

The Law on Defilement in Ghana and Challenges in its Implementation at the Ejisu-Juabeng Domestic Violence and Victims Support Unit of the Ghana Police Service

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Abstract

Ghana like other African countries has been involved in the universal effort to uphold reproductive justice for children including adolescents. The country's efforts have been predominately geared towards legislation and prosecution of defilement cases. The Domestic Violence and Victims Support Unit of the Police Service (DOVVSU), is directly responsible for such prosecutions. The objective of this study was to assess the implementation of the law on defilement at the DOVVSU of Ejisu-Juabeng Municipality of Ashanti Region of Ghana. The study involved in-depth interview of the staff and analysis of police dockets on cases of defilement filed at the local DOVVSU office. Thematic analyses of the in-depth interviews were done. The case records were summarised using descriptive statistics. The findings revealed that Ghana has a comprehensive law on defilement. Many complaints of defilement were filed at DOVVSU during the period under review. Majority of the cases were abandoned or withdrawn for settlement out of court. Settlement of defilement cases outside court violates the very spirit and letter of the law on defilement in Ghana. Further research is needed to establish why cases are withdrawn after complaints have been filed with DOVVSU.

Keywords: Defilement, DOVVSU, Children, Access to Reproductive Justice

1. Introduction

The offence of rape of children is known as defilement. Defilement is a major reproductive justice issue and access to justice is of paramount importance to everyone particularly victims of defilement. The majority of rape victims in Ghana are children below the age of 15 years (Bortei-Doku & Kuenyehia 1998). The authors contend that "children can be as young as 3 months and men who rape range from as young as 15 years to elderly men in their eighties" (Bortei-Doku & Kuenyehia 1998).

Defilement leads to adverse long term reproductive health consequences. Indeed, victims get pregnant because they undergo unprotected sex with perpetrators and they are also susceptible to sexually transmitted diseases including HIV/AIDS. The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) contend that HIV/AIDS is a cause and a consequence of sexual exploitation of children (ANPPCAN 2001; Bowman & Kuenyehia 2003). For inadequate access to reproductive health services, some victims get pregnant and are also susceptible to long term health problems associated with early motherhood. One problem associated with early motherhood is increased morbidity such as obstetric fistula and risk of death from childbirth (Lai & Regan 1995). Victims of defilement also suffer adverse psychological and economic effects long after the offence has been committed. In one study, victims were found to present a range of "psychiatric problems, somatic manifestations and disturbances in instinctive functions" (Menick & Ngoh 1999). Economic hardship is often associated with teenage pregnancy and attendant complications.

Morhe in her assessment of access to justice in informal courts of the Ewe of Ghana, observed that most families of victims of defilement prefer not to prosecute when the offence results in pregnancy because the overriding concern is the upkeep of the victim and the unborn child (Morhe 2011). Thus, money is offered and often accepted in lieu of prosecution (Morhe 2011). Similarly, Connerton noted that although the usual consideration is that the girl is better off married or catered for by the rapist such marriages are discouraging (Connerton 1997). Such girls have low leverage in marriage and often get kicked out of their marital homes or abandoned (Connerton 1997).

Ghana like all African countries has been involved in the universal effort to improve access to justice for victims of defilement. In this regard, the country has legislations to counter the offence of defilement (Republic of Ghana 1960). In addition, in 1998, Ghana established the Domestic Violence and Victims Support Unit of the Police Service (DOVVSU), formerly called the Women and Juvenile Unit of the Ghana Police Service (WAJU) to prosecute such cases. The name of the unit was changed to DOVVSU for easy awareness creation under the Ghana Domestic Violence Act and also to ensure that all vulnerable persons are catered for regardless of gender.

DOVVSU was established as a specialized unit to be equipped with the requisite skills to deal with domestic violence in its varied forms. The unit was established because of the perceived inability of the police to properly handle complaints from people against their own family members and friends, particularly complaints related to sexual abuse. The unit is a division of the police force but differs in that the police with DOVVSU are dressed in civilian clothing to ensure that they are approachable and welcoming. DOVVSU consists of not only police prosecutors and investigators but also social workers, clinical psychologists and counsellors. The vision is to create an environment that provides timely and equitable response to victims of abuse. DOVVSU has been mandated to prevent, protect, apprehend and prosecute perpetrators of domestic violence and child abuse in Ghana.

With the passage of a law on defilement and the establishment of DOVVSU one could assume that there would be access to justice for all victims of the offence of defilement in Ghana. One could also assume that the law would provide deterrence to potential perpetrators. Nonetheless, information gathered from newspaper reports suggest that defilement is on the increase (Ghana News Agency 2012; Anonymous 2011 & Yeboako 2010).

This study examined the implementation of the law on defilement at DOVVSU. The specific objectives were to assess utilization of the service, and to determine the profile of reported defilement cases before DOVVSU in the Ejisu-Juabeng municipality between 2007 and 2011. The purpose was to identify and discuss challenges in enforcement of the current law on defilement.

2. Materials and Methods

This was a five year review of the utilization of the services of Domestic Violence and Victims Support Unit (DOVVSU) of the police service in Ejisu-Juabeng municipality. This case study adopted both qualitative and quantitative methods of data collection. The study involved a review of the Ghana Criminal Offences Act, 1960 (Act 29) and its provision on defilement, in-depth interview of the DOVVSU officials, direct personal observations and review of case registers, actual police dockets and files on cases between 2007 and 2011. Ejisu-Juabeng DOVVSU was selected because it was the first to be established in Ashanti Region of Ghana, in 2006. The unit is located in the district capital and its services covered a large peri-urban population with varied socio-cultural background. Having been in operation for six years the unit was the most preferable place because of availability of ample data for the five year review.

The in-depth interviews of the officials of DOVVSU were conducted on the operational challenges in receiving, processing and prosecution of cases of defilement. Responses of the interviews were manually recorded by diligent note taking by the principal investigator and a research assistant. The records of cases were reviewed and data capture done using case record forms. Variables included in the review of the police records including actual dockets were age of perpetrator and victim as stated in the police record, the relationship between the perpetrator and the victim, number times defiled, and whether victim sought medical care, and whether HIV and pregnancy tests were done. The outcome of cases was determined in terms of the proportion of the cases prosecuted, convicted, withdrawn or abandoned. The data collection process took a total of four weeks to complete.

Thematic analysis of the qualitative data was done. The quantitative data were entered onto Microsoft Excel Spreadsheet and analyses done using SPSS version 15.0. For broader picture of how cases were handled at DOVVSU during the study period missing values were included in the data analysis. Only descriptive statistics were used to present results.

3. Results

3.1 The Law on Defilement in Ghana

In order to provide access to justice for defilement victims, Ghana passed legislation to counter the practice of non - prosecution of defilement cases. The offense of defilement is defined under the section 101 of the Criminal Offences Act, 1960 (Act 29), as the natural or unnatural carnal knowledge of any child less than sixteen years of age. Section 101(2) of the Criminal Offences Act, 1960 states that:

a person who naturally or unnaturally carnally knows a child under sixteen years of age, whether with or without the consent, commits a criminal offense and is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years.

By using the sex-neutral word 'child' the law is gender neutral and recognizes that boys as well as girls are susceptible to sexual exploitation. A person who defiles a boy less than sixteen years of age is therefore also liable to be prosecuted under the Criminal Offences Act for defilement. Under the law, prosecution in defilement cases is mandatory and the law is very strict because the consent of the victim is immaterial. Indeed, in *Republic v. Yeboah* an accused defiled a nine year old girl who failed to make a report of the incident (Republic of Ghana 1968). The court held that even if the failure to report indicated that she was a consenting victim, her consent

was of no consequence.

Under Ghanaian law out of court settlement of defilement cases is *ultra vires* the law. It is trite knowledge that the settlement of criminal cases out of court is recognized under Ghanaian law. Indeed, under section 73 of the Courts Act, 1993 (Act 459), state courts are mandated to promote reconciliation in some criminal cases before them:

A Court with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of an offence not amounting to felony and not aggravated in degree on payment of compensation or on any other terms approved by the Court before which the case is tried, and may, during the pendency of the negotiations for settlement, stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person (Republic of Ghana 1993).

Similar provisions recommending courts to promote reconciliation are in the Ghanaian Alternative Dispute Resolution Act, 2010 (Act 798) that provided for customary arbitration of criminal cases under alternative dispute resolution (ADR) (Republic of Ghana 2010):

Except otherwise ordered by a court and subject to any other enactment in force, a person shall not
(a) submit a criminal matter for customary arbitration; or
(b) serve as an arbitrator in a criminal matter

Under the above quoted laws, criminal cases can only be resolved outside courts under the express orders of state courts and only for cases that do not amount to felonies or not aggravated in degree. The settlement of defilement cases outside court violates the very spirit and letter of the law on defilement because rape under Ghanaian law is a first degree felony (Republic of Ghana 1960). Indeed many advocates of ADR have noted that certain types of victim-defendant relationships are inappropriate for ADR intervention (Wheeler 2002). These include relationships of domestic violence, and child abuse (Wheeler 2002).

3.2 Challenges in Implementation of the Law at DOVVSU in Ejisu-Juabeng

3.2.1 Profiles of Reviewed Cases

The summary of defilement cases made in the police dockets and files recorded 9 cases for 2007, 32 cases for 2008 and 2009 respectively, 28 cases for 2010 and 23 for 2011. Although a total of 124 cases were filed during the period under review 117 dockets were found and included in the analysis of this research. Of the 117 cases analyzed, 96 (82.1%) involved victims less than 16 years of age. With the exception of one case of sodomy, where the victim was a boy raped by a male, all victims were females. The mean age of victims was 13.1 years. The youngest victim was 1 year of age and the oldest was 17 years. Seventy-five (64.1%) of the victims were school pupils. Most perpetrators were adults. In 36 (48.0% valid) cases the perpetrators were less than 20 years of age. Majority of the perpetrators were acquaintances of the victims [figure 1].

3.2.2 Outcome of Cases

Outcome was measured in terms of proportion of cases prosecuted, those withdrawn and convictions. Figure 2 represents the outcome of cases. A reading of the cases in the dockets revealed that many of the cases were discontinued. In all 14 (12.0%) convictions were reported for the period under review. Five (4.3%) cases were pending, in 2(1.7%) cases accused persons were on remand. Fourteen (12.0%) cases were settled at home and 4(3.4%) were withdrawn. Two of the dockets on withdrawn cases contained letters of withdrawal written by the complainants (parents of the victims), stating that the matter had been settled amicably between the parties. In these few cases where letters were written for withdrawal of cases for settlement, details of the settlement terms were not stated.

Seventy-eight (66.7%) cases were abandoned. Review of the dockets showed that abandoned cases included those involving 16 year olds and above and those cases in which medical report forms were not returned. Cases withdrawn and abandoned were marked "discontinued". Some explanations were given by officials for this high numbers of discontinued cases:

"Sometimes the perpetrator denies responsibility and only agrees to the offence when threatened by court action. Hence cases are filed in attempt to get perpetrators to own up. As soon as they are faced with threat of court they do own up and plead for withdrawal of the case for settlement at home".

"Some cases involved family friends or neighbours who have tried to resolve the issue and have failed. Other cases involve teenagers or students who have been defiled by their boyfriends. Sometimes the boyfriends are also teenagers or students. In the above cases, the perpetrator is threatened with court action as a means of eliciting a guilty confession, or where there is pregnancy involved, as security that they or their parents would contribute to upkeep of pregnancy and unborn child. Thereafter, families' come together to withdraw the cases for settlement. When such gestures are made we [DOVVSU] allow them to withdraw for settlement."

The police officers were however very optimistic in their work and they mentioned that they were satisfied

because all cases actually processed and prosecuted in court ended in convictions.

3.2.3 *Late reporting of cases*

Many victims did not report the offence until later when they fell ill or got pregnant. In all, 23(32.9% valid) pregnancies cases were recorded. Forty-one (56.9% valid) of the victims had been defiled two or more times. Pregnancies were found mostly among 15 year olds who were defiled by their boyfriends.

3.2.4 *Difficulty in obtaining medical report*

Only 36 (47.4% valid) cases indicated that medical attention was received. In 24 (34.8% valid) cases recorded, HIV testing was done. Although the general policy according to DOVVSU officers interviewed is that medical treatment for defilement victims is free, many hospitals charge for the service. Officers have to rely on magnanimity of doctors for free medical reports. Victims who are unaccompanied by police officers are sometimes charged and may pay the equivalent of between 50-100 dollars. Some victims may not be able to pay for medical reports and may fail to pursue the case. Indeed entries in some dockets revealed that medical forms issued by the police were not returned.

3.2.5 *Logistics and administrative challenges*

Direct observation and in-depth interview report indicated that the Ejisu-Juabeng DOVVSU lacked capacity in terms of resources for its work. The unit had no computers and therefore no database of cases before them. The police dockets were managed manually by using notebooks and files. There were also many missing values of the variables in the reports found in the dockets. Officers did not have filing cabinets.

Some challenges facing the DOVVSU were acknowledged by the officers at the unit. *“We do not have the capacity to follow up on cases because of lack of basic resources like computers to keep data on offenders. For instance for lack of computers there is no database for perpetrators making it difficult to track repeat offenders”* indicated one officer. There were also no vehicles assigned to the DOVVSU office for investigation of cases.

4. Discussion

Ghana has a comprehensive law on defilement that seeks to uphold sexual rights of victims and afford them justice. However, this study revealed some difficulties in implementation of the law. The first difficulty is the mandatory prosecution of cases. As detailed above, one channel the law uses to counter defilement is DOVVSU, which has a broad mandate to offer justice. The said justice could even in some offences include out of court settlement. But in the case of defilement, the law is categorical that there must be mandatory prosecution, thereby limiting the kind of justice to be offered. The services of DOVVSU of Ejisu-Juabeng municipality have been patronized by victims of defilement and their families as indicated by the number reported cases recorded over the period under review. This is an indication that if effectively managed, services of DOVVSU could be utilized by victims to seek redress of such offences.

However, the high numbers of cases withdrawn or discontinued coupled with the number of cases allowed to be settled at home is worrisome. Obviously, when families withdraw cases, there is more to be understood. Indeed it has been observed by some commentators that some families want to treat defilement as a house matter especially when the perpetrator is a friend, family member or a neighbour and that they do not want to wash their dirty linen in public (Morhe 2011; Carrol & Ofori-Atta 1998). Whatever the seemingly good intentions may be, it is submitted that settlement of cases out of court is unlawful and goes against the tenets and spirit of the Criminal Offences Act of Ghana, which seems to favour mandatory prosecution of such cases with or without the consent of the victim. Mandatory prosecution is particularly important in cases of young victims, who usually do not have a hand in negotiations, and who could feel left out, unsatisfied and without remedy for the abuse. No amount of money can compensate for sexual abuse (Menick & Ngoh 1999).

The second difficulty observed in the implementation of the law is that the law calls for mandatory prosecution but does not specifically provide for free medical care for victims. Victims have to pay for medical report, but many may be impecunious. Free medical reports could facilitate access to justice (Bennett 2006).

A third difficulty in implementation of the law is the many operational challenges facing DOVVSU in terms of logistics to carry out its mandate. Lack of basic logistics like computers and office vehicles affect the quality of service rendered. Computers ensure better record keeping, investigation and monitoring of all cases filed, including those abandoned or withdrawn. DOVVSU officials ought to be able to track cases and keep proper data on convicted felons in communities. Lack of database lends itself to repeat offenders and recidivism. It was no wonder that the records showed that some of the victims had been abused multiple times [see table 1].

Finally, as already observed, pregnancy due to defilement was mostly recorded among 15 year olds. The high number of pregnancies recorded is consistent with inadequate access to reproductive health care for victims. Furthermore it revealed a gap in public education on the law of defilement and adolescent sexual health and reproductive rights. This result is consistent with the observation made by the DOVVSU officials that some cases report late after the offence and do not benefit from medical care particularly post sexual assault emergency contraception a known measure to prevent unintended pregnancy.

5. Recommendations

The high percentage of pregnancies recorded underscores the need for continuous public education on the law and on the rationale behind mandatory early reporting and prosecution of defilement cases. Early reporting and seeking adequate medical care and administration of emergency contraception could avert some of these pregnancies. Mandatory reporting and prosecution of cases as envisaged in the law could be more receptive to the public, if there is adequate awareness creation on the law and running training programmes on the vulnerability of children. The targets of such programmes should be all stake holders- children, educationists, community opinion leaders, and the officials of DOVVSU. Non-governmental organizations like the UNDP, already working on justice sector reform, could offer assistance with training programmes.

There is need for further research to find out victims' perspective of withdrawal of cases for settlement out of court despite mandatory prosecution as demanded by law. Such a study could help towards strategizing for reform in order to make the law enforceable.

In addition, it is important that where circumstances demand the necessity of settlement, there be some documentary evidence of the settlement processes. Also, such processes ought to be made under the auspices of the court and properly supervised Alternative Dispute Resolution mechanisms in order to prevent recidivism.

In order to provide access to justice for victims of defilement, there is need to remove all barriers facing victims including payment of hospital bills incurred as the result of the defilement. The law ought to make provision for special doctors to attend to victims of defilement on *probono* basis. In addition, provision needs to be made for victims to have access to psychologists. Psychologists on call could be attached to DOVVSU offices. Psychologists are very important to make the victims and their families feel at home and discourage tendency to take cases out of court.

6. Conclusion

The services of the Domestic Violence and Victims Support Unit at Ejisu-Juabeng has been patronised by the people. However, logistic support, late reporting, high rate of withdrawal or discontinuation of cases are major challenges hampering the implementation of the law on defilement.

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Table1: Characteristics of Reported Defilement Cases

Variable	Number	Percentages	Valid percentages
Age of suspect			
- <20 years	36	30.8	48.0
- 20years or more	39	33.3	52.0
- Not stated	42	35.9	-
Age of Victim			
- <16 years	96	82.1	82.1
- 16 years or more	21	17.9	17.9
Victim enrolled in school			
- Yes	75	64.1	85.2
- No	13	9.4	14.8
- Not stated	31	26.5	-
Number of times defiled			
- Once	31	26.5	43.1
- Two or more	41	35.0	56.9
- Not stated	45	38.5	-
Sought medical attention			
- Yes	36	30.8	47.4
- No	40	34.2	52.6
- Not stated	41	35.0	-
Had HIV testing			
- Yes	24	20.5	34.8
- No	45	38.5	65.2
- Not stated	48	41.0	-
Pregnancy resulted			
- Yes	23	19.7	32.9
- No	47	40.2	67.1
- Not stated	46	39.3	-
- Sodomy	1	0.9	-

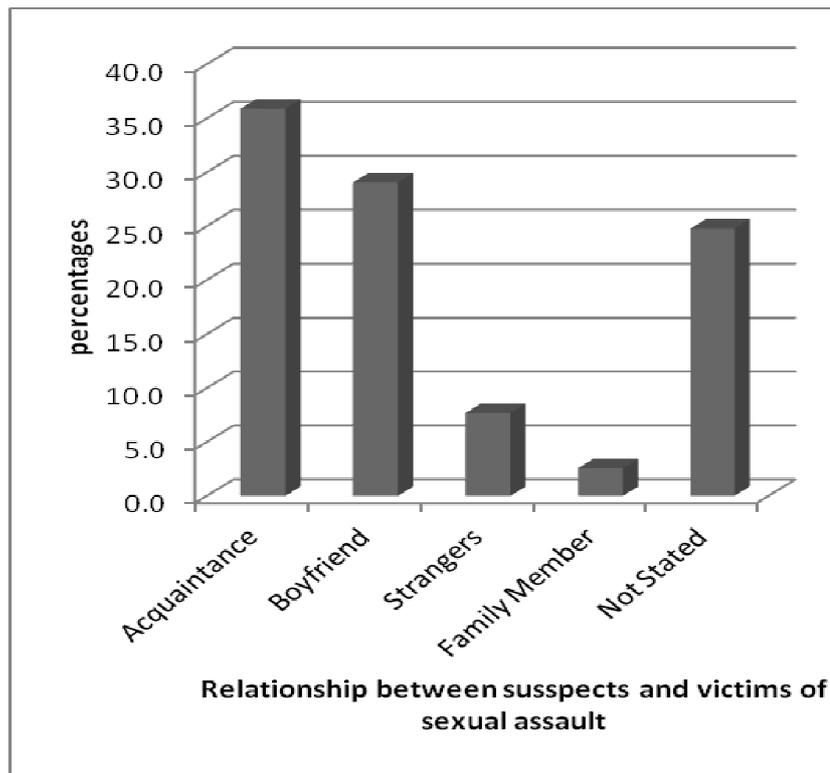


Figure 1: Relationship between Suspect and Victim

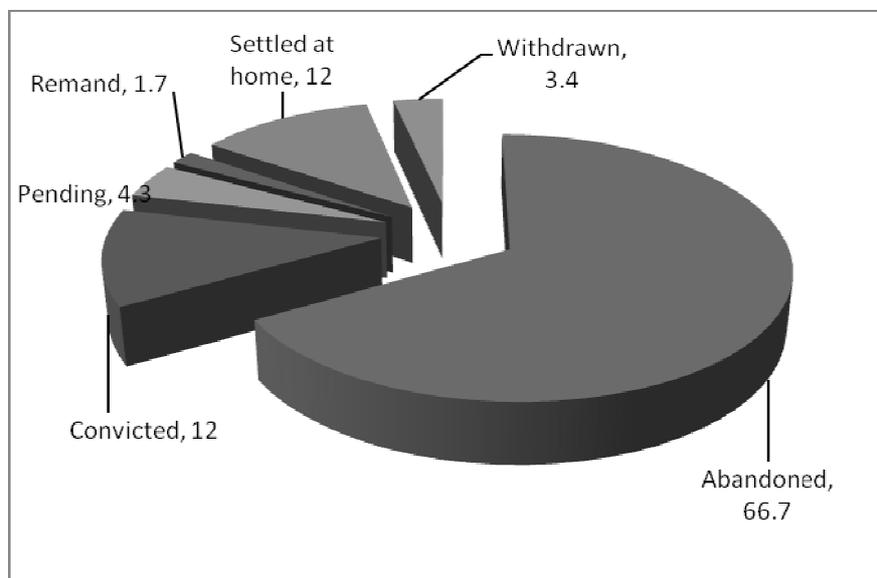


Figure 2: Outcome of Cases

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