMS OF DEFILEMENT IN UGANDA

**To assess the response of the justice sector in Uganda to the issue of
defilement**

8 February – 30 May 2021

Consent to take part in research

The National Association of Women Judges (NAWJU) is undertaking a study to assess justice delivery for victims of defilement in Uganda. NAWJU is a membership organization of female judicial officers across the bench, including, judges, magistrates and registrars. NAWJU was founded in 1994, as a national chapter of the International Association of Women Judges (IAWJ). The vision of NAWJU is to enhance justice for all, particularly, the marginalized while her mission is to “improve justice for the vulnerable populations and attain gender equity.”

The study is funded by the International Development Law Association (IDLO).

The main objective of the study is to assess the response of the justice sector to defilement in the past 13 years; and the role of the legal framework in facilitating or impeding the actions by the sector. The study aims to: analyze data from formal justice institutions, including the police, prosecutions and Judiciary on the extent of reporting, investigation and prosecution of defilement cases in Uganda since 2007 to understand the trend; undertake a comprehensive analysis of the legal and institutional framework relating to defilement in Uganda, including the level of implementation of the law of defilement (as amended in 2007), and how the legal and institutional framework has facilitated or impeded reporting, investigation and prosecution of defilement cases; and make recommendations on possible solutions towards better justice outcome in defilement cases including policy and institutional reform recommendations, tailor-made for different stakeholders.

This is research and not provision of care.

Why are you being chosen to participate?

You are being chosen to participate because your rights have ever been violated through defilement.

What will happen to you if you agree to participate?

This is a cross-sectional study where you will be interviewed once with a set of questions outlining your experiences; how you went about the process of reporting; and whether you were supported by the justice sector actors. We also want to understand the coping mechanisms after you experienced this act. Finally, we would like to know your thoughts on how the justice system can improve access for victims of defilement. In this survey, you will be around 6 participants.

Voluntary Participation

Your participation in this research is purely voluntary and you have the right to withdraw at any point without any penalties. Feel to stop the interview whenever you feel the questions are discomforting or evoke memories of this painful experience. I will request you to resume the interview in case you are willing. If not willing, the interview will be stopped.

Risks and Benefits

This is a minimal risk study; however, the questions may make you feel uncomfortable and could lead to a breakdown. I will pause the interview for you to compose yourself and you will also have an opportunity for a referral should you require further counsel and psychological assistance.

There are no benefits for participation. However, we believe your responses are an invaluable opportunity for the research team to contribute to knowledge which will inform policy direction and improve service delivery for victims of defilement.

Compensation

We appreciate your time and effort to participate in this research. In consideration of your time and travel costs, you will receive a compensation of twenty thousand (20,000) Uganda shillings.

Privacy and Confidentiality

The information you share with us will be treated with confidentiality. No identifying information about you shall be disclosed to any other party. We shall use pseudo names and anonymous quotes while describing you in the study. Any form of data collected from you and documentation shall be stored on secure servers and under lock and key.

For your privacy, we shall request your choice of venue for the interview that is known only to you and the interviewer. However, for purposes of monitoring and regulatory oversight, a member of the National Ethics Committee could have access to your records.

Sharing of Feedback or Research Dissemination

The data collected from you will be shared in form of reports among different stakeholders including police, prosecution and the judiciary. We shall also publish the findings on the IDLO and NAWJU websites.

Who to contact

If you have any questions about the study, please contact the Lead Researcher, Dr Josephine Ndagire: 0784819311.

Should you have questions regarding your rights and welfare during participation in this research, please do not hesitate to contact the Chairperson, The Aids Support Organization Research and Ethics Committee, Dr Adrian Jjuuko, 0782169505.

Certificate of Consent

I have read to and explained the information about the research (nature and purpose, the procedures, the potential benefits, and possible risks associated) to the participant. I have given them an opportunity to ask questions. They have freely accepted to participate.

They have read and explained to me the objectives of the research. I have been given an opportunity to ask questions to further understand. I voluntarily accept to participate through consent. I understand that the discussion will be audio-recorded.

[Participant should tick appropriate box below]

I consent voluntarily to be a participant in this study YES NO

I consent to be audio recorded YES NO

Name of Researcher

Signature

Date.....

Name of Respondent

Signature/Thumb print.....

Date

Name of witness.....

Signature/Thumb print.....

Annex III. Consent Form for Parents, Guardians and Caregivers

ASSESSMENT OF JUSTICE DELIVERY FOR VICTIMS OF DEFILEMENT IN UGANDA

To assess the response of the justice sector in Uganda to the issue of defilement

26 February – 30 May 2021

Consent to take part in research

The National Association of Women Judges (NAWJU) is undertaking a study to assess justice delivery for victims of defilement in Uganda. NAWJU is a membership organization of female judicial officers across the bench, including, judges, magistrates and registrars. NAWJU was founded in 1994, as a national chapter of the International Association of Women Judges (IAWJ). The vision of NAWJU is to enhance justice for all, particularly, the marginalized while her mission is to “improve justice for the vulnerable populations and attain gender equity.”

The study is funded by the International Development Law Association (IDLO).

The main objective of the study is to assess the response of the justice sector to defilement in the past 13 years; and the role of the legal framework in facilitating or impeding the actions by the sector. The study aims to: analyze data from formal justice institutions, including the police, prosecutions and Judiciary on the extent of reporting, investigation and prosecution of defilement cases in Uganda since 2007 to understand the trend; undertake a comprehensive analysis of the legal and institutional framework relating to defilement in Uganda, including the level of implementation of the law of defilement (as amended in 2007), and how the legal and institutional framework has facilitated or impeded reporting, investigation and prosecution of defilement cases; and make recommendations on possible solutions towards better justice outcome in defilement cases including policy and institutional reform recommendations, tailor-made for different stakeholders.

This is research and not provision of care.

Why are you being chosen to participate?

You are being chose to participate because you are a parent, guardian or caregiver of a person whose rights were violated through defilement.

What will happen to you if you agree to participate?

This is a cross-sectional study where you will be interviewed once with a set of questions outlining your experiences; how you went about the process of reporting; and whether you were supported by the justice sector actors. We also want to understand the coping mechanisms after you experienced this act. Finally, we would like to know your thoughts on how the justice system can improve access for victims of defilement. In this survey, you will be around 6 participants.

Voluntary Participation

Your participation in this research is purely voluntary and you have the right to withdraw at any point without any penalties. Feel to stop the interview whenever you feel the questions are

discomforting or evoke memories of this painful experience. I will request you to resume the interview in case you are willing. If not willing, the interview will be stopped.

Risks and Benefits

This is a minimal risk study; however, the questions may make you feel uncomfortable and could lead to a breakdown. I will pose the interview for you to compose yourself and you will also have an opportunity for a referral should you require further counsel and psychological assistance.

There are no benefits for participation. However, we believe your responses are an invaluable opportunity for the research team to contribute to knowledge which will inform policy direction and improve service delivery for victims of defilement.

Compensation

We appreciate your time and effort to participate in this research. In consideration of your time and travel costs, you will receive a compensation of twenty thousand (20,000) Uganda shillings.

Privacy and Confidentiality

The information you share with us will be treated with confidentiality. No identifying information about you shall be disclosed to any other party. We shall use pseudo names and anonymous quotes while describing you in the. Any form of data collected from you and documentation shall be stored on secure servers and under lock and key.

For your privacy, we shall request your choice of venue for the interview that is known only to you and the interviewer. However, for purposes of monitoring and regulatory oversight, a member of the National Ethics Committee could have access to your records.

Sharing of Feedback or Research Dissemination

The data collected from you will be shared in form of reports among different stakeholders including police, prosecution and the judiciary. We shall also publish the findings on the IDLO and NAWJU websites.

Who to contact

If you have any questions about the study, please contact the Lead Researcher, Dr Josephine Ndagire: 0784819311.

Should you have questions regarding your rights and welfare during participation in this research, please do not hesitate to contact the Chairperson, The Aids Support Organization Research and Ethics Committee, Dr Adrian Jjuuko, 0782169505.

Certificate of Consent

I have read to and explained the information about the research (nature and purpose, the procedures, the potential benefits, and possible risks associated) to the participant. I have given them an opportunity to ask questions. They have freely accepted to participate.

They have read and explained to me the objectives of the research. I have been given an opportunity to ask questions to further understand. I voluntarily accept to participate through consent. I understand that the discussion will be audio-recorded.

[Participant should tick appropriate box below]

I consent voluntarily to be a participant in this study

YES

NO

I consent to be audio recorded

YES

NO

Name of Researcher

Signature

Date.....

Name of Respondent

Signature/Thumb print.....

Date

Name of witness.....

Signature/Thumb print.....

Date.....

Annex IV. Consent Form for Key Informants

ASSESSMENT OF JUSTICE DELIVERY FOR VICTIMS OF DEFILEMENT IN UGANDA

To assess the response of the justice sector in Uganda to the issue of defilement

26 February – 30 May 2021

Consent to take part in research

The National Association of Women Judges (NAWJU) is undertaking a study to assess justice delivery for victims of defilement in Uganda. NAWJU is a membership organization of female judicial officers across the bench, including, judges, magistrates and registrars. NAWJU was founded in 1994, as a national chapter of the International Association of Women Judges (IAWJ). The vision of NAWJU is to enhance justice for all, particularly, the marginalized while her mission is to “improve justice for the vulnerable populations and attain gender equity.”

The study is funded by the International Development Law Association (IDLO).

The main objective of the study is to assess the response of the justice sector to defilement in the past 13 years; and the role of the legal framework in facilitating or impeding the actions by the sector. The study aims to: analyze data from formal justice institutions, including the police, prosecutions and Judiciary on the extent of reporting, investigation and prosecution of defilement cases in Uganda since 2007 to understand the trend; undertake a comprehensive analysis of the legal and institutional framework relating to defilement in Uganda, including the level of implementation of the law of defilement (as amended in 2007), and how the legal and institutional framework has facilitated or impeded reporting, investigation and prosecution of defilement cases; and make recommendations on possible solutions towards better justice outcome in defilement cases including policy and institutional reform recommendations, tailor-made for different stakeholders.

This is research and not provision of care.

Why are you being chosen to participate?

You are chosen to participate in this study based on your expertise in law, access to justice and issues of defilement in Uganda in your professional capacity. You are about 15 participants who will share with us your expert knowledge on issues of defilement through a qualitative interview. The information you provide would be useful in shaping services related to justice for victims of defilement.

What will happen to you if you agree to participate?

This is a cross-sectional study where you will be interviewed once with a set of questions outlining your experiences and any recommendations you would like to make to improve access to justice for victims of defilement.

Voluntary Participation

Your participation in this research is purely voluntary and you have the right to withdraw at any point without any penalty.

Compensation

We appreciate your time and effort to participate in this research. For your time and transport, you will receive a compensation of twenty thousand (20,000) Uganda shillings.

Privacy and Confidentiality

The information you share with us will be treated with confidentiality. No identifying information about you shall be disclosed to any other party. We shall use pseudo names and anonymous quotes while describing during report writing. Any form of data collected from you and documentation shall be stored on secure servers and lockable cabins.

For your privacy, we shall request your choice of venue to conduct the interview that is known only to you and the interviewer. However, for purposes of monitoring and regulatory oversight, a member of the National Ethics Committee could have access to your records.

Sharing of Feedback or Research Dissemination

The data will collect from you will be shared in form of reports among different stakeholders including police, prosecution and the judiciary. We shall also publish the findings on the IDLO and NAWJU websites.

Who to contact

If you have any questions about the study, please contact the Lead Researcher, Dr Josephine Ndagire: 0784819311.

Should you have questions regarding your rights and welfare during participation in this research, please do not hesitate to contact the Chairperson, The Aids Support Organization Research and Ethics Committee, Dr Adrian Jjuuko, 0782169505.

Certificate of Consent

I have read to and explained the information about the research (nature and purpose, the procedures, the potential benefits, and possible risks associated) to the participant. I have given them an opportunity to ask questions. They have freely accepted to participate.

They have read and explained to me the objectives of the research. I have been given an opportunity to ask questions to further understand. I voluntarily accept to participate through consent. I understand that the discussion will be audio-recorded.

[Participant should tick appropriate box below]

I consent voluntarily to be a participant in this study YES NO

I consent to be audio recorded YES NO

Name of Researcher

Signature

Date.....

Name of Respondent

Signature/Thumb print.....

Date.....

Annex V. FOCUS GROUP TOPIC GUIDE

**ASSESSMENT OF JUSTICE DELIVERY FOR
VICTIMS OF DEFILEMENT IN UGANDA**

19 April – 30 July 2021

Name of Group Interviewed:.....

Date:

Site:

Village:

Subcounty:

District:

Time discussion started:

Time discussion ended:

Participant summary:

No. of Parents, guardians and caretakers:

No. of men:

No. of women:

Name of Facilitator:

INTRODUCE MODERATORS, TRANSLATORS, RECORD KEEPERS

**INTRODUCE TOPIC OF RESEARCH: (ASSESSMENT OF JUSTICE DELIVERY FOR
VICTIMS OF DEFILEMENT IN UGANDA)**

I am interested in learning about some of the concerns and needs of people in this community with regard to justice for victims of defilement. I am especially interested in understanding some of the issues faced in obtaining justice for children victims of defilement. I hope that your answers to my questions will help inform and improve justice delivery for victims of defilement in this community. I expect our discussion to last about 40 minutes to 1 hour.

AGREE ON GROUP NORMS AND CONFIDENTIALITY

**FIRST, I WOULD LIKE TO ASK YOU SOME GENERAL QUESTIONS ABOUT YOUR
COMMUNITY:**

1. What do you understand by defilement?
2. Do you know someone who has suffered defilement?
3. What exactly happened? How was the child defiled?
4. What did you or that person do after it happened?

5. Did you report it? If yes, to whom did you report? If no, why didn't you report it?
6. Who was responsible?
7. Was the person responsible apprehended by the local authorities? If yes, how was the matter handled? If no, why?
8. What challenges have you faced in seeking justice for victims of defilement in your community?
9. Was the matter reported to the Police? What did the Police do about it?
10. Were any investigations carried out on the matter? How long did these investigations take?
11. What happened after investigations were completed?
12. Was the matter referred to the Office of the Director of Public Prosecution (ODPP)?
13. Were you or the victim contacted by the ODPP?
14. If, yes, explain your experience?
15. Did the matter reach the courts of law?
16. What was your experience with the courts?
17. Was the matter concluded? Was it an acquittal or conviction?
18. What is your overall impression about the justice sector? Were you satisfied with the way the matter was addressed?

12. Which of the following, do you think has tried to perform its duty in addressing defilement in Uganda?

- (a) Legislature
- (b) Judiciary
- (c) Police
- (d) Local authorities

NOW I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE SAFETY AND SECURITY OF CHILDREN:

Are you aware of problems with the safety and security of children in this community? (Ask for examples. If no one speaks specifically about defilement, evaluate the group to decide whether you want to bring up the issue now or wait until the group has developed more comfort talking about these issues.)

1. Where do children report when they have been defiled?
2. What are the circumstances that cause problems of defilement in this community? (Ask for examples.)
3. What practices are considered sexually inappropriate/appropriate, abusive, or violent in this community?
4. Can you give examples of defilement in your community? (Examples sexual acts with children, aggravated defilement).
5. When and where is defilement likely to occur?
6. What has been done here to improve the safety of children from defilement?
7. Without mentioning names or indicating anyone specific, who are the perpetrators of defilement in this community? What happens to the perpetrators (different consequences if the perpetrator is known/unknown)?
8. Without mentioning names or indicating anyone specific, which groups of children do you think feel the least safe, or feel at most risk for defilement? Which groups of children do you think feel the most safe from defilement?
9. Has the problem of defilement gotten worse, better, or stayed the same in the last 10 years? If there has been a change, what has caused it?
16. What social and legal services exist to help address problems associated with defilement (e.g., health, police, legal counseling, social counseling)? Who provides these services? How could these efforts be improved?
17. How can and how should this community protect children from defilement? What about NGOs and other community organizations? What about religious institutions and the government?

CLOSE THE INTERVIEW:

Thank you all for your time and insight. This has been extremely helpful. As I said in the beginning, the purpose of this discussion was to help me understand your experience with the justice sector regarding defilement case.

Please remember that you agreed to keep this discussion confidential. Please do not share details of what was said in our discussion, so that we can try to preserve confidentiality and the safety of the victims of defilement.

Do you have any questions? If anyone would like to speak with me in private, I will stay here after we finish. Thank you for your help.

Annex VI. Interview Guide for the Police, Prosecution and Judicial Officers

ASSESSMENT OF JUSTICE DELIVERY FOR VICTIMS OF DEFILEMENT IN UGANDA

19 April – 30 July 2021

INTRODUCE SELF, RESEARCH TOPIC AND PURPOSE OF THE RESEARCH

Study Purpose: To assess the response of the justice sector in Uganda to the issue of defilement throughout the justice chain in the last decade and the role that the legal framework, particularly the amended law on defilement (2007), has played in facilitating or impeding the actions by the sector.

I would like to ask you some questions about the above subject. These questions intended to get a sense of what your thoughts and experience are on the amended law on defilement (2007). Please note that your responses will be used (albeit anonymously) to inform recommendations for reforms in justice delivery for defilement victims.

I hope that your answers to my questions will help inform and improve justice delivery for victims of defilement. I expect our discussion to last about 40-60 minutes.

Questions for Police

1. What is your understanding of the broad definition of defilement according to the amendment of Section 129 of the Penal Code Act (Cap 120) of 2007?
2. Have you applied any elements of this amendment to your work? How has this affected your work?
3. How many cases of defilement do you receive and investigate per month?
4. What do you do when you receive a report of defilement? What steps do you take when handling the case?
5. Does someone always accompany the victims when they report to the police?
6. Which people are involved? What is the procedure for reporting defilement?
7. How are the victims handled and protected from the perpetrators?
8. How many times do the victims need to repeat their description of the incident?
9. What do you do if the child is unsafe, has no place to stay or the suspect is a primary care giver?

10. How do you gather evidence of defilement? How long does it take on average to complete this process?
11. From the number of cases reported per month, How many of these are conclusively investigated and make it to the Office of the Director of Public Prosecution?
12. What challenges have you or do the Police face in investigating cases of defilement?
13. Are you conversant with the Maputo Protocol Guidelines of investigating, documenting and prosecuting defilement cases? Have you undergone training in applying these guidelines?
14. How often do the designated child desk officers at the police visit the communities to check on cases of defilement?
15. From your experience, do victims come up to seek services willingly? If not, why?
16. Is there documentation of these reports? Who is responsible for this documentation?
17. Where is this documentation stored?
18. Is there a designated desk officer at the Police Station to receive defilement complaints?
19. Have they attended any basic training on handling defilement cases?
20. What is the ratio of male to female officers in the police?
21. Is there gender-sensitivity training for all investigating police officers on defilement? Is it done for relevant officers attached to this desk at every Police post? Upon transfer of these officers are the new officers who replace them given this training?

Questions for Prosecution

1. In your opinion, how adequate is the legal framework in addressing defilement in Uganda?
2. Has, the 2007 amendment of Section 129 of the Penal Code Act (Cap 120) been useful to you in handling of defilement cases in Uganda over the last decade? If so, please elaborate. If no, Why?
3. Have you applied any elements of this amendment to your work? How has this affected your work?
4. Do you find the investigation procedure of defilement cases adequate? If not, what is lacking?
5. There have been complaints about delays in sanctioning files on defilement cases. What do you have to say about this?

6. Is there a specialized unit of investigators assigned to defilement cases at the Office of the Director of Public Prosecutions?
7. Are you conversant with the Maputo Protocol Guidelines of investigating, documenting and prosecuting defilement cases? Have you undergone training in applying these guidelines?
8. Is there gender-sensitivity training for all officers in this unit on defilement? Are they given any refresher trainings, and do they attend any multi sectoral trainings with other duty bearers?
9. Is there gender budgeting within the Office of the DPP for this investigative unit to assist in defilement cases?
10. How many defilement cases are referred to your office per month?
11. How many of these cases are sanctioned for prosecution? Why are the others not sanctioned?
12. Do you conduct any follow ups on pending cases? How often is this done?
13. What are the challenges faced by your team in collection of forensic evidence in defilement cases?
14. What are the protective measures for child victims when testifying? Are these child victims mentally, psychologically, culturally and spiritually prepared for trial?
15. Why do you think there are more acquittals than convictions?

Questions for Judicial Officers

1. Is the 2007 amendment of Section 129 of the Penal Code Act (Cap 120) on defilement (in its prescribed forms) adequate for enforcement of justice to child victims? If yes, please elaborate. If not, what are the gaps?
2. Has the amendment helped your work in delivering justice for victims? If yes, how? If no, why?
3. How is the Court handling same sex defilement cases? Are they rampant?
4. In your opinion is the quality of investigations carried out by the Police and Office of the DPP adequate in ensuring justice for defilement victims? Is it useful to the courts?
5. How would you characterise the perpetrators/accused persons?
6. Does the relationship between the perpetrator and victim have a bearing on the trial? If so, how?
7. How many defilement cases do you handle in a month, on average?

8. How many of these cases have been prosecuted, dismissed, acquitted, discontinued, are pending in court or have had convictions in a year in your jurisdiction? What were the reasons for dismissal, acquittal, discontinuation?
9. In your view are the main challenges in defilement trials?
10. Could you please highlight a few cases on defilement, particularly those that have enhanced justice for victims? Are these easily accessible?

Annex VII. Interview Guide Key Informants

ASSESSMENT OF JUSTICE DELIVERY FOR VICTIMS OF DEFILEMENT IN UGANDA

19 April – 30 July 2021

INTRODUCE SELF, RESEARCH TOPIC AND PURPOSE OF THE RESEARCH

Study Purpose: To assess the response of the justice sector in Uganda to the issue of defilement throughout the justice chain in the last decade and the role that the legal framework, particularly the amended law on defilement (2007), has played in facilitating or impeding the actions by the sector.

I would like to ask you some questions about the above subject. These questions are very general and are just intended to get a sense of what your thoughts are (from your experience either by direct or indirect interface with actors in the justice chain that is, the police, DPP and Courts) towards the response of the justice sector in Uganda to the issue of defilement. There are no wrong or right answers, so feel free to answer the first thing that comes into your mind. Please note that your responses will be used (albeit anonymously) to inform recommendations for reforms in justice delivery for defilement victims.

1. What is your impression about the law on defilement in Uganda; especially the 2007 amendment to Section 129 of the Penal Code Act (Cap 120)? Is the existing legal framework adequate to address defilement in Uganda? If yes, please elaborate. If no, why?
2. From your experience do you think any elements of this amendment are being applied by the actors in the justice chain who you have directly or indirectly interfaced with?
3. What in your opinion have been the structural, institutional or other impediments to justice delivery for defilement victims in Uganda over the last decade?
4. What in your opinion can be done to improve justice delivery to defilement victims?
5. Have you made any recommendations to any actors in the justice chain on handling of defilement cases in the past 10 years?
6. What were your recommendations and how were they delivered?
7. What was the response of the said actors to you recommendations? Were these recommendations acted upon or properly absorbed?
8. What has been your experience (if any) in dealing with any of the actors in the justice sector in regard to defilement?

9. What is your impression of the investigation procedures, the content and timeframe of generating investigation reports and the capacity of the justice actors involved in handling defilement cases in Uganda?

10. Are there any other critical reforms you wish to suggest towards better justice delivery for these victims? How can these actors be supported to deliver justice to defilement victims?