

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI**  
**CRIMINAL SESSIONS CASE No. 0020 OF 2018**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

**CHANDIGA GEOFFREY** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**SENTENCE AND REASONS FOR SENTENCE**

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When this case came up on 12<sup>th</sup> February, 2018, for plea, the accused was indicted with the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 26<sup>th</sup> February, 2018. Yesterday there were four prosecution witnesses in attendance ready to testify but the accused chose to  
15 change his plea and the indictment was read to him afresh. It was alleged that on 9<sup>th</sup> January, 2017 at Abeso village in Moyo District, the accused performed an unlawful sexual act on Anzoa Christine a girl under the age of 14 years. The accused pleaded guilty to the indictment.

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The learned Resident State Attorney, Ms. Bako Jacqueline then narrated the following facts of the case; on 9<sup>th</sup> January, 2017 as the victim was at home with a one Caesar, the accused came to Cesar's home and called the victim at around midnight. He got hold of her and pulled her towards the valley where they fetch water and threatened to kill her if she made any noise. At the valley, he threw her down remove her panties and had sex with her. He warned her not to tell anyone,. he returned her to the home of Caesar but found all had inside the house. He told her to  
25 go back home and she went home. At home she opened the kitchen door where she sleeps and her mother Roman Andama on hearing the noise of the door came out of her house and asked the victim where she was coming from and she told her mother that she was from playing. Her mother told her to enter and sleep. In the morning the mother inquired where she had been the previous night that caused her to return home late. She revealed to her mother that she was taken  
30 by the accused to the valley where the accused had sex with her. She further told her mother that it was the second time the accused was having sex with her, the first time having been 25<sup>th</sup>

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December, 2016. Her mother then took her to the bathroom where she examined the victim's vagina and found it was pale and swollen. The mother informed the father of the victim Andama Alfred who interviewed the victim in the presence of Jane Zena and Mary Drani and the victim narrated that the accused had sex with her. The victim then led the group including her father, 5 mother Jane Zena and Limio Drani to the scene where they found the grass was trampled and signs of a struggle. The accused was arrested by the Chairman of Abeso village with the help of the youth. He was forwarded to Moyo Police Station and charged with Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. The victim was examined on P.F2A on 9<sup>th</sup> January, 2017 from Moyo General Hospital by a Clinical Officer Kizza Francis where she was 10 found to be 14 years of age and her genitals were found to have faucet with bruises in the labia and the hymen with laceration suggesting recent penetration. The cause was penetrative sex. The accused was examined on P.F 24 on 9<sup>th</sup> January, 2017 from Moyo General Hospital by the same Clinical Officer where he was found to be 25 years old and mentally normal. Both police forms; P.F. 3A and P.F 24A were tendered as part of the facts.

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Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. Submitting in aggravation of sentence, the learned State Attorney stated that although she has no previous record of the accused, the offence is of serious nature in that the victim was 20 in Primary three and 13 years old when he exposed her to early sex and to-date the girl is still in school. She prayed for a deterrent custodial sentence to keep the accused out of circulation to enable the victim complete school. She proposed twenty five years' imprisonment.

In response, the learned defence counsel Mr. Barigo Gabriel prayed for a lenient custodial 25 sentence on grounds that; the convict is a first offender. He has pleaded guilty and has not wasted court's time. He is remorseful and looks it as evidenced by his plea. He is youthful and is married, with one wife and one child. He has spent time on remand. That should be considered and with a lenient sentence he will reform. The convict is capable of reform. He should come out after the sentence and take charge of the family as sole bread winner. In his *allocutus*, the convict 30 prayed for lenience on grounds that while in the prison, the complainant went and sold all his property; a pig, two smart phones that had been brought to him for repair and some Nokia

phones that had been brought for repair, two sacks of ground nuts and his money Shs. 350, 000/= in the mattress. His sister married in Sudan took refuge at his home and died in Sudan when she had returned to collect her property. There is no one to care for those children. He is not on good terms with the family of the complainant. She destroyed the house of his brother and chased him  
5 from home and thus there is no one at home. Some of the property was recovered with the help of his brother who now has a conflict with the complainant. He prayed for a lenient sentence because he has orphans to look after and his mother is elderly, over 70 years. His child is disabled. He proposed two months' imprisonment.

10 In his victim impact statement, Mr. Andama Alfred, the father of the victim stated that up to now he is aggrieved against the accused. He is not sure whether her reproductive parts will not be affected in the future. At the police the convict denied having committed the offence. He had no grudge with the convict. He is his nephew. He even gave him my motorcycle to earn a living. He liked him because he was an active member of the society. He had asked the girl to collect some  
15 water for him and he took advantage. He is married with a child and he should have not gone for his daughter. He had settled differences the convict had with his wife before. He will be happy if the convict is given ten years' imprisonment.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s  
20 129 (3) and (4) (a) of the *Penal Code Act*, is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it has lethal or other extremely grave consequences. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

25 Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. Only one aggravating factor prescribed by Regulation 22 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is applicable to this case, i.e. the victim was defiled repeatedly by an offender who is supposed to have taken primary responsibility of her. A sentence of life imprisonment may as well be justified by  
30 extreme gravity or brutality of the crime committed, or where the prospects of the offender reforming are negligible, or where the court assesses the risk posed by the offender and decides

that he or she will probably re-offend and be a danger to the public for some unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see *R v. Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410). There are cases where the crimes are so wicked that even if the offender is detained until he or she dies it will not exhaust the requirements of retribution and deterrence. It is sometimes impossible to say when that danger will subside, and therefore an indeterminate sentence is required (see *R v. Edward John Wilkinson and Others* (1983) 5 Cr App R (S) 105 at 109). However, since proportionality is the cardinal principle underlying sentencing practice, I do not consider the sentence of life imprisonment to be appropriate in this case.

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When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act, the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors.

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Although the manner in which this offence was committed did not create a life threatening situation, in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was over 25 years old and the victim 13 years old. The age difference between the victim and the convict was 12 years. However I am mindful of the decision of the Court of Appeal in *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal opined that the sentencing guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. In that case, it set aside a sentence of 30 years' imprisonment and substituted it with a sentence of 15 years' imprisonment for a 29 year old appellant convicted of defiling an 8 year old girl.

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I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the

court of appeal in its judgment of 8<sup>th</sup> February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1<sup>st</sup> April 2014, the court of appeal upheld a 15 year term of  
5 imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6<sup>th</sup> February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal*  
10 *No. 36 of 2010* the Court of appeal in its judgment of 6<sup>th</sup> July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old  
15 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl. Accordingly, in light of those aggravating factors, I have adopted a starting point of fifteen years' imprisonment.

Against this, I have considered the fact that the convict has pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory  
20 footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and  
25 purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence but because it has come on a day fixed for hearing and not at the earliest opportunity, I will not grant the convict the  
30 traditional discount of one third (five years) but only a quarter (three years), hence reduce it to twelve years.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to ten years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period  
5 spent on remand from the sentence considered appropriate, after all factors have been taken into account. I note that the convict has been in custody since 1<sup>st</sup> March, 2017. I hereby take into account and set off a period of eleven months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of ten (10) years and one (1) month, to be served starting today.

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Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

15 Dated at Adjumani this 27<sup>th</sup> day of February, 2018

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Stephen Mubiru  
Judge,  
27<sup>th</sup> February, 2018.

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