

**THE LAW ON DEFILEMENT AND ITS EFFECTIVENESS  
CASE STUDY IN MUKONO DISTRICT**

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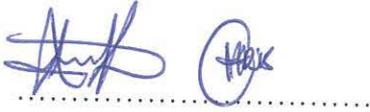
**A RESEARCH PROJECT SUBMITTED TO THE FACULTY OF LAW  
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THE AWARD OF DIPLOMA IN LAW AT KAMPALA  
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KANSANGA**

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## DECLARATION

I **AKEKU CHRISTOPHER** hereby declare that this is my own original research work and has never been submitted to any university for any academic award.

Signature



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.....

## APPROVAL

I certify that **ALEKU CHRISTOPHER** carried out his research under my supervision and wrote this report titled the law on defilement and its effectiveness; I therefore endorse the report to be submitted to Kampala international for the award of diploma in law.

Signature .....

**MISS PARTON TWIKIRIZE**  
**(SUPERVISOR)**

Date .....

## DEDICATION

This endeavor is warmly dedicated to my beloved sister Keliki Beatrice, my brother Tadaqu John Bosco Opio, my late brother Mandela, my family, my supervisor Madam Twikirize Parton and to whom I owe so much who has helped me in special ways to develop into what I am today.

## ACKNOWLEDGMENTS

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I extend my sincere gratitude to my supervisor madam Parton Twikirize who has ensured the accomplishment of this report appropriately and on time.

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# CHAPTER ONE

## 1.0. Back ground

The research study mainly focused on the law on defilement and its effectiveness that is mainly faced by female sex being the most affected group in the universe. The offence of defilement is defined in section 129 of the P C A of Uganda and it provides that any person who unlawfully has sexual intercourse with a girl under the age of 18 years is guilty of the offence and is liable to suffer death<sup>1</sup>.

Before the amendment of P C A sections it used to define defilement to mean a man having sexual intercourse (carnal knowledge) of a girl who is below the eve of 18 years that was the meaning of defilement, after the amendment of the P C A section 129 it defined defilement to mean any person who performs sexual act with another person who is below the age of 18 years of age commits a felony known as defilement and on conviction and on conviction is liable to life imprisonment, and still the P C A provides that any person who attempts to perform sexual intercourse with another person who is bellow the age of 18 years commits an offence and is on conviction liable to imprisonment not exceeding 18 years.<sup>2</sup>

The enactment of the P C A has played a paramount role in the protection and securing of young girls as far as virginity is concerned which is a priority of every female sex person not with standing there dignity.

In Mukono district emphasis were put on methods that can be used to control and stop the course of defilement and how best these methods can be used.

Mukono district is comprised by different tribal groups but majority being Baganda, Basoga, and westerners, it has been found on record that the main courses of defilement in Mukono district is due to the large number of youth who are not well educated and most of them are not employed and so idle in addition to that there are very many drinking places surrounded by slummy areas and bars being attained by young girls.

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<sup>1</sup> Section 129 (3) of the penal code Act

<sup>2</sup> Section 129 (2) of the penal code Act

Poor enforcement of laws by the law enforcers of the area was also found to be one of the main courses of defilement, there for the researcher carried out the study in Mukono district simply because Mukono district is the most vital place for the study concerning defilement given the scenario, it is there for important that every individual acquires basic knowledge about the offence of defilement which will enable them live as good citizens in the society.

## **1.1. Objective of the study**

### **1.1.0. General objective**

To investigate on the law on defilement and its effectiveness and the main challenges to eradicate the offence of defilement in Mukono district.

### **1.1.1 Special objectives**

- i) To investigate the status of the existing facilities
- ii) To establish the motivation level of law enforcers in Mukono District
- iii) To investigate the attitude and support of people towards defilement

### **1.1.2. Research question**

- i) What is the status of existing facilities used for the enforcement of the law of defilement?
- ii) What is the level of motivation of law enforcers?
- iii) What are the attitudes and support of people towards the offence of defilement?

## **1.2. Scope of the study**

### **1.2.0. Geographical scope**

The study has been conducted in Mukono district it is located 20 kilo meters from Kampala the capital city of Uganda, Mukono district was chosen because it is the district with most criminal cases.

### **1.2.1. Content scope**

The study was mainly to examine, analyze, and state the law on defilement in Mukono district where the victims include among others rich family and poor family.

### **1.2.2. Time scope**

The research will cover the period between years 2000 up to date; this is because the researcher thinks that it is the most appropriate period for his research.

### **1.3. Significances of the study**

The study will help to find out the challenges to the implementation of laws punishing the convicts in relation to the offence of defilement

The study will be significant in order to find out how much effort the government of Uganda is putting in place in order to control the offence

The study will provide recommendation to the enforcers on how best they can enforce these laws

The study will provide information which will be used by future scholars for further research into fresh areas of problem which have not been exhaustively dealt with

The study will enable the researcher to acquire skills and techniques of conducting research which he will continue in doing research

The study will help the researcher to gain knowledge and practical skills in the field handling criminal problems; the study is significant because it is a partial fulfillment for the award of diploma in law

### **1.4. Statement of the problem**

Although the law on defilement has been enacted in Uganda and introduced in Mukono district by the provisions of the P C A and constitution<sup>3</sup>, and although emphasis has been put on it, the offence of defilement has continued to exist in Mukono district, this district still experiences sexual abuse and violation mainly perpetrated against woman and girl returnees. This is because of the community's attitude towards the offence and victims who consider the victims to be a disgrace to the community. This problem is perpetuated by archaic cultural beliefs, the researcher has therefore done this research to show the citizens how bad the offence and its consequences are and to put the offence to an end.

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<sup>3</sup> The republic of Uganda 1995

## LIST OF KEY WORDS

**Disability**', within the meaning of the Act means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting into limited participation

**'Sexual offender'**, this means a person who has previous conviction for the offence of defilement or aggravated defilement.

**'Sexual intercourse'**, having sex with another person or sleeping with another person

**'Carnal knowledge'**, having sexual intercourse with a woman, it happens when the male organs (penis) penetrates that of a woman (virgina)

**'Defilement'**, this is a term to mean an offence which occurs when an adult person has carnal knowledge of a person who is below the majority age (18 years)

**'Victim'**, a victim is a person to whom the offence has been committed to. a person suffering the consequences of the offence.

**'Accused'**, is the person who committed the offence

## CHAPTER TWO

### LITERATURE REVIEW

This chapter provides a wide range of ideas from deferent writers and scholars about the law on defilement and its effectiveness and the offence of defilement in general, in order to understand the problem at hand, the researcher read books, journals, websites, magazines and other dissertations that were related significantly to this noble study. The researcher was guided by deferent theories put across by various authors about the law on defilement and its effectiveness.

**J.M ALIRO OMARA<sup>4</sup>**, in his paper, discusses the rights of a child as articulated in the constitution and the children Act. It also suggests strategies for the protection and promotion of these rights while recognizing the challenges of such custom, practices and beliefs. The paper is however silent on the strategies for the protection of the rights of a child especially the girl child and disabled. The other in his book offers comprehensive analysis of the role of the constitution in the protection of children from acts of violence.

A **UNICEF<sup>5</sup>** publication also tackles the issue of child welfare but focuses mainly on various issues like child sexual abuse, alcohol, school drop outs but it does not look at such problem in light as how they conflict with the right of children as enshrined in statutes.

**HELLESTINE HUME AND OFFEN<sup>6</sup>**, in there book called **child molestation** deals with child sexual abuses with there attention being put on the girl child. In these times many male children are sexually abused by house maids, grown women and fellow men. This is a serious problem that comes up as a result of domestic violence and it has to be sufficiently researched on mean while, the boy child under such circumstances he is equally vulnerable as the girl child.

According to **LILLIAN NAMATAKA<sup>7</sup>** a defiler woman who jumped bail was re-arrested, the case was “Lucy Akello 30 accused of keeping a 17 year old boy in her house and having sexual intercourse with him” the case in which Lucy Akello is accused of keeping a minor in her house and allegedly having sexual intercourse with him was before Gulu chief magistrate, Praff Rutakirwa, this shows that now a boy child can also be defiled.

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<sup>4</sup> April (1998) rights of an African child centenary publishers house limited

<sup>5</sup> Annual public report Uganda covering events from January to December 2004 at pg 41

<sup>6</sup> (1998) child molestation and the law, batterworth London at pg 99

<sup>7</sup> New vision Monday October 1, 2012

**BWIBO**<sup>8</sup>, in his book entitled **battered baby syndrome** says that when a child is physically or emotionally abused, his or her physical system recalls as it were and refuses to function. The physical trauma of the abuse interferes with the normal growth and development and hence failure to thrive. According to human rights magazine, Evelyn Brenda Endrone wrote that children should be given special attention and their welfare should concern every body because they are the pillars of tomorrow.

**GEORGE GOIRE 2006**, according to him, he asserts that sexual violation should be regarded as a critical emergency, a crime and a human rights violation, which has the effect of destroying the fabric of communities. He says that violation must be understood as occurring a long continuum of violation and social disintegration and that its root cause must be addressed.

Internationally in relation to the convention of United Nations with in the meaning of a child, it means every human being below the age of 18 years. But according to 1995 constitution of republic of Uganda<sup>9</sup> provides that a child shall be a person under the age of 18 years. Defilement is unlawful act and it concerns only to persons who are under the age of 18 years, according to the penal code<sup>10</sup> defilement is when a person performs sexual act with another person who is below the age of 18 years commits a felony known as defilement and on conviction is liable to life imprisonment. In addition to that any person who attempts to perform any sexual act with another person who is below the 18 years of age commits a felony and is on conviction liable to imprisonment not exceeding 18 years<sup>11</sup>

**D J BAKIBINGA**, in his book **sexual assaults and offences against morality** discussed the offence of defilement as whole, for example ingredients of the offence, types of defilement, corroboration in evidence giving, defilement of idiots and boy child and many other things. The researcher found his book more detailed and so important for this study, the offence was discussed as below.

Sexual act in defilement means

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<sup>8</sup> Battered baby syndrome, Africa medical journal at pg 48-56

<sup>9</sup> Art 34 (5) of 1995 constitution of Uganda

<sup>10</sup> Section 129 (1) of the penal code Act

<sup>11</sup> Section 129 (7) (a) of penal code Act

- i) penetration of the virginals, mouth, or anus however slight, of any person by sexual organ
- ii) the unlawful use of any object or organ by a person on another person's "sexual organ" means a virgina or penis

The law on defilement is that no body no body on this earth can have sex intercourse with a person who is below the age of 18 years this is as provided by the constitution of Uganda 1995 and the penal code prohibits that act to section 129.

## **2.0. The law of defilement on boy child**

The fact that male defilement is not recognized in laws of Uganda, but section 129 of the penal code Act provides that any person who performs sexual act with another person, this shows that there were no specifications in gender whether male or female but both sex can be defiled. Before the amendment of the penal code Act it used to provide that any person who performs sexual act with a girl under the age of 18 years commits the felony which meant that by then only girls would be defiled but not boys. after the amendment it is clearly shown that even boys can also be defiled. The law relating to protection of minors covers both girls and boys and according to law reforms of 2001 of the Acts, study of rape and defilement now show that even boys can also be defiled and since the law is aimed at protecting all children from sexual exploitation and abuse the it should not de discriminative against boys and there for discrimination violates Article 21<sup>12</sup> of the constitution of Uganda 1995 this means that the constitution prohibits all kinds of discrimination against any person therefore since the constitution is the first law that means that even boys can be defiled.

## **2.1. The law of defilement on child to child sex**

When it comes to child to child sex, the law on defilement treats it differently, this is very important for one to differentiate between child to child sex and defilement, the penal code Act provides for the meaning of child to child sex and how it should be handled <sup>13</sup> provides that

- i) Where the offender in the case of any offence under section 129 is a child under the age f 12 years the matter shall be dealt with as required by part V of the children`s Act.

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<sup>12</sup> Equality and freedom from discrimination, that all persons are equal before the law and deserve equal treatment and protection by the law

<sup>13</sup> Section 129 of the penal code Act

ii) Where an offence under section 129 is committed by a male child and female child upon each other when is not below the age of 12 years of age. Each of the offenders shall be dealt with as required by part X of the children's Act.

The Act further provides that where a person is charged an offence under the section 129 that person shall undergo a medical examination as to his or her human immune deficiency virus HIV status.

## 2.2. Types of defilement

According to the laws of Uganda, the offence of defilement has got two types and these include simple and aggravated defilement, the penal code provides that simple defilement is when the accused performs sexual intercourse with another person who is below the age of 18 years or attempts to have sexual intercourse with adpersons who is below the age of 18 years.

Whereas

Aggravated defilement is provided for in the penal code Act<sup>14</sup>, this section provides for the circumstances that amount to aggravated defilement and these include the following.

- i) Where the person against whom the offence is committed is below the majority age.
- ii) Where the offender is infected with HIV.
- iii) Where the offender is a parent or guardian or a person in authority over the person against whom the offence is committed.
- iv) Where the victim is a person with disability.
- v) Where the offender is a sexual offender and when the accused person is above 18 years and the victim is below 14 years

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<sup>14</sup> Section 129 (4) of the penal code Act

### **In Uganda vs. Mulengera<sup>15</sup>**

It was held among others that to establish sexual intercourse one does not need to establish the rapture of the hymen as the very slightest penetration with out rupturing the hymen will do.

### **2.3. Ingredients of defilement**

The essential ingredients for a successful prosecution for defilement have been defined by various court ruling. **In Agaya Roberts vs. Uganda<sup>16</sup>**, court of appeal stated that it is well settled that in order to constitute the offence of defilement the following must proved.

- i) Sexual intercourse
- ii) Victims age below 18 years
- iii) The accused is the culprit

### **In Bassita Hussein vs. Uganda<sup>17</sup>**

The Supreme Court also laid down ingredients of the offence of defilement which the prosecution must prove beyond reasonable doubt as

- i) the facts of the sexual intercourse
- ii) the age of the victim being under 18 years
- iii) participation by the accused in the alleged sexual intercourse

### **2.4. The law of defilement on people aiding defilement**

As with the offence of rape, persons who aid some one who is actually committing the offence having unlawful sexual intercourse with a girl under the age of 18 years can be found guilty with the perpetrator. This is a consequence of section 19 of the Uganda penal code Act which deals with principal offenders.

#### **Section 19 principal offenders 19 (1)**

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<sup>15</sup> (1994-1995) HCB 28

<sup>16</sup> Criminal appeal No 18/2000

<sup>17</sup> Criminal appeal 35 / 1995

When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it.

- i) Every person who actually does the act or makes the omission which constitutes the offence.
- ii) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence
- iii) Every person who aids or abets another in committing the offence

### **Case, in Kayondo, Fred and Mutagayika Silva vs. Uganda<sup>18</sup>**

The two appellants were convicted of defilement C/s 123 (1) of the penal code kayondo Fred the first appellant had sexual intercourse with the complainant while the second appellant held her arms, it was held that Kayondo (A1) was a principal offender and (A2) an aider and abettor A2 assisted A1. A2 consciously participated in what was happening. He assisted A1's sexual act. The intention of A2 in holding the hands of the complainant while A1 ravished her was to enable A1 to succeed in his act of defilement, the provision of section 21 (1) (b) and (c) of the penal code Act apply to A2.

Thus the court found that the prosecution proved beyond reasonable doubt that it was A1 who had sexual intercourse with the complainant while A2 aided and abated the defilement. Both were guilty of defilement under section 129 of the Uganda penal code Act both were sentenced to seven years the high court findings were confirmed by the court of appeal.

### **The law on corroboration of evidence in sexual offences**

The law requires evidence from witnesses of sexual offences corroborated, corroboration is needed on all the ingredients of the offence as with case of rape, for successful prosecution of defilement, all the ingredients of the offence must be corroborated-the evidence of the victim is not in itself sufficient proof

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<sup>18</sup> Criminal appeal No 31 / 1998

## Case in Uganda vs. Rurahukayo<sup>19</sup>

The High court held that in sexual offences court must find corroboration of the complainant's testimony on all the ingredients. This corroboration is required as a matter of judicial caution and practice. It may be adduced from direct or circumstantial evidence.

### 2.4.0. Evidence of children of tender years

Who is a child of tender years? A discussion of defilement necessitates focus on evidential rules regarding the testimony of a child of tender years, **in Kibagenyi Arap vs. R**<sup>20</sup>.

The court of East Africa defined a child of tender years as follows, in the absence of special circumstances, any child who of any age, or apparent age, of less than fourteen years is a child of tender age. Victims of defilement are often children of tender age and in many cases the only other witness (apart from the victim) to the act of defilement is another child of tender age the rule on corroboration in sexual offences makes proof of cases in sexual difficult, in sexual offences where the victim is a child of tender years, evidential rule makes the prosecution case doubly difficult. There is need to corroborate the evidence of a child of tender years who gives evidence not on Oath. The need to corroborate the evidence of a child of tender years is based upon the view that evidence of a child is inherently less liable than that of adults and that there is a grave danger of false accusation by children. It is assumed that children are highly imaginative and that their stories may be the product of suggestion by others but, where a child of tender years does not understand the nature of an Oath but is intelligent enough to know the duty of speaking the truth, he /she nevertheless be allowed to testify in a court of law. However the evidence of such a child should be corroborated before by some other evidence before a conviction can be based on it.

### Voire dire, what is avoi dire?

Courts around the world have historically employed special inquiries to asses whether or not a child is competent to testify, the goal of inquiry is to determine whether a child has the intellectual ability / competence to give evidence, the test of competency requires that the witness has sufficient intelligence, understanding and ability to observe in order to recall and

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<sup>19</sup> Criminal session case No 260 / 97

<sup>20</sup> (1959) E A 92

communicate information. Comprehend the seriousness of taking an Oath and appreciate the necessity of telling the truth it is this inquiry in regard to a child witness that is called a voire dire process

**The purpose of the process is to ascertain that a child**

- i) knows the deference between truth and lies
- ii) is prepared to testify truthfully and
- iii) is capable of observing, remembering and verbally describing events

**2.4.1. Sworn evidence of a child of tender years is capable corroborating the evidence of the complainant.**

**Case Mukasa Evaristo vs. Uganda<sup>21</sup>**, where a child of tender years gives evidence on Oath, corroboration of her evidence as such witness is not necessary.

**Case, Bangirana vs. Uganda<sup>22</sup>**, the appellant was convicted of indecent assault on a female centrally to section 148 of the penal code Act, after conducting a voire dire, the sworn evidence of a girl aged 12 years was permitted by the trial judge, it was held by the high court that despite the fact that the girl was a child of tender years, her sworn statement (Evidence) was capable of corroborating the evidence of the complainant.

**Evidence conclusion**

From the various cases cited above one can conclude that

- i) according to statutory law a person accused of a crime can not be convicted on a sworn evidence of a child of tender years unless the testimony of such a child is corroborated in some material particularly by other evidence
- ii) According to case law there is a rule of practice to the effect that the trial judge should warn the assessors and himself that although they may convict on the sworn evidence of a child witness, it would be dangerous to do so in the absence of corroborative evidence.

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<sup>21</sup> Criminal appeal No 43 / 2000 supreme court

<sup>22</sup> (1975) H C B 361

#### **2.4.2. The law on issues that concern the age of the complainant**

The essence of the law on defilement is the need to protect the young ones from early sex activity, proof that the girl is under the age of 18 years is thus essential for a conviction of defilement. Lack of knowledge of the victim's age is no defense, before the 1990 amendment of the law proof by an accused persons that he reasonably believed the girl to be above the prescribed age was a complete defiance to a charge of defilement of under age person. Since the 1990 amendment this is no longer a defense.

#### **Case in Tumuhairé vs. Uganda<sup>23</sup>**

The court of appeal held inter alia that the fact an accused did not know that the victim in defilement case was under the age of 18 years is not a defense. There is no need to prove the age of the victim, in Uganda vs. Iwasa sempanji<sup>24</sup>. It was held inter alia in defilement that the prosecution needs not to prove the exact age of the victim rather it must be proved that the girl was at the time of intersection under the age of 18 years.

#### **2.5. Defilement of persons with mental disabilities section 130 of the Uganda penal code** **Section 130 of the penal code Act states**

Any person who, knowing a woman or a girl to be an idiot or imbecile, has or attempts to have sexual intercourse (un lawful canal knowledge) of her under circumstances not amounting to rape, but which proves that the offender know that by the time of commission of the offence that the woman or girl was an idiot or imbecile, is guilty and liable to imprisonment for fourteen years.

It is noted that the substantive crime of defiling an idiot and attempt to commit the crime are created by the some section and that maximum sentence for either of the offence is the some.

#### **2.6. The law of defilement on the side of prosecution**

The prosecution has to prove the following ingredients

- i) Mental state of woman, imbecility or idiocy

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<sup>23</sup> Criminal appeal No 29 / 97 court of appeal

<sup>24</sup> Criminal session case No 381 / 96

ii) Carnal knowledge of the woman

iii) Knowledge of the offender that the woman is an idiot / imbecile

Just as in the case of defilement of girls under the age of 18 years, the law presumes that an imbecile or an idiot is not capable of giving meaningful consent to sexual intercourse. It is for this section that consent to sexual intercourse by a female of relevant mental defectiveness the two available defenses are, marriage and lack of the woman's mental state.

## **2.7. Effectiveness of the law of defilement**

The effectiveness of the law of defilement can be seen in various things for example it has brought very many changes in African cultural activities and norms (customary marriage Act) and Islamic marriages / Mohammedan

### **How the law has been effective**

#### **2.7.0. The effect on customary marriages**

Customary law is defined under section 1 of the customary MCA as rules of conduct which govern legal relationships and they are established by usage and are not part of common law or laws enacted by parliament.

**2.7.1. Customary marriage defined in section 1(b) of the Act** as marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community or any marriage celebrated under part 111 of the marriage Act there is no general customary law in Uganda, each tribe is guided by its customary beliefs which may not necessarily be uniform. For customary law to enforceable it should not be repugnant to natural justice, good conscience and equity as stipulated by the judicial Act.

**Article 2** of the constitution provides for the supremacy of the constitution and any laws or customs which are inconsistent with any of the provisions of the constitution shall to the extent of the inconsistency be void.

**Article 33(6)** prohibits laws, cultures or customs or traditions which are against the dignity, welfare or interest of women and those that undermine their status.

The judiciary Act provides that customs will be applicable in so far as they are not inconsistent with common law doctrines of equity and principles of natural justice. Therefore customary law

although not written must not be notorious and courts must have taken judicial notice of it for it to be applied.

**2.8. Age of marriage in customary marriage,** Act various tribes never determined capacity by only age but physical appearance section 11(a) the maximum age marriage was supposed to be 16 years for girls and 18 years for the boys, this section is in conflict with the laws in the penal code Act on defilement age and **Article 31** of the constitution which stipulates 18 years as the age of consent. Therefore such laws of the customary law being prohibited by Article 33(6) of the constitution being the supreme law in Uganda and section 129 of the penal code Act makes them null and void to the level of there inconsistency, this means that any person who unlawfully marries a girl under the age of 18 years and has sexual intercourse wither does it unlawfully and is therefore on conviction liable to life imprisonment. These laws have helped in protecting minors from sexual exploitation and early marriages and such laws have been effective in the way that who ever tries and brakes them is caught and punished accordingly.

### **2.9. The effect on Islamic marriages/ Mohammedan**

An Islamic marriage is marriage celebrated according to the Islamic faith. This kind of marriage is potentially polygamous, it is governed by

- i) the constitution
- ii) marriage and divorce of Mohammedan Act
- iii) Islamic law or sharia-divine law of Islam which is found in the Koran
- iv) Texts written by reputable Islamic scholars

Section 1 of marriage and divorce of Mohammedan Act in Uganda provides that all marriages to persons professing the Mohammedan religion and all divorces of such marriages which are celebrated according to the rites and observances of the Mohammedan religion shall be valid.

There are various sects in Islam and some times there are variations in specific rules that apply in different situations such as marriages, divorce and so many others. These sects include tabliqs, Sunnis, ahammadia, shias and many others they all profess Islamic religion.

Moslems and non Moslems can contract marriage under the marriage Act and if they so did, that so did, that marriage will be governed and dissolved in accordance with marriage and divorce Act and not Islamic.

### **Promises to marry under Islamic law**

Islamic marriage may be preceded by *khuba* which is basically a request by a man for the hand in marriage. If the man's offer is accepted by a woman or a person legally entitled to accept on her behalf, once there is acceptance, no other man is allowed to approach this woman when he knows that she is already booked.

For the engagement to be valid a woman has to be eligible for marriage. This engagement amounts to mutual promises to marriage and does not constitute marriage hence it is not binding on parties thus each one of them have unconditional right to revoke it. the injured person has no right for compensation for injury of her or his feelings and suffering.

Under Islamic law there was no specific age for which people would get married, capacity to get married when they attained puberty. This is a subjective standard some would attain puberty at the age of 10, others at 14 or even 15 years and to them this could mean that that person (girl) is ready to get married.

Yet in Uganda, Islamic marriage among others among others is governed by the constitution. Article 31 of the constitution grants a person who has attained the age of 18 years of age to marry and according to the penal code Act below 18 years is defilement.

The legal position in Uganda is that although Islamic law reorganizes puberty, it is override by the constitution requirements. Therefore a problem arises between the people's beliefs and what the law says, some Moslems still marry below 18 years of age this is still controversial issue.

In Tunisia, the maximum age for marriage for a woman is 17 years and 20 for a man and in Lebanon 17 for women and 20 for men, there for the law on defilement has been so effective in Uganda as far as defilement is concerned. In Uganda now the person who makes a girl below 18 years to get married and that person who marries the girl are all on conviction liable. That is why no Muslim can get married before attaining the majority age in Uganda and if it happens that they get married the law makes the marriage void abinitio

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.0. Introduction**

Methodology is a theory and analysis of how research is done or should be done.

This chapter describes the research methodology followed in this study: it presents a discussion on various types of research to find out the appropriate approach and method for the present research work. The chapter takes into account the issue of research design, study population, sampling, data collection, collection instruments, and data analysis which are followed by description of data categorization procedures. Subsequently the chapter informs how the collected and categorized data is analyzed. According to mountain and Marais (1996), the research methodology focuses on the manner in which the research was planned, structured and executed in order to comply with the scientific criteria. For Leedy (1993) research forms an integral part of any research that is undertaken there for assists in explaining the nature of the data and high lights the methods employed that will be lead to the generation of appropriate conclusions through applicable data processing. In terms of research methodology two methods are employed namely qualitative and quantitative, depending on the nature of the study both methods can be applied.

#### **3.1. DATA ANALYSIS**

This research was carried out using qualitative methods which entitles collecting data which can not be quantified. They include observations, interviews, questionnaires and documentary / literature review. Analysis of data is the process inspecting, cleaning, transforming, and modeling data with the goal of highlighting useful information, suggesting conclusions and supporting decision making. Data analysis using qualitative methods assists me to study selected issues, cases, or events in depth and detail during the research.

Provided depth and details looks deeper than analyzing ranks and counts by recording attitudes, feelings and behaviors.

Using data analysis also helped me in determining why people especially children acted the way they did and this helped in my research findings.

### **3.2. Data collection using qualitative method was disadvantageous in my research in the sense that,**

It was time consuming and there for I managed to research on a smaller sample size. It was also less easy to generalize since exact numbers were reported than percentages.

I found it had to make systematic comparisons since people had different responses. The various villages I studied gave me totally different responses and this made compiling the data difficult for me.

I had to use my own dependant skills as a researcher particularly when I was conducting interviews, focus groups and observations, which in turn delayed the research and also brought some falsity in the findings since I made wrong conclusions and judgments.

### **3.3. OBSERVATIONS**

I also based part of study from observation I made during the study. Observation is one's activity consisting of receiving knowledge of the outside world through the sense or the recording of data using scientific instruments.

My first observation was when I went to seek information at Mukono police station and the officer in charge told me that he had no time to talk to me and answer my questions concerning defilement that it was apparent to do that, I had to leave the place with out any information. This clearly shows that even if a child comes to complain to a police man that she or he has been defiled that officer can easily send him or her away. This is so discouraging especially from a state organ that knows the law and is expected to up hold it.

Another observation I made was during a group interview with one of women group formed in 2006 (NIGINA) where in discussion one gentle man just walked away pretending that he was given a call on a mobile phone, this was because the man was very notorious at torturing his step son and had been threatened several times with an arrest and that is why he never wanted to meet the chair person physically and did not want to be present at the discussions too.

The last observation was made at one of the respondents home where I was interviewing a house help who also happened to be relative in that home and in the process, her boss came in and literally sent me out of her home hurling insults at me that am coming to get her home secrets and also getting it separated then I go tell the police. I later learnt that when I left the place, the

maid was brutally beaten and almost sent packing. This also confirmed the assumptions I had before going to the field that parents / guardians / relatives abuses children sexually, in as much as they are abused sexually, they cannot speak out for fear of being beaten or even sent away.

### **3.4. INTERVIEWS**

An interview is a conversation between two or more people (the interviewer and interviewee) where questions are asked by the interviewer to obtain information from the interviewee.

I carried out both oral and written interviews to the designed population of study to gather part of the data for the research. In in-depth interviews were carried out with children, parents, elders (community leaders) and even the police.

I only held one group interview with a women group called (AGALI AWAMU) which comprised of five men and ten women. The discussion was led by the area chief who also acted as an interpreter since there were some old men and women in the group who could not understand English. He asked questions relating to the topic and responses were given by the interviewees. However, not all group members participated freely.

### **3.5. QUESTIONNAIRES**

The methodologies used were questionnaires and face to face interview. A questionnaire is a research instrument consisting of a series questions and other prompts for the purpose of gathering information from respondents. I used questionnaires containing relevant questions capable of obtaining solutions to the problem under research. I formulated mostly open ended questions and made them in a questionnaire form and sent them to the field prior to my visit, mostly to FIDA<sup>25</sup>, children department and ministry of gender offices.

### **3.6. Use of questionnaires was advantageous in the following ways**

i) It was not time consuming like face to face interviews. This was because Mukono is a big town and interviewing every one could take a longer duration, there for questionnaires suited since several questions were asked.

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<sup>25</sup> It is an NGO for women lawyers in Uganda established to assist vulnerable people especially women and children to access legal information and justice

- ii) Questionnaires are easy to analyze and are familiar to most people, thus it gave me enough time since almost every respondent answered the questionnaires.
- iii) Questionnaires reduced biasness since I was not present, like in interviews where verbal or visual clues can influence the respondents.
- iv) Questionnaires are less intrusive than telephone or face to face surveys, unlike other research methods; the respondent is not interrupted by the research instrument. At least every respondent was entitled to his own opinion and expressed it on the questionnaires with out any influence.

However I found the use of questionnaires to be disadvantageous in that

- i) Since they are standardized, it is not possible to explain any pointing the questions that participants might misinterpret.
- ii) Open ended questionnaires took me long since they are generated from a larger amount of data. Some questions were returned back to me blank and others incomplete since some people were not willing to answer the questions, and others just guessed the answers. This really affected my findings.

### **3.7. HYPOTHESIS**

In African traditional societies, child care was often a community activity. Now with busy parents, reliance on community support and guardians which leads to a minimum of state intervention. This however has implications since in some cultures, individual and extended families have legitimate basis of asserting responsibilities towards the child.

In such traditional settings, rights are closely related to duties with less or no distinction at all. This is the myth that has to be and rebutted completely from the minds of those who are protecting children.

The legal concept governing children rights and protection in Uganda and enforcement is not strict. This therefore affects the efficacy and diligence of the system. Sexual abuse against children is mostly attributed to socio-economical conditions and cultural beliefs. The people of Uganda are therefore responsible for some the violence and abuse of children.

### 3.8. RESEARCH ASSUMPTIONS

- i) children have rights just like other human beings
- ii) these rights are known to children/parents/guardians
- iii) children are sexually abused by there parents/guardians
- iv) the laws that govern and protect children rights are not implemented and protected

## CHAPTER FOUR

### LEGAL INSTRUMENTS

#### 4.0. Introduction

Chapter three of my research provides for the legal instruments that concern defilement as an offence and even rights of children as enshrined in different authorities. Every child has a right not to be sexually abused (defiled) when we talk about rights of children, we must concern ourselves first and foremost with the child's basic rights. This is to say right to life, health and basic education among others.

Children require special laws as their tender years render them handicapped to cope up with the complexities particularly of modern society. **E Adamson Hubel** looks at law as an instrument of social change says that legal coercion is a necessary means of compelling society towards certain goals.

The recognition of children's problem were first defined as far as 1923 when **Eghatyne Jebbs**<sup>26</sup>, drafted the first declaration of the rights of children in the children's charter following her work with refugee children, Brazil Balkans, after the first world war.

In 1924 she achieved her ambitions when the League of Nations the forerunner of United Nations adopted the declaration of the rights of the child.

In 1948, the United Nations General Assembly approved the adoption of a Universal Declaration of human rights in which the rights of children were implicitly included. It was however thought that this was not enough as the special needs of children justified an additional separate document. As a result the second Declaration of rights of children was adopted by United Nations General Assembly on 20<sup>th</sup> November 1953<sup>27</sup>

Chapter 3 and 4 there for examines and absorb my research assumption when discussing both causes and effects of defilement against children

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<sup>26</sup> Eghatyne jebb (foundation of save the children fund, UNICEF)

<sup>27</sup> Declaration of rights of children 1959

#### 4.1. National, Regional and International Legal Instruments

#### 4.2. The Constitution of the Republic of Uganda 1995

The constitution under chapter 4 provides that the promotion and protection of fundamental rights other than human rights are inherent and not granted by the state.

The constitution also provides for the rights of the children<sup>28</sup>, these rights include inter alia the rights to education, medical treatment, social and economical benefit like shelter, food, clothing and immunization, right to life, personal liberty, protection from harmful employment and discrimination on grounds of race and sex.

However this not observed in practice in Uganda. The crux of the matter is that these rights are not necessarily read or administered with the child in mind, what is meant here is that policies too may be on paper but when it comes to practical part, the situation in the country overshadows the provisions of the law.

**Article 34(4)** further provides that, children are entitled to be protected from social or economical exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.

Conclusively, though the constitution clearly protects such child, the state cannot step in and enforce the child's right because the state has no mechanism and financial capacity to cater for such children apart from the parents. A department for children has been set up in the ministry of Gender and community development, specifically to deal with the plight of children.

#### 4.3. The children's Act<sup>29</sup>

This is the fundamental Act in the life of a child and stipulates the rights of the child and even gives the parents / guardian the mandate take care of the child. Failure to which, leads to a breach, thus penalty.

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<sup>28</sup> Article 34 of the constitution of republic of Uganda 1995

<sup>29</sup> Cap 59

The Act defines a child as a person below the age of 18 years the purpose of this age is to clearly indicate that the violation that has been meted out is on those below the age of 18 years. This shows that this is the right to refer to them as children the age is also necessary to show that the law under this Act can apply to the field research findings on sexual abuse against children which in most cases comes as a result of domestic violence. In such situations children are the victims.

It is observed that the Act provides, it shall be the duty of the parent, guardian or any person having custody of a child to maintain that child and in particular, that duty gives a child a right to education, guidance, shelter and medical attention

**Section 5 (2)**<sup>30</sup>, further provides that any person having custody of a child shall protect the child from discrimination, violence, neglect and sexual abuse.

#### **4.4. The penal code Act**<sup>31</sup>

The penal code by providing for offences relating to sexual abuse, this Act seeks to protect the children from sexual abuses as provided by existent Acts. It is evident that emphasis is on the child's right to protection by different maltreatment by parents, guardians, and other people responsible for them. Here, the law reorganizes that a child has the right to enjoyment of the highest attainable standard of physical and mental health and the absence of basis means of substances has grave consequences for them as it may affect their normal development. According to **section 129 of P C A**, it prohibits acts of sexual intercourse to persons under the age of 18 years.

The Act provides that, any person who performs a sexual act with another person who is below the age 18 years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and, is on conviction by the high court, liable to suffer death<sup>32</sup>

The circumstances referred to in subsection (3) are as follows<sup>33</sup>

- a) where the against whom the offence is committed is below the age of 14 years
- b) where the offender is infected with HIV

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<sup>30</sup> Ibid

<sup>31</sup> Cap 120

<sup>32</sup> Section 129 (3) of the penal code Act

<sup>33</sup> Section 129 (4) of the penal code Act

- c) where the is a parent or guardian of the victim
- d) where the victim of the offence is a person with disability
- e) where the offender is a serial offender

There is no civil legislation that addresses to maintenance of children of a substituting marriage. The penal legislation affords the child no civil redress and punitive measures against the parents may course.

#### **4.5. Case laws**

There are very many decided cases concerning the offence of defilement of which some of the cases have been included in the study through out, some of these cases that where decided by courts of competent jurisdiction like the High court, court of Appeal and supreme court have become binding on the courts below them and legally this called **(the doctrine of prisdent)** that when courts of law that are below the court that decided the previous case then with similar facts and cause of action, the court handling the present case must follow the ruling of the already decided case.

#### **4.6. The United Nations Convention on the rights of the child, 1989**

A primary philosophy behind the CRC is that children are equal and have same rights as other people. Human beings, they have the same inherent values as grown ups thus there best interest should be upheld. The CRC in its preamble states that a party to the convention considering that in accordance with the principles proclaimed in UN charter, recognition of inherent dignity and of equal and alienable rights of all members of the human family is the foundation of freedoms, justice and peace in the world. The convention therefore affirms that children are the objects of rights and not simply objects of concern. They are entitled to the actions of the states, institutions and individuals for their rights to be fully realized.

#### **4.7. United Nations Convention on the Rights of a Child, 1989**

Article 1 defines a child as every human being below the age of 18 years and to that effect, every child shall be entitled to the enjoyment of the rights and freedoms guaranteed in this charter irrespective of the child's parent or legal guardian, race, ethic group, color, sex, language, religion, political or other opinion. Article 19 deals with child abuse and torture: parties to the

present charter shall take special legislative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and specifically physical or mental abuse or injury, neglect of maltreatment including sexual abuse, while in the care of a child , protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child.

#### **4.8. EFFECTIVENESS OF THE LAW OF DEFILEMENT**

The effectiveness of the law of defilement can be seen in various things for example it has brought very many changes in African cultural activities and norms (customary marriage Act) and Islamic marriages / Mohammedan

##### **4.8.0. How the law has been effective on customary marriages**

Customary law is defined under section 1 of the customary **MCA** as rules of conduct which govern legal relationships and they are established by usage and are not part of common law or laws enacted by parliament.

**Customary marriage defined in section 1(b) of the Act**, as marriage celebrated according to the rights of an African community under part 111 of the marriage Act there is no general customary law in Uganda, each tribe is guided by its customary beliefs which may not necessarily be uniform. For customary law to be enforceable, it should not be repugnant to natural justice, good conscience and equity as stipulated by the judicial Act.

**Article 2** of the constitution provides for the supremacy of the constitution and many laws or customs which are inconsistent with any of the provisions of the constitution shall to the extent of the inconsistency be null and void.

Article 33(6) prohibits laws, cultures or customs which are which are against the dignity, welfare or interest of women and those that undermine their status.

**The judiciary Act** provides that customs will be applicable in so far as they are not inconsistent with common law doctrines of equity and principals of natural justice. Therefore customary law although not written must not be notorious and courts must have taken judicial notice of it for it to be applied.

**4.8.1. Age of marriage in customary marriage Act.** various tribes never determined capacity by only age but physical appearance<sup>34</sup> the maximum age of marriage was supposed to be 16 years for girls and 18 years for boys, this section is in conflict with the laws in the penal code Act on defilement age section 129 and Article 31<sup>35</sup>(1) of the constitution of republic of Uganda 1995 which stipulates 18 years as the age of consent. Therefore such laws of the customary laws being prohibited by Article 33(6) of the constitution of Uganda being the supreme law in Uganda and section 129 of the penal code Act makes them null and void to the level of there inconsistency.

This means that any person who unlawfully marries a girl under the age of 18 years and has sexual intercourse with her does it unlawfully and does it at his own risk and is therefore on conviction liable to life imprisonment. These laws have helped in protecting minors from sexual exploitation early marriages and such laws have been effective in the way that who ever tries and brakes them is caught and punished according to the law.

The effect on Islamic marriages/Mohammedan

An Islamic marriage is marriage celebrated according to the Islamic faith. This kind of marriage is potentially polygamous, it is governed by

- i) the constitution of republic of Uganda
- ii) marriage and divorce of Mohammedan Act
- iii) Islamic law or sharia-divine law of Islam which is found in Koran
- iv) Texts written by reputable Islamic scholars

**Section 1** of marriage and divorce Mohammedan Act in Uganda provides that all marriages to persons professing to Mohammedan religion and all divorces of such marriage which are celebrated according to the rites and observances of the Mohammedan religion shall be valid.

There are various sects in Islam and some times there are variations in specific rules that apply in different situations such as marriages, divorce and many others. These sects include tabliqs, Sunnis, ahamadia, shias and many others they all profess Islamic religion.

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<sup>34</sup> Section 11(a) of customary marriage Act

<sup>35</sup> Right of the family, man and woman are entitled to marry only if they are each above the age of 18

Moslems and non Moslems can contract marriage under the marriage Act and if they so did, that marriage will be governed and dissolved in accordance with marriage and divorce Act and non Islamic

#### **4.9. Promises to marry under Islamic law**

Islamic marriage may be preceded by khuba which is basically a request by a man for the hand in marriage. If the man's offer is accepted by a woman or a person legally to accept on her behalf, once there is acceptance, no other man is allowed to approach that woman when he knows she is already booked.

For the engagement to be valid a woman has eligible for marriage. This engagement amounts mutual promises to marriage and does not constitute hence it is not binding on parties thus each one of them has unconditional right to revoke it. The injured person has no right for compensation for injury of her or his feelings and sufferings.

Under Islamic law there was no specific age for people would get married; capacity to get married was when they attained puberty. This is a subjective standard some would attain puberty at the age of 10, others at 14 or even 15 years and to them this could mean that that person is ready to get married.

Yet in Uganda Islamic marriage is governed by the constitution<sup>36</sup>.it grants a person who has attained the majority age to marry and according to penal code Act marriage below the age of 18 years is defilement.

The legal position in Uganda is that although Islamic law recognizes puberty, it is override by the constitution requirements. Therefore a problem arises between people's beliefs and what the law says, some Moslems still marry below 18 years of age this is still controversial issue.

In Tunisia, the maximum age for marriage for a woman is 17 years and 20 for a man, and in Lebanon also 17 for women and 20 for me, therefore the law on defilement has been so effective in Uganda as far as defilement is concerned in Uganda now a person who makes a girl below the age of 18 years to get married is on conviction liable. That is why no Muslim can now get married before attaining majority age and if the marriage occurs the law makes it null and void

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<sup>36</sup> Article 31 of the constitution of republic of Uganda 1995

## CHAPTER FIVE

### FINDINGS, DISCUSSIONS, RECOMMENDATION AND CONCLUSION

#### 5.0. Introduction

This chapter presents the findings basing on research objectives. Here data/information was presented descriptively and interpretations of the resultant findings were done basing on the literature and findings of the stud. The analysis was based on summery of key issues from theoretical and empirical literature; comparison and contrast of finding were systematically done. This chapter also presents research findings of the study about the law on defilement and its effectiveness and hence it deals with the analysis and interpretation of empirical data and presentations and discussions of results and findings. In this research we administer 30 questionnaires but only 15 were returned. Interviews were also carried out to gather information on how the offence is committed ant how the law on it has been effective.

#### 5.1. Gender characteristics

This research was carried out basing on the number of male and female citizens who participated in answering the questionnaires

**Table showing gender characteristic of the respondents**

Valid	Frequency	Percentage
Male	16	38.1
Female	14	33.3
Total	30	71.4

The above table shows the valid number of male and female who answered the questionnaires out of 30 respondents. 16 male with a percentage of 38.1% participated in answering the questionnaires, the valid of female who answered the questionnaires were 14 with percentage of 33.3%, the total number of sampling space is thirty (30) with percentage of 71.4

## 5.2. Age of the respondents

The table below shows the age of respondents both male and female

Age	Frequency	Percentage
10-16	12	18%
17-29	10	19%
20-24	28	33%
25 and above	10	30%
Total	60	100%

## 5.3. Occupation of respondents

The table below shows the respondents occupation

Occupation	Frequency	Degrees
Farming	12	90
Civil servants	11	66
House wives	20	120
Business men	14	84
Total	60	360

The table above shows that most of the respondents were house workers and then followed by farmers and most of the men who were interviewed were business men this was so because of the location of the area of Mukono district.

## 5.4. Religious status of the respondents

The table below shows the Religious status of the respondents

Religion	frequency	percentage
Catholics	25	30%
Muslims	18	42%
Protestants	15	20%
Others	12	8%
Total	70	100%

The table above shows that majority of the respondents were Catholics because of the place being surrounded by catholic churches

### 5.5. Causes of defilement

The table below shows courses of defilement

Courses	Frequency	Percentage
Ignorance of law	20	33%
Alcohol consumption	30	20%
Forced marriage	10	17%
Famine	15	3%
Illiteracy	5	7%

The table above shows that the major course of defilement was due to alcoholism and then followed by ignorance of law; this is because after getting drunk they loose shame and end up defiling these young children.

### 5.6. SUMMERY FINDINGS

#### Introduction

In this research carried out in Mukono district on the law on defilement and its effectiveness some of the findings were found and among these the following represent the summery findings, recommendation and conclusion.

#### Summery findings of the research

The offence of defilement was found to exist in Mukono district as shown in the tables above. with the information from the tables it is clearly shown that the offence of defilement is committed and the types of defilement found in Mukono are of two kinds that is to say simple defilement and aggravated defilement. the evidence provided also clearly shows that victims of defilement were young school girls and disabled individuals.

Same of the findings on the law on defilement is that, the law on defilement has been effective in away that almost (though not clearly shown), the accused (defilers) have been jailed in Mukono prison and people have been made a wear that the offence is of strict liability. The law has been effective in away that it has made consent not a defense, the offence of defilement is based on

the presumption that a person under a certain age is not capable of making rational decision about sex, the law steps in to make decisions for the child.

The law also has made marriage not a defense, Uganda reorganizes different types of marriage. Under the customary marriage Act, the law recognizes marriage according to the customary practices of the parties, the law there under sets major age of marriage for girls at 14 and for boys at 16 years, this has been prohibited by the law and it is no longer existing and reorganized in Uganda.

Under the marriage and divorce of Mohammedan Act, the law reorganizes marriage contracted according to Islamic law. And under Islamic law a girl can marry as soon as she starts her menstruation periods, it follows that a girl who starts her menstruation period before the majority age (18) years can get married under Islamic law.

But

If marriage of a girl under the age of 18 years is a valid marriage, then the husband of such a girl would not be convicted of defilement for a man can not defile his own wife. However since the promulgation of the 1995 constitution, a man can not contract marriage with a girl under the majority age, since such a marriage would be unconstitutional and thus illegal, sex with a girl under 18 years can never be legal according to Article 31 (1) of the 1995 constitution of republic of Uganda.

In addition to the above findings in relation to the offence of defilement and its course, it was found that defilement was mainly caused by negligent parents like those who always make themselves very busy for example parents who go for work and leave their young daughters to male visitors and neighbors who take advantage of these lonely children and defile them and after threatening them to be beaten in case they report to their parents. It has been found on record that those parents who use their children from school as bar attendants exposing them to drunkards who defile them and also it has been revealed that those young children who are sent to fetch water lonely to along distanced wells which are so bushy who are targeted by those defilers in the end.

Complaints from the respondents show that convicts of defilement are not punished as recommended by the law, that after them being convicted and found guilty they are taken for a short period and later released with out much emphasis put on them, other respondents complained that some victims and parents of victims are just given some money and they stay silent instead of reporting the case to people concerned to work upon them, this is the case as to why defilement is still rampant in Mukono district.

It has been found that these victims of defilement have been helped by some good Samaritans and some NGOs have also come out to help these victims of defilement by donating them some money for up keep, treatment and others just provides them with treatment and help in prosecuting the case.

## **5.7. CAUSES OF DEFILEMENT**

### **Causes of defilement in summery findings**

The study findings indicate that defilement is occasioned by factors such as customs, and cultures of a particular community, the living environment, poverty, alcoholism, drug abuse and many other causes. There are very many causes of defilement which also include cultural factors, health factors and community factors.

#### **5.7.0. Health or psychological factors**

Among the health or problems, these problems where stated to include mental problems, HIV aids scourge, high libido and shyness or inferiority complex. The aids scourge encourages men to go for young girls. Some people just want to spread the disease while others fear to get it from grown up people, it is believed that other people with HIV some times become insane and end up doing stupid things like defiling young girls.

#### **5.7.1. Negligence of parents or guardians**

Parents who are negligent for their children are part of causes of defilement, those abandoned children end up getting guidance from wasted and uneducated groups this is because most children are left unattended to by their parents` hence easy prey to defilers.

Children with working parents normally lack parental guidance and love; they also lack parental responsibility which exposes them to defilers who may be living with these young girls in the some house, the research findings show that these children are then lured into men`s houses with

cakes and sweats. In addition to the above at school mostly primary schools, those primary teachers who lack professional ethics and to whom these young girls are left take advantage and befriends these children who later becomes to close to the teachers to the extent of even being sent to their rooms for house works.

### **5.7.2. Distance**

This refers to the distance covered by these young children mostly when sent by their elders for example the long distance covered by village children when sent to fetch water and fire wood, the distance covered when going to school, playing areas and night movements. Most of these things are done without the parents monitor and responsibility.

### **5.7.3. Pornography / internet and the media**

The media has got some pornographic videos / movies that induce children to early sex. Most of these materials are not censored, the radios talk about sex and the televisions also show sex not considering that children are also watching, such things entices, encourages and exposes the young ones to sex which in the end is defilement and this increases the libido to.

## **5.8. Cultural factors**

In Africa different tribes have different cultures, norms and practices and certain norms and practices have led to incidents of sexual offences. Among the cultural factors we have practices of circumcision (mbalu) this practice is done by tribes like the Bagisu in Mbale district who are as well found in Mukono district. In Mbale circumcision is a major factor that causes defilement and some of the secrets revealed show that during circumcision various ceremonies are done and that in this period people are allowed to have sex indiscriminately and that women sleep with fresh circumcised men under illusions that they will give birth to baby boys.

Another cultural factor that enhances defilement is witch craft. In Uganda it is believed to be practiced by the entire country, Traditional healers incite defilement by telling their clients to have sex with virgin girls that their problems will be solved once and for all and others become victims of defilement when their parents take them to witch doctors for treatment and they end up being admitted in their shrines and these innocent girls are later defiled. And others believe that sex with a virgin girl is always source of richness.

## **5.9. EFFECTS OF DEFILEMENT**

According to doctor Mirrembe, a consultant obstetrician and gynecologist of Makerere medical school, that the medical complications of defilement are numerous but the general complications include bruises, lameness and many other things. The following are the effects of defilement

### **5.9.0. Public reputation**

Most people who are victims end up being rejected by the public or community, this is because they think whoever is defiled has lost her humanity and is infected by HIV and aids, victims suffer from depression as a result of shame. In most cases girls who have been defiled becomes public topics and this make them feel out of place and what makes it hard is that they often end up not getting married because men think that they will be disrespected due to marrying a victim of defilement.

Where a girl is defiled by a relative, then a sense of trust or respect in people is destroyed. Some of the consequences of defilement are feeling out of the community, hopeless, isolated and depressed, the longer the defilement topic in public the greater the impact on girls autonomy, in addition to that the victim may also suffer the losses of human potential and this may also result into personal economic hardships and depressions and it reduces a girls opportunity to work, mobility and participation in training and education.

There are also specific effects of defilement for example, injury in the genital urinal system, these include bruises, tears and laceration of the genital system bleeding often, infections of STDs this quit common and many victims have been found to develop STDs such as gonorrhea, syphilis and Aids however actual figures of defilement victims are not readily available.

### **5.9.1. Unwanted pregnancy**

About one to five of the defilement cases result into unwanted pregnancies which affects the physical, mental and health conditions for the victims hence affecting girl child education. Due to unwanted pregnancies got through defilement some of these girls end up losing there lives in attempt to abort because of the pressure from there parents or friends who feel like the child will be a child of sin and fatherless. Pregnancy may occur if the intercourse where un protected or not

properly treated or even not reported to the authority or persons responsible and is mostly in those people who do not reveal the truth.

## 5.10 RECOMANDATIONS

As the person who carried out the research and a student of law, I am of a view that the following can be done to control and prevent the offence of defilement, my first recommendation will be directed to the government of republic of Uganda that the government should consider defilement as violation of human rights and any person caught doing or trying to do it should be handled accordingly by the human rights activist this shall at list create and terror in peoples minds thus putting a stop at it.

The government should also make strict laws concerning drug consumption and by arresting these drug dependants, it has been found that these drug abusers are the same people who are involved in committing the offence of defilement but if the government can punish them properly such offences shall be reduced and controlled, the government with help of these community development officers and some medical officers can in the community should train and educate citizens in the community about the offence of defilement that people will be well versed with the consequences of defilement that will deter them away from the offence.

In addition to the above, the government should employ heavy compensation to the defilers and more serious punishment should be put in place, victims of the offence must be heavily and adequately compensated by the offenders so that they can feel the weight and act as deterrence to others who may be planning to do the some offence.

In addition to the above defilement can be controlled in the following ways.

Defilement can be controlled, eradicated or even stopped but this will depend on which methods are used for this purpose, as an anthropologist and director of amnesty international in USA<sup>37</sup>women program says that by producing global human rights frame work for the struggle, amnesty international will show how the international human rights standards cut across international boundaries to fight sexual harassments. Schools and institutions are adopting clear policies on sexual harassments that are published and are easily accessible.

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<sup>37</sup> Shailer Daver

Organizing wide spread media campaigns that focuses on forms of eradicating defilement which is accepted and reviewing the image of girls in the media which include movie shows and religious programs that support any inferior image of a woman and reorganizing the girls positive.

Defilement can also reduced by reporting the matter to the nearest police station or authority immediately if there are no police stations then the case should be reported to the nearest LCs or to the chief of the area. The chief or the LCs should then make all efforts to report the case or assists the parent of the victim to go to the nearest police station and give all the information as soon as possible.

Children should be stopped from going to commercial video shows halls because these are some of the causes of defilement which makes them think that they can do what ever they have seen in the movies mostly in love story videos and blue movies and such videos increases there libido.

Another way of controlling defilement is by parents educating there children on issues concerning sex, sexual education is important because children get to know the repercussions of sex for example unwanted pregnancy, infections of STDs and so many other things and this can act as deterrence to them and also sex education is important because it helps them to know how the body functions and how it can be damaged, children should also stop hanging out in lodges and bars.

Registration of more NGOs who aim at fighting such offences and protecting human rights, in other words the government should be involved and should embark on intensive campaign against sexual abuse of children, the already existing NGOs like FIDA, UNICEF among others should add in more efforts in rehabilitation.

## **5.11 CONCLUSION**

As already mentioned, the offence of defilement of under aged girls is based on assumptions that a girl under a certain age can not be capable of giving or making rational decision about sex. Consequently, criminal law comes in to fix a minimum age of consent to sex.

International human rights law reorganizes that a child is entitled to special care and protection and that a child by reason of physical and mental immunity, needs special protection including legal protection therefore.

The offence of defilement in Mukono is real and its courses are just minor things that the community can adjust to. It is that the community is just lacking that educative message and sensitization of human rights so that every one is made aware and offenders should be handled with metallic hands by the law.

I therefore conclude by saying that it is the role of the government to educate people on matters concerning defilement and that they should also encourage more NGOs to emerge mostly those who will be human rights activist so that they can educate to change their attitude towards victims and victims should be made to know that that is not the end of the world and conclude by saying that it is the responsibility of all the citizens of Uganda to control and avoid defilement.

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