

Delayed access to justice for Sexual Violence cases in Uganda

Executive Statement

Although the number of reported sexual gender-based violence (SGBV) cases has declined during the past five years, prosecution and sanctioning of reported cases remain incredibly low. Furthermore, SGBV cases that make it to the courts of law are characterised by high rates of dismissal and generally low conviction rates. This brief examines the reasons for the delayed access to justice by SGBV survivors, and the implication for attaining gender SDG targets. We recommend raising awareness on rights of SGBV survivors within the justice system and among health practitioners. We also call for increased financing and staffing within the justice system, as well as an urgent need to invest in investigative infrastructure to facilitate timely prosecution. Finally, there is a need to strengthen victim and witness support systems to both protect victims and ensure that SGBV cases are reported and sustained through the criminal justice system

Introduction

The number of reported sexual gender-based violence (SGBV) cases— notably defilement and rape—remains high in Uganda. According to 2019 Uganda Police Force (UPF)'s annual crime report, the number of defilement cases registered was 13,613 in 2019, down from 18,507 in 2014 while rape cases increased to 1,528 in 2019 from 1,419 in 2014.¹ Despite the high numbers of reported cases of Sexual Violence, nearly half of the perpetrators/offenders still go unpunished. Such a large number of reported cases accompanied by little punishment poses a considerable threat to the attainment of national development aspirations as stated in the 2016 National Policy on Elimination of Gender-Based Violence in Uganda and several Sustainable Development Goals (SDGs)—notably SDG 5 and 16.² In this regard, the justice system must play its role to quickly respond and mitigate acts of impunity to regain public confidence in the justice system. SGBV does not only violate the dignity of women and girls but also affects the long term health of survivors. For example, grave injuries undermine the sexual reproductive health of the victims, lead to high risks of contracting HIV and other Sexually Transmitted Diseases, forced marriages, teenage and unwanted pregnancies leading to a rise in single motherhood.³ According to the 2016 Uganda Demographic and Health Survey (UDHS), at least 32 percent of adolescents aged 15-19 years that have begun child-bearing are single mothers, and 70 percent of these have never been in a marital union.⁴

This policy brief examines the effectiveness of Uganda's justice system to timely respond to SGBV cases. It points out some of the reasons for the low prosecution and conviction of sexual violence cases. The brief relies on

secondary statistics obtained from institutions such as the Uganda Police Force (UPF), Office of the Director of Public Prosecution (ODPP) and the Justice Law and Order Sector (JLOS).

Key Findings

Defilement is the most reported sexual offence in Uganda: Figure 1, based on the annual Uganda Police Crime Reports, shows that the number of defilement cases was 13,613 in 2019 compared to 1,500 rape cases and 500 other sexual related cases. The 2019 Annual Police crime report notes that defilement is the second most frequently reported criminal offence in Uganda, after common assaults, with most cases arising from rural areas

Figure 1 Number of sexual related cases reported: 2014-2019



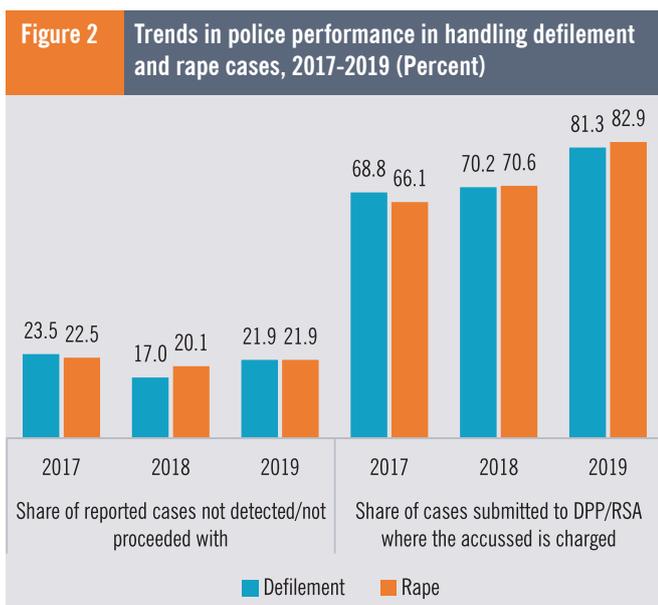
Source: Uganda Police Force, 2020

(Uganda Police Force, 2020). Overall, sex-related crimes (i.e. defilement, rape, indecent assault, and unnatural offences) account for 7.2 percent of all crimes reported in 2019.

Furthermore, Figure 1 shows that the number of defilement cases declined by 26.4 percent between 2014 and 2019. The decline in reported cases to Police is partly in line with the reduction in cases reported in earlier surveys. For example, based on the UDHS, the prevalence rate reduced from 28 to 22 percent between 2011 and 2016. However, the decline in reported cases partly points to declining public trust in the justice system, given the significant delays in SGBV survivors accessing justice. Worth noting is the fact that the burden of defilement disproportionately affects adolescents. In 2019, at least 77 percent of the victims of defilement cases reported were young girls aged 15-17 years.

Men are the biggest perpetrators of rape and defilement: As would be expected, the majority of the rape, aggravated and simple defilement cases are committed by men. Indeed, over the five years (2014-2019), on average, 91.4 percent of the perpetrators of rape are males aged at least 18 years, while 7.5 percent are male juveniles. For 2019, 98 percent of the defilement victims are girls.

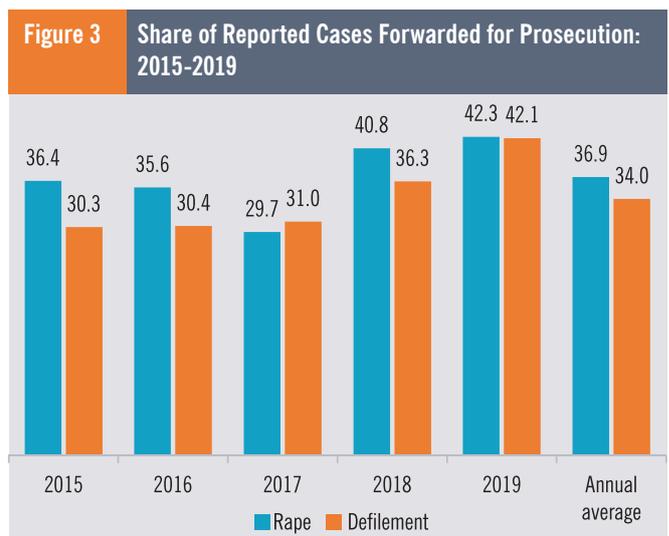
A substantial number of reported SGBV cases are undetected by Police. As such do not stand a chance for the perpetrators to appear in Court. Figure 2 examines trends in the Uganda Police Force (UPF) performance in handling sexual offences over three years, i.e. 2017, 2018 and 2019. Over the three years, on average, 21 percent of reported sexual crimes go undetected. Several reasons explain the relatively high share of undetected SGBV cases including the limited number of criminal investigation department (CID) officers to effectively investigate reported cases—especially the lack of specialised officers to handle SGBV cases. Also, interventions by family members of perpetrators—who attempt to frustrate SGBV cases before they reach the ODP. Finally, delayed/inadequate medical examinations of the victims; and victims’ loss of interest in the case due to the associated stigma—especially in rape cases.



Source: Uganda Police Force Annual Crime Reports for 2017, 2018, and 2019.

Figure 2 also shows that the share of submitted cases to the ODP/Resident State Attorney (RSA) that result in court action has significantly increased in the recent past. For example, between 2017 and 2019, the share of submitted defilement cases resulting in the accused being charged increased from 69 to 81 percent. This suggests that police officers are increasingly collecting sufficient evidence to enable the sanctioning of the cases to Court. The success in sanctioning of cases is also partly attributed to the increasing practice of prosecutor-led investigations by the ODP. However, the share of reported defilement cases dismissed at the police stations has remained constant at about 2 percent over the three years (not indicated in the chart).

The rate of prosecutions and sanctioning for rape and defilement cases are still low: Sanctioning occurs when a State Attorney has examined the evidence in the case file and is satisfied that such evidence can sustain the charge/offence preferred against the suspect in the courts of law. A substantial number of registered rape and defilement cases do not make it to Court for prosecution. On average, about 3 in every 10 rape cases reported to Police and 4 in 10 defilement cases reported to Police do end in Court (Figure 3). It is also worth noting that a relatively lower share of defilement cases is forwarded for prosecution in comparison to rape cases. The low rates of prosecution of SGBV cases are attributed to; delays in investigations mainly due to underfunding, lack of adequate skills in collection, preservation and presentation of forensic evidence, poor interviewing skills and poorly recorded statements from sexual violence victims, poor filling of the Police Form 3 by Medical officers, lack of investigation equipment for analysis of evidence samples especially in up-country police stations, and understaffing. For instance, the Criminal Investigation Department (CID) currently has only 5,292 personnel instead of the approved 19,843, leading to work overload in carrying out investigations.⁵ Also, the practice of encouraging aggrieved parties to resolve the matter outside Court (due to the potential hefty sentence upon conviction) is responsible for the low rates of prosecution of sexual offences.



Source: Uganda Police Force Annual Crime Reports 2015-2016

Worse still, the cases that are forwarded to ODP for prosecution suffer from low sanction rate. On average, only 58 percent of the newly registered rape and defilement cases by ODP are sanctioned annually (Figure 4). This implies that every year at least four out of every ten newly registered cases

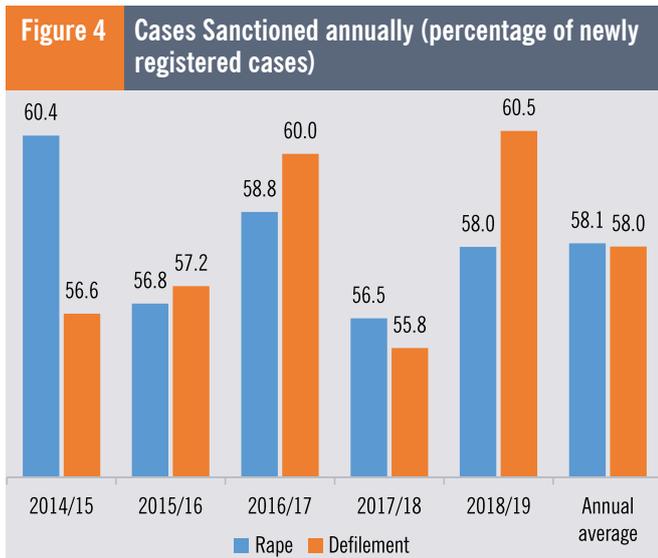
are carried forward to the subsequent year before beginning the process of prosecution, which undermines timely access to justice by the victims. Such a low rate of sanctioning gives the perpetrators and the community a sense of impunity, allowing them to continue with their criminal practices. The low sanction rate can also be attributed to staffing gaps, delays in completion of forensic reports, and weak coordination with Police and the prevailing Court-cases backlog (JLOS, 2019). For instance, some districts have no RSA to sanction such SGBV case files.

rate for rape cases declined by 19.3 percentage points while the dismissal rate increased by 17.3 percentage points.

The above statistics are also attributed to lengthy court procedure characterised by numerous adjournments—which frustrates witnesses causing them to lose interest in the case and fail to attend Court (UPF, 2018). Over time, victims become unwilling to testify in Court because they have moved on with their lives or overcome the trauma.⁶ In other instances, the witnesses are compromised with bribes or intimidated by the offenders. Beyond frequent adjournments, court environments are not survivor friendly. Specifically, in several Courts, there is no provision for victims to testify in camera. Furthermore, no priority is given to cases involving women as litigants or witnesses so that they leave early to attend to their family chores.

Nonetheless, the Special-Court sessions instituted by JLOS since 2018 to handle GBV cases have been commended for expediting justice to the victims. The 2018–19 JLOS Annual Performance Report notes that under the special SGBV Court Sessions, at least 788 cases were disposed of, and 78 percent of these were defilement (JLOS 2019). However, the training provided to court officers for special sessions is insufficient, given the short duration. Furthermore, the quality of justice for the cases disposed off under special sessions remains something to ponder about. Besides, the 2019 JLOS report highlights the lack of a victim/witness support system and failure to trace witnesses due to the long duration between filling and hearing of cases as some of the reasons for the dismissal and eventual acquittal of cases (JLOS 2019).

Furthermore, there are inherent weaknesses among prosecutors which limit the number of convictions. For instance, some committal papers do not disclose the ingredients of the offence and have insufficient summaries of evidence. The current low conviction rate for rape and defilement cases means that attainment of the 2021 JLOS target—of achieving 64 percent conviction rate for violence against women and children cases—remains an ambitious target to achieve.⁷



Source: Office of the Director of Public Prosecutions (2020)

When prosecuted, rape and defilement cases also suffer from high rates of dismissal and low overall conviction rate: Table 1 below shows that 46 percent of rape cases, 25 percent of aggravated defilement and 51 percent of simple defilement cases are dismissed annually. The conviction rate stands at an annual average of 49 percent, 62 percent, and 46 percent for rape, aggravated defilement, and simple defilement, respectively. Furthermore, between 2016/17 and 2018/19, the conviction

Table 1 Outcomes of SGBV cases prosecuted by ODPP, 2014/15–2018/19

Action /Case(s)	2014/15	2015/16	2016/17	2017/18	2018/19	Annual average
Conviction rate (%)						
Rape	45.0	38.4	63.7	55.8	44.4	49.4
Aggravated Defilement	56.9	64.2	69.9	52.5	67.3	62.1
Simple Defilement	43.8	43.8	47.6	45.6	48.7	45.9
Dismissal rate (%)						
Rape	52.1	58.7	30.8	39.6	48.1	45.9
Aggravated Defilement	39.8	31.9	26.8	43.2	31.7	34.7
Simple Defilement	52.5	53.8	49.6	50.8	48.2	51.0
Acquittal rate (%)						
Rape	3.0	2.9	5.6	4.6	7.4	4.7
Aggravated Defilement	3.4	4.0	3.3	4.3	1.0	3.2
Simple Defilement	3.7	2.4	2.9	3.6	3.1	3.1
Number of closed cases due to lack of evidence						
Rape	323	334	271	292	111	266
Aggravated Defilement	522	399	421	392	250	397
Simple Defilement	1,341	1,405	1,021	1,046	939	1,150

Source: Office of the Director of Public Prosecutions (2020)

Lack of evidence: Table 1 above also shows that many sexual offences are closed annually due to lack of evidence. For instance, over the five years, an average of 266 rape cases, 397 aggravated defilement cases, and 1,150 simple defilement cases were closed annually due to lack of evidence. This is partly attributed to delays in reporting cases by victims. Families of the victims tend to first engage in negotiations with the perpetrators, before reporting to Police.⁸ Furthermore, for defilement cases, some parents/guardians of the victims distort evidence by conniving with alleged offenders to alter the child’s age which diverts the course of justice after receiving bribes.⁹ Also, whereas DNA samples (including hairs, semen, and bodily fluids) must be collected within 72 hours to prove that sexual contact took place, many victims report to health facilities after this duration. The limited laboratory/testing facilities in rural settings further complicates this requirement. Potential evidence to be used in Court is also compromised by lack of sufficient scene-of-crime officers, weak technical capacity of officers to collect the evidence, and limited awareness among medical officers on the importance of proper filling

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of the Police Form 3—used a medical examination of victims of crimes.

Conclusions

Rape and defilement cases are the most frequently reported sexual offences in Uganda, with the latter considered the second-highest crime after common assaults. Despite the gravity of these cases, less than 4 in every 10 of these cases are forwarded by Police for prosecution. This leads to a subsequently low sanction rate. Worse still due to absence of substantial evidence, intimidation of victims by perpetrators or community, limited staffing and financial resources to operationalise the justice system at full capacity, fewer cases are convicted, and many more dismissed or closed at the onset. Given that rape and defilement have a gender bias—in which women and girls are the victims, access to justice for these persons is futile. Furthermore, the financial ability of these traumatised women and children to sustain these cases is low. Also, cultural norms, though not examined in this brief, come into play, where victims sometimes are alienated from communities or societies. All these have grave implications in the actualisation of the aspirations of National policy on elimination of GBV and meeting the specific SGD 5 and 16 Indicators by 2030.

Recommendations

- a) **Strengthen community capacity to demand human rights protection and to pursue justice to its logical conclusion.** Deeper sensitisation of the public on their rights and the health and legal implications of sexual violence cases is needed to reduce stigma among the victims, encourage reporting, and support witnesses to testify in courts of law.
- b) **Enhance specialised technical capacity across the JLOS system to handle** sexual violence cases in a gender-sensitive and victim-friendly manner. This involves the use of standard operation procedures and holding officers accountable for non-compliance to set standards. There is also need to build the capacity
- c) **Allocate adequate budget to strengthen the infrastructure for investigation, prosecution and adjudication of sexual violence cases.** There is also need to increase technical and financial resources to fast track investigation and prosecution of cases. This includes; purchasing of equipment for evidence collection and storage and enhance access to analytical laboratories. Also, recruit and train investigation officers, judges and magistrates to accelerate investigations and prosecution of the cases.
- d) **Ministry of Health should deepen training for medical officers on how to fill the Police Form 3.** The ministry also needs to institute measures to handle medical officers who demand payments from survivors and ensure community awareness and access to Post-Exposure Prophylaxis (PEP) for HIV prevention and emergency Contraceptive pills in case of rape.
- e) **Strengthen victim and witness support across the JLOS system.** There is need to set-up specialised desks/offices and strengthen the CID sexual offences Unit and Child and Family Protection Department within the Police across all districts, establish victim waiting areas and breastfeeding rooms and promote victim education on their rights in the justice system. This will foster the protection and safety of witness testimonies needed to successfully prosecute and sentence perpetrators of criminal acts.
- f) **Strengthen data generation and management capacity across all JLOS institutions mandated to handle SGBV.** There is also need to support the generation of disaggregated/granular data to better inform policy and programming.
- g) **Coordination among formal justice actors to ensure effective management of GBV cases.** This can be done through prosecution led investigations and case conferencing.

Endnotes

- 1 Uganda Police Force (2020). Annual Crime Report 2019
- 2 SDG 5 specifically target 5.2 on elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, and Goal 16-targets 16.1 on significantly reduce all forms of violence and related death rates everywhere; 16.2- end abuse, exploitation, trafficking and all forms of violence against and torture of children, 16.3 which promotes the rule of law at the national and international levels and ensure equal access to justice for all.
- 3 Mugambwa, (2019). <https://www.kuchutimes.com/2019/11/16-days-of-activism-2019-rape-and-defilement-in-uganda-a-fight-for-all-women-and-girls/>
- 4 Uganda Bureau of Statistics (UBOS) and ICF. 2018. Uganda Demographic and Health Survey 2016. Kampala, Uganda and Rockville, Maryland, USA: UBOS and ICF.
- 5 UPF (2019). Annual Crime Report 2018
- 6 (National Child Protection Working Group, 2018).
- 7 Justice Law and Order Sector (2019). Annual Performance Report 2018/19
- 8 Uganda Women Parliamentary Association (2015). Sexual Offences Bill (SOB) 2015: Fast tracking legal reforms on SOB. Policy brief
- 9 Uganda Police Force (2016). Annual Crime Report 2015

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