



Examining the right of a rape victim to drop a criminal charge against the perpetrator- South Sudan.



Introduction

In December 2020, UNDP in partnership with the Judiciary of South Sudan and the Kingdom of Netherlands established the Gender Based Violence (GBV) and Juvenile Court. The court was meant to provide among others a stronger possibility that court personnel will be gender sensitive and experienced in the unique characteristics of cases of violence against women and may be able to process cases more quickly, reducing the burden on victims. Further, survivors will be protected from the accused and mechanisms will be available to prevent them from having to face perpetrators during trial. Despite this, the GBV Court faces challenges in the delivery of justice for victims of SGBV including adherence to relevant human rights obligations found in the eleven international and regional treaties South Sudan has signed. Two years down the road of establishment of the GBV and Juvenile court, South Sudan still has the world's fifth-highest prevalence of child marriage. The newsletter write-up is informed by the monitoring of events at the GBV court in Juba where the victim believed she had a right to drop a case against a perpetrator.

The practice of child marriage.

The practice, according to the UN is a violation of human rights, a serious impediment to literacy and a major cause of persistent poverty. It says about a third of girls in the country are pregnant before turning 15, according to UNICEF. Child marriage is a growing epidemic driven by socioeconomic factors such as poverty and gender inequality with most families of victims of rape preferring not to prosecute when the offence results in pregnancy of teenage girls because the overriding concern becomes the upkeep of the victim and the unborn child, thus, money is offered and often accepted in lieu of prosecution. Usually the victim is better off married or catered for by the rapist.

An example of a rape case handled at the GBV Court where the victim was preferred the charges dropped against the perpetrator.

In this case, a survivor called Jackie (not her real name) and her mother were against the decision of a GBV court which sentenced the perpetrator to imprisonment for a 10 years' jail term and to and pay Two Million South Sudanese pounds as a reparation to the victim's family. The court ruling put the victim and her mother at odds with the victim's father who was the complainant in the case. The victim and her mother decried the action of her father to prosecute the rapist saying he could have opted to settle the matter customarily since the perpetrator admitted that he was in love with the teenage girl and had promised to marry her and pay all the required cows. The victim went further to contradict the father over her age, claiming that the father lied to court to have the perpetrator prosecuted. "You're a father who is a liar. I am a shame of you. I was not born in 2008 but in 2005. Why do you want someone's son to suffer in jail while you also have boys? Even for one hundred years, I will wait for him to come out from jail. I will not go back to school but will start behaving the way I like and you will never stop me from loving him." She stated in the presence of her mother who was in support of customary settlement of the matter.

The role traditional practices on the influence of parties.

The above incident corroborates traditions upheld by most families of the girl child whose pride is to remain in good social standing and to have financial prosperity. "Young girls are often married off to reduce financial stress for families, and for the chance at gaining a profit such as a dowry. When experiencing poverty, dowry is often seen as the last chance for the rest of the family to survive in order to keep their children safe and to prevent their daughter from conceiving children without being married." One of the court attendees observed.

Whether the victim can decline the criminal case:

Rape is a major reproductive justice issue and access to justice is of paramount importance to everyone particularly victims of child rape. The majority of rape victims in South Sudan are children below the age of 15 years.

Rape leads to adverse long-term reproductive health consequences. 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.) 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. Economic hardship is often associated with teenage pregnancy and attendant complications.

Victim has no right to drop the case;

On the above premises, can the victim drop the charges?" The short answer is no they can't. But the situation is a lot more complicated.

The general public seems to have a common misconception that a victim has the right to either press or drop criminal charges in a rape case. This is not accurate. On the contrary, even if the victim wants to drop charges on a private right, the State's Attorney may on public right decide after reviewing all the facts that it is in the State's best interests to continue prosecuting the case. It is the state that is offended although the victim's input is very important and under the Constitution, all victims of crimes have the right to be heard throughout the proceedings and voice their concerns to the court. However, those rights do not extend to being able to drop the case.

In situation of the rape case decided, the victim still have an ongoing relationship with the accused because they have a newly born baby in common and she feels that the accused is the caregiver and her husband.

The most important thing that needs to be defined when talking about "dropping charges," is who exactly is able to decline a criminal charge. Surprisingly, it is not the victim – it is the government and typically the office of the public prosecution attorney where the crime occurred-that actually brings the charges.

Some best practices outlined;

- It is a settled practice that even if a victim requests that charges be dropped against a perpetrator, it will be up to the prosecutor to decide if the government will drop the charges against the accused.
- Whatever the seemingly good intentions of the victim may be, it is submitted that settlement of cases out of court is unlawful and goes against the tenets and spirit of the law that aims at protecting society.
- The prosecutor has the call to continue or not to continue the charges because, even if the victim is no longer interested in pursuing the charge, the State may believe that the accused could still be harmful to others.
- If a victim refuses to appear in court, prosecution can actually issue an arrest warrant for them. Additionally, if the victim does show up to court, but testifies that the violent incident in question did not actually occur, then they could be accused of and ultimately charged with filing a false police report. In this situation, there is a possibility that rape cases or any criminal charges could be dropped.

Conclusion.

While the victim can't "drop" the charges in a rape case, the input from the victim is an important factor in the determination of a rape case. Having a cooperative victim who wants to see the case against perpetrators go away can go a long way towards achieving a favorable resolution of rape case.