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## **The endangered girl child**

Evaluation of the reporting procedures and environment of defilement cases  
in the Zambia police service

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Paul Muyongo

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Southern and Eastern Africa Regional Centre for Women's Law, University of  
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*Dedication*

To the plight of the girl child.

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## CHAPTER ONE

### Introduction

The layman's definition of defilement is when a man has sexual intercourse with a girl under the age of sixteen years. Based on this definition, it is a criminal offence under the Zambian law for a man to carnally know a girl under sixteen years because it is assumed that a girl below this age should not engage in sexual intercourse. So the Zambian law under the Penal Code, Chapter 87, Section 138(1) states that:

Any person who unlawfully and carnally knows a girl under the age of sixteen years is guilty of a felony and is liable to imprisonment for life.

Section 138(2) further states that:

Any person who attempts to have carnal knowledge of any girl under the age of sixteen years is guilty of a felony and is liable to imprisonment for life.

Although the law is silent on the age of consent, it is assumed that any girl below the age of sixteen years cannot consent to sexual intercourse. This implies that consent is immaterial when a man defiles a girl child.

The scholarly and polemical literature on defilement is marked by a wide range of estimates regarding the number of defilement cases which remain unreported. Public policy and police interest aim to reduce the number of unreported defilement cases at least when failure to report the crime is a consequence of the victim's perceptions of the harsh response the report will receive from the family, the community and the police. An increase in the number of reported defilement cases to the police or other service providers paradoxically can be seen as a healthy sign indicative of growing victim confidence, though it may also, of course, reflect the growing number of committed offences (Hopkins, 1984:59).

Deciding to report a case of rape is a step most victims never take. If they do it is only the first step. The road to conviction and sentencing is long (Estrich, 1987:15). Because of the very nature of defilement cases, victims are uncertain about whether to report or not, not only to the police but also to their close associates like family members and friends. The victims tend to blame themselves for the ordeal they went through and they always wonder what response they will elicit if they tell somebody (Estrich, 1987, 15).

The police services are the starting point in the criminal justice system, therefore their perception and attitude towards defilement cases is important in the justice delivery system. The police need to develop and apply procedures for dealing with the victims of defilement which reflect an awareness of and an application for, the unique legal system that would benefit the defiled girl child.

## **Background of the study**

In Zambia defilement is causing considerable alarm because of its frequency and the way the press reports about it, in both print and electronic media. Hardly a day passes in Zambia without news from the media that a girl has been defiled, a man has been convicted for defilement and the case of defilement has been adjourned to a particular date. Public discussions have dominated the media, too, raising concerns about defilement. Generally defilement has been discussed in both private and public life. Due to the frequency of the reports in the media and the sexual nature of the issue, surrounded by factors of whether to report or not, it became imperative for me, as a law enforcement agent, to contribute to the existing body of knowledge, if any, by evaluating the Zambia police service roles and procedures. In this regard, the procedures and the role of the police were evaluated from the inception of a defilement report up to court. However, consideration was also given to other service providers like the Social Welfare Department and non-governmental organizations because, whilst it is agreed that the police is the starting point in the criminal justice system, these service providers are an integral part of the system.

## **Statement of the problem**

At present, few members of the public are satisfied with the capacity of the police to fulfill its original mandate of investigating crimes which would result in a conviction. General public opinion compels us to conclude that the original great expectations of the police have not been fulfilled. The loss of faith stretches to the capacity of the police in defilement cases whereby they are considered, by their nature, to be private wrongs.

The procedure the victim of defilement goes through from the time she reports the matter to the police up to the courts of law is quite long for the victim. The victim first comes into contact with the police procedures at the inquiries office which is an open office where reports are made and interviews are conducted pertaining to the alleged crime. The problem at the inquiries office is that a victim may be interviewed by more than one officer or in the presence of other complainants lodging different complaints.

In most circumstances, the victim is referred to the hospital for medical examination by officers from the inquiries office and she is usually not accompanied by a police officer. This means that officers at the hospital police posts attend the medical examinations. This further traumatizes the victim because in most cases she is the one who goes to the police post to go and call the officers who should attend the medical examination. There is a great likelihood that even officers at the post further interview her. The condition under which the examination is conducted also raises some questions as doctors who are males conduct the examination in a clinical way without regard to counselling.

After an examination, the victim goes back to the police where the report was made where she is then referred to either the Victim Support Unit or the Criminal Investigations Department where further interviews are conducted. The reason for further interviews either at the Victim Support Unit or the Criminal Investigations Department is to look for independent evidence which could

corroborate the victim's statement and the medical examination results. And if at all there is need to further investigate the case, the police are hindered by lack of transport and fuel. This delays the case and gives room to the suspect to run away.

Lastly the docket is referred to the prosecutions section where it is perused to determine whether there is evidence in the case. The statement from the complainant should be corroborated to ensure a conviction because, in present practice, even though not required by the law, it is not acceptable to take a woman's statement on its own as a basis for the charge of rape; it must be backed up by corroborative evidence (The London Rape Crisis Centre,1988). In addition, since corroborative evidence may include, for example, forensic evidence gathered at the medical examination and photographs of injuries, the victim might not have had the money to go for a medical examination and the police may not have a camera or film to take photographs. Besides lack of logistics, personnel, facilities, techniques and the community's continual unwillingness to report cases of defilement, there is great concern about the lack of training and qualifications of police officers who handle defilement cases.

### **Objectives of study**

The main objectives of study are:

- 1 To evaluate the reporting environment and procedures at police stations;
- 2 To ascertain responses of the police to cases of defilement;
- 3 To determine the factors that determine the non-reporting of defilement to the police;
- 4 To recommend measures that will create a good rapport between the police and the victim and the community.

### **Literature and law review**

Like in other countries in the Southern African region, Zambia's two systems of law have continued to develop almost separately. One is the formal system which has enjoyed more recognition and a large share of available resources such as personnel and infrastructure. It also needs more resources in order to access it. The other is the traditional customary law system, as well as numerous other rules and institutions which people rely on in order to conduct their daily lives. It is apparent that the latter system is more accessible to most of the people, mainly because it is more directly relevant but also to a large extent because it requires fewer resources to reach it. At the same time, however, it enjoys less recognition and commands fewer resources leading to an alienation of people from substantive legal services (Chuulu *et al.*, 1999: 1).

Despite Zambia having ratified many international human rights instruments which promote the rights of the girl child, these instruments are not yet enshrined in the constitution. The international instruments ratified or acceded are not self-executing. Therefore it is only when international normative standards are re-enacted into domestic law that the government can be

legally accountable. With regard to defilement, there are pieces of legislation in Zambia and these include the Penal Code, Chapter 87, the Criminal Procedures Code, Chapter 88, the Juveniles Act, Chapter 53, the Zambia Police Act (Amendment) Act No 14 of 1999, Chapter 107 and the Marriage Act, Chapter 50 of the Laws of Zambia.

Like other countries in the African region, Zambia's plural system of law has continued to develop almost separately. The statutory law has enjoyed superior recognition and its origin is from English law which was developed to serve the interests of the European colonialists. The traditional customary law has full legal and constitutional recognition and it encompasses rules and institutions which people rely on in order to conduct their daily lives. In terms of accessibility, statutory law requires more resources like personnel and infrastructure whilst customary law requires fewer resources.

With regard to defilement, there is conflict between the provision in statutory law and the perception in customary law about critical issues like age of consent, age of marriage and which interests prevail most between individual rights and family or community rights. The manifestations of the above issues depend on the socio-economic, cultural, religious, political and structural organization environment in which the girl child lives. Also the accessibility of the available legal system has an effect on what course of action should be taken in the event of the occurrence of defilement. These factors are clearly pointed out in illustration number 1 in the appendix.

Zambia has signed the following child-related conventions and instruments.

- The African Charter on the Rights and Welfare of the child;
- The Stockholm Congress against Commercial Sexual Exploitation of Children; and
- The Convention on the Rights of the Child (CRC).

There are also four specific policy instruments which promote the child's welfare. The first one is the National Child Policy which provides guidelines for improving the welfare and quality of life of children by consolidating all existing and proposed legislation pertaining to the Convention on the Rights of the Child. The second is the National Youth Policy which covers children and young persons and is administered by the Ministry of Sports, Youth and Child Development. The third one is the National Plan of Action (NPA) which provides guidelines for achieving total development of children through various survival, developmental and protective rights. The last is the National HIV/AIDS Policy which was drafted in 2002 and is currently under review by government departments and non-governmental organizations for revision and approval. The draft policy has provision for the care and support of orphans and vulnerable children. All four policies were adopted by Cabinet in August, 1994 (Government of the Republic of Zambia, 2002).

The Zambia Police (Amendment) Act Number 14 of 1999 which amended the Zambia Police Act, Chapter 107 established the Victim Support Unit which handles all types of abuse including child abuse, violence against women, property grabbing and victimization of the elderly (Convention on the Rights of the Child Report, 2002: 11). The Victim Support Unit of the police service is increasingly accepted and used by the general public as the police appear to ill-equipped to deal with cases involving sexual abuse of children (YWCA, 1999). This is further



complicated by the dual system of laws – statutory and customary laws. Customary law allows parents or guardians to obtain financial compensation from the perpetrator through payment of a fine. This causes the non-reporting of cases to the police or withdrawals if earlier reported once an agreement between the parent or guardian and the perpetrator has been reached.

The initial question which should concern the police in responding to complaints of defilement is ‘Did defilement take place?’ This fact should be established by a proficient police investigation, based on knowledge of law and the offences governed by law, rules of evidence and previous police experience in handling such complaints. Methods of gathering evidence, besides the process indicated above, include statements from witnesses and complainants, interviews with parents and children and general observation.

After observing and investigating home conditions and discussing the case with the family and witnesses, an evaluation of the situation should be made by the police officer. The evaluation should include those aspects of the case regarded as legally and socially significant: the seriousness of the situation, the need for immediate protection of the child, observations concerning the physical condition of the child, attitudes of parents, statements of witness, and the general condition of the home. This evaluation is not a social history, since it differs in purpose, scope and degree, but is simply a process of arriving at a police disposition.

A problem confronting the police is the need to develop and apply procedures for dealing with victims of defilement which reflect awareness and an application of the unique legal system which functions. Realistically, police officers gather information from persons and from the scenes of crime in every criminal case which they handle. Defilement cases should be as fairly and completely investigated as soon as possible.

However, there is a tendency for some officers to neglect certain facts in the investigation on the assumption that the Juvenile Court does not need or require detailed facts and evidence. This assumption is incorrect as full information concerning the case is always needed to sustain convictions.

The interview, broadly defined, is used in every stage of the criminal process and is probably the most common service used to influence others by commands, direction, guidance, suggestions, entreaties or merely expressing options. The interview is probably the most important means that the police office has for carrying out his investigations (Eldefonso, 1973: 294). Interviews with victims of defilement or any sexual offence deserve some degree of privacy in order for the victim to talk freely and comfortably with the officer. Conducting interviews with child sexual abuse victims must rank as one of the most demanding interview situations, due to the sensitivity of the topic, the reticence of victims, prior threats to maintain secrecy and the potential conflict between getting evidence and helping the child. This problem can be particularly acute when the child is a victim of familial abuse or when the victim is mentally handicapped.

Community opinion as to the enforcement of laws relating to defilement is invariably divided. The majority of the community appears to be indifferent to the problem. Whilst some want to report defilement cases to the police, others would rather deal with the matter at family or community level. This division of public opinion makes the police’s task even more difficult for it is not usually the case that the police are in close contact with the community. The police are almost powerless without the support of the majority who, all too frequently, are content in their

passive role. A police officer should be cognisant that there will always be a certain amount of resentment which has to be accepted. In order to improve community relations, every police officer must accept winning of public support and respect as a challenge to be faced (Eldefonso, 1973:347).

Police exercise substantial discretion and they do so almost invisibly. Police decide whether the woman's complaint is 'founded or unfounded' only 'founded' complaints are forwarded for possible prosecution (Estrich, 1987:15). The exercise of discretion by the police can imply discrimination, violence and other abuse practices. Personal judgments are often conditioned by emotional problems and predilections. In specific circumstances it is often extremely difficult to draw a reliable line between discretion and discrimination.

In almost every aspect of their work, the police must have contact with at least one other agency in the community. It must be recognized that the police services are only a part of the total community effort to promote the welfare of children and young people. For the police service to be more effective, they must plan in relation to the overall community programme as well as to the services offered by individual agencies. In so far as services to children are concerned, the police might bring to the attention of community planning bodies such matters as: the frequency of defilement, focal points of defilement, inadequacy of shelter care services and offices, accommodation for operations, need for additional personnel to serve the girl child, need for assistance in conducting community programmes and various services needed for families and children which are lacking.

Civil society organizations have carried out training programmes for police officers in an attempt to help them appreciate human rights issues. Out of their own will, the police approached the Young Women's Christian Association (YWCA) in 1995, to hold training workshops and help officers around the country to set up Victim Support Units which would provide basic counselling, support and understanding for victims of violent crimes. A two-week training course developed by the YWCA included awareness, human rights, violence against women, and personal testimonies by the victims of violence. Officers were given time to discuss their own frustration and working conditions during which they stressed the need for resources such as transport, office space, additional training and improved conditions of service.

Civil society now recognizes that, without political will, there is unlikely to be an improvement in the police attitude towards human rights. The police service is an important tool in upholding human rights in Zambia. Therefore any lapses in providing the necessary environment for protection of human rights has serious implications for society as it erodes the confidence society has in the system. It is incumbent upon the government of the day to provide an enabling environment for police to clearly understand their position in the sustenance and protection of human rights for the citizen ([http://afronet.org.za/the\\_observer/vol.3:5.htm](http://afronet.org.za/the_observer/vol.3:5.htm)).

## CHAPTER TWO

### **Methodology**

The grounded theoretical framework which informed this research assumed a high prevalence of defilement cases of girls between 12 and 16 years within the Ndola and Mufulira districts of Copperbelt Province and that only a few cases are reported to the police and proceed to trial. It was also assumed that the girl child, as a victim of defilement, is not given a free and fair hearing when reporting at the police station and during the hearing in the court of law. The reporting environment at the inquires offices, how and where the interviews with victims are done, and the stages, were explored and evaluated.

### **Data collection**

The study mainly employed the qualitative method of data collection which involved the combination of the lived realities of the defiled girl with assumptions about her social, economic, cultural and legal position in society. These approaches uncovered the constraints and influences the victims of defilement face with regard to whether to report the crime or not. This meant to uncover specific local characteristics of the formal law and the local customs and practices. However, quantitative information was collected with regard to the number of cases reported to the police, the number of cases in court, the number of victims and withdrawn cases. Therefore, I used four main methods of data collection and these were focus group discussion, in-depth interviews, observations and key informant's interviews.

### **In-depth interview**

A significant amount of data was collected through this method because it elicited most primary data. This technique of data collection was administered on parents and guardians of victims, defilers and other members of the public who had handled or reported a defilement case to the police or any service providers like non- governmental organizations. The victims of defilement were deliberately omitted so as not to remind them of the ordeal they had been through. The interviews were unstructured for wider knowledge on the subject matter. Since the research involved evaluating the procedures at police stations, some respondents were reluctant to talk but I had to explain to them that we cannot improve the services of the police with regard to defilement without uncovering the reality on the ground. This persuaded the respondents to talk more freely about their perception of the police.

### **Key informant interviews**

This type of interview was conducted with people who by the nature of their work come into contact with victims of defilement. The basic aim in interviewing key informants was to uncover information on legal, social, psychological (counselling) and organizational procedures, the reporting environment and interviews. The intention was to establish what role these key informants play when they come into contact with victims of defilement. The key informants included police officers, social welfare officers, officials from non-governmental organizations, doctors and magistrates. Initially I had a problem with obtaining data from the police because they said 'you know everything about the police'. This was especially the case with the criminal investigation department but other sections like the victim support unit were co-operative. Officials from non-governmental organizations were very co-operative especially since I came from the police – the starting point in the criminal justice system.

### **Observation**

This technique was employed to observe procedures and interviews when reports were being made at police stations, the gender dimension of officers in various sections at police stations, the court proceedings and in informal discussions in public places like bars and minibuses. I conducted observations in various sections in the police and used to introduce the subject of defilement in public places like bars and observe the interaction between revelers as they discussed the subject. The information obtained was triangulated with follow-up interviews with members of the community and other potential informants. The problem with the observation technique was that the discussions were not controlled and my presence at police stations made officers feel uncomfortable.

### **Research assumptions**

The research assumption which guided this study focused on the roles and procedures at police stations and members of the public's perceptions of the police with regard to defilement cases. I formulated my assumptions about the assumed problems and barriers likely to arise at each stage in the process of making a report of defilement.

#### **Inquiries office**

- 1 The reporting environment at the inquiries office that lacks privacy results in the traumatization of the victims.
- 2 Few or no women police officers in shifts at the inquiries office result in gender insensitivity in the handling of defilement cases.

#### **Victim support unit (VSU)**

- 1 Inadequate office space with no privacy hinders the operation of the victim support unit.
- 2 Lack of investigative and counselling skills of the unit's officers results in unprofessional handling of defilement cases.

### **Criminal investigations department**

- 1 The investigating officers take a long time to arrest the defiler even when he is known.
- 2 Incompetent and inadequate investigations result in cases of defilement not going to court.

### **Prosecutions**

- 1 The prosecutor's discretion to refuse or withdraw cases lacking corroboration disadvantages victims of defilement.
- 2 The prosecutor's failure to communicate court dates to victims of defilement results in withdrawals of cases.

### **Medical examination**

- 1 Failure by victims of defilement to pay for medical examination implies injustice to victims.
- 2 Conducting medical examinations in a clinical manner without considering the need for counselling further traumatizes the victim.

### **Members of the public**

- 1 The traditional belief that defilement is a private wrong results in reconciliation between the victim and the defiler.
- 2 The societal attitude encourages marriage between the victim and the defiler resulting in non-reporting of the crime to the police.
- 3 The loss of confidence in the police by members of the public results in not reporting defilement cases to the police.

### **Research questions**

Based on the above assumptions, the following research questions were devised to focus each stage of the reporting process.

#### **Inquires office**

- 1 Does the reporting environment at the inquiries office which lacks privacy further traumatize the defiled girl?
- 2 To what extent does having few or no women police officers at the inquiries office result in gender insensitivity in the in the handling of defilement cases?

#### **Criminal investigations department**

- 1 Why do investigating officers take so long to arrest a defiler even when he is known?
- 2 How do incompetent and adequate investigations in defilement cases result in the cases not going to courts?

### **Prosecutions**

- 1 To what extent does the discretion of prosecutors to refuse or withdraw cases lacking corroboration disadvantage the victim?
- 2 How does the failure by prosecutors to communicate court dates to victims results in acquittals or withdraws?

### **Medical examination**

- 1 What are the implications for justice if victims of defilement cannot pay for medical examinations?
- 2 How does conducting medical examinations in a clinical manner, without considering counseling, traumatize victims?

### **Members of the public**

- 1 How do traditional and customary beliefs that defilement is a private wrong warranting compensation and reconciliation affect the non-reporting of cases to the police?
- 2 To what extent do societal attitudes which encourage marriage between the victim and the defiler affect the reporting of cases to the police?
- 3 How does the loss of confidence in the police by members of the public affect the reporting of defilement cases?

### **Sample population**

Since the target of study was known before the commencement of the study, the sample was purposely selected. The sample included:

- 1 Police officers – both female and male officers so as to get their views on how they deal with cases of defilement, how they conduct the interviews and where, the causes of defilement and how gender sensitive they are.
- 2 Members of the public – these included men and women in order to establish the causes of defilement, their perception of the police and why some people do not report cases to the police.
- 3 Officials from other service providers – these included officers working for government departments like social welfare and non-governmental organizations like the National Women’s Legal Aid Clinic, Young Women’s Christian Association. The idea was to obtain information on what services they provided with regard to defilement cases and the extent of their co-operation with the police.
- 4 Medical personnel – to determine the environment in which medical examinations are conducted.

## CHAPTER THREE

### **The long road to the court**

The findings are presented stage by stage with the guidelines on the research assumptions which were formulated and their corresponding research questions. However, since other assumptions were challenged in the field, the emerging issues have been included so as to reflect the reality on the ground.

#### **Inquires office**

The inquiries office is an open office at every police station and police post where complaints by victims of crime are made, interviews are conducted, statements are recorded and finally the docket is opened. The office is staffed in three shifts:

Shift one – 24.00 hrs to 08.00 hours

Shift two – 08.00 hours to 16.00 hours

Shift three – 16.00 hours to 24 .00 hrs

The shifts are staffed by general duty personnel who basically handle complaints at the inquiries office. They receive or attend to complaints and determine whether the complainant is civil or criminal. If it is criminal, they look for the criminal element or evidence in the case. It is at the inquiries office that complainants in defilement cases first come into contact with the procedures at the police station.

#### **Lack of privacy at the inquiries office**

These offices are usually open and all police officers and members of the public have access to them. Through observation at both Ndola and Mufulira central police stations the general reporting environment of all crimes lacks privacy as interviews with both complainants and suspects are done in the open office. At times the complainant is interviewed in the presence of the suspect. As I was on leave during the period of the research, my presence at the inquiries office for observation made the officers uncomfortable; they often questioned my presence.

So in order to uncover the reporting environment at the inquiries office with regard to defilement cases, I targeted persons who had previously reported cases to the police. In a focus group

discussion with eight women who are helpers<sup>21</sup> from a non-governmental organization called Children in Distress (CINDI), the women said victims of defilement are interviewed in the presence of other complainants that come to lodge different complaints. One woman stood up and said:

At times the girl child can be interviewed by more than one officer at the same time without regard to whether the officers are male.<sup>22</sup> Its wholly dependent on the officers on duty, some officers, male or female, understand the sensitivity of sexual offence, as a result they look for alternative office space like the lecture room where they can conduct the interview.<sup>23</sup>

Some officers tend to ask irrelevant and embarrassing question like: Did you enjoy the sex? How did you feel when the man came out (ejaculated).<sup>24</sup>

It also came to light that most cases of defilement are reported at police posts which service the local community. The posts are cramped and when an interview is being conducted, the inmates in the cells can hear the discussion. This is not private and can make the victim of defilement reticent. The lack of gender sensitivity of some offices does create a hostile environment in the reporting process. Therefore there is need to sensitize officers on gender issues and to equip them with counselling skills.

For a defiled child to give a relevant, unbiased and accurate account of what happened, the interview must be conducted with absolute privacy and sensitivity. The interviewer should have considerable expertise so as not to further victimize the victim and the interviewer should go at the pace of the victim. The number of people present at the interview should be limited so that the victim can comfortably reveal information. Where possible, the accompanying adult or social welfare officer should be available to reassure and comfort the victim. However, it became rapidly apparent that in reality these conditions are not present.

#### **Few or no women police officers and gender insensitivity**

Through interviews with shift officers and a check in the shift files at both Mufulira and Ndola central police stations, I discovered that there is at least one woman police officer on duty in each shift. But the problem was the availability of women police officers at police posts where most reports are made. I discovered that if there were women police officers on duty at a police post, they worked mainly during the day. This meant that the reports made at night were attended to by the male officers who could not conduct a preliminary examination on the victim. Due to the sensitivity attached to matters pertaining to sexual offences, in an informal discussion at a local bar, one woman had this to say:

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<sup>21</sup> These are women working voluntary for CINDI and leave together with the Community and have made reports to the police.

<sup>22</sup> Comments by Mrs Banda

<sup>23</sup> Comments by Mrs Chola

<sup>24</sup> Comments by Mrs Chewe



When a woman is raped or a girl is defiled they only feel free to give account of what happened to a woman rather than to a man?<sup>25</sup>

And through this informal discussion two men (members of the public) mentioned that it is not all police officers – men and women – who are gender sensitive. Some male police officers still consider women as sex objects who should satisfy the sexual desires of men and that defilement is a private wrong, especially if it occurs within a family. The lack of female police officers, especially at police posts, makes it difficult for victims of sexual offences to report freely about the circumstances leading up to the alleged crime. In addition the purported view that defilement is a private wrong, especially if it happens within the family, contributes to the non-reporting of the offence and the resultant reconciliation between the victim and the defiler.

### **Victim support units**

The next stage in the procedure for victims of defilement is the victim support unit. This is a unit in the Zambia police service whose purpose is to handle all types of abuse against women, children and the elderly. The cases handled by the unit include child abuse, violence against women and property grabbing, to mention a few.

### **Inadequate office space**

At all major stations in Ndola and Mufulira there are victim support unit officers who handle the above-mentioned cases but in very small offices which are usually overcrowded. The overcrowding of clients or complainants at the unit offices makes the officers rush through the cases, thus allocating less time to the case than it deserves. In addition, due to inadequate office space, complainants are forced to wait for long hours prior to being attended to by the police officers.

During a discussion with officers from the victim support unit in Ndola with reference to defilement cases, the officers said that whenever they have such cases they do conduct the interview in private although they are constantly disturbed by knocks on the door by other complainants who also want to be attended to. This definitely disturbs the flow of an interview.

One officer in Mufulira said that since the inception or creation of the victim support units, less consideration has been given to creating office space or building offices which correlate with the nature of duties the victim support unit officers carry out. This has resulted in the units operating in conditions that do not generate the warmth and friendliness this environment warrants. The environment is typical of any other police offices, especially since the victim support unit officers are amongst other police offices. There is the likelihood of the victim of defilement seeing or hearing how the suspects in other crimes are being interrogated. This affects the victim's perception of the police and can make the victim reserved about what she wanted to say or even prevent her from cooperating with the police.

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<sup>25</sup> Comments by Mrs Chola

The police posts where most reports are made lack the service of victim support units because the units are only located at major police stations. Victims of defilement have to travel to major stations if they are referred to the units. These long procedures through referrals can discourage complainants from reporting and may lead to the loss of vital evidence. Therefore for the impact of the victim support units to be felt, their services should be decentralized so that the community has ready access to the services.

**Investigative and counseling skills of victim support unit officers**

The investigative and counselling skills of an officer are the basic tenets by which to judge the efficacy of the police .A good combination of the two skills will make victims of crime appreciate the justice delivery system, especially with victims of sexual offences.The table below shows the number of defilement cases dealt by the victim support units at Ndola and Mufulira central police stations.

Station	Reports made	Arrests made	Convictions	Withdrawn * cases	Acquittals	Pending ** cases	Total
Ndola	46	31	22	9	Nil	15	46
Mufulira	35	22	17	5	2	11	35

\*These are cases withdrawn at police stations by victims or complainants or their families, for example after reconciliation and compensation.

\*\*These are cases where arrests have not been made and cases are still in court.

By looking at the number of cases reported to the victim support units at the two police stations and the number of convictions secured in courts, one would conclude that the victim support unit personnel are doing their best with limited resources like inadequate office space and lack of transport and stationery. These figures represent the cases dealt with by the victim support unit officers which fall within their jurisdiction.

On the issue of counselling, I discovered that not all officers are equipped with counselling skills .One officer stated:

There is a tendency amongst senior officers to be attending every workshop or seminar where the counselling skills are taught.

Furthermore, in an interview with the officer in charge of the victim support unit in Mufulira, she maintained that there is need to equip officers at all levels who deal with victims of defilement with psycho-social counselling skills. This, according to her, is so they do not further traumatize the victims, but due to financial constraints, workshops or seminars rarely take place.

These revelations point to the need to train more police officers in counselling skills at all levels where cases of defilement may pass through the system. This will entail police officers not only looking at the criminal aspect as their training provides but looking at other factors which enable victims of defilement to open up.

### **Criminal investigations department (CID)**

During the research, it became prudent to find out what role the criminal investigation department plays at police stations in so far as defilement cases are concerned. As I am a senior officer in the CID, the initial interviews conducted with CID personnel proved futile as officers responded by saying: 'You know what happens in the department'. So to avoid influencing the responses in the research, I engaged an independent researcher, Charles Chabala, who is a fellow student at the Women's Law Centre to conduct the interviews on my behalf.

### **Delays in arresting suspects**

In most cases, whenever a report of defilement is made at the police station, the suspect is usually known by the victim and the victim usually gives the police his address or his whereabouts. In an in-depth interview with a senior officer from the CID, he said the whenever a report is made at the inquiries office or any section<sup>26</sup> of the police, the officers to whom the report has been made have a duty to arrest the suspect. But the trend is that officers tend to wait for the CID personnel to go and arrest the suspect and this delays the cases and it also gives time for the suspect to run away or hide and for evidence to be lost or tampered with.

The officer further said that:

The delays can also be caused by failure of some officers at the inquiries office to record a detailed statement from the victim or an independent witness and the absence of the medical report form in the docket.<sup>27</sup>

An interview with another officer revealed that some officers in the police 'personalize the dockets', that is, they secretly open the docket and then call the victim and the suspect at different times with a view to reconciling the parties. This can be done with the full knowledge of the complainant and or family when they want compensation.

Alternatively, the reconciliation can be instigated by the suspect. In such cases the officer is paid some money by the suspect or complainant or both. This means that some officers play a mediatory role rather than an investigative role.

The above narratives cannot go without comment. It is therefore required to establish a separate unit in the police to deal specifically with sexual offences and this unit should be closely supervised or monitored if the interests of the girl child have to be taken care of. Disciplined

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<sup>26</sup> This means any Police Officer, that is whether a prosecutor, Para military, bank guard summon server etc

<sup>27</sup> Anonymous Officer

officers with necessary investigative and counseling skills should be tasked to performing these duties.

### **Inadequate investigations**

During the research it was discovered that there are some factors which contribute to CID officers not adequately investigating cases in general and defilement in particular. First it came to light that officers face logistical problems like absence of transport, stationery, rape kits and fuel. The officers are forced to do investigations with the assistance of the complainants if they can provide a vehicle or fuel. But not all complainants can afford this because most victims and their families are economically disadvantaged. The victims and their families, if they report the case, struggle to find transport money for themselves and to meet bills for the medical examination. This was echoed by one helper from CINDI who said:

We reported the case at the local police post; we examined the girl on behalf of the male police officers. After that, we contributed money for transport to the hospital as the victim's family had no money. The suspect was a neighbour's relative of no fixed abode and he has since run away.<sup>28</sup>

Secondly, in an interview with the scenes of crime officers who fall under the CID it emerged that they have never conducted a preliminary examination on a victim despite having a limited number of rape kits. One officer from the scenes of crime unit in Ndola stated:

We are not consulted to do a preliminary examination on the victim when there is a report of defilement. We are on duty from 800 hours to 1700 hours and we can be contacted at home after working hours and on weekends. We have two motorbikes to service the whole of Ndola but we lack fuel at times.

There is need to sensitize officers about the importance of the scenes of crime officers so that vital evidence is not lost and to put in place resources that would enable officers to be mobile. In addition, it was observed that in both Ndola and Mufulira, the scenes of crime officers were male. This could be the reason they are not contacted, especially considering the cultural sensitivity attached to sexual offences whereas victims could more easily open up when dealing with fellow women. To address this problem, women police officers should be trained as scenes of crime officers so that they can examine the victims of sexual offences.

Thirdly in an interview with one officer from Mufulira, it was discovered that at times the suspect can be arrested and the complainant given a medical report for examination at the hospital, but upon being examined the complainant does not bring back the medical report form. During follow up on such cases, it is discovered that the relatives of the suspect and the complainant have reconciled without police knowledge. In such instances, the medical report is used as a 'ransom' so that there is compensation between the defiler and the complainant's family. With such a development, the police are forced to release the suspect.

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<sup>28</sup> Comments by Mrs Chewe

Therefore, whilst the police are striving to ensure that adequate investigations are conducted within their reach, other service providers or stakeholders should be enlisted to supplement the work of the police. The community should be sensitized on the basic need to consider the best interests of the girl child first.

## **Prosecutions**

Assuming that the case is further pursued by the police and a docket is transmitted to the prosecutors, there are some problems at the prosecutions stage. In Zambia the prosecutors in the magistrate's or subordinate court are police officers. They initially undergo the basic police training at police college on recruitment to the police. They should then undergo a prosecutor training course at basic and advanced level at the National Institute of Public Administration (NIPA). Out of the total number of prosecutors in the police, only a few have been to NIPA. The role of the prosecutors is to peruse the dockets before cause listing suspects to court and it is at this point that they have significant discretion.

### **Prosecutors' prerogative**

In an interview with a senior prosecutions officer, he maintained that it is not necessary to waste the courts' time or to prosecute a case in which there is no evidence at all. Therefore the prosecutors have the prerogative, for instance in terms of sexual offences, to not prosecute cases which lack evidence, for example, when a medical report form is not conclusive, that is, it does not indicate whether the victim was defiled or when the findings of the doctor are contrary to the allegations. The prosecutor was quick to point out that at every level in the police service, the police have the discretion to file a case or not depending on the available evidence. He stated that:

It is this discretion that the police use of whether to open or not to open a docket that the complainants and members of the public misinterpret to be corruption of officers.<sup>29</sup>

The above comment made by the prosecutor arises from the failure of some police officers to explain to complainants the reasons for not filing complaints officially and unfortunately also from corruption on the part of some police officers. However it is a matter of educating the public on what elements constitute defilement and encouraging the officers to cultivate a rapport with the public.

The requirements in relation to proving defilement are that there must be penetration (the issue of consent is immaterial), the girl should be less than sixteen years of age and there must be corroboration. On the issue of corroboration of evidence, another prosecutor said the Criminal Procedure Code; Chapter 88 of the Laws of Zambia makes it a requirement that the evidence of the child should be corroborated. This implies that the word of the victim alone without evidence to back it is not considered sufficient to obtain a conviction for defilement. This is based on the assumption that victims of sexual offences report cases out of spite, thus their words alone should

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<sup>29</sup> Anonymous Officer

not be relied on. The prosecutor remorsefully said that the issue of corroboration is a constraint to the prosecutor, especially in cases of sexual offences.

Because of the private nature of defilement, it is less likely to be supported by corroboration than other crimes. Mostly the victims are blamed for their victimization leading them to remain silent and to not report. Defilement is different from offences like thefts where corroboration is easy by virtue of finding the stolen goods in his or her possession but you could find semen, bruises or skin scrapings. However these are rarely found in practice because they are tampered with by the victims or during the long process of making a report.

### **Court environment**

Even if the case proceeds to court for trial, there are still other problems the victim of defilement will be subjected to. The Juveniles Act Chapter 53 of the Laws of Zambia provides for the establishment of the juvenile court where only interested parties to the case should be present in court. It also, together with the Penal Code chapter 87 of the Laws of Zambia, provides that cases involving juveniles should be held in camera and the children's names should be withheld from the public. However, through observations at the magistrate's courts during the research, I noted that in practice the juvenile courts exist but the sessions are not held in camera in either Ndola or Mufulira due to lack of these facilities. This implies that the victim has to directly face the suspect in open court. She will be directly cross examined by the suspect without even the presence of a social welfare officer or counsellor.

I observed that prior to the trial, the prosecutor interviews the victim to refresh the victim's memory of what transpired on the material time and date in an open environment. This is not done in privacy and it therefore further traumatizes the victims as she recounts the ordeal she went through. I also observed that whilst waiting for the case to come up for hearing the victims of defilement wander around the court premises with the likelihood of them meeting or seeing the defiler, especially if he is on bail.

Therefore, the existing court environment needs urgent redress. To ensure that the victim does not directly face the defiler, there is need to review court procedures by introducing the one-way mirror system where the victim can give evidence without seeing the defiler. The court should also provide a private room where the victim can be interviewed by the prosecutor and this will enable the prosecutor to have personal contact with the victim which might create a rapport between the two. The use of dolls and other props, when used properly could assist the prosecutor to get the statement rather than the victim being exposed to the open court environment.

### **Communication of court dates**

One problem that arises in the quest for justice in defilement cases is the failure to communicate court dates to the witnesses that could lead to the acquittal or discharge of the suspect. The prosecutions through the summon server have been tasked to ensure that all available witnesses should be informed of dates to go to court. An interview with one prosecutor informed me that they are faced with lack of transport and fuel and that some witnesses have no fixed abode. Complaints about communication of court dates extend even to service providers who want to

update their records. For example the person in charge at the Young Women's Christina Association, Ndola, noted that:

We also have an interest in the welfare of the girl child. It is unfortunate that we are not told the court dates. As a result most of the files on defilement cases we opened have no results from the court.<sup>30</sup>

The prosecutions section, by working hand in hand with the investigating or detailing officers, should cultivate a rapport with the victims and their families so that in the event of change of address, they can be informed in advance. In the case of the YWCA, especially since some cases are first reported to them and they provide psychosocial counselling to the victims, they should be notified of the court dates so that they equally have an aggregated database on defilement cases.

### **Medical examination**

In order to secure a conviction in a defilement case the victim should be medically examined so that the findings of the doctor corroborate the victim's account. The need for a medical examination of the victim is an integral part of the justice delivery system. The basic responsibility of medical personnel is to treat the complainant's injuries and to collect evidence required by the police and the courts. Based on their responsibilities in so far as cases requiring medical examinations are concerned they are both physicians and representatives of the criminal justice system.

#### **Cost of medical examination**

Having an examination conducted of the victim of defilement is requisite in criminal investigations and it demands a cost which should be paid by the victim. It came to light during the research that most cases of defilement are reported at police posts which usually service high-density areas. The socio-economic environment in these areas, coupled with the differential power relations between men and women, makes the girl child vulnerable to defilement. Through interviews with ten convicts at Kansenshi prison, I discovered that they all came from high density areas. This is not suggest that defilement cases only take place in high density areas but that most reports have been made from these areas.

An interview with two police officers revealed that the victim or her family have to pay K15 000 (fifteen thousand Kwacha which is an equivalent of US\$3). The officer at the inquiries desk stated:

Some victims and their families cannot afford to part with K15 000 for medical examination They complain about the cost of examination and to make matters worse, there are times when we have one medical report at the inquiries office so the complainants have to photocopy the report. Officers internally have no money to photocopy the report .<sup>31</sup>

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<sup>30</sup> Ms Cynthia Shawa

<sup>31</sup> Anonymours Officer at Hospital Police Post

However, through an interview with officers from the victim support unit, I learnt that a medical examination cannot be given to the complainant, in this cases the form. In such cases, the complainants are referred to non-governmental organizations that at times assist, but the assistance is not guaranteed.

Furthermore, due to the publicity the crime of defilement has received and the general notion from members of the public and civil society, the police, especially if the case has just happened, do write to the hospital board so that the examination can be conducted. The police then pay the medical fees on behalf of the complainant. Initially the police only paid for postmortem examination in murder cases if the relatives cannot afford to pay but this courtesy has been extended to sexual offences.

### **Medical examination environment**

An attempt to seek permission from the Director of Clinical Services at Ndola Central Hospital to interview hospital personnel proved futile as he was always reported to be in the theatre or wards. However during the research I discovered that whenever an examination is conducted, the police officer has to be present. So I went to interview some officers at the police hospital who in most cases attended these examinations because complainants are not usually accompanied by police officers from where they had made a report.

In an interview with three officers, two male and one female, at the police hospital post revealed that the people in attendance are the doctor plus the supporting member or members of staff and the police officer. The officers mentioned that the doctor, usually male, and a nurse in the presence of a police officer conduct an examination and there is no one to counsel the victim.

This implies that the examination is conducted in a clinical manner without any counselling despite the hospital having social workers or a psychologist. The fact that other police officers at the police post attend these examinations instead of the initial officers who conducted a preliminary examination exposes the victim to further traumatization and victimization. And better results could be obtained for the prosecution's case if the dealing officer is the one who attends the examinations. It is better to build the confidence of a victim by having one officer dealing with the case up to its end. By so doing, the victim can develop trust and confidence in that particular officer and it would be less traumatic for the victim if it were an appropriately-trained female officer. This could build the prosecution's evidence because the officer will have all the details of the case. However during the interview with convicts one of the convicts stated that:

I denied the charge of defilement in the court but it is unfortunate that the magistrate convicted me without conducting a medical examination on me. It was going to be better to compare what they found on the victim and me before convicting me.<sup>32</sup>

But the provision in the law is that everyone who is alleged to have committed a crime is presumed innocent until proven guilty by the competent court. Therefore conducting an

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<sup>32</sup> Comments made by John Chasa who defiled a 14 years Old neighbour



examination on the suspect will violate this provision unless the laws are revisited so as to subject the suspect to an examination.

### **Other service providers**

During the course of the research, it became obvious that I also needed to explore the roles of other service providers – both government and non-governmental – so as to determine their co-operation with and their perception of the police and the role they play with regard to defilement cases. The following organization were sampled; the social welfare department, the Young Women's Christian Association (YMCA), the National Women's Legal Aid Clinic (NWLAC), Children-in-Distress (CINDI) and the Catholic Diocese of Ndola (the children's desk and the para-legal department).

### **Social welfare department**

In an in-depth interview with a senior officer from the social welfare department, I discovered that in so far as defilement cases are concerned, there is less co-ordination between the two departments. The officer mentioned that his department has only dealt with two cases in 2003 and they got the information about the cases through the person in charge of the Catholic foster home. He pointed out that:

The role of the department is to determine and examine the socio-economic conditions and other factors that make the victim of defilement vulnerable. Upon determination of such factors, the department through the court application, could remove the victim from such an environment if there is a likelihood of further abuse.<sup>33</sup>

With reference to the two cases they dealt with, the person in charge of the foster home said the victim were abused by their fathers and through a court application, the victims were removed from the custody of their father. In one of the cases, due to family pressure, the case did not go to court because the family insisted on solving the matter outside the formal law system and the girl child has since been reunited with the family. In the other, the matter is in court and the victim is still staying at the foster home. The decision to solve the issue outside the formal legal system in the former case poses a problem in that the family appeared to be considering their own interests like protection of the family name.

With the distance of about 100 metres and 20 metres in Ndola and Mufulira respectively between the social welfare offices and the main police stations, there is no co-ordination between the two departments to ensure the protection of the girl child. Therefore the two departments need to co-ordinate their activities so that each department does its own part in the provision of services to the defiled girl child.

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<sup>33</sup> Anonymous Social Welfare Officer

### **Young Women's Christian Association (YMCA)**

The YWCA is a Christian organization which empowers women and provides counselling services to women. It was established in 1957 in Kitwe on the Copperbelt, the YWCA provides a variety of programmes which include hostels in Lusaka and Kitwe, a shelter for battered women and drop-in centres. The Ndola drop-in centre was opened in 1997. The YWCA handles cases like property grabbing, domestic violence, child sexual abuse and devolution of property, and work hand in hand with the police victim support unit and the National Women's Legal Aid Clinic.

In an in-depth interview with the officer in charge at the Ndola office, she noted that whenever they receive a complaint of defilement at their offices they do the psychological counselling and interview the victim and later on refer the victim to the victim support unit. However she complained that:

Some times the police sideline us by not telling us courts dates. Not consulting us to counsel the victim. The non-consultation results in unprofessional or no counselling at all for the victim and no communication of court date and or results of cases which makes our record incomplete.<sup>34</sup>

She also complained that some police officers are not serious about their work and that they do not have counselling skills as they only concentrate on the criminal aspect of defilement cases. Despite the location of the YWCA offices about 10 metres from the police station in Ndola, the YWCA is not consulted by the police to counsel the victim. Therefore, personnel from the two departments should work hand in hand in order to ensure that cases of defilement are professionally handled.

### **National Women's Legal Aid Clinic (NWLAC)**

Reports of defilement are not always made directly to the police but through other service providers such as non-governmental organizations like the National Women's Legal Aid Clinic. This is a project of the women's rights committee of the Laws Association of Zambia whose aim is assist underprivileged citizens by providing full legal services to poor women and children. Act No.47 of the Laws of Zambia mandates it to develop law as an instrument of social justice, encourage lawyers to serve the people, especially the disadvantaged, and to promote law reform. Unfortunately the clinic has only two offices countrywide, one in Ndola and another in Lusaka.

An interview with one of the lawyers from the National Women's Legal Aid Clinic office in Ndola revealed that the clinic has a very good working relationship with the police, especially the victim support unit, and that they refer cases of defilement to these units. The Ndola office covers the Copperbelt, Luapula, Northern and North-Western Provinces and they mostly receive reports of defilement from the Copperbelt Province which range between 10 to 15 cases per month.

The lawyer confirmed that their chief clients are poor women who are not able to hire private lawyers and seventy-five per cent of these women are unemployed and underprivileged. The

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<sup>34</sup> Ms Cynthia Shawa

clinic pays for women who are unable to pay to file a complaint with regard to defilement cases. In terms of sentencing of convicted persons, she stated:

There is need for all defilement cases to be handed by the High Court which is mandated to sentence life imprisonment for having defiled a girl and a maximum of 14 years imprisonment for attempting to defile. The magistrate's court where most cases are handled have no jurisdiction to sentence these jail terms.<sup>35</sup>

However some of these cases are tried by the High Court and this can be supported by the cases which were handled in the Kitwe High Court. One of such a case was as follows:

A 43 year old man was sentenced to 21 years in prison with hard labour by the Kitwe High Court for defiling his 12 year old step daughter. Before Judge Raphael Okafor was Edison Banda of 100 Nyati Road Chingola who pleaded guilty for defiling his stepdaughter. Facts before the court were that on September 6, 2003 a debt collector found Banda naked in the bedroom from which the girl emerged crying. Patricia Chanda said she went to get her money from Banda's stepdaughter who owned her K40 000. Chanda said she reached the house the neighbours to Banda told her that the girl was around. She went inside and sat in the sitting room and after some minutes, Chanda saw the girl emerge from the bedroom crying. Chanda decide to check what was in the bedroom but discovered Banda closing the door while naked. She then alerted people outside who apprehended Banda and later took him to Chiwempala police station after the girl revealed that she has been abused since 1999. Meanwhile both Banda's wife a and sister in law wept in court after the sentence saying Banda had not defiled their daughter (Times of Zambia, 4 February, 2004)<sup>36</sup>

The stance taken by the Kitwe High Court in this regard is a move in the right direction in that this is in line with the provision of the law as Section 138 (1) of the Penal Code states:

Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of felony and is liable to imprisonment for life.<sup>37</sup>

The circumstances in which the above case involving Edison Banda unfolded denotes how a family can be protective of its own as can be evidenced by the Mrs Banda's weeping and the remarks made by her and her sister. This could be because Mrs Banda wanted to protect her marriage or that Edison Banda was the breadwinner of the family. This indicates the dichotomy of individual rights and family or community rights.

The National Women's Legal Aid Clinic carries out sensitization programmes and workshops in schools and it also publishes a magazine on a yearly basis. However its intended objectives are constrained by finances.

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<sup>35</sup> Comments by Miss Docus Munkombwe

<sup>36</sup> Time of Zambia, 4<sup>th</sup> February, 20004

<sup>37</sup> Section 138 (1) of the Penal Code

## **Catholic Diocese of Ndola**

The Catholic Diocese of Ndola runs some programmes which include the children's desk, the para-legal department and several foster homes. The Diocese through the children's desk takes care of orphans left after the death of their parents and covers the entire Copperbelt Province with an estimated population of 2.5 to 3 million people. The overall objectives of the desk are to contribute to an improved capacity of the community to care for orphans and vulnerable children and this is done together with initiatives by other non-governmental organizations and the government.

During an interview with the person in charge of the children's desk, Sister Charity Nkandu, she stated that it became a reality to the desk that due to harsh economic situation prevailing in Zambia, young children discontinue their education and become breadwinners for their young siblings. Girls are particularly vulnerable and often resort to prostitution whilst boys are led into the streets – resorting to drug taking and crime. This exposes girls to risks of contracting STDs and HIV.

She also mentioned that lack of interested and qualified personnel with regard to defilement cases – especially at police stations – is making people reluctant to report the cases. The police also lack facilities making the reporting environment for the defiled child not conducive or private enough. This, coupled with financial constraints on the part of the victim's family, disadvantages the girl. She further said that there is need for a maximum sensitization programme especially targeted at the community to inform them that defilement is a crime and alert them to its effects on the development of the girl child. She cited a case she dealt with in which the girl was defiled by the father and got pregnant and when this came to the attention of the mother, the mother advised the girl to point to another man. The children's desk pursued this case but in the end, the girl was sent away from home into hiding by her parents as they insisted on sorting out the problem within their family.

The para-legal department has established several offices in all the towns of Copperbelt. Their objective is to provide legal services to their clients and to provide spiritual and psycho-social counselling. They also carry out sensitization programmes through drama and theatre in schools where they target schoolgirls from both primary and secondary school. The girls are sensitized to what defilement is, what form it takes, who the defilers are, not to tamper with evidence when they are defiled, and to not allow anyone to touch their private parts like breasts and buttocks.

In an interview, one of the para-legal officers at the Catholic diocese of Ndola, Mrs Mushingé, stated that:

There are a lot of cultural practices which make the girl vulnerable and make them not reveal when they are defiled. An initiation ceremony prepares girls to go into womanhood and some of the lessons make the girl child put the lessons into practice. They are taught how to manage their menstruation, how to handle men and that after reaching puberty they are fully grown and able to handle any man. And they are not supposed to say anything of what they are taught.<sup>38</sup>

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<sup>38</sup> Mrs. Mushingé, Catholic Diocese of Ndola, Para legal

The fact that through initiation ceremonies, girls are taught not to reveal anything they are taught makes it very difficult for them to come out in the open or report when they are defiled. They will definitely consider sexual issues to be matters falling within the private domain.

## CHAPTER FOUR

### **Factors leading to non-reporting**

As my research progressed it became prudent to interview and discuss with members of the public – both female and male – as well as with convicts to ascertain the factors which contribute to non-reporting of defilement cases to the police. In his regard three focus group discussions for men and another for women and a combination of the two were held and ten convicts were also separately interviewed at Kansenshi prisons. I have categorized their answers under the different factors highlighted although these categories do overlap. These factors have a great influence to the extent that they determine or affect whether or not a defilement case is reported to the police.

#### **Cultural factors**

Predominant in this group are traditional practices such as initiation ceremonies and early marriages. In a focus group discussion with women respondents the women said the issue of initiation ceremonies is common among the people from the Eastern Province who are of matrilineal descent. The duration of the initiation ceremony varies depending on the girl's ethnic group. One woman stated that:

Initiation is a sign that the girl has reached puberty and is a symbol for her acceptance into woman hood. The adolescent girls are taught to run house and please and be subservient to a would- be husband. Certain ceremonies involve scenes of aroused sex and the girl is not supposed to only watch but imitate or emulate.

The fact that the girl has to emulate whatever is taught during initiation can have a positive and negative influence on the girl. Positive in the sense that she should be able to be a good housewife in the future to enable her keep the marriage and negative in the sense that she could put what she learnt in practice at a tender age, she would accept her subordinate status to a man and she can readily submit to the advances of any man. The negative aspects of these practices outweigh the positive aspects as they make the girl more vulnerable to defilement.

The issue of initiation ceremonies was condemned by one man who stated that:

According an old English adage which says 'practice makes perfect', this means that since girls are supposed to emulate what they are taught, they will practically test their proficiency by having sex with a man or having a man friend.<sup>39</sup>

Therefore the attitude the girl might have towards sexual relationships is likely to prompt her to be sexually active and thus expose her to today's realities of the HIV/AIDS pandemic. Also the girl is told not to reveal anything taught during initiation ceremonies especially to a man, so the

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<sup>39</sup> Comment by Mrs. Chasaya

girl grows up knowing that sexual issues are private matters. This could make the girl uncommunicative on such issues.

The concept of early marriage is closely related to that of initiation ceremonies in the following circumstances. The girls can be engaged to a man at a tender age and her relatives are forced to instill some sense of responsibility as a housewife into her through initiation ceremonies. However, early marriages do occur after she has been defiled. When pregnancy occurred after a girl being defiled one woman mentioned that:

Nowadays, when a girl gets pregnant, you look at the socio- economic status of the man responsible. If he is of a good status, especially when he is single, the best criteria is to look at the future of the child and the would- be mother. If he is single, he has no alternative but to take the girl as a wife.<sup>40</sup>

Similar sentiments were echoed by another woman who stated that:

Especially if the girl does not go to school, it will be a burden to look after her and her child when the man responsible is known. The man should bear the burden.<sup>41</sup>

The notion of early marriage is perceived to be the best solution in some communities because people see little to be gained from criminal proceedings. To make matters worse, despite the fact some people know that they can pursue civil action after the criminal one, the whole court procedure is long and bureaucratic.

One aspect which is of growing concern to the Zambian society is the belief that having sex with a virgin girl will 'cleanse' a man from sexually transmitted diseases or will increase luck in a business. This growing belief has placed the girl child at risk and it has brought distrust in families, between families and the community at large. One man narrated the ordeal his female relative went through on the grounds that defilement of a girl-child brings luck in business. He stated that:

My girl cousin, then aged 15 years, was staying with her grandmother in Mansa, Luapula Province. their neighbour, a couple were business people and one day the husband told the wife that in order for their business to succeed, he was told by a witchdoctor that he has to cut pubic and armpit hair from the virgin and then defile her. So they arranged with his wife that he was going to pretend to go for a business trip out of town, so that the wife should ask for permission from the grandmother of the girl so that she can come and sleep with her. Permission was granted and in the evening, the wife made tea which she served to an unsuspecting girl. Not knowing the tea contained some herbs to make her sleep; she drank the tea and slept. The husband later came in the night and cut the hair and defiled the girl. When the girl woke up, she discovered that her hair was cut and she had pains in her private parts. She informed the man's wife who pleaded ignorance. She informed her grandmother who later reported the matter to the police. After interrogation, the man's wife revealed the

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<sup>40</sup> Comments by Mrs. Charisa

<sup>41</sup> Comments by Mrs. Kaisala

truth and the man was apprehended and was found in possession of pubic hair which he was taking to the witchdoctor. He was convicted for two years by the court but he out rightly said 'I will be rich after serving my sentence'.<sup>42</sup>

The nightmare the girl went through was disturbing, especially after a seemingly honest request from the neighbour she thought she could trust. If the life sentence was imposed on the man, he would never enjoy his wealth earned through barbaric means. The witchdoctors or traditional healers' medicinal advice to their clients has promulgated the belief in defiling a girl child as a remedy for getting wealth. Despite having the Traditional Healers Association of Zambia, not all traditional healers are members of the association and as a result their conduct is not checked.

Patriarchy which is male domination and subordination of females in almost all aspects of life cannot be left unmentioned. The control of women by men even in sex matters has also perpetuated the defilement of the girl child. In a focus group discussion, one man mentioned that the reason why women or girls fall prey to men through defilement and rape cases is that they (women and girls) wear seductive clothes to the extent that they arouse men's feelings. This statement was quashed by women who argued that the trend now has extended to defiling infants. Can the legs or exposed parts of the baby's body honestly arouse sexual feeling in a normal person?

Not only does the diversity of patriarchy oppress women and the girl child in particular, but also other aspects of the family and community and within the society itself. Therefore fighting the evils of defilement is impossible without the support of men and their rejection of oppressive social structure which oppress women and the girl child.

## **Social factors**

The social environment in which a girl child lives has an effect on her perception of defilement. In any case, the socialization process determines the girl's attitude towards sexuality and the age at which she may begin to engage in sexual relationships. Girls are socialized to adopt their socially-determined position such as being submissive and accepting their inferior position without question whilst boys are socialized to be aggressive and dominant. From childhood, children are socialized to be obedient and respect elders, but it is this obedience and respect which is abused by elders to defile the girl child. The respondents agreed that usually the girl will not question the sexual advances made to her thinking disobeying them will imply that she is impolite.

The issue of peer pressure amongst the girl child also influences the girls to start engaging in sexual relationships. The informal discussion amongst the girl pertaining to relationships with men can make a girl vulnerable to be defiled. One man stated that:

Everyone wants to have a sense of belongingness, the girl who plays with a sex oriented group will want to be identified as part of the group by having a relationship.<sup>43</sup>

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<sup>42</sup> Narration by Mr Mutale

<sup>43</sup> Comments by Mrs. Mubanga



Whilst elders within the family and the community at large should be the protectors of children in general and the girl in particular, some elders have taken advantage of the inferior status of girls. Due to the socio-economic, legal and social status of women in their families and communities, they (women) fail to protect the girl from abuse due to their fear of losing marriages and to their submissive socialization.

### **Economic factors**

The high level of poverty among most families in the community makes the girl child vulnerable to sexual abuse. In this study most cases reported to the police were from the high density areas, but this is not to suggest that defilement does not take place in low density areas. In a focus group discussion, the respondents – men and women – agreed that defilers take advantage of the economic status of the victims by offering money to victims in exchange for sex. As one woman said:

Minibus drivers are defiling schoolgirls who want to have free rides'. This is evidenced by the fact that the schoolgirls tend to board specific minibuses where they are known by the crew. Due to peer pressure every girl child wants to be identified with a particular commuter omnibus.

Due to economic hardships the girls face in their families, they have resorted to going to social places like bars where there is no longer restriction as to the age of the person entering the bar. The girls resort to prostitution and some bar owners promote the presence of young girls in order to woo revelers. One man mentioned that men find it easier to have sex with young girls because they can easily pay them (girls) off with less money as compared to experienced prostitutes who demand more.

Furthermore, with the advent of the HIV/AIDS pandemic, many parents have died and left their children to fend for themselves or with relatives who in turn abuse them. An example is the case Bob Chisenga who defiled his niece as shown in illustration number 2 in the appendix. The emergence of child-headed households exposes the children to use whatever means available to make ends meet. Some girls resort to the street where they are equally defiled by fellow street kids.

### **Religious factors**

Some religious groups allow marriage between very young girls and old men and the man will start carnally knowing the girl on the onset of menstruation. Usually in such circumstances the decision to be married to an older man is made by her family by virtue of the family belonging to such a religious group. This is the case with a religious group near Mokambo Border Post in the outskirts of Mufulira and it is only recently that the community has started reporting these cases to the police after a public outcry. One respondent in Ndola informed me that there are even some verses in the Bible which are interpreted to discourage the reporting of defilement cases to the police or any other non-governmental organization or even to the community. Mrs Mushingie pointed out the following verses which say:

If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints? Do you not know that the saints will judge the world? And if you are to judge the world are you not competent to judge trivial issues? Do you not know that we will judge angels? How much more the things of this life. Therefore if you have disputes about such matters, appoint as judges even men of little account in the church. I say this to shame you. Is it possible that there is nobody among you wise enough to judge a dispute between believers? But instead one brother goes to law against another – and this in front of unbelievers.<sup>44</sup>

Another verse which is interpreted as allowing cases of defilement to go unreported states that:

If your brother sins against you, go and show him his fault just between the two of you. If he listens to you, you have won your brother over.<sup>45</sup>

Mrs Mushinge maintained that these verses in the Bible are interpreted by some churches to mean that when a believer in your church does something wrong to you, you ought to solve it within the church. With regard to defilement cases, the implication is that when there is allegation of somebody having defiled a girl in the church, there is no need to report the matter to the police for they are within reach of church people who are competent to deal with the matter. So the police and the courts are considered to be ‘unrighteous, incompetent and unbelievers’. In these circumstances it is better to solve the issues within the church by appointing the judges within the church. So when church members are indoctrinated with these beliefs they see no need to report the matter to the relevant authorities like the police for action. Therefore there is need for sensitization programmes to be directed towards all members of these churches so that they are educated on the need to report these cases.

### **Structural factors**

The bureaucratic criminal justice system can also hinder and discourage the reporting of defilement cases. The procedure from the police to the court exposes the victim to several interviews which could traumatize and stigmatize her. The victim is first interviewed at the inquiries office and then referred to either the victim support unit or the criminal investigations department where further interviews are conducted. The prosecutions office also interviews the victim before trial commences at the court. This long process can remind the victim of the ordeal she went through. Therefore upon receipt of the report of defilement, a specialized officer should handle the case to the end for this will promote the victims’ confidence in the officer.

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<sup>44</sup> I Corinthians 6:1-6, holy Bible New International Version.

<sup>45</sup> Mathew 1:15, Holy bible New International Version

## CHAPTER FIVE

### **Discussions and conclusion**

The fact that the reporting environment at the inquiries office lacks privacy is an inhibiting factor which can result in victims of defilement having second thoughts about reporting. The open nature of the inquiries office attracts attention even to people who have come to lodge other complaints and at times they even participate indirectly in the interview. Any officer who comes to the inquiries office may ask irrelevant questions which could disturb the flow of an interview. Police officers should be trained on matters of gender so that they are able to handle sexual offences with considerable skill – and firstly, by looking for an alternative office where they can conduct the interview. Lack of female officers in almost all the shifts, especially at police posts where most defilement cases are reported is a drawback in the creation of a better reporting environment in the police service. This means that reports which are made when women officers have gone off duty or at police posts where there are no women officers have to be handled by male officers. In such circumstances the victim may be referred to the main station where there is the victim support unit or they can be referred directly to the hospital without being accompanied by a police officer. The initial or preliminary examination of the victim is a guide for the doctor who is going to do an examination. But if the victim goes to the hospital unaccompanied, she will further be interviewed at the hospital police post before going for examination. This further traumatizes the victim and evidence would be obliterated due to delays.

The manner in which interviews are conducted can be embarrassing and irrelevant questions are asked of the victim of defilement which is a violation of her right to dignity. Article 3(1) of the African Charter states that:

Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

The above provision is supported by Article 3(4) of the same charter which orders state parties to implement measures to ensure the protection of every woman's right to respect for her dignity, and protection of women from all forms of violence, particularly sexual and verbal violence.

If the victim support unit programmes were to have a positive effect on the services provided to women and children, especially with regard to cases of sexual offences, the nature of the workplace should have been correlated with the services they provide. This means they should have spacious offices to absorb their work load, private rooms to interview the victims or clients and logistics to reach out to every community. But currently their services are constrained by the

above factors which put them in an uncondusive environment. There is need to decentralize their operations so that the community has ready access to their services. However, merely decentralizing the victim support units services is not a complete solution with regard to defilement cases, the community needs to be sensitized to the vices of defilement so that they start reporting cases.

The failure by prosecutors to communicate court dates to victims and witnesses and the delay by the CID in arresting the suspect are caused by lack of logistics like transport. Generally, the police as a department work under difficult conditions which make their work inefficient and ineffective. Such logistical problems are interpreted by some members of the public as negative attitudes on the part of the police. The idea of changing the name from the Zambia police force to the Zambia police service was in order to bring the community close to the police so that the community should also participate in policing. The policing duties the community should involve themselves in with regard to defilement are, for example, to sensitize other members of the community, to educate the community on consequences of defilement and to apprehend suspects.

The issue of corroboration and cautionary rules are problematic in sexual offence cases for they are considered to be discriminatory against the women. The requirement that the evidence of the child should be corroborated and the idea that children or women report out of spite are injustices to sexual offence victims. Corroboration and cautionary rule seem to have been created to uphold the supremacy of men over woman's sexuality. However, while it is important for the trial judges or magistrates to be aware of the danger of convictions on uncorroborated, evidence of certain categories of witness who are potential suspects and the insidious and private nature of defilement makes it hard to have supportive evidence. For example, in the earlier case of Edison Banda who has been defiling his stepdaughter since 1999, if it was not for Patricia Chanda who went to collect money and discovered her ordeal, the vice would have continued. This means that rules or laws on sexual offences will continue to disadvantage the victims even when they have been defiled or raped.

Defilement can be a difficult matter to investigate and prosecute especially where a parent or close relative is involved. The parent has the duty to care for children, to support them and be responsible for any of their acts which are imputed to him or her by the law. The courts will seldom intervene through either the criminal or juvenile court and interfere with the way parents rear their children. If the conditions are severely unacceptable, for example in circumstances where the parent is a defiler living with the victim in the same home, the social welfare officers may seek to have children removed from their natural parents through petitions in the juvenile court and place them in foster homes. The social welfare department and the juvenile court do not contemplate taking children from their parents and breaking up families merely because in the estimate of the welfare offices and the courts, the children could be better provided for in foster homes.

Criminal charges against a parent are usually very difficult to prove and punishing the parent does not seem to alleviate the problem nor necessarily deter him from further acts of abuse. Since guilt must be proven beyond reasonable doubt, lack of evidence may make it impossible to obtain a conviction. Witnesses are protected against self- incrimination and parents cannot be forced to testify against their own interests. When such prosecution fails, the parent may feel even more punitive towards the child, more immune from outside interference, and more justified in his

actions. In addition the publicity which surrounds a child often makes it more difficult to work with the parent afterwards. Even when legal action against the parent might be possible, the child's interest is usually better served by not pressing charges (Eldefonso. 1973:327).

The role that other service providers like the social welfare department and non-governmental organizations play for victims of defilement cannot be isolated in the quest for justice. What seems to be lacking at the moment is the lack of co-ordination among the service providers themselves and co-ordination between the service providers and the police. The key to success in any system that seeks to provide services is an agreed and effective mechanism for co-ordinating the system and their services. The basic tenets which should enhance the co-ordination framework include sufficient resources to implement programmes and the legal mandate to protect the right of children. The existence of dual systems of laws in Zambia has left the girl child at the crossroads in as far as defilement is concerned. Whilst statutory law stipulates that the age of consent is assumed to be at the age of 16 years, the customary law maintains that the age of consent to sexual intercourse is when the girl reaches puberty. It is not only statutory law and customary law that determine the age of consent in defilement cases, there are other bodies of rules generated by different semi autonomous social fields like the church, the family etc. However since defilement is a criminal offence, statutory law take precedence but its not everyone who can assess statutory law for it requires more resources , therefore people resort to the most available and which requires less resources to access.

In customary law, the age of consent which is when girls start menstruating is closely related to marriage. As soon as a girl starts menstruating, she is considered to have graduated into womanhood and therefore she is ready to be a mother. However, Article 6(b) of the African Charter mentions that the minimum age of marriage for women shall be 18 years. Furthermore families or communities actually force victims of defilement to get married to the defiler without even the consent of both parties. This is a violation of the Marriage Act chapter 50 of the Laws of Zambia which provides that any person below 21 years requires written consent from parents or guardians and Article 6(a) of the African Charter which provides that no marriage shall take place without the free and full consent of both parties. This is further supported by Article 16(2) of the Universal Declaration of Human Rights (1948) which provides that 'no marriage shall be entered into without free and full consent of intending spouses'.

Article 23(1) of the International Convent on Civil and Political Rights provides that a family shall be a natural and fundamental unit of society entitled to protection by society and the state. But the family unit remains the most repressive of the rights of women and children because it is often within the family that women and children are sexually abused and battered. When the girl child is defiled, mostly the families decide whether to report to the police, whether to marry the girl to the defiler or to settle the matter within the family. The rights of the individual are subdued by the concerns or interests of the family.

Traditional and customary practices like initiation ceremonies and early marriages perpetuate defilement of the girl child. The lessons given during initiation ceremonies include seductive scenes which the girl has to imitate and she can later put these lessons into practice by engaging in sexual relationships. The Zambia constitution recognizes the existence of customary practices but these practices should be regulated especially those whose negative aspects outweigh the positive ones. Article 17(1) of the African Charter provides that women shall have the right to

live in a positive cultural context and to participate at all levels in the determination of cultural policies.

The Convention on the Rights of the Child (CRC) is a comprehensive legal code of the rights of the child whose aim is to be an instrument of advocacy on behalf of children universally with regard to the health, development and welfare. Article 19 of the Convention on the Rights of the Child provides that the state shall protect the child from all forms of maltreatment by parents or others responsible for child care and establish appropriate social programmes for the prevention of child abuse and treatment of victims. Lack of an information database on the prevalence of defilement and resources are constraints to the states in abiding by the provisions of most Articles in international instruments.

Defilement is a serious problem in Zambia and it seems that cases will continue happening if left unchecked. The cases reported to the police are on one hand indicative of growing victim confidence and on the other hand of the increase in defilement being committed in the community. The cases which are brought to light are most likely only the tip of the iceberg. This is a big challenge which requires all service providers and the community at large to take a multi-dimensional approach. The interplay between social, economic, cultural, religious, structural and legal factors in perpetuating defilement cases needs urgent redress.

## Recommendations

There is need to make the reporting environment at police stations friendly so that victims can be interviewed privately by a supportive officer who has been specifically trained to deal with victims of sexual offences. Since most defilers are known to victims, parents and guardians should be careful not to give men access to the girls. Parents should also be made aware of the effects of withdrawing cases in preference for marriage and reconciliations. The public and support services should be aware that the first blame in defilement should not be on the victim, but on the defiler. The girl child should be educated on how to weigh the risks of STDs and HIV against short-term benefits such as money or payments for sex. The traditional and community leaders should educate people about false beliefs, for example, the idea that defiling a girl brings luck in business.

Parents should be helped to develop less punitive attitudes to their children and to increase their capacity to talk with their children who have gone through a traumatic event like defilement. There is need to have better support services for victims by involving professional like social workers, psychologists or counsellors in all cases of defilement so as to assist relatives and the child to cope up with the trauma. There is need to train police officers as well as other officials who deal with defilement victims in counselling skills.

Doctors need to be instructed on how to gather maximum evidence in cases of defilement. A victim of defilement should be accompanied to the hospital by a police officer dealing with the case. Court officials should be gender sensitive in order to minimize the trauma during court proceedings and female police officers should be made available at all police stations and police posts in all shifts. To consolidate the prosecutions case, suspects should be subjected to medical

examination especially when a disease has been passed onto the victim. Prosecutors should carefully weigh their discretion in matters of defilement so as not to disadvantage the victim.

Lastly there is need to delineate specific tasks for each professional who deals with cases of defilement. The professionals need to develop a co-coordinating framework which should be multi-dimensional.

## APPENDIX

### **Illustrations**

These illustrations were the interviews I had with convicts at Kannsenshi Prison Ndola, I have withheld names of the victims for the sake of confidentiality.

#### **Illustration 1**

Jonas is a 62 year old Congolese national serving a 5 years term for having defiled a 12 year old girl in September, 2003. He stays at Konkola Village along the Mufuura-Ndola road. He wanted to marry the girl and her family agreed and the bride price was only to cultivate his in-laws field. He started staying with the girl and having sex with her but when her relatives in Ndola heard about this marriage they objected to it and reported the matter to Sakania police station. He was arrested and spent three days in cells before going to court where he admitted the charge. He maintained that upon serving the sentence, he will marry the girl because she is his wife.

#### **Illustration 2**

Bob aged 22 years of Chipulukusu compound in Ndola is serving a 5 year term for having defiled a 13 year old niece (his late sister's daughter). She used to stay with her unemployed grandparents and used to come to Bob's house to look for food, where he defiled her. He was caught whilst having sex with the girl by the neighbours who handed him to Chipukusu police post. The girl is now staying with his unemployed and unmarried elder brother who drinks a lot of illicit beer (kachasu).

#### **Illustration 3**

Given, a 54 year old from Chiwala area, Ndola was convicted on 21 February 2003 and jailed for 5 years for having defiled a sister-in-law aged 11 years. His wife left to attend a meeting at a nearby school and when she came back, she found her sister sleeping on the matrimonial bed whilst Given was outside in the fields. She beat the girl and examined her and she revealed that she was defiled by Given. She reported the matter to the church pastor who together with community members arrested and took him to Ndeke post where he spent three days in cells and another three days at Ndola central police station. He denied the charge at the police but later admitted because he wanted the court to be lenient with him. The wife visits him at the prison and the girl has been chased away.



#### **Illustration 4**

Yusuto of old Mushil, Ndola is aged 18 years and was sentenced to 6 years on 13 June 2003 for having defiled a 15 year old girl. He proposed love to this girl to which she agreed and they knew each for three months during which they had sex three times at his house. On the last occasion, she slept at his place and went to her place the following morning. Due to a beating by her uncle, she revealed that she slept at his house and the uncle reported the issue to the police and she was chased from home for two days during which she was sleeping in the house hedge. He stayed in cells for seven days at Mushili police post and the uncle never used to come for he wanted to settle the issue out of court but the neighbour insisted on taking the issue to court. After seven days, the uncle was summoned to give a statement and the matter went to court. The girl used to visit him whilst he was in cells and she cried when he was sentenced to 6 years.

#### **Illustration 5**

Gift, aged 19 years, of Kubushi Ndola defiled his niece of 2 years. He was left to look after the girl when the mother went to the market. He defiled the girl and the mother discovered this when she was bathing the baby. She reported the matter to Lubato police post where he stayed for 9 days in cells. He was sentenced for 5 years on 7 January 2003.

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