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HOW SHOULD RAPE CASES BE DEALT WITH IN NAMIBIA?

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THIS week The Namibian newspaper reported a story about an alleged gang-rape of a 14-year-old girl by nine boys.

The article says that a teacher reported the incident to the Police but that the parents were unhappy with this action as they had agreed to settle the matter through the traditional court.

The decision of whether to report a rape case is complicated. The Legal Assistance Centre supports the need to report rape cases to the Police as the law sees rape as an extremely serious crime.

The minimum sentence for rape can be a prison sentence of 5, 10 or 15 years depending on the circumstances of the crime. In cases of gang-rape, each rape can be punished by a separate sentence. This means that if three people help each other to rape a girl, each person could be convicted of three counts of rape. Gang-rape gets the highest minimum sentence of 15 years' imprisonment, so each person could face a prison sentence of 45 years. This shows how seriously the crime of rape, and particularly gang-rape, is considered in the eyes of the law.

However, the minimum sentences for rape do not apply to children under the age of 18. This means that if the alleged incident in Rundu went to court, the judge would treat the crimes extremely seriously but that there is no set punishment these children would receive.

Reporting a rape case to the Police can be difficult for the rape survivor but by reporting it, the victim and the family are sending a message to the perpetrator and society that rape is not acceptable. The punishment is an example to the perpetrator and other people who might commit a similar crime.

Reporting a rape case to the Police also helps the rape survivor take control of the situation. Many people who have been raped feel that the rape has taken away all of their power. By taking the case to court, the person who has been raped is able to take back control of his or her life. A court case allows the person who has been raped to tell his or her story and show that he or she is not a victim of the crime but a survivor.

Another very important reason to report the crime to the Police is that if the rape case is not reported, there is a risk that the perpetrator could rape someone else. Studies from across the world have shown that rapists often repeat the crime and there have been a number of cases in Namibia to show that this is also true here.

Although there are many reasons to report rape cases to the Police, research by the Legal Assistance Centre shows that complainants request withdrawals in more than one-third of all rape cases. The most frequently cited reason for case withdrawal is alternative resolution through compensation. Often this is managed through the traditional courts. The traditional court does not have the authority to deal with the criminality of the case - this remains within the jurisdiction of the criminal court - but the traditional court can order compensation for damages.

Some people agree with this method of restorative justice, particularly as it often allows the case to be dealt with faster and may seem more private. However, other people feel that compensation cannot address the serious nature of the crime. Some people in Namibia have also commented that compensation allows the perpetrator to "buy" the right to rape a person, or to "buy" the right not to face prosecution in the criminal court. Whether or not compensation is an acceptable form of justice is up to the individual. But one of the biggest concerns is that as the rapist remains in society, compensation does little to prevent the rapist repeating the crime.

As the incidence of claiming compensation for rape cases is so common in Namibia, the Legal Assistance Centre has recommended that the law should be changed to allow rape survivors to bring criminal charges and claims of compensation at the same time. The Criminal Procedure Act of 2004, which has been passed by Parliament but is not yet in force, would make this possible.

The Legal Assistance Centre has also recommended that Government and civil society should do more to ensure that people are aware that even now they can bring criminal charges in court and claims for compensation of damages in the traditional court, if they wish.

In the context of the Rundu situation, this means that the fact the teacher reported the crime to the Police does not prevent the family from dealing with the matter through the traditional court. The parents are entitled to continue with a traditional hearing even if the criminal prosecution continues. Some people may argue that the compensation process is meant to be an alternative form of resolution to a prison sentence. However, a prison sentence for rape may be the best way of protecting society.

The final decision of whether the case will go ahead or not in the criminal court rests with the Office of the Prosecutor General. This is because a rape case in court is between the Government and the accused. The Office of the Prosecutor General could decide to continue with a rape case even if the person who was raped is not willing to give evidence. For example, a case might go ahead if there are a number of other witnesses to the rape. However, in the majority of cases, if the person who has been raped refuses to testify, the case will not go ahead as this person is usually the only witness to the crime.

One final issue must be addressed in the Rundu case - did the teacher have a duty to report the incident? The law is currently silent in this regard. However, the Child Care and Protection Bill, which we hope will be taken to Parliament this year, addresses the issue.

The Child Care and Protection Bill contains a provision that will require any person who performs professional or official duties with respect to children, and who is aware or suspects that a child has been abused, to report the information to a social worker or a member of the Police. This provision is intended to ensure that all children are adequately protected.

The provision is very important even if it may seem to intrude in the family domain. This is because in some situations it is the parent who is abusing the child. If the service provider only reported the suspicion to the parents, the abuse would continue. In other circumstances the parent may be too afraid to report the abuse to the Police. There have been cases across the world where children have died in the care of their parents because support services did not address suspicions of child abuse soon enough. The Legal Assistance Centre advocates for more discussion by members of the community about how to deal with cases of rape. There have been regular reports in the media recently about calls for heavier punishment for crimes of rape and domestic violence. Whilst it is important to ensure that we have strong laws, if the laws that are currently in force are not utilised, stronger laws will not help to address the problem.

As a nation we cannot tolerate the widespread occurrence of rape. The Legal Assistance Centre supports the reporting of rape cases to the police whilst understanding that this solution may not be right for all people in Namibia. Therefore above all we support the need for rape survivors to speak to a trained social worker or counsellor to help them deal with the situation and be supported in the difficult decisions that will follow.

In our effort to meet this call to action, the Legal Assistance Centre has made contact with the Rundu school and offered to provide information for the school members and their families about what to do if you have been raped. We hope that other schools and communities will also take action and promote discussion about this sensitive issue.

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