

**DEFILEMENT AND ITS IMPACT UPON CHILDREN IN THE COMMUNITY
AND THE CASE STUDY KAMULI DISTRICT**

BY

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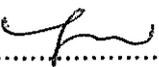
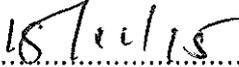
A dissertation

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of the requirements for the award of diploma in laws at Kampala
International University**

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DECLARATION

I KAWUUDHA RUTH, I declare that this is my original dissertation that I attained from Kamuli District. It has never been presented to any institution of higher learning for the award of economic qualifications.

Signed.......... Date..........

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APPROVAL

This research report has been submitted under my supervision as a university supervisor

Signed..........Date.....19/11/2015.....

Nyapidi Brenda

Supervisor

DEDICATION

This report is dedicated to my lovely brother Magoola Matthias and parents Mr. Magoola Febiano and Mrs. Nabirye Elizabeth for the love care and support they have given to me throughout my studies. May the Almighty God bless you abundantly.

LIST OF ACRONYMS

NGO	:	Non Government Organization
LC	:	Local Councils
HAR	:	Hope after Rape
ACPPACAN	:	African Charter for Prevention and Protection Against Child Abuse and Neglect
UN	:	United Kingdom
CRC	:	Convention on the Rights of Children
FCC	:	Family Children Court

TABLE OF CONTENTS

DECLARATION	ii
APPROVAL	iii
DEDICATION	iv
LIST OF ACRONYMS	v
ABSTRACT	viii
CHAPTER ONE	1
1.0 Introduction	1
1.1 Background of the study	1
1.2 Statement of the problem	3
1.3 The purpose of the study	4
1.4 The general objective	5
1.5 Scope of the study.....	5
1.6 Significance of the study	6
CHAPTER TWO	7
LITERATURE REVIEW	7
2.0 Introduction	7
2.1 The legal frame work in defilement cases.....	14
2.2 The ingredients of defilement.....	16
2.3 Factors that aggravates defilement.....	17
CHAPTER THREE	18
METHODOLOGY	18
3.0 Introduction	18
3.1 Research design	18
3.2 Sample procedures	18
3.3 The sample size.....	19

3.4 Interview	19
3.5 Observation	19
3.5.1 Questionnaires	20
3.6 The data analysis	20
3.6. 1 Area of study	21
3.6.2 Research questions.....	21
3.6.3 Hypothesis.....	21
3.7 Problems faced by a researcher	21
CHAPTER FOUR	22
DEFILEMENT UPON CHILDREN IN THE COMMUNITY AND FAMILY	22
4.0 Introduction	22
4.1 Review on enforcement law relating to defilement	27
4.2 The role of LCs.....	29
4.2.1 Other findings	30
CHAPTER FIVE	31
5.0 Introduction	31
5.1 Recommendations	31
5.1.1 Existing law on defilement	31
5.1.2 Defilement law	32
5.2 Factors that aggravate defilement.....	32
REFERENCES	33
QUESTIONNAIRE	34
APPENDIX I	34

ABSTRACT

The children of communities today are faced with numerous challenges and the most outstanding in all of them is the defilement challenges. Precisely defined as sexual offence and is the construct to have carnal knowledge with a person under the age of majority, irrespective of the sex of a child by the majority or minority male who is older than a minority female defilement poses a societal threat and the impediment. Under criminal law taking its toll on the central of the vice in community, it remarks un certain as to whether the law is too weak to ensure it's reduction as national statistic on defilement cases is on rise year to year out. The question that puzzles through the heed of many legislators is what believed to be done by communities to safeguard the children from the vice? Is there hope that a proper research on this topic shall provide reliable information on the state of law and recommendations?. In the main objective of this study being an identification and assessment of the problem of sexual abuse on children with defilement puts in a limelight of this research. The legal concept of the state of law on central of defilement both national and international law a great regard in this research.

CHAPTER ONE

1.0 Introduction

In recent decades, defilement and its impact upon children in the community has been undetermined. It affects many children and families as well as children are being neglected in the victims of defilement due to lack of awareness or ignorance on the law. But there has been inadequate clearly showing the impact of defilement upon children in the community and failure to protect their rights. So the aim of the research is to fulfill this gap.

Defilement in most cases has been caused by over consumption of alcohol, poor styles of wearing clothes, late movements at night, ignorance among others.

1.1 Background of the study

The modern law of defilement and its impact upon children in the community can be traced right from colonial days. Before colonization, criminal law in communities varied from community to community as it was governed by customary law of each ethnic group. The nature of the law depends on the character of each community.

So when the community was more settled under a kind of traditional leadership. Chieftaincy, the law was more developed than those of the nomadic communities who were always in the move.

However in each community, it was uneventfully recognized that some kind of rules or norms should be put in place to be followed by every member purposely for stability.

The norms and regulations were strictly based on sex, age and status and were often controversial and strict. In certain groups, a girl was not supposed to have pre-marital sex yet in other wards a man had to abduct the girl and have sexual

intercourse with her¹ before he was allowed to marry her. In communities like Bugishu and Karamoja this practice was seen as acceptable².

The method of redressing the norms ranged from simple to violent. But were always effective and enforced. Public opinion was a cardinal force and obliged people to conform to the rules of the community by way of positive sanctions. In some cases every harsh and crude measure were used for example a girl who had premarital sex would be thrown in a river and men who raped a woman or had sex with a young girl would loose his organ by way of castration or crushing³. In other cases, a man would be forced to marry the girl or pay compensation to her parents.

Sexual abuse and violence are serious problem that transcend racial economic, social and regional or even age and sex boundaries, violence is frequently directed towards the female, the youth and children especially the children all whom lack of economic, social status and physical capabilities to avoid adolescent and young children in particular many experience abuse in the form of domestic violence, rape, sexual assault, sexual exploitation, defilement and worse cases. Female genital mutilation⁴, to estimate the prevalence rate of sexual abuse and sexual violence in developing world is difficult due to limited amount of research done on the subject⁵.

Shortly after communities becoming British colonies, English law was introduced. The whole set of laws of England was deemed applicable in foreign jurisdiction by virtue of 1890 foreign jurisdiction Act. So the 1902, the British law became applicable in the community especially in Uganda by virtue of 1902 the British law became applicable in Uganda. Jurisdiction was to be applied in conformity

¹ Tamale, s (1998) when the hens begin to crow, 3rd edition 24

² I bid at page 217

³ Dr. Henry onoria (2001) human rights in the perspective proper delivered at human rights centre Makerere, November 2001 at page 71.

⁴ Corwin (1988) civil liability in criminal justice 4th edition page 22

⁵ Finke hot (1914) criminal law and application 3rd edition page 17.

with the economic law, doctrine of equity and statics of general applications in force in England on 11th August 1902. They had to be applied in accordance with the powers vested and in accordance to the procedure and practice observed by and before English course.⁶

The 1995 constitution also accept to use customs which are not repugnant in addition to being abusive to modesty of women⁷. This is seen in Article 2 (2) of 1995 constitution of uganda.

To avoid legal lacuna uncertainties as whether infringement of custom leading to criminal penalty. The 1967 constitution out reward the conviction of a person for criminal offenses unless the offence is defined and its penalty prescribed in the written law. By virtues of this law, the customary criminal law of rape, defilement, elopement, abduction, adultery, incest and all other sexua! offenses were abolished as they were an written.

1.2 Statement of the problem

"Communities today has its self in a problem of defilement and its impacts upon children in communities. In many cases, victims of defilement are the very ones whop do not want the prosecution of suspect" on my side, I would not allow some one who defiles a 16 year old girl to be prosecuted under the law of defilement. This is some thing wrong with the law governing defilement in my opinion do not think intended good law has been achieved its goal so I strongly say that some thing should be done to address the problem of defilement in communities today.

While there are a number of sexual offences against children defilement is the most prominent many children are defiled, raped by in all spheres of life, in the

⁶ This was set out under the 1902 order in council article 20

⁷ Uganda police report on crime rate in the country number 2011 page 16

hands of their biological fathers, step fathers, relatives, friends religious leaders, care givers and villagers⁸.

Despite the fact that the 1995 constitution of Uganda grants children's rights, its defilement in fostering outright protection from children. It is clear that the penal code Act cap 120 spell out defilement is death and 7 years imprisonment. There are no explicative factors to facilitate to protect children against defilement. This weakness has hindered the court process and protection of the abuses. The death rate of defilement cases in Uganda is becoming a great concern to law makers, parents, religious leaders and community at large.

Despite the high rate of reporting by the press, the existence of the penal code expanding police force, growing judicially, civil advocate on children's right, parents and local community authorities against child sexual abuses, there are many challenges facing this phenomenon which this study seek to find out. There is no evidence available that the presence of all the above measures to reduce defilement of children as having any effect in reducing the effect of defilement while a number of studies have been under taken to determine causes and effects of defilement on children not much research has been under taken to determine the reason why despite of the measure that have been put in place the rate of defilement continue to arise. This is against the back ground of the study attempting to find out why defilement continue to be a big problem of assessing the challenges faced to control children defilement.

1.3 The purpose of the study

The research critically analyzes the defilement and its impact upon children in the community.

⁸ Ibid at page 17

1.4 The general objective

The general objective of this study is to identify and assess the problem of sexual abuse.

To examine the legal frame work in controlling defilement in the community of kamuli district. But especially it finds out legal framework in controlling the defilement in Uganda.

To establish strategies that can be put in place to control of defilement in Uganda.

To examine the extent to which social economic and cultural factors may be barriers in controlling the defilement in Uganda.

1.5 Scope of the study

I covered facts upon defilement and its impact upon children in the community in kamuli district, the eastern part of Uganda.

The time taken was two weeks moving from one place to another looking for information concerning defilement and its impact upon children in the community

A selection of statistics⁹ show that cases of defilement come from all regions of Uganda, although the least is reported Kamuli, the eastern region of the country Uganda .

According to annual report 2009¹⁰ shows that Kamuli district has the lowest case of child cases 9/10 of the report cases of defilement where subjected upon children since the least of the cases are reported in Kamuli which is also the researchers area of residence, the geographical scope of this study ahs been limited to Kamuli eastern region of the country.

⁹ Uganda statistic bureau of static report, Oct 2011

¹⁰ Annual report 2009-ANPPCAN Uganda chapter www.anppcanug.org/wp-content/uploads/situation-analysis/oil-analysis-2009.pdf

Secondly, Kamuli being in the eastern part of Uganda and not being a capital city. The population so sampled, give an insight into cultural beliefs, practices of the very ethnic group selected and how this influenced the treatment of defiled children received with in the community.

The researcher had the advantage of being a citizen of Kamuli where she came into contact with many people of the same ethnic group of the community, hence managed to know what takes place throughout the district with out much travel, there by addressing the question of defilement in community.

1.6 Significance of the study

The beneficiaries would include girl child, boy child and the community at large because it seeks its protection. The result of the study are very helpful to the government/community especially the law makers to understand the relationship between defilement law in communities and this guide further review and improvement.

The research was relevant to many LCs (local council) courts because they were able to know that defilement is an aggravated case which needs not to be handled at local court council.

In additional many NGOs got more knowledge about defilement in the community and how to handle criminals.

The research will be significant to the future generation because of the knowledge they acquired on how to handle defilement cases in the community and also they were high lightened in away that defilement cases should be reported to high court or magistrate court which have more powers than lower courts

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter reviews the literature to the related study of defilement. It discusses various contribution which has been done by different scholars concerning defilement and its control.

The concept of defilement of children world health organization report in 1999 says, child abuse is defined as an involvement of child in sexual activities that he/she does not fully comprehend. He/she is unable to give consent, or that violent law or social taboos of society. It further goes to say that child sexual abuse is an act between the child and an adult or another child who by age or development in relationship of responsibility trust/power, the activity being intended to gratify or sexual needs of the other person.

The report further mention what other conceived Acts of child sexual abuse would entitle and this include the inducement or coercion of the child to engage into any unlawful sexual activities, the explosive use of a child to practice prostitution or other indecency practice of similar nature and the exploitive use of the child to practice and enjoy by way viewing pornographic materials and performances.

Ugandan defilement law considers boys and girls below 18 years to be minor nevertheless it is rarely implemented in practice of rhino camp refugee settlement¹¹.

Defilement is a very big threat to the well being of children in Uganda. According to Lorraine and Andrew, the definition of child sexual abuse must be

¹¹ The Uganda government, the children's act 2004

comprehensive to give abroad and standing when they address two issues, narrowness and broadness of the definitions, to them there are issues such as contract child sexual abuse and non contract of child sexual abuse that need understanding critically.

A contact child sexual abuse according to them involve any form of physical sexual contact during the commission of a sexuality abusive Act, intimate or non intimate ranging from non genital and genital touching to vaginal or anal sexual intercourse, while non contact child, sexual abuse involve sexually abusive children in pornography or prostitution¹².

According to Kemp,¹³ he gave a comprehensive definition of the concept child sexual abuse which applies to an environment of modern sexual abuse examination analysis. He stated that it's the involvement of dependent, developmentally immature children and adolescent in sexual activities that they do not fully comprehend and to which they are unable to give informed consent or that violent the social taboo of the family roles.

Defilement on the other hand is a behavior that exposes a child below 18 years of age to sexual content or which a child is used to obtain sexual stimulation and gratification. The proof of sexual intercourse must be carnal evidence indicating that the penis of a person penetrated the complainants vagina, however slightly also medical examination report verifying the physical evidence such as the presence of blood sperms in the vagina or bruises on the walls and margins of vagina may also be permitted as evidence¹⁴.

UN summit¹⁵ wrote that any under rest ending of child sexual abuse is incomplete without consideration of the child's perspective. Understating the child's context of abuse reinforces the adult logic of the vulnerability, damaging

¹² Lorraine and Andrew 2005 and milner 1998, examining adequacy of criminal law in third world pg 33

¹³ Kemp (1991) criminal theory and law, pg 91

¹⁴ Anppcan (2005)

¹⁵ 1983

UN summit¹⁵ wrote that any understating of child sexual abuse is incomplete without consideration of the child's perspective. Understating the child's context of abuse reinforces the adult logic of the vulnerability, damaging effects and therefore amelioration of the situation. It further points out that the sexual abuse accommodation syndrome consists of five elements that include;

Secrecy, if the child feels she will not be understood or will be blamed, and then she is compelled to conceal her experience of sexual assault.

Helplessness, if a child has no confidence to believe that her report will not be rejected the abuse will go unnoticed fully. Entrapment and accommodation. If a child thinks that it will be very hard to validate her report about her experiences she became a victim of both primary and secondary damaging effect of abuse, delayed, unconvincing disclosure. He further point out that the first categories preconditions to the occurrence of sexual abuse and the last three categories are sequential categories which takes on increasing variability complexity.

According to Lorraine and Andrew¹⁶ child sexual abuse differs in terms of age category in focus in their exploration of the individual and contextual factors that have been associated with sexually abusive acts involving children. They appreciate that there is clear evidence that the abuse of young children is a common phenomenon all around, yet because of thee reasons for the abuse of young children the reason are likely to be different from the case of children who have reached puberty.

Child abuse includes a wide range of sexual behaviors that take place between a child and elder person. This sexual behaviors is intended to critically abuse the elder person generally without consideration for one reactions or choice of the child and elder person and with out consideration for ones reaction or choices of the child and without consideration for effect of the behavior upon child.

¹⁵ 1983

¹⁶ Supra at pg 110 Lorraine and Andrew 2005 and Milner 1998

According to Blumenthal¹⁷ says that children are sexually abused if not by parents or cohabite than are abused by custodian such as foster parents by sisters, relatives or friends. And these individual or abusers are drowned from all sections of the community sexual exploitation of young children is frequently facilitated by their lack of economic power and job opportunities. Sugar cadies take advantage of children due to lack of economic resources by promising to help with expenses in exchange of sex.

To Delano,¹⁸ he compiled a report of studies done in different countries for example study carried out in Kenya reveled that 50 percent of children admit receiving of form of money, ornaments and cloths when they engage in sex for the first time young girls frequently report that their early sexual experiences were coerced. In custody in South Africa 30% of girls report that their first sexual intercourse was forced in rural Malawi 55 percent of adolescent girl's surveyed report that they were often forced to have sex.

These girls get the threat of social stigma prevent young girls from speaking out about sexual abuse. In Zimbabwe, rape cases are some times settled out of court when perpetrators either pay compensation to the girl avoid bringing up public attention and shape to the girl and family.

A study in rural population of south Africa found out that 51 percent of children between 6 months and 5 years of age received medical treatment for sexual abuse have been abused by neighbors and acquaintance, a lodger or stranger studies conducted in Zimbabwe found out that half of reported rape cases involve girls less than 15 years of age and that girls are most vulnerable to sexual abuse by male relatives, neighbors and school teachers.

¹⁷ Brumenthal (2001) the concept of defilement, law and policy pg 51

¹⁸ Delano 1998-99) exploring the reason to defilement, the law and policy pg 51.

According to Uganda law reform (2000)¹⁹ research indicates that girl children are defiled by persons in authority. The study showed that many children are defiled by persons who were authority over them.

The abuse of victims is made easier by relationship or position of trust or authority the offender has in relation to the child. It found out among the offenders such teachers, domestic servants, employers, guardians, and wardens. In addition to the above girls, children are defiled by their biological fathers, uncles, grand fathers, neighbors, boda boda, riders, house boys and Shamba boys and it has become the order of the day.

According to daily monitor 21st August 2015, the police in Gulu district have arrested renounced pastor over allegations that he defiled a 13 year old girl. The suspect is a senior pastor in one of the born again churches in Gulu municipality. Daily monitor went ahead by saying that a total of 437 cases of defilement were registered in Gulu district in 2014.

Similarly, Mukono high court has sentenced a 25 years old man to 16 years in prison for defiling a 13 year old girl. This was on Monday August 17th, 2015.

Also new vision, Monday, August 24, 2015, the high court of Arua sentenced Roselyn Afoya 13 years in jail for defiling a boy of 14 years old and affects him with HIV.

In the new vision news papers²⁰ girls are sexually abused and defiled by clergy, security guards, drivers, soldiers, widows and fellow children. Also still the press reports that girls are defiled by responsible people in society like local council officials, teachers, police men, guardians, employers, domestic servants, relatives, include cousins, uncles, grandfathers, stepfathers and biological fathers. And these girls are rarely defiled by strangers.

¹⁹ Uganda law reform commission report 2000

²⁰ New vision November 2011 pg 81

Girls are also defiled by drug abusers and alcoholic girls are defiled by persons who have authority over them. The abuse of the child is made easier by relationship or position of truth or authority. The offender has in relation to the victim.

The causes of defilement range from social, cultural, economic and political Luswata²¹ says that absolute poverty loans in the majority of house hotels in Uganda, this can also set up factors leading to increased defilement.

This is because parents and girl child are looking for material gains in order to survive.

The UNICEF ANPPCAN²² observed that, broken marriages leaves children stranded and without proper support. Children are often mistreated by step parents and run away from home ending up of being prostitutes or child laborers, orphans who lack care and support are at risk of being exploited and street children are also more vulnerable to sexual exploitation. Drug abuse is both direct cause and consequence- of survival sex and child prostitution. In most countries, parents make their children vulnerable for sexual exploitation as away of earning money or in exchange for in validation of family debts.

The United Nation on the convention of the rights of the child (UNCRC)²³ which Uganda ratified in 1989. The purpose of the convention is for protection of the right of a child and to be articulated on girl defilement are provided by UNCR. These include the right to life the protection of a child without family freedom from abuse and neglect freedom of identity, freedom from sexual from sexual abuse, freedom from sale, trafficking and abduction. These are contained in article 6, 7, 8, 34 and 36.

²¹ Luswata (1999) research theory and defilement concept pg 44s

²² UNICEF, ANPPCAN el at (2001) report, p.61

²³ UNCRC

Godwin²⁴ observed that child sexual abuse is seen to be present through out the history of human interactions and in some cultures is ingrained in the historical and sociological development of society, thus like folks, tales that emphasizes the relationship between kin that are in cultural practice are incest taboos. He puts emphasis on the point that should be taken seriously is the fact that people should be aware of and conscious of the historical concepts as well as the cross cultural differences that exist in different societies across the world when thinking of adult child sexual contacts that may in society not be seen as civil and deviant behavior.

Karrisa²⁵ high lights that new technology in from of televisions, videos, cinemas, novels, music and some magazines with pornography have brought problems and pressure to children. Alcohol, stereotyping, sexual immorality and drug abuse need to be dressed.

Events that happen within families are usually not subject to international law. International law respect families. Family autonomy as articulated in international convent of economic, social and cultural rights (ICESCR). However, child abuse facilitated in the family under the guise of culture is known prohibited under international law by convention rights of child (CRC) and the African charter on rights and welfare of the child (ACRWC).

Under article 19 of the convention right of the child (CRC), a child is protected from abuse whilst in the care of parents, guardians or others who care for the child. The state required to take all appropriate legal, administrative, social and educational measures to protect the child. Sexual exploitation of the child is also prohibited.

However, if a man defiles a girl being prepared to marry the "kabaka" meaning king the defiler will be killed. In the African tradition, every elder person was

²⁴ GODWIN (1998) POLICE VEHICULAR PURSUIT constitutionality, liability and negligence (spring field iii Charles c. Thomas 2007.

²⁵ Karrisa (1993) criminal law case studies and controversies (new York aspen 2005)

regarded as a parent to any child. Sexual issues were forbidden to be discussed in public and traditionally the position of a woman in society, family and politics was subordinate. Virginity of a girl was safe guided but today parents leave their children with house girls/boys, relatives, neighbors and school authorities (Batunzi and kingdom 1997).

In Uganda and Africa at large, matters concerning sex were treated with sensitivity that should not be discussed in public. The responsibility of giving and passing sex education to the girl child was to be done by female relatives of the family (NK02 1992). This would happen when a girl was prepared for marriage.

2.1 The legal frame work in defilement cases

The constitution 1995 as a supreme law in Uganda defines the social norms for the care and protection of children and superseded all traditional practice which is conflicts with the right of the child. Chapter four of the constitution guarantees human rights and freedom and article 34 specifies children's rights. Children's statute, 1996 specifically addresses the issue of child care and protection.

Uganda's criminal laws are mainly found in the penal code cap 120²⁶. Defilement is an offence under section 129 of the said Act and amendment made there under.

However, there are other laws that govern the defense of defilement working in conjunction with many other laws written and unwritten. The written laws include trial on indictment Act (TIA)²⁷ and the magistrate court Act²⁸ both of these Acts prescribes the venue for hearing of cases and lay down similar terms under section 38 and section 99 respectively, the procedures to be followed by court when taking evidence from children. They also prescribe the value to be placed on the evidence of children of tender age.

²⁶ Cap 120, laws of uganda

²⁷ Cap 123, laws of uganda

²⁸ Cap 16, laws of uganda

The TIA²⁹ provides that "every witness in criminal cases or matter before high court shall be examined upon.

Section 38(3) provides that "where in any proceedings any child of tender years called as witness does not in option of the court, understand the nature of oath evidence may be given though non and oath if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understanding the duty of telling the truth.

Proved that where evidence by virtue of this sub section is given on behalf of the prosecution, the accused shall not be liable top be convicted unless such evidence is collaborated by some other material evidence in support there off implicating him. This is seen in the case of Uganda obbo,³⁰ where 13 years old girl was the judge stated that

"I warn the assessor present and also worn my self not that it is necessary to be continuous about such evidence. This is particularly sincere increase of the this nature, there is always the danger of acting on feigned evidence of the complainant, consequently, advise the social assessors and I do hereby advise my self that as a matter of practice, before that evidence can be acted upon, it must be either

- (a) Be collaborated by some independent testimony.
- (b) Or verified that in every way it is the truth.

The 1995 constitution of Uganda³¹

Chapter four of the constitution guarantees human rights and freedom and Article 34 specifies children's rights. Children's statute, 1996 specifically addresses the issues of children care and protection. The constitutional provisions states the age of marriage as 18 years and above. Section 129

²⁹ Section 37, ibid

³⁰ HCCC/21/1988

³¹ 1995 constitution

penalizes defilement of a person under the age of 18 years of age and section 12(b) provides for payment of compensation to victim of defilement.

2.2 The ingredients of defilement

The essential ingredients for a successful prosecution for defilement have been defined by various court rulings. In *Agaya Robert vs Uganda*³² it was well stated that in order to constitute the offence of defilement, the following must be provided.

- Sexual intercourse
- Victim must be 18 years
- The accused is a culprit

2.3 Sexual intercourse

In the case of *Uganda U Enoch*³³ it was held that for defilement to occur the accused's male organ (penis) must have penetrated the victim's male organ (vagina). However slight the depth of the penetration need not to be considered.

The victim must be below 18 years

The case of *Uganda U Enoch*³⁴ where the accused raved a defense that reasonably believe that the girl was above 18 years and therefore marriageable age. He was told that this was no sufficient defense. Similarly in the case of *Tumuhairwe Vincent vs Uganda*³⁵ the court of appeal had inter alia that the fact that an accused did not know that the victim in defilement case was less than 18 years of age is no defense. Girls in particular, are forced to assume adult roles prematurely. The government of Uganda enacted the principle law³⁶ that deals with children's affairs and protection under the law. The children's stature is a

³² Criminal appeal No 18/2000, court of appeal

³³ (1988) HCB PG 12

³⁴ Supra 40

³⁵ *Tumuhairwe Vincent vs uganda*

³⁶ Criminal appeal no 29/27 copurt of appeal the government of Uganda, children act 2004

milestone in child care and protection because it makes both care and protection legally enforceable.

The law enforcement officers have tried to punish the culprits as the law states as reported, Justice Vassin Nyanzi the high judge of Arua convicted and sentenced David Okello 28 years to 20 years imprisonment for defiling a girl of 8 years old minor justice Nyanzi³⁷ says defilement has become rampant, and sentencing such offenders to serious punishment would bear others from committing the same.

2.3 Factors that aggravates defilement

Children in all situations are prone to sexual abuse. Both boys and girls can be sexually abused. However certain categories of children are especially at risk including the following, orphans, child domestic workers, children living in slums, disabled children, children on streets, children in conflict areas, children living with step parents among others.

The penal code Act cap 120 laws of Uganda section 129(4)³⁸ provides that any person who perform a sexual act with another person below 18 years of age in any circumstance specified in subsection (4) commits a felony called aggravated defilement and on conviction by high court, liable to suffer death and the circumstance referred to in subsection (3) as follows where the person against whom the offence is committed is below 14 years where the offender is affected with human immune deficiency virus where the offenders is a guardian of a person in authority over the person against whom the offence committed where the victims of the offence is a person of disability or where the offender is useful offender.

³⁷ <http://uganda land onetwork.com/landstory.php?s=4/009#ixzz1wzge26cm>. accessed on 3/6/2012 at //

pm

³⁸ Ibid

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This sub chapter describes the techniques of research which were used in collecting data during the study. Research design area of the study, study population, it also indicates the sampling procedure and sections, sample size, data collection, instruments, validity and reliability of research instruments and lastly it describes data analysis, ethical considerations and limitations of the study.

3.1 Research design

The study used an exploratory and descriptive design both qualitative and quantitative research methods were used in the study. Its aim was to enable the study offer and stimulate explanation about the challenges in the control of defiling of children.

The qualitative method was of a particular importance to this research because of their ability to penetrate into different expressions and experiences of respondents to the subject matter. The study used qualitative methods because of the experiences of key respondents like LC's, NGO officials who handles the cases. The qualitative method was also used due to desire to establish the magnitude of the problem using statistical data and evidence.

3.2 Sample procedures

Cluster sampling procedures were used to select the sample of the study area. The study used sample sampling to choose respondents. Defiled child in their house hold were selected and these ones found on spot at police stations and NGO's with new/fresh cases. The key information based on their knowledge were

purposely selected in defilement study areas members from NGOs, LCI officials opinion leaders and parents which were selected.

3.3 The sample size

The sample size of 50 respondents was selected and this represented the population of defilement. The sample size consisted of 10 victims of children defilement 25 selected key informants from the two organizations dealing with defilement, police local offices and one officer and 14 parents/guardians as defiled victims. The researcher chose different categories of people for interview due to sensitivity of the research problem and the availability of the respondents. However, the selection of respondents based on geographical location.

The instruments used

The instruments used include interview observations and questionnaires

3.4 Interview

This was used to gather information using face to face conversations between a researcher and a respondent. That is to say purposely selected key informants involved in the issue to do with controlling defilement of children. The importance of this instrument was to get data from key informants that help to carry out in depth interviews on the key information relating to the experiences with defilement. The key informants were the NGO's, police officers local councils dealing with children's rights, child sexual abuse and defilement.

3.5 Observation

This method was used in the study to help and capture hidden behavior of children, parents and other respondents by viewing how the victims reacted when asking some of the questions, peoples attitude towards the question were observed to fulfill the gap of data collection that were collected.

3.5.1 Questionnaires

These were employed to help to correct the view of the children, parents of the victims of defilement, NGO officials, police officials and LC officials.

The questionnaires were semi-structured and self administered questions to which the respondents were required to select from the option given.

The questionnaire for the key informants had free response choice to try and balance up the data to give free options with out being influenced by the study. The report was created with respondents which created a good study area and more detailed information and 13 questions were asked /sampled and distributed among the key interviewees.

However, besides of the above interview observation and questionnaire the researcher also used published and un published materials. These were used to help in the collection of qualitative information that can be used to validate data collected from other desk review of legal instrument methods. Such information was used to get an insight into how views and opinions about child sexual abuse have influenced the effort for improvement in the existing control measures to prevent child sexual abuses and defilement. The material helped to draw appropriate conclusions about the collected information from the respondents. Materials such as academic research report from civil society organizations dealing with child sexual abuse will be reviewed and the police report about the problem of children defilement will be the focus of the study.

3.6 The data analysis

All the information gathered from the field was softened, edited, classified for analysis, arranged manually according to the research objectives. After transcribing, data was analyzed. Analyzing data collected enabled a researcher to examine, compare and contrast and as well as interpret and develop meaning for conclusions.

But since the study used both qualitative, the first step to analyzing the qualitative data collected was to get familiar with the data collected through reading text of collected data, key themes and patterns that address the research question were then identified and organized in coherent categories to help summarize and bring meanings to the data collected.

On the other hand, the quantitative data through use of questionnaire went through gradual process of analysis involving editing of collected data, coding and tabulation. Coding involved classifying the answers for each item into meaningful categories.

3.6. 1 Area of study

The study was carried out in Kamuli district.

3.6.2 Research questions

What legal frame work is available in controlling defilement in the community?

What strategies can be put in place to improve the control of defilement in the community?

3.6.3 Hypothesis

In spite the fact that there is the existence of strong laws prohibiting defilement, the practice continues to be uncontrolled and rampant through out the community.

3.7 Problems faced by a researcher

The researcher was affected with the problem of transport as the research required moving from one place to another looking for the information. Some relevant information deep in the village was not fully accessed due to limited transport among others.

CHAPTER FOUR

DEFILEMENT UPON CHILDREN IN THE COMMUNITY AND FAMILY

4.0 Introduction

This study (defilement in Kamuli) district revealed that when a girl is defiled, she may not report to any body until they are revealed/discovered either by their parents or some other adult members of the family or neighbors.

If however the girl report, she would report to her parents or to adult members of the family. When this happened, the parent or adult member of the family hijacked the girl's experiences and it was their view and perception of what happened that would prevail.

In either cases, the discussion that were made by parents/guardians were informed by their perception of the girls age, her sexuality and their projected planes for her future together with their understanding of the law and implication of that operation on their social relationship with others, whom the act of defilement affected in one way or the other.

At this stage, it's a premafacy that the greatest problem in enforcing the law against children defilement is the silence of the victim. The study revealed that the treatment offered to the defiled children by the law and community contributes greatly in preventing them from reporting.

Findings in the field indicated that communities is interested in regulating the age at which children can actively participate in sexual intercourse, parents then take it upon themselves to fix this age and not decoding to law, but according to their economic needs and depending on the availability of an improved suitor for their daughters. For example if a parent looked for 14 year old girl and because they felt she is too young to marry, steal going to school. This is because children are generally regarded a s an investment. More especially an educated

children are generally regarded as an investment. More especially an educated girl fetches higher bride price than the one who was not educated. This was qualified by the members of the group discussions who scattered statements like "I spent much on her school fees that I have become bankrupt. I have to get bride price from Muko".

According to the group discussions, communities lay down emphasis on girls' purity marriage. That is why the parent quoted above was proud that she managed to keep her daughter in school hence protecting her from "hungry men" who in her opinion "pronounced on the young girl like hungry men lion" where a girl is defiled, her value will have been lost. She is stigmatized and regarded with suspicion, thus one youthful respondent said "I can not marry such a girl, she might be sick".

Another one said "gasya" meaning "rubbish" others also said that such a girl was not suitable for marriage either for their selves or their son's. Thus unless you take her far away like in Kenya where people do not know you but at least not her in our community.

Another respondent was angry with the whole issue of defilement saying Madam, "Why do you make it a crime for men. A man to have sex with a girl of 17 years of age? At least girls should be allowed to sleep/have sex with men. They want and why did you create such a law? Because it restricts girls' freedom to sex, care and protect for the young babies who are below 12 years and abandon the rest".

Due to the above, girls are restricted in their movements and their activities are confined to domestic chores where they are often under observation of their parents. They are almost looked at as property. This study revealed that societies/communities deny the girl child a right to express her sexuality. This was also found from the researcher's own experience as a girl/woman who has grown up in this community and a family of 7 boys and her interaction with other children in the process of growing up children are brought up to regard sex as

evil and word such as "bad things or silly" things are used to describe sexual intercourse.

Another finding was that societies/ communities denied children's knowledge on sexual matters. The discussion of sex was a taboo. Children are denied knowledge of words that describe sexual organs of their bodies, consequently, lack the words with which to express their sexual experience or words to describe sexual related matters, he would just know that they are promising "malaya's" such words are not to be uttered in public or in the presence of adults.

The above could probably be the reason why the majority of the cases the researcher has studied, the victim did not report until they were discovered. No wonder the child who is defiled stand muted and does not report even when she is seriously injured.

From the above findings, the researcher found it deducible that were girls were lured into sexual intercourse and got injured, they do not report for fear of blame from their parents or another adult who had warned them against that civil. The elder girls (above 4 years) liked the experience and feared that the revealing could resolute into termination of their relationship. Others did not report because the defilers were their relatives and others had threatened to kill them if they reported them.

One of the respondents said "what? Testify against people who had threatened them? Against fathers! Brothers! Or masters! Others never reported some thing went wrong with them or their affairs for example if the man adamantly neglects to provide maintenance of girl with the baby, then the parents of the girl would come up with the idea of defilement while the girls only need is maintenance of the baby and her self yet others like in case did not report because they know no words with which to express themselves. They where disqualified by their tender age. Even those who know the right words still did not report because they

were constrained by the manner in which they had learned those words (in secrecy) and found it embarrassing to use them in public.

From the foregoing therefore, it's evident enough that many cases of defilement are settled at family level. Either because the parents are ignorant of the existence of the law, or knowing community perception of defilement and the harsh punishment it entitles, parents rise to exploit the situation and realize financial gain that even suppose what they would not get if they had taken the matter to court. Some parents use death sentence to threaten the defilers hence extorting huge sums of money from them and the matter solved at the family level. This is done even where the girl has been injured with out having regard to the physical and psychological trauma inflicted on the children by the act of defilement. Hence statement made by respondents, "we hear societies/communities of children being defiled and the law that protect them. We see the same girls pregnant but no reports are made to us".

Another one said "when I realized that my neighbors 17 year old girl was pregnant, I told her that she was defiled and that there was law to protect her, she simply replied saying "my man for the antenatal care and he also buys meat for my mother and father, what hasn't he given me?"

In such cases the defender receives sympathy even from the victim and several other members of the community. The offender then gets away set free and continues with his activities of defilement with renewed vigor. The researcher has found this extremely discouraging to other victims who would like to pursue the case of defilement, but who in the end see no use of it after experiencing an incident like the above.

According to Lady Justice Kikonyogo due to the incautious nature of some incidents of defilement, parents have opted to rush up the affairs and only demanded for things like children, goat or some little sum of money from the

offender. The offender thus become un repentant and encouraged to repeat his act on another victim since it will be brushed up.

A gynecologist interviewed also stated that "girls who are defiled come for treatment, our responsibility is to treat. We do not advise them to go to the police for reporting or exposing the defiled girl. We would be contravening the medical ethics that is why we see child mother and we simply treat them.

There is a conflict between professional ethics and statutory obligations or regulations. As a citizen, doctor has a duty to reports criminals to police, but according to his profess, he is supposed to offer professional privacy to his patients (defiled girls) professional ethics should be categorized where by doctors will have options to report cases like defilement, rape or murder. There is law that will operate in such situation in away that doctors can be charged as non-compliance but they will always plead professional ethics. As a result, cases are not reported. The issue at stake there fore if whether not statutory regulations should take precedence over professional ethics.

As already seen, incestuous incidents of defilement, the matter is always hashed or settled up with in the family. One respondent gave an example of a 14 year old girl who died while committing abortion. The girl and the family could not stand the shame of producing a child whose father was a cousin of the defiled girl's mother. Despite the fact that the girl died, the matter was hushed up with in the family, such an offender discovers the weakness in sociological set up in the community and most likely to welt to his advantage. If such an incident can not be reported for thee possible prosecution of the offender, then the law is left extremely hand capped hence allowing offenders to wonder free with out fear. Is the law therefore appropriate for sociological situations in the community? Should people be regarded to behave in a manner that suits the law, or should the law be adjusted to suit them? The above factors lead to failures of the enforcement process and the girls who needs protection by the law may never

be hard within the community reflect the day to day practice with which marriage relations are often magistrate and neglect the traditional methods of dispute resolution, having little or no regard to the existence of criminal law.

From the above analysis, it's clear that a girl child who is defiled has her voice silenced b communities suppression of her right to express her sexuality. The stigmas attached to early sexual involvement by girls and referral by adults to give the girl child knowledge on matters relating to sex. The interest offered by parents to support the defiled girls. There fore may be economically motivated, so that when parents report the girl's experiences parents may distort them to suit their own interests and financial needs. This then affect the enforcement process and service to enforce the girl child into more silence, factors that have greatly rendered the law of defilement is applicable.

4.1 Review on enforcement law relating to defilement

The purpose of this study, the enforcement of law refers to the whole process from a moment of report is made the arrest prosecution and incarceration of the offender with view of deterring future occurrences of a similar nature. The process is set in motion when a child reports, usually to her parents or an adult member of the family discovers the defilement either the girls has been injured or disappeared from the home under suspicious circumstances. Thereafter, the discussion to report to institutions of law enforcement and avenue where the conflicts are to be resolved is taken by parents or guardian of the victim.

The discussion to report, and where usually determined by several factors which include the age of the victim, the nature of transaction that manifested into defilement, whether it was rape or by resent of the involved victim. It may also determine the economic need of the family I involved or perception held by parents in respect as an investment for future wealth of the family in form of pride, wealth. Other factors affecting the discussion to report and the avenue include location of the structure of law enforcement such as police and courts.

The removal of jurisdiction from lower courts to high court has made the court less accessible because the high court is not well distributed in the absence of strong well equipped police force coupled with the presence of LC's at lower level who have translated their jurisdiction as far as handling criminal matters like defilement.

As a result, the vast majority of cases go unreported and many that are reported are settled by compromise the mediation. However, if parents decide to report, there are number of avenues to which he can do it. Theses include the van, the LCs, courts religious leaders and the police. It is at the police station that attempt to determine the incidence of that offence and assess whether it's on an increase or decrease can be made. In order to achieve this and considered police stations reveal that after receiving report of defilement, police may resolve most of the cases at police station and others will be registered at court. Responsibilities even with out proof of the incident, there is lack of fair hearing for both defiler and the victim despite the fact that in some incidents the child is too young and has suffered several injuries, the loss incurred is considered to be parents, loss of value attached to child's purity as virgin and for the simple local people, this value can only be compensated in monitoring terms. This depicts and emphasizes the proprietary nature of the child's sexuality as regards her parents, the expression of which must be material gain in favor of parents who then realized his expectations from the child as an investment. Only in the event of the clan's failure to resolve the issue of compensation will the matter be referred either to the LCs or police.

However in may cases, where a victim is too young and the injury has been serious, some clans may not entertain the matter, they advise parents directly to go police, but even this will depend on who the defiler is and other surrounding circumstances. In fact, in many cases of this nature, if a family member committed defilement, the case may end in family level.

4.2 The role of LCs

An attempt to give more power to people at grass root level in the general management of affairs among local people, the NRM government legalized the LC systems as part of Uganda's local government structure. They derive their powers to enforce law from LC judicial power statute which empowers LC to arrest all persons whom they reasonably suspect has committed an offence, and hand him over to the police station within twenty four hours. However this is done with the cases, the situation become different when it is a case of defilement. The stature also empowers the LCs to handle cases where the girl is under 18 years have been impregnated. The conflict in Uganda law therefore made LCs court one of the avenues to which defilement cases can be handled. But in empowering LCs' to handle civil.

Customary law, the LC perceptions of defilement has enabled them to comfortably handle it. To them it does not matter whether the girl is pregnant or not. On my side defilement means having sexual intercourse with a girl below 18 years where the girls are to be virgin as this is to be paid for. So on the side of LC even when the girl is traumatized, it will settle the case.

During group discussions, all LC's confessed to handling these cases including those who were aware that it was a criminal offence and that they are acting ultra virus. Many therefore disapproved death sentence prescribed for the offence. One of them said that my villagement is guilty of defilement why do I forward the matter to police when LC's very well know he will face death?

As a result, many of them concluded of fine to them punishment is quantified in monetary terms and like many members of the community which they represent the remedy, they offer is considered more meaningful to the parties. I asked as to whether they know the dangers in decision of compensation by defilers, the LC's replied "we know it facilitates concealment of the crime, but compensation between fifty thousand to twenty thousand shillings may not be a small amount

for rural parents for whom raising one thousand Uganda shillings may not be very rare occurrence. It therefore critically to it solves people's financial problems and once money is paid, the case is closed and people who came annoyed walk away smiling, consequently, defilement will end at this level and it will go again to police station after failing to pay for compensation by the defiler.

But this way, it was realized that by their interference and interruption in the enforcement process, the LC's oversteps their jurisdiction, hence making it difficult for police to do its work properly.

Much as LC's may argue that their idea of reconciling the two parties through compensation of two parties is highly recommended by local people, it only considers the benefits of defilers and parents victim. No body speaks for the child at LCs courts. Since his/her voice subsumed within that of the parents, her voice, if heard will only be secondary one of the LC respondent gave confessional tale where the handled cases of a sixteen year old girl whose parents insisted that the defiler should repair the leaking roof as away of compensation.

4.2.1 Other findings

Respondents revealed that those are formally ways that the vice should be fought and this should not entire be left to government or law makers, it should be citizens reasonability it revealed that parents should teach the children the dangers of early sex avoiding bad groups in schools and communities. That the government should regulatory measures on social media to avoid exposing the young generation to pornography.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

The result of the study revealed that the community has laws in place that criminalize defilement. However citizen [practice have over the years led to increased cases of defilement in our comm. unity and in Kamulu in particular because having good law that is not translated into good practice or even good children against defilement is a waste.

The biggest percentage as shown that poverty in urban life style, ignorance and technology are the major causes rampant increased number of defilement in Kamuli district. Generally, the study revealed that defilement is still a big problem in Kamuli district and has resulted into school dropout, early marriages, pregnancies, increased spread of diseases especially sexually transmitted diseases which are harmful to children. And the total number of defiled children in Kamulu district my area of study in 2009 was 34 cases.

5.1 Recommendations

A number of recommendations are made regarding the study findings, conclusion and lessons learnt from the study.

5.1.1 Existing law on defilement

The republic of Uganda has a wide range of law that guide against defilement. Therefore there is needed to make them popular among the citizens so that defilement is reduced in the community.

The media and civil societies need to priotise children issues that are geared towards focusing more child protection.

5.1.2 Defilement law

The law enforcement officers/ authorities should make sure that the right procedure is followed as stated in the law.

There are need to inform the current defilement law especially making them align properly with the marriage law and constitution of Uganda 1995.

Clarify what and how sex intercourse between under age boys and girls same age should be treated.

Facilitate police to carry out quick and reliable investigations related to sexual intercourse where minors are concerned.

Improve record keeping enabling victims easily proof the easier ingredients of defilement such as age, establishing more remand homes to handle child offenders, establish corrective and preventive measures to reduce the occurrence of vice.

5.2 Factors that aggravate defilement

Parents should teach the children the dangers of engaging in sexual activities early in life as well as teaching them the life skills to avoid being conned into having sex for simple favors like money, phone etc.

Increased sensitization of the public so that they know the dangers as well as knowing what the law states regarding defilement.

The government should work out sustainable measures to put and to the problem of defilement.

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QUESTIONNAIRE

APPENDIX I

Research topic: Defilement and its impact upon children in the community and the case study Kamuli district.

1. Sex: Male.....Female

2. Occupation (chose one applicable): lawyer law makers.....police officers....._parents.....other specify.....

3. Are you aware of the law of defilement in community.....
.....

4. What is stated in the law above defilement.....
.....

5. Do you think that defilement law is sufficient enough to guard against defilement in our community?
.....
.....

6. What do you propose law makers should do to further input into defilement law to make it more efficient?
.....
.....

7. Do you think defilement increase or decrease in the last 10 years

Yes.....No.....

8. what do you think the person for increased cases on defilement in community today.

.....
.....

9. What do you think the following should do to reduce defilement in community?

- a) Parents
- b) Government
- c) Police
- d) Children
- e) Media

10. What practice in Uganda do you think have contributed towards increased defilement case in the community?

.....
.....