

PUBLIC SERVICES AND JUSTICE: A CASE STUDY OF THE LEGAL TREATMENT OF DEFILEMENT IN MALAWI

Defilement is one of the common sexual offences against children in Malawi. The Penal Code criminalises sexual intercourse with a girl below the age of 16 with or without her consent. However, research shows a number of challenges in the legal treatment of defilement cases by both the formal and traditional systems and therefore the protection of girls from sexual abuse. Such challenges include inefficiencies in delivery of public services by such agencies as the police and courts as compounded by traditional systems. Ultimately, the combination of the two adversely affects access to justice.

This paper is based on research conducted in 8 districts of Malawi in 2013. The research set out to investigate the extent to which the justice delivery system protects rights of children who have been sexually abused. It involved individual interviews, case reviews and focus group discussions. Part of the findings show that access to justice and protection of affected children is undermined by inefficiencies in public institutions such as the police, hospitals and courts, in the way that they handle defilement cases. These include arbitrary decision-making and poor investigation by the police; lack of expertise and proper equipment to handle such cases in hospitals and poor evidence adduced before the court. The poor public service is compounded by social cultural factors that also adversely affect protection of children from sexual abuse at community level.

This paper therefore argues that the (in)efficiency of public service delivery by the police, hospitals and courts and the traditional system have a direct impact on the quality of justice available to children who have been sexually abused which is critical for the protection of the girl child in Malawi. It is further argued that the systemic failure to protect the girl child is a breach of children's rights as enshrined in the Malawi Constitution.

Submitted by:

Ngeyi Ruth Kanyongolo, PhD and Bernadette Malunga,

University of Malawi, Chancellor College, Faculty of Law, Zomba, Malawi