

Delayed access to justice for sexual gender based violence in Uganda and implications for gender SDG targets.

Executive Statement

Although the number of sexual gender based violence cases has declined during the past five years, prosecution and sanctioning of these cases remain very low. Worse still, cases that make it to the courts of law are characterised by high rates of dismissal and low conviction rates. This brief examines the reasons for this worrying trend and what it implies for attaining gender SDG targets. We recommend measures such as sensitisation, increased financing and staffing of the judicial system, and building infrastructure for testing evidence samples which would help in expediting justice for the victims. In addition, publicising rape and defilement prosecutions cases and handing down tougher sentences would go some way in reversing the impunity by perpetrators to continue such very harmful practices. In addition, we call for investing in investigative infrastructure to facilitate timely prosecution and strengthening of victim and witness support systems to protect victims and eye witnesses

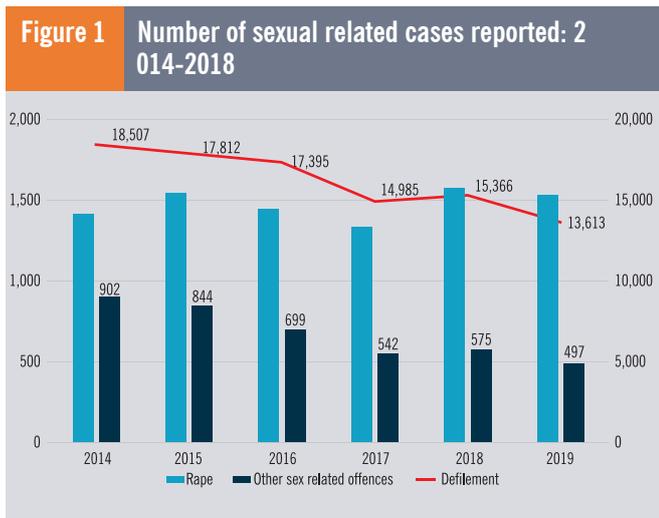
Introduction

The number of sexual offence cases—notably defilement and rape—remains large 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 2014.¹ Despite the reduction in the number of reported cases of Sexual Gender Based Violence (SGBV), nearly half of the perpetrators/offenders go unpunished. Furthermore, beyond SGBV, domestic violence has huge economic costs. Estimates by the Centre for Domestic Violence Prevention (CEDOVIP) showed that violence costs UGX 79 billion annually.² Such a large number of cases and accompanying economic burden poses a huge threat to the attainment of national development aspirations and Sustainable Development Goal 5 (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. The justice system needs to play its role in responding quickly to this continuing impunity as SGBV has grave consequences for the victims. In particular, rape and defilement can cause injuries which undermine the sexual reproductive health of the victims, lead to high risks of contracting diseases like HIV and other Sexually Transmitted Diseases, and unwanted pregnancies giving rise to young single parenting and forced marriages.³ It is from this perspective that this policy brief puts to light the effectiveness of the Uganda's judicial system in responding to cases of rape and defilement.

The policy brief examines the reasons for the low prosecution and conviction of SGBV 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 Uganda Bureau of Statistics (UBoS). In addition, key informant interviews were conducted to understand the reasons behind delayed justice.

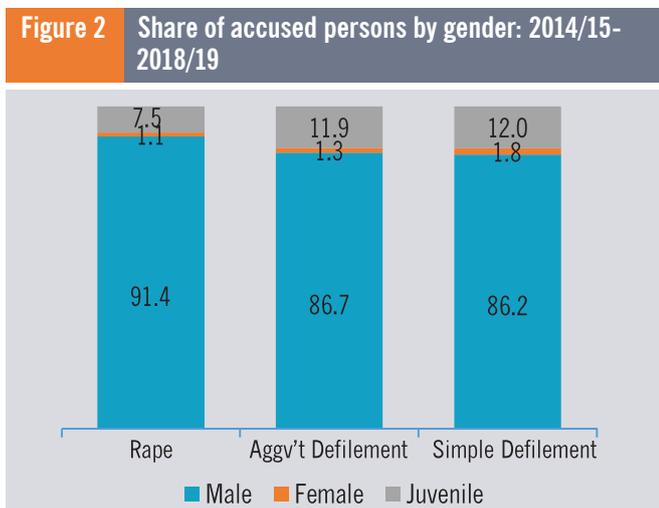
Key Findings

Defilement is the most commonly reported sexual related offence: Defilement offences, though declining over time, continue to remain by far the most reported cases to police irrespective of year. Figure 1 shows that defilement cases declined by 26.4 percent between 2014 and 2019. Nonetheless, despite the decline, these increased by 381 cases in 2018 from 2017. In addition rape cases reported to police were highest in 2018 compared to the previous years (Figure 1). More specifically, rape reported cases increased by 7.7 percent between 2014 and 2019 with the largest change registered between 2017 and 2018 (an increase of 18.4 percent). According to UPF (2020), defilement is the second ranked criminal offence, *after common assaults*, in Uganda with majority of case arising from rural areas.



Source: Uganda Police Force, 2020

Men are the biggest perpetrators of rape and defilement: As would be expected, majority of the rape, aggravated and simple defilement cases are committed by men. More succinctly, over a five year period, an average of 91.4 percent of the perpetrators of rape are males while 7.5 percent are juveniles (Figure 2). Similar observations are noted for aggravated and simple defilement where on average over 86 percent of accused persons reported are men with the offences committed on women and girls. In addition, the victims might not report other persons such as close family, friends, neighbours and community leaders.



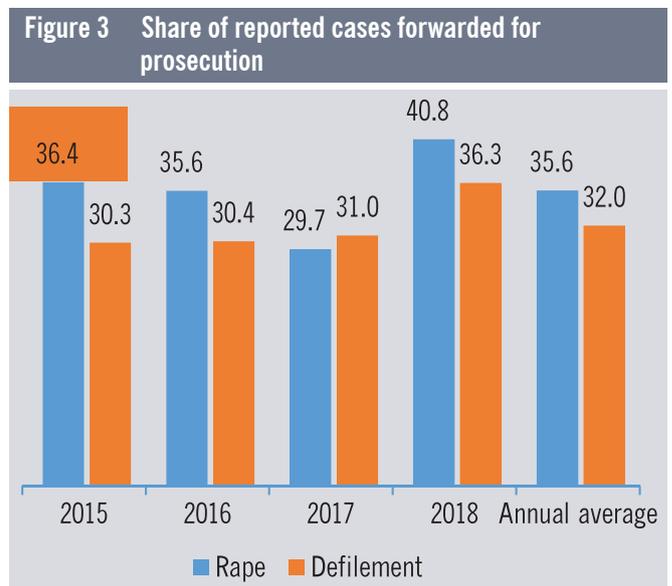
Source: Office of the Director of Public Prosecutions (2020)⁴

The rate of prosecutions and sanctionings 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 only 3 out of every 10 reported rape and defilement cases are forwarded by police to court for hearing (Figure 3). More so, there

was at first a decline in the percentage of rape cases forwarded from police for prosecution between 2015 and 2017 (from 36.4 percent to 29.7 percent respectively) however, these increased to 40.8 percent in 2018. While there was stagnation in the share of defilement cases referred for prosecution since 2015, the share increased by 6.6 percentage points between 2017 and 2018 (Figure 3).

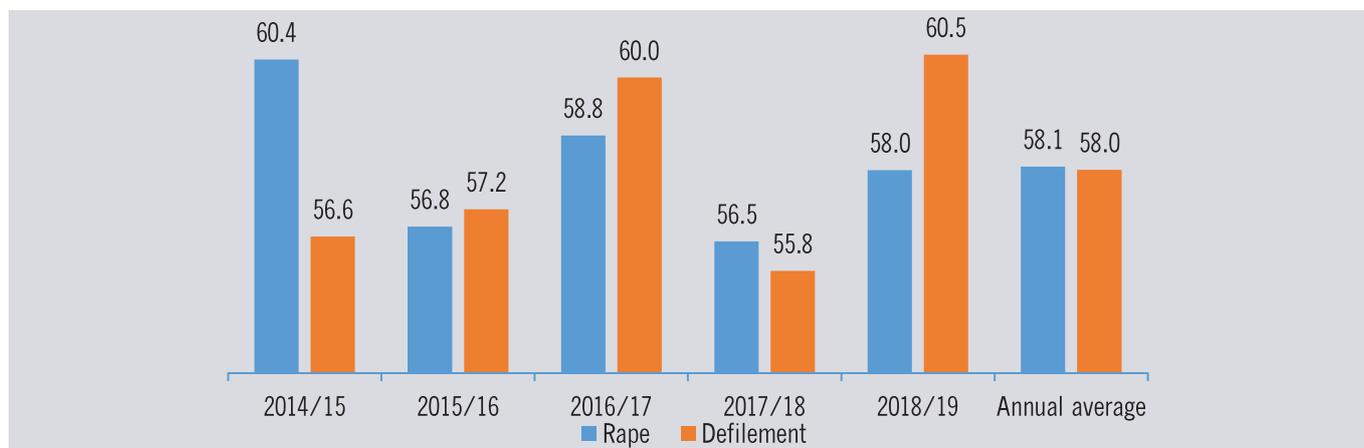
It is thus important to highlight that, despite the number of defilement cases being high compared to rape cases, a relatively lower share in the number of defilement cases forwarded for prosecution due to several reasons. First, this could be linked to both delays in investigations attributed to underfunding, understaffing and lack of equipment for analyses of evidence samples in defilement cases particularly in up-country police stations. 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 In addition, there is a tendency for police to informally encourage parties to resolve the matter outside court (due to the potentially heavy sentence upon conviction) and this is responsible for the low rates of prosecution sexual offences. A key informant interviewed as part of this study reveals that:

“A person comes to the police station and opens up a domestic violence case and she disappears forever. You try to follow up the case until you get frustrated. Sometimes the victim tells you she is no longer interested in following up the case. At times victims or their relatives connive with local council leaders and settling matters at household level” **Commissioner Child and Family Planning Unit (CFPU) in the Uganda Police Force (UPF)- December 2017**



Source: Uganda Police annual crime reports

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 are sanctioned annually (Figure 4). This simply implies that every year at least four in ten newly registered cases are carried forward before beginning the process of prosecution which undermines timely access to just by

Figure 4 Cases sanctioned annually (% of newly registered cases)

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

the victims. Such low rate of sanctioning gives the perpetrators a sense of impunity, allowing them to continue with their criminal practices. The low sanction rate can be attributed to staffing gaps, delays in completion of forensic reports, and weak coordination with Police (JLOS, 2019) and the prevailing court case backlog. For instance, some districts have no Resident State Attorneys to sanction some case files.

When prosecuted, rape and defilement cases also suffer from high rates of dismissal and low overall conviction rate:

Close to five in ten rape cases (46 percent), three in ten cases of aggravated defilement (25 percent) and five in ten cases of simple defilement (51 percent) concluded annually are dismissed (Table 1). The conviction rate stands at annual average of 49 percent, 62 percent, and 46 percent for rape, aggravated defilement, and simple defilement respectively. More so, the conviction rate for rape cases declined by 19.3 percentage points while the dismissal rate increased by 17.3 percentage points between 2016/17 and 2018/19.

The above statistics are also attributed to over adjournment of cases which frustrates witnesses causing them to lose interest in a case and fail to attend court (UPF, 2018). In addition, lack of a victim/witness support system and failure to trace witnesses due to the long passage of time between filing and hearing of cases have stagnated dismissal and acquittal cases (JLOS, 2019).

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—will be a very tall order.⁶ On the other hand, the high dismissal rate for rape and defilement cases points absence of witnesses (in some instances, the witnesses are compromised with bribes or intimidated by the offenders). The length court procedure is also partly responsible for the disappearance of witnesses. For instance, over time, victims become unwilling to testify in court because they have moved on with their lives or overcome the trauma.⁷

Table 1 Status of concluded cases annually

Action /Case(s)	2014/15	2015/16	2016/17	2017/18	2018/19	Annual average
<i>Conviction rate</i>						
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
<i>Dismissal rate</i>						
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
<i>Acquittal rate</i>						
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
<i>Closed cases</i>						
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)

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Lack of evidence. A large numbers of sexual offenses are closed annually due to lack of evidence (Table 1). For instance, over the five year period, 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 affected families. For instance, there is evidence to show that families of the victims delay to report the cases by first engaging in discussions/negotiations with the perpetrators.⁸ Furthermore, for defilement cases, some parents/guardians of the victims can distort evidence by conniving with alleged offenders to alter the child’s age to divert the course of justice after receiving bribes.⁹ In addition, whereas it is stipulated that DNA samples must be taken within 72 hours from the occurrence of the incident, this may not occur in rural setting. Overall, delayed reporting of such crimes can end up compromising the available evidence.

Conclusion

Rape and defilement cases are the most commonly reported sexually related offences with the later considered the second highest crime after common assaults reported in Uganda. Despite the gravity of these cases, less than 4 in every 10 of these cases are forwarded by police for prosecution with an equally low sanction rate. Worse still due to absence of substantial evidence, intimidation of victims by perpetrators or society, limited staffing and financial resource to operationalize the judicial system at full potential, fewer cases are convicted and many more dismissed or closed at the onset. Given that rape and defilement has a gender bias in which more women and girls are the victims, access to justice for these persons is futile. Again, the precious financial situation of these already vulnerable traumatised women and children to sustain such cases when reported is

very low. In addition, cultural norms come into play, where victims sometimes are alienated from communities or societies. All these have grave implications in meeting the SGD 5-target 5.2 indicators by 2030.

Recommendations

- **Sensitisation, increase financing and staffing of the judicial system.** Sensitisation of the masses would help reduce stigma among the victims and encourage reporting of sex related offense. However, for the judicial system to effectively expedite justice to the victims, there is need to increase financial and human resources which would help speed-up investigations, enhance collection and storage of evidence, and enhance prosecution of the cases.
- **Publicise rape and defilement prosecutions with severe sanctions imposed** This would serve as a warning to the would-be perpetrators and thus deter future cases of rape and defilement.
- **Build infrastructure that deals with testing and offer services to victims.** Increasing access to analytical laboratories for evidence samples of rape and defilement would speed-up conclusion of police investigations. In addition, increased access to emergency health services and preventive measures for the victims such as Post-Exposure Prophylaxis (PEP) for HIV prevention would help reduce trauma among victims.
- **Strengthen victim and witness support systems;** Institutions in the Justice and law and order sector should open up functional desks/offices to protect crime victims and their witnesses while safeguarding reliable witness testimonies needed to successfully prosecute and sentence perpetrators of criminal acts.

Endnotes

- 1 Uganda Police Force (2020). Annual Crime Report 2019
- 2 CEDOVIP (2015). Economic costs of Domestic violence in Uganda <http://www.cedovip.org/index.php/resources/reports/5-economic-cost-of-domestic-violence-in-uganda/file#:~:text=Most%20important%2C%20experience%20of%20DV,the%20after%20effects%20of%20DV.>
- 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 The Office of the Director of Public Prosecutions (2020) ODPD Case Statistics for 2014/15-2018/19 (Kampala: ODPD)
- 5 UPF (2019). Annual Crime Report 2018
- 6 Justice Law and Order Sector (2019). Annual Performance Report 2018/19
- 7 (National Child Protection Working Group, 2018).
- 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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