



A STATEMENT TO COMMEND PROGRESSIVE JUDGMENTS ON CASES OF DEFILEMENT AND CALL TO FURTHER ACTION

Cases of child abuse, particularly defilement, have been so rampant so much that every day, the media is awash with reports of such cases. Again, complaints received at the Commission and official police records have also documented cases of sexual gender-based violence. Some of these have allegedly been perpetrated by people who are expected to protect the children. Such perpetrators include parents and guardians, close relations, police officers, teachers, transport operators, community members, and other adults.

Where such sexual violations occur, section 15(2) of the Constitution provides for the availability of remedies for victims. These remedies include the assistance of the courts, the Ombudsman, the Human Rights Commission and other organs of government to ensure the promotion, protection and enforcement of those rights and the redress of any grievances in respect of those rights.

It is in this light that the Commission commends the Judiciary for the recent progressive judgments it has made through various cases on defilement, in particular the following judgments: **The Republic v Bester Kamayanika (Criminal Review Case No. 7 of 2021)** pronounced by Justice Chifundo Kachale; **Steven Kaliyati v the Republic (Criminal Appeal No. 109 of 2018)** pronounced by Justice Fiona Mwale, **Fabiano Maliko v The Republic (Criminal Appeal Cause No. 13 of 2020)** pronounced by Justice Redson Kapindu and **The Republic v Levison Harold (Confirmation Case No. 37 of 2020)**; **The Republic v Afete Daniel (Criminal Confirmation Case No. 2123 of 2020)** pronounced by Justice Annabel Mtalimanja, where stiffer punishments were imposed to correlate with the severity of the sexual offences following lenient sentences the lower courts had imposed at the first instance of trial.

We highly commend the path the Judiciary is taking towards pronouncing gender responsive judgments as judicial decisions have both an individual and a collective power in giving meaning to the rule of law. We therefore call upon the Judiciary to ensure the pronouncement of stiffer punishments for all sexual offences as a strategic intervention within the hierarchy of the judicial system in a bid to also deter other would be offenders from committing such heinous crimes.

This call extends to other relevant stakeholders, including the Ministry of Gender, Community Development and Social Welfare, the Ministry of Homeland Security and the Ministry of Justice and Constitutional Affairs, uniquely placed to ensure that relevant criminal laws, including those relating to gender-based violence are implemented through the lens of international standards and norms; are effectively enforced; protect women and girls from violence, including from the recurrence of violence; hold perpetrators accountable; and provide effective reparations for victims.

The Commission also calls on the general public and Civil Society Organizations to be vigilant for red flags on all situations that can potentially be abusive to children. Every adult should rise up to identify possible risky situations and behaviors of adults towards children and report the same with speed considering that time is of essence in children's matters. The general public is reminded that child protection is the responsibility of every adult regardless of the relationship between the child and that adult. It is in this spirit that Section 36 of the Child Care Protection and Justice Act, 2010 places such responsibility on every member of the community. To achieve this, we should ensure that all processes from the reporting stage must be done in consideration of the principle of "The Best interests of the Child" as stipulated in Article 3 of the United Nations Convention on the Rights of a Child and Article 4 of the African Charter on the Rights and Welfare of the Child. It is therefore the Commissions hope that we shall all take our roles seriously in the fight against sexual violence, particularly defilement, like the Judiciary has done, by imposing stiffer sentences against perpetrators of defilement and other forms of sexual violence.

Dated this 30th April, 2021

A handwritten signature in black ink, appearing to read 'Habiba Osman', with a large, stylized initial 'H' at the beginning.

**Ms. Habiba Osman
Executive Secretary**