

Child sexual violence: Enhancing access to justice

POLICY BRIEF

By National Child Protection Working Group

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Brief 1

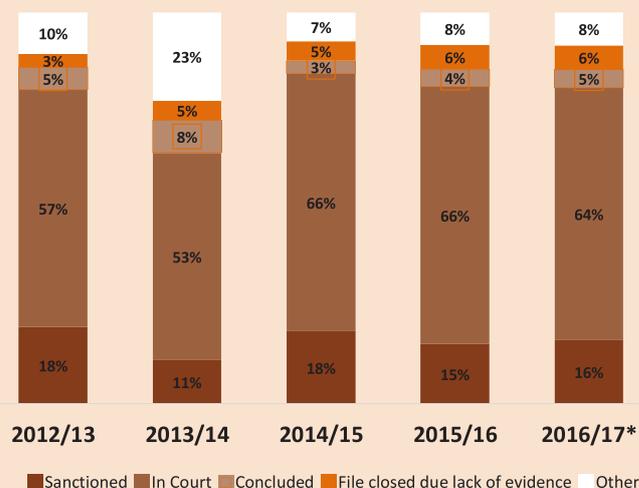
Introduction

A large proportion of children in Uganda experience sexual violence but do not seek help. Specifically, according to the 2015 Violence Against Children (VAC) survey, among children aged 13-17 years, one in four girls (25 percent) and one in ten boys (11 percent) reported sexual violence in the past year. Despite the widespread experience of sexual violence by children, only a few cases are reported to the authorities, which adversely impacts children's access to justice. In 2017, only 14,567 defilement cases were reported to the Uganda Police Force (UPF) up from 7,690 in 2011.¹ Even among the reported defilement cases, a substantial proportion go unpunished because suspects are arrested in less than half of the reported cases. Furthermore, according to the statistics from the Office of the Director of Public Prosecution (ODPP), out of 1,594 new rape cases and 7,618 defilement cases referred by the UPF to the ODPP in 2015/16, only 57 percent were sanctioned i.e. where the State Attorney was satisfied that evidence on the case file was sufficient to sustain the charge in Courts of Law.² Such low levels of perpetrator apprehension enable impunity, allowing perpetrators to continue harmful practices and exacerbating the sexual violence faced by children.

During the 2017 National Learning Event on Child Wellbeing, which had the theme *"Applying legal and policy frameworks for improved child wellbeing"*, the widespread prevalence of violence against children at the household level was a major concern. It is against this background that the National Child Protection Working Group (NCPWG) is producing this particular brief which describes the policy issues faced by children who seek services after experiencing sexual violence and do not receive them. It is based on a nationwide survey report the **2018 Violence Against Children Survey (VACS)** study that assessed the lifetime prevalence of exposure to sexual, physical, and emotional violence among 13- to 24-year-olds.⁴ Furthermore, the survey captured information on whether the children where to seek services and whether they utilized known services. Finally, the survey captured the reasons for not seeking services.

Figure 1: **Handling of sexual violence cases by the ODPP, 2012/13-2016/17**

Percentage distribution of sexual violence cases in the DPP 2012/13-2016-2017



Source: ODPP case management statistics (2017).³

Duty bearers are not fully addressing reported cases

Despite substantial capacity building by different actors, some of the duty bearers still lack the sufficient capacity to support children affected by sexual violence. For example, health workers lack expertise in examining and documenting evidence using the revised Police Form 3 and do not understand how to facilitate a survivor's access to justice. Some health workers do not record the victim's prior sexual experience, if any, although such prior sexual experience can be used in court by defence lawyers to question the survivor's *"victimhood"* to the detriment of the victim. Even when prior sexual experience is documented, defence lawyers can raise questions regarding previous unreported sexual violence experience. Partly as a consequence, approximately one in every four rape or defilement cases registered at the ODPP is closed due to lack of evidence.

Using informal means to settle defilement cases

Despite the availability of the 2010 Gender Based Violence (GBV) Act and The Penal Code, the use of informal methods of settling sexual violence cases involving children persists. Due to the stigma associated with sexual violence cases, e.g., name calling, as well as attempts to preserve the honour, respect and integrity of families, victims may be forbidden to speak out. Families may choose alternative ways of settling defilement cases, especially if the child is an adolescent. The methods adopted include receiving money from the perpetrator as compensation for the crime committed and even negotiating for the perpetrator to marry the victim. Poor households are forced to negotiate marriage with the perpetrators, especially in anticipation of receiving dowry or gifts such as cows and goats that would improve the family's economic situation. Indeed, the results of the 2011 Uganda Demographic and Health Survey (UDHS) show that for some women, their first sexual encounter was forced. However, when the victim ends up marrying the perpetrator, she often face lifetime negative consequences. Furthermore, such informal cultural approaches to addressing defilement cases have a number of implications for the victim and, ultimately, the justice system if the sexual assault is followed by an arranged/negotiated marriage. For example, the victim may not be willing to testify after they have entered an arranged marriage with the perpetrator. Additionally, the Uganda Police Force may find it challenging to enforce the law if the crimes culminate in an arranged marriage. For instance, given the victim's dependence on the perpetrator as a bread winner after an arranged marriage, any attempts to arrest the perpetrator may increase the victim's vulnerability. Furthermore, prosecution could lead to extended vulnerability of the victim, especially if the prosecution results in a conviction.

High burden of proof for defilement cases

As indicated in Figure 1, only a small proportion of sexual violence cases are concluded within a year approximately 5 percent every year. This is partly due to the large case backlog in courts i.e., the number of cases that have been in the court system for 2 years or more and this affects the scheduling of court cases involving sexual gender based violence (SGBV). Specifically, as of June 2018, the number backlogged cases was 31,580 or 21 percent of the cases before Courts of Law.⁵ The High Court where 62 percent of cases relate to SGBV accounted for 37 percent of all case backlogs. Furthermore, the Evidence Act especially with

respect to judging defilement cases is too demanding for cases involving children given Uganda's poorly resourced criminal investigation capacity. Specifically, the Evidence Act requires that

“the person accused shall be entitled to be acquitted of the offence with which he or she is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person with respect to that offence”.

This provision places a high burden of proof on the accused. Additionally, the institutions mandated to undertake investigations of defilement cases are poorly funded. For example, in some instance, the UPF has no proper storage for evidence, and it is often stored and carried in regular polythene bags. Such inappropriate storage can lead to substantial loss of evidence due to damage, including destruction by rodents. When evidence is stored in this informal manner, the likelihood that it will stand up to the demands of cross-examination in the courts particularly two or more years after the offence was committed are slim. In addition, most of the chemical analyses required for samples and evidence collected from up-country police stations for defilement cases can only be performed in Kampala, which further delays police investigations and the eventual prosecution of offenders.

Lengthy Court procedures

The average duration before criminal cases are resolved in Uganda is approximately 2 years; however, defilement cases can take up to 5 years to be resolved. Indeed, as noted above, a substantial proportion of backlogged cases relate to sexual offences involving children. The time until the case is eventually tried in the courts and the demands of cross-examination can take a heavy toll on children. Defence lawyers may want the victims to retell their story 5 years later the same way they told it in the original affidavit. Any minor changes to the story even after 5 years can raise issues regarding inconsistent testimony, questions of lying to court or not being sure, and the case can be thrown out on these grounds. In contrast, after time passes, defilement victims may not show up in court or may be unwilling to testify in court because they have moved on with their lives or overcome the trauma. Courts normally lose interest and dismiss cases due to the unavailability of witnesses. Furthermore, due to lengthy court procedures, duty bearers such as health workers may be reluctant to appear in court.

The absence of available professionals who can work with the evidence offered by victims affects the speed at which sexual violence cases are resolved. Additionally, defilement victims are often afraid to give testimony in open courts due to intimidation and fear. Because victims are reluctant to testify openly in courts, cases may also be dismissed on these grounds. Consequently, lengthy court processes affect the extent to which defilement cases are reported and pursued to achieve justice for children.

Addressing unintended pregnancies arising from violence

The VAC survey also showed that nearly one-third of 18- to 24-year-old females who experienced sexual abuse during their childhood became pregnant as a result (Figure 2). Even among girls aged 13-17 years who reported pressured or forced sex, 6 percent reported a pregnancy as a result. Children who become pregnant while they are students face the dilemma of whether to continue in school. Due to cultural norms associated with child sex, victims of sexual violence who become pregnant are often denied access to secondary education as an indirect means of controlling teenage pregnancy among the wider school population, regardless of the circumstances of the pregnancy. According to the Uganda Demographic and Health Surveys (UDHS), at least 47 percent of pregnancies among adolescents (aged 15-19 years) are unintended, and 92 percent of adolescent girls who have ever been pregnant leave school.

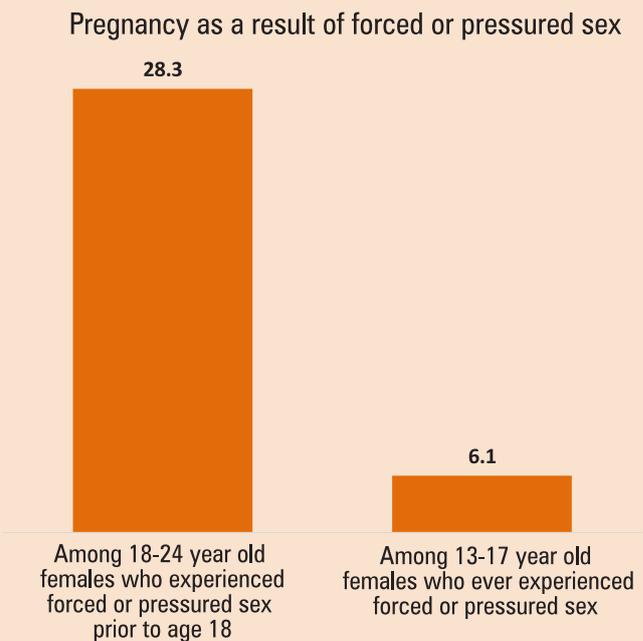
The draft guidelines by the Ministry of Education and Sports on “*prevention and management of HIV/AIDS, teenage pregnancy and re-entry of child mother in school settings in Uganda*”⁶ make it mandatory for school administrators to grant mandatory leave to expectant mother and re-admit them back into conditional on signing a commitment to return and stay in school. The same guidelines also call for school support with respect to examinations for adolescent who expecting. One of the provision states explicitly that,

“The School Administration should be flexible to allow the girl to prepare to sit for her end of year (promotional examinations) if she wishes to. For pregnant girls in candidate classes (Primary Seven, Senior 4 and Senior 6), it is mandatory that they are allowed to sit for the respective national examinations.”

In the recent past, there have been media reports indicating that the above provisions are yet to be upheld. Currently,

upholding the retention and re-entry policy for girls who become pregnant while still at school is left to discretion of the head teacher. There is an urgent need for the Ministry to fully adopt the guidelines on re-entry and disseminate the guidelines to all school administrators.

Figure 2: **Prevalence of pregnancy as a result of sexual abuse (%)**



Source: VACS Study 2018

Recommendations

Given the widespread prevalence of sexual violence, duty bearers should intervene through a national campaign possibly one similar to the national campaign against HIV/AIDS that was adopted in the 1990s. Such campaigns can help demystify the experience of sexual violence and address the stigma attached to reporting sexual violence. As government considers initiating such a nationwide campaign on violence against children in order to bring the issue to the forefront of the national agenda, it is important to underscore the fact that such campaigns should be delivered through grass-roots advocacy platforms. This is based on the understanding that on matters concerning children, communities are a much better placed as watch-dogs.

Furthermore, community based initiatives will help address social norms regarding sexual violence, specifically by considering all forms of violence as a power issue most people who commit violence do so from a point of power

i.e., having power over someone. Enabling communities to reflect on the use of power would greatly reduce violence in the home. Nationwide campaigns could also be used to address violence justified on the basis of religious norms, i.e., “*spare the rod and spoil the child*” quotations in the bible.

There is also need to speed up the adoption of the National Child Policy which clarifies on the age of marriage. This will ensure that informal arrangements of settling sexual violence offences such as agreeing to marry the victim are not allowed.

A survivor-friendly court environment should be ensured by making provisions for victims to testify behind screens or on camera, giving priority to cases involving children as litigants or witnesses so that they can leave early to attend to family care roles, providing pads and sanitary materials in toilets or upon request, providing government-funded legal aid services, providing spaces for breast-feeding mothers and child care and temporary shelters for survivors seeking justice, especially those from faraway places. In addition, in the hearing of defilement cases, the High Court Judges should hold sessions in the Child Friendly Courts (CFCs).

SGBV among children occurs frequently in Uganda; consequently, health facilities should budget adequately to provide comprehensive services to SGBV victims. Furthermore, there are negative attitudes towards completion of the required PF3 form, and some health workers provide inadequate information that may not be usable by courts. There is a need to train health workers on the appropriate handling of SGBV cases. For instance, there is a need to improve pre-hospitalization services and causality/emergency room services, including training emergency room staff to provide timely and quality emergency trauma care to mitigate the negative consequences of violence. In addition to treatment and counselling, health practitioners should be able to provide information on the options available to enable victims/survivors to seek redress, including reporting to the police or legal options, shelter, etc.

Having the government analytical laboratory services only available in Kampala is likely to perpetuate the delay in receiving justice by the survivors of sexual violence. We call for a decentralization of chemical analytical capacity to sub regions to enable the speedy conclusion of police investigations.

Endnotes

- 1 Uganda Police Force (2018) Annual Crime and Traffic/Road Safety Report 2017 (Kampala: Uganda Police Force)
- 2 Sanctioning means that 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. Normally, the State Attorney appends his/her signature onto the charge sheet in approval of the preferred charge. That appended approval is what’s known as sanctioning a charge.
- 3 The Office of the Director of Public Prosecutions (2016) FY 2015/16 Performance Report (Kampala: ODPP).
- 4 Uganda Ministry of Gender, Labour and Social Development, United Nation’s Children’s Fund, The Afri-Child Centre for Excellence, USAID, and the U.S Centers for Disease Control and Prevention (2018). Violence against Children in Uganda: Findings from a National Survey, 2015. Kampala, Uganda: UNICEF, 2015.
- 5 JLOS (2018) JLOS Annual Performance Report 2017/18.
- 6 Ministry of Education and Sports (2018) Draft Guidelines on Prevention and Management of HIV and AIDS, teenage pregnancy and re-entry of child mothers in school settings in Uganda. January 2018

About the National Child Protection Working Group

The National Child Protection Working Group (NCPWG) was established in September 2009 and it replaced the Inter agency Sub-committee (IASC) on Child Protection Sub-cluster1 under the humanitarian response in Northern Uganda. Since its inception, the NCPWG serves as the local initiative to address coordination gaps in child protection programming and service delivery. The broad mandate of the NCPWG is to coordinate the efforts of child protection actors, identify and respond to key national child protection issues and provide a platform for linking, sharing information and learning within and among actors. In 2012, the MGLSD with support from Child Protection oriented development partners established a secretariat of the NCPWG within the department of Youth and Children Affairs at MGLSD as a step towards strengthening and mainstreaming the role and mandate of MGLSD on strengthening the national child protection system in Uganda. The NCPWG has close linkages with the relevant sub-national child protection structures including the District OVC Committees (DOVCC), District Community-based services Departments and the office of Probation and Social Welfare.