

THE LAW ON DEFILEMENT AND ITS ENFORCEMENT IN UGANDA

A case study of Kampala District

BY

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DECLARATION

This is my original work and has not been presented for a Degree or Diploma in any institution of higher learning here or elsewhere.

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Approval

I certify that this Dissertation has been submitted for examination with my approval as
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Date.....

Dedication

This work is dedicated to my beloved parents Mr. and Mrs. Bitanako Emmanuel, My Brother Major David Muhanguzi, and the entire family of Chief Bitanako Emmanuel for their inspiration, love and affection during my academic struggles.

Acknowledgment

This Research work was not simple but despite the hardships, I have been able to accomplish this work with the help of people whom I owe a lot because of their assistance and support.

My sincere thanks to Ms. Muchuma Caroline, my supervisor with whom I have worked with smoothly despite her busy schedules in her respective duties.

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LEGISLATION

Constitution of the Republic of Uganda 1995

The Penal Code Act Cap 120

The Magistrate Courts Act Cap 16

The Children Act Cap 59

The Prisons Act 2006

ABBREVIATIONS

SAFAIDS.....	Southern Africa HIV and AIDS Information Dissemination Service
APPCAN.....	African Network for Prevention Against Child Abuse and Neglect
IDC.....	International Development Consultants
MoH.....	Ministry of Health Uganda
HIV.....	Human Immunodeficiency Syndrome
UNICEF.....	United Nations Children Emergency Funds
CHH.....	Children Headed Homes
MCA.....	Magistrate Courts Act

ABSTRACT

This study explored and described all factors connected to defilement cases in Uganda. Legislation on defilement was examined as to whether it's weak or strong. The study explored factors for continued raising cases of defilement in Uganda. It considered whether such cases are successful prosecuted and whether the courts orders passed in defilement cases are enforced. The factors responsible for the unsuccessful enforcement of court orders in defilement cases were looked into. Recommendations that are necessary in order to stop defilement, prosecute the defilement perpetrators successfully and effectively enforcement of court orders.

CHAPTER ONE

1.0 INTRODUCTION

1.1.0 BACKGROUND

One of the notorious forms of child abuse in Uganda is defilement. According to a survey done in 2008¹ by the International Development Consultants (IDC) on behalf of the Ministry of Education and funded by the World Bank about 4% of upper primary school girls were defiled by their teachers.

While this might seem a small percentage, it means that 43,635 of the 1,090,853 girls currently in upper primary have been defiled by their teachers².

According to the above World Bank report, 10% of upper primary school girls admitted to having sexual relationships. Out of every 10 relationships, four were with teachers. The survey covered 380 schools in 17 districts in the country.

A similar 1994 study of primary school pupils in Uganda found that 11% of girls said they had been forced to have sex with a teacher.

A Media Analysis on child abuse 1986 - 1996 undertaken under the auspices of the Ugandan Chapter of the African Network for Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) revealed that out of 486 cases of child abuse as reported in the three English daily newspapers in Uganda in the period quoted, defilement featured in 214 cases - nearly half of all cases of child abuse.

1.1.2 DEFINITION OF DEFILEMENT

Under section 129(1) Of the penal Code Act, any person who has canal knowledge of the person below the age of eighteen years commits defilement.

¹Dora Byamukama, How Can the Law On Defilement Be Made More Effective? New vision 20 October 2010

²ibid.

1.1.3 THE LAW ON DEFILEMENT

Article 28(12) of the Constitution of the Republic of Uganda requires that for a person to be convicted of an offence, that offence should be written and the sentence prescribed by the law.

Thus offence of defilement in Uganda is defined and it's sentenced prescribed in the Penal code Act Cap 120

1.1.4 DEFINITION OF DEFILEMENT

Under section 129(1) of the Penal Code Act, defilement means the unlawful having of sexual intercourse with a person under the age of eighteen years.

However, the penal code makes a distinction between simple defilement and aggravated defilement.

Aggravated defilement is explained under Section 129(3) and its committed when any person performs a sexual Act with another person who is below the age of eighteen years and on top of that, the following circumstances exist ;

- i. Where the person against whom the offence has been committed is below the age of eighteen years
- ii. Where the offender is infected with Human Immunodeficiency Virus (HIV).
- iii. Where the offender is a parent or guardian of or a person in authority over the person against whom the offence has been committed.
- iv. Where the victim is a person with disability
- v. Where the offender is a serial offender.

Any other form of defilement in the circumstances which do not conform with the circumstances stated above is simple defilement.

The maximum sentence for simple defilement is life imprisonment whereas the maximum sentence for aggravated defilement is death

An attempt to commit simple defilement carries a maximum sentence of 18 years where as an attempt to commit aggravated defilement carries a maximum sentence of life imprisonment respectively.

1.1.5 INGREDIENTS OF THE OFFENCE OF DEFILEMENT

In the case of *Basita Hassan v Uganda* the Supreme Court held that the ingredients of the offence of defilement must be proved by the prosecution against the accused beyond reasonable doubt. The court went further to state those ingredients and they are;

The fact of sexual intercourse, the prosecution must prove that there was penetration of the private parts however slight it may be.

The age of the victim must be below the age of eighteen years. The age can be proved by production of a birth certificate, baptism certificate or through radiology.

Participation of the accused in defilement, this is necessary to place the accused at the scene of the crime of the alleged defilement.

The intercourse should be unlawful.

1.1.6 JURISDICTION TO TRY DEFILEMENT CASES

The jurisdiction to try aggravated defilement lies with the High court but Chief Magistrate Courts have the jurisdiction to try simple defilement and both attempts whether of simple or aggravated defilement.

However as a general rule, all offences begin from the lower courts. Hence when the charge of aggravated defilement is filed in the Chief Magistrate court, he or she will do committal proceedings.

1.2. STATEMENT OF THE PROBLEM

Up to the present day, children continue to be defiled both in their homes, neighborhoods and in institutions. This has over and over again been reported by the local authorities and in the press and it is apparent that it is on the increase.

It is notable that children are vulnerable to defilement by virtue of factors like age, strength, intellect and lack of experience among others.

However it has become increasingly threatening that notwithstanding the overwhelming defilement cases in Uganda, the culprits escape punishment which has arguably encourage them to perhaps commit the same crime or crimes of a similar.

There has been an outcry both from the general public, Civil Society Organizations (CSOs) and both National and International Non-Government Organizations directed towards the government of Uganda and other stake holders to respect children rights including stopping child sexual exploitation in Uganda by enforcing the defilement laws.

Therefore, the researcher intended to find out the causes of defilement, if it prosecuted and whether the court orders in defilement cases are enforced.

1.3 RESEARCH OBJECTIVES

1.3.1 MAJOR OBJECTIVE

The major objective of the study was to establish the root causes of defilement, how defilement cases are treated within the criminal justice system and challenges faced in the prosecution of these cases.

1.3.2 SPECIFIC OBJECTIVES

- i. To establish the various causes of defilement in Uganda
- ii. To establish whether defilement cases are reported to authorities
- iii. To establish whether the perpetrators of defilement are prosecuted
- iv. To ascertain the challenges faced by various stakeholders in the prosecution of defilement cases
- v. To determine whether Court orders in defilement cases are enforced
- vi. To establish whether Uganda has stringent laws against defilement.
- vii. To ascertain the reaction of courts to defilement cases

1.4 RESEARCH QUESTIONS

- i. How have the Courts of Judicature reacted to defilement cases in Uganda
- ii. What are the causes of defilement in Uganda
- iii. Are defilement cases reported to the relevant authorities
- iv. Whether Court orders in defilement cases are enforced
- v. What challenges are faced during the prosecution of defilement cases?

1.5 HYPOTHESES

Many people are not aware of the rights of the child.

Many people follow traditional rights that discriminate against children.

Political will in enforcing children protection laws is actually very low.

The rich and powerful disregard courts orders.

1.6 SCOPE OF THE STUDY

The study covered the period from 1986 to date. This is because, it is the period with the most documented and widely covered cases of sexual exploitation of children.

The geographical scope of study covered was Kampala District.

1.7 SIGNIFICANCE OF THE STUDY

Drawing from the objectives of the study, the study was focused at determining the enforcement of defilement court orders. The research will be of tremendous assistance to the government and other stakeholders in streamlining Uganda's defilement laws. It will also be of great importance in highlighting policy issues that affect the children. The study will also be of great importance in examining laws relating to children and evaluation of whether such laws are enforced in the best interests of the child. The study will be useful to students, legal practitioners, academicians, policy formulators and implementers who have interest in children rights in Uganda.

1.8 OPERATIONAL DEFINITIONS OF KEY TERMS

A child means a person below the age of eighteen years³.

Defilement means the act of having sexual intercourse with a person below the age of eighteen years⁴.

A court means a court of competent jurisdiction duly established under the laws of Uganda.

Jurisdiction means the power vested in a court to hear and dispose of a certain matter.

Court orders refer to orders of a court with competent jurisdiction.

Prosecution means the setting of the law in motion by the government for the purpose of punishing wrongs committed against the State.

1.9 LIMITATIONS OF THE STUDY

During the study I encountered a number of challenges and these are;

Time constraints; the time allocated for research was not enough. Besides, respondents also did not have enough time because of their busy work schedules.

Non availability of key informants; some of the key informants were out of their offices during the field study and were therefore not interviewed.

Limited funding; the study required me to move to various places which were expensive. Therefore the number of people interviewed was small.

There was lack of enough reliable literature on child sexual abuse particularly on the defilement cases of the male child.

³ Article 257 of the Constitution and Section 2 of the Children Act cap 59

⁴ Section 129 of the Penal Code Cap 120

CHAPTER TWO

LITERATURE REVIEW

2.0. INTRODUCTION

This chapter examines the existing literature on defilement on the law on defilement, definition of defilement, ingredients of the offence of defilement, courts with jurisdiction to try defilement cases, causes of defilement and challenges to successful prosecution of defilement cases. Under this segment reference was had to the Constitution of the Republic of Uganda, 1995, the Penal Act cap 120 as amended, textbooks on criminal law and Case law.

Benjamin Odoki in his book Criminal Procedure emphasized about defilement. He states that defilement is immoral in society and the punishment for it should be enhanced. He also emphasizes that defilement is a coercive act which is done unlawfully and illegal and the Court must take action against defilers. He also alludes to the definition of defilement. This attitude has been in cases. In the case of *Kyadondo Fred and Mutagayika Silas V Uganda Criminal Appeal no.31 of 1998* the two appellants were convicted of defilement contrary to section 129(1) of the Uganda Penal Code Act. Kyadondo Fred (A1) had sexual intercourse with the complainant while the second appellant and an aider held the complainant's hands.

Court held that Kayondo (A1) was a principal offender and A2 an aider and abettor. (A2) assisted (A1) and (A2) consciously participated in what was happening. He assisted (A1) in assuring that (A1) should not resist the sexual act they were all sentenced to seven years imprisonment.

Francis Ayume in his book, Criminal Procedure in Uganda states that defilement is an unlawful act and illegal whereby both parties have no total consent and having carnal knowledge without the consent of the victim. He further said that for a person to be convicted of defilement there must be the following ingredients; lack of consent, unlawful carnal knowledge, the victim must be under the age of eighteen years and that the accused must be liable for act committed.

In Justice Kanyeihamba's book; *Constitutionalism, Politics and Social Justice in Uganda* he emphasizes on defilement in Uganda. He asserts that Courts in Uganda must take action against defilers. He also emphasized about impunity in Uganda. He goes on to state that for a country to exercise the rule of law and good governance, illegal acts such as defilement, murder, rape, corruption, must not be in existence. He also talked about the principle of legality which is enshrined under Article 28 of the Constitution 1995, this principle means that no person shall be punished for an offence committed unless that offence is defined and the punishment prescribed by the law. Accordingly, the offence of defilement is provided for and the punishment prescribed.

According to Busulwa and Neema (1999) the several causes of defilement include economic vulnerability, drug abuse, moral decency, peer influence among others. Studies commissioned by UNICEF in 1999 (Kivumbi and Mpapulungi, 1999; Korukiko and Ampaire, 1999; Arinaitwe and Turinde, 1999) showed that substance abuse is emerging as a problem among adolescent. Most of these factors have been greatly attributed to defilement cases in Uganda.

Dora Byamukama in a Newspaper Article titled 'How Can the Law on Defilement Be Made More Effective?' New vision 20 October 2010 also gives factors that limit successful prosecution of defilement cases in Uganda. These include; Lack of awareness of the law. The biggest percentage of the population of is illiterate yet the law is even written in English. Some peasant people do not even understand that it is an offence; Destruction of evidence by victims who rush to bathe after being defiled hence making it difficult for medical evidence to be obtained which can be used in securing a conviction; In some instances the victim chooses not to cooperate with the Police and instead shields the offender; The fact that in most cases defilement is committed by family members who prefer to keep it a secret rather than take a relative to court make it difficult for the authorities to prosecute those cases; Needy parents prefer receiving compensation or bride price when their child has been defiled and marry off their daughters to receive bride wealth; Lack of birth certificates for some children, which makes it hard for one to ascertain the age of the victim.

The arguments fronted by most of these scholars have been adopted in this work.

CHAPTER THREE

METHODOLOGY

3.1 INTRODUCTION

The researcher in this chapter presents the methodology on how data was collected and analyzed. The researcher used both primary and secondary data. Primary data was collected using the self-administered questionnaires which contained both coded and open ended questions for the respondents to answer. The questionnaire was designed in English since the court language in Uganda is English; it was assumed that most of the people were well versed with English. The secondary resources will be publications on the offence of defilement.

3.2 STUDY POPULATION

The study population was Court Officials; Victims of defilement, Relatives of the victims of defilement, perpetrators of defilement, Human Rights Activists, Kampala based Advocates and Public Leaders in Kampala district.

3.3. STUDY LOCATION

The research was carried out in all the Chief Magistrate court in Kampala, Luzira prisons and the High Court at Nakawa.

3.4. RESEARCH DESIGN

A descriptive survey was used in the study. This was because the researcher was interested in collecting information about people's attitudes and opinions towards enforcement of court orders in defilement cases.

The researcher administered a questionnaire to a sample of individuals at all the Magistrate courts in Kampala, Nakawa High Court and Luziira prisons.

3.5 SAMPLING DESIGN

The researcher used simple random sampling where by the respondents were chosen randomly. Therefore each respondent had an equal chance of being selected.

3.6 SAMPLE SIZE DETERNATION

In order to determine the sample size, the following factors were considered;

The level of significance, the standard normal statistics, the variability of samples which was obtained from the past surveys, the permissible error which was estimated in the field.

3.7. DATA EDITING

All questionnaires to be filled were checked of their accuracy and well edited. This was done to ensure that the questions were properly answered by the respondents.

3.8. DATA ENTRY AND ANALYSIS

The data collected was entered into computer using **EPI Data**. It was then analyzed by referring to emerging issues, patterns and explanations. The findings were then interpreted in light of the research objectives in orders to attach meaning to the data collected/gathered.

CHAPTER FOUR

ANALYSIS, PRESENTATION AND INTERPRETATION OFFINDINGS

4.0. INTRODUCTION

This chapter will present the findings got from the study particularly focusing on the commission of the offence of defilement, causes of defilement, prosecution of defilement cases and implementation of court orders in defilement cases.

4.1. Are defilement cases reported to the relevant authorities?

Defilement is the most common form of child abuse. In 2003, 82% of all reported forms of child sexual abuse was defilement.⁵ And Studies that have been carried out indicate that the offence of defilement is on the increase and many of those cases go unreported and few of those which are reported succeed when they are prosecuted.

How the cases are handled depends on how the community perceives defilement. According to Ms Mungu Feney, a State Prosecutor at Nakawa Court, perception of defilement was dependent on the age of the child, the consequences of the act (e.g. pregnancy) and whether there was consent or force was used.

In some communities, defilement was looked at as different offence from rape (where force is used). When the victim of defilement is very young (e.g. 10 years or below) most communities will consider it as rape. When the victim of defilement is about 16 years, most communities' do not consider it defilement.

The study found out that sex among children of comparative age is considered normal among communities in Kampala. Often time they are said to be just experimenting. When the respondents were asked whether sex among children should be treated as defilement, 85% disagreed. Because the community does not look at sex among children as defilement, such cases are not handled in the manner that the law requires.

⁵ ANPPCAN study-Analysis of child abuse in Uganda 2004

4.2. What are the causes of defilement in Uganda?

According to Busulwa and Neema⁶, the several causes of defilement include economic vulnerability, drug abuse, moral decency, peer influence among others. The study found that this statement holds truth. More than 95% of the respondents gave exactly the above outlined factors as responsible for defilement in Uganda. According to Moses Bwengye⁷, the unfavourable economic dynamics have made it difficult for young people to make ends meet mostly in Kampala City. As a result many young girls as young as 14 years are involved in prostitution in Kampala in order to earn a living. The causes of defilement are expounded on below;

4.2.1 Economic needs and vulnerability

A study by Busulwa and Neema⁸ on the economic needs and vulnerability of female adolescents to HIV Infection in Mubende district revealed that pocket money or cash followed by expensive dresses were the most tempting items in the groups of adolescents which lure them into sex. Parents seemed to look less favorably to the needs of girls who were out of schools. 70.3% of adolescents indicated that cash was the most common means of reward for sex.

4.2.2 Substance abuse

There appears to be a close relationship between drug abuse and violence and defilement of children. Habituation and drug addiction is a problem that has multiple devastating impacts on the youth, their health and social structure⁹. Drug abuse, violence and reckless sexual behavior have a close relationship with defilement of children.

Studies commissioned by UNICEF in 1999 (Kivumbi and Mpapulungi, 1999; Korukiko and Ampaire, 1999; Arinaitwe and Turinde, 1999) showed that substance abuse is emerging as a problem among adolescent. Boys smoke cigarettes, drink local brews and there is an increasing

⁶ (1999)

⁷ Bwengye and Co Advocates

⁸ Supra note 6

⁹ (MoH 1999)

use of opium and marijuana which make them end up into sex either between themselves or with older people. People who also use substances end up defiling children and raping women.

4.2.3 Street Children/adolescents

Due to civil strife, family disintegration and AIDS pandemic, some children have taken to the street as a source of livelihood. Street children and adolescents survive through manual labour, carrying loads for business people, stealing; pick pocketing, while girls get involved in sex for survival. Defilement is common among these children. A number of them have become pregnant, carry out abortions and sometimes abandon their children¹⁰

4.2.4. Children/adolescents in armed conflict

Northern Uganda and parts of western Uganda has had insurgency and civil strife for some time. Many young girls have been defiled by the warring factions (soldiers).

They have been exposed to STD/HIV and early and unwanted pregnancies. Some adolescents as a result of being defiled have been forced into early and unplanned marriages (NUPSNA, 1998).

4.2.5 Orphans

As more countries in Africa move from HIV to an AIDS epidemic with corresponding rise in deaths, the number of orphans will continue to rise steeply (SAFAIDS Bulletin 1998)

Children living alone in child headed houses (CHH) are not a new Phenomenon though it has become more pronounced in the recent past. Such refers to children between the age of 13-17years heading families or households. The term CHH in this regard goes beyond families of children living alone to include those with bedridden and elderly guardians. A study by(Neema et.al 2000) in Rakai revealed that adolescent girls in such households have suffered defilement, or have engaged themselves in early sexual activities for basic necessities at home. Some have got married or got pregnant at an early age.

¹⁰ Neema and Kiguli, 1997

4.2.6 Pressures of early sex

Girls are particularly vulnerable to pressures for early sex. The phenomenon of “sugar daddies” is still prevalent. Older men are persistently enticing young girls into sex for favors/gifts/money . This problem has been exacerbated by the AIDS epidemic where more men are seeking adolescent girls in an attempt to avoid contact with HIV.

4.2.7 Cultural issues affecting children and adolescent s

Adolescents are being exploited partly due to the culture of silence in Uganda. They lack a voice in the family and community affairs, and assertiveness when confronted with adults who may entice them into sex has made them more vulnerable. Most of the social mechanisms operate in the principle of cutting off girls’ options and opportunities right from birth. Male children compared to female are accorded higher value¹¹. Uganda adolescents are living in a time of socio-cultural transition where traditional practices that formerly limited adolescents’ sexual experience are breaking down. Traditionally, in a number of ethnic groups in Uganda, an aunt discussed matters related to sexuality with adolescent’s females¹² and males were educated by community elders. Parents did not traditionally discuss sexual matters with their children a thing that is still prevalent today. Very few parents talk to their adolescents about sexuality.

4.2.8. Lack guidance from parents

Parents also seemed not to be guiding their children with the necessary information while growing up. The breakdown of child-parent communication seemed to be seriously affecting the behaviour and morals of the young people. Lack of parental guidance is one of the possible causes for early sex and marriages and the associated problems of having no career and bearing many children that young people could not afford to look after. The socio-cultural orientation is not favourable to enable parents talk to their children on sexual issues yet young people feel their parents are backward to advise them. There are instances where parents would even force their young daughters to get married so that they could receive dowry from the in-laws

¹¹ Turyasingura, 1996

¹² Kirumira, 1988

(Korukiko and Ampaire 1997). All this exposes the adolescents to unprotected and early sexual activity.

4.2.9. Peer Pressure

Peer Pressure is a significant force making youth engage in early and unprotected sex. Adolescent engages in unprotected sex because their friends are doing it. A midterm reviews of Sexual Transmitted Infections (Neema et.al 2000) revealed that adolescent both in school and out of school were engaging into sex due to bad groups they associate with. Peer pressure motivates many adolescents to initiate sexual activity.

4.2.10 Poor enforcement of defilement laws

Defilement is a crime in Uganda, but most of the cases of defilement have been either handled poorly especially by the community and families involved. The penalty has been so minimal that many of the offenders have gone away with it. This also applies to early marriages below 18 years.

4.2.11 What challenges are faced during the prosecution of defilement cases?

Dora Byamukama²⁰¹⁰ gives factors that limit successful prosecution of defilement cases in Uganda. These include; Lack of awareness of the law. The biggest percentage of the population of is illiterate yet the law is even written in English. Some peasant people do not even understand that it is an offence; Destruction of evidence by victims who rush to bathe after being defiled hence making it difficult for medical evidence to be obtained which can be used in securing a conviction; In some instances the victim chooses not to cooperate with the Police and instead shields the offender; The fact that in most cases defilement is committed by family members who prefer to keep it a secret rather than take a relative to court make it difficult for the authorities to prosecute those cases; Needy parents prefer receiving compensation or bride price when their child has been defiled and marry off their daughters to receive bride wealth;

Lack of birth certificates for some children, which makes it hard for one to ascertain the age of the victim.

The study found out that proof of the victim's age is very important in proving the offence of defilement. This is supposed to be done by producing a birth certificate. According to Vincent Mugabo the Chief Magistrate of Buganda Road court, Uganda has not enforced the law on defilement and therefore this makes it difficult for the prosecution to prove the cases beyond reasonable doubt hence making it difficult to secure a conviction.

Because of lack of enforcement of the birth register it was reported that people who want marry off their young daughters inflate their age where as those who want to extort from the alleged defilers would claim that their adult daughters are below the age of 18 years¹³. According to Walube Andrew a State Prosecutor at Buganda Road Court, it is only the rich who can afford extensive and expensive medical services who normally secure justice for their defiled children. The poor according to him are normally let down by circumstance of the system which has the law in place but not the will to implement it.

According to the survey conducted by the IDC , the additional factors that are responsible for the low successful prosecution of defilement cases in Uganda.

Lack of awareness of the law, the biggest percentage of the population of is illiterate yet the law is even written in English. Some peasant people do not even understand that it is an offence.

Destruction of evidence by victims who rush to bathe after being defiled hence making it difficult for medical evidence to be obtained which can be used in securing a conviction.

In some instances the victim chooses not to cooperate with the Police and instead shields the offender.

¹³ Baseline Preparatory Study in Kampala and Mukono Save the Children Denmark Cress 2004

The fact that in most cases defilement is committed by family members who prefer to keep it a secret rather than take a relative to court make it difficult for the authorities to prosecute those cases.

Needy parents prefer receiving compensation or bride price when their child has been defiled and marry off their daughters to receive bride wealth.

Lack of birth certificates for some children, which makes it hard for one to ascertain the age of the victim;

Limited Police surgeon's services to carry out medical examinations of the victims which make it difficult for the prosecution to successfully prosecute defilement cases.

Corruption within the judiciary where by some perpetrators of defilement bribe judicial officers are then left free.

Lack of political will. The political among the political elite is still very low and hence other stakeholders have not been inspired or otherwise compelled to give defilement cases the seriousness it deserves.

4.3. How have the Courts of Judicature reacted to defilement cases in Uganda?

Courts of law have been at the forefront in ensuring that accused persons duly prosecuted for the offences of defilement are convicted and sentenced accordingly. Where there is insufficient evidence to criminate the accused courts of law have also acquitted these persons, in addition to the above courts of law have laid down the essential ingredients for a successful prosecution for defilement have been defined in a number of judicial decisions. In *Bassita Hussein vs. Uganda*¹⁴ the Supreme Court stated that in order to constitute the offence of defilement, the following must be proved; sexual intercourse, victims age below 18 years, the accused is the culprit. The same was reiterated by the Court of Appeal in *Agaya vs. Uganda*¹⁵. In these cases the burden of proof squarely lies on the prosecution to prove beyond reasonable doubt that the accused

¹⁴ criminal appeal 35 of 1995

¹⁵ Criminal Appeal no. 18/2000

person has committed the offence¹⁶ with which he is being charged. It is also trite law that an accused person should be convicted on the strength of the case as established by the prosecution but not on the weakness of his defence, *R vs. Israili Epuku*¹⁷

Courts of law also held criminally responsible accomplices to this offence. In *Kayondo Fred and Mutagayika Silas vs. Uganda*.¹⁸ The two appellants were convicted of defilement contrary to section 129 (1) of the penal code act. Kayondo Fred, the first appellant had sexual intercourse with the complainant while the second appellant held the complainant's hands.

In holding the accused person's liable the Court stated that Kayondo (A1) was a principal and A2 an aider and a bettor. Both were guilty of defilement under section 129 of the Uganda penal code act both were sentenced 7 years imprisonment the High Court finding and sentence were confirmed by the court of appeal.

In defilement cases just like in other sexual offences the Court has been placing a lot of reliance on circumstantial evidence since it is often times not easy to obtain direct evidence. The court therefore relies on the victim's account and the obtaining evidence that leaves no any other inference other than that the victim has been defiled. Courts have been insisting on corroboration¹⁹ as a matter of practice. This corroboration has mostly been through medical evidence.

4.4. Whether Court orders in defilement cases are enforced?

The Magistrate courts Act (MCA) gives the Chief Magistrate power to try an offence which carries life imprisonment²⁰. This means that he has the power to try the offence of simple defilement. However, Chief Magistrate Court do not have the power to try an offence which is punishable by death²¹ which means that the Chief Magistrate Court will not have the

¹⁶ Woolmington vs. DPP (1935) AC

¹⁷ (1934) 1 EA CA 166.

¹⁸ criminal appeal no. 31/1998

¹⁹ Chila and anot6her vs Republic [1967] EA 722

²⁰ See in section 161 and 162

²¹ ibid

jurisdiction to try aggravated defilement. What the court does in those circumstances is to commit the accused to the High Court.²²

At the end of the trial of the accused, if he or she is convicted, court will issue order about what should happen to the defendant. According to Section 129(1) and (5) of the Penal Code²³, the maximum sentences of simple defilement and aggravated defilement are life imprisonment and death respectively. Courts can on their discretion give linier sentences according to the circumstances of the case.

The study found out that judges normally give smaller sentences to the victims. 94% of the respondents of the respondents decried the short sentences that were handed by the courts to the victims. Ms Mungu Fene²⁴ was concerned that the judges give short sentences to the victims which has done very little to deter others from the commission of the same offence.

The study also found out that notwithstanding the shorter sentences handed over by the courts, most offenders serve those sentences. 75% of the respondents submitted that the majority of the perpetrators of defilement offences serve their sentences when they are convicted.

The study however found out that in isolated cases there are those perpetrators who actually do not serve court orders. This was due to the following factors;

4.4.1 Absconding from justice

This happens when a suspect has been granted bail pending trial. The study found out that when some people are granted bail, after knowing that they have been convicted or are about to be convicted, they do not return to court. They run a way. The result is that the court order or sentenced passed upon that person will not be served and hence justice will not be served. 40% of the State Attorneys who responded to the study complained that they have prosecuted some people who have been on bail but run into hiding when they discover that a guilty verdict has been handed down.

²² See MCA Section 168

²³ Cap 120

²⁴ Supra

4.4.2 Escape of defilement convicts from prison centers

The study also found out that some convicted criminals mostly those who have the money normally buy their way out of the prison by bribing prison officers who then let them out and they go into hiding. James²⁵, told the research that he knows of three cases where the prison staff have released defilement convicts before they have served their sentence after the prison staff has been bribed. 20% of the respondent also asserted corruption and bribery as one of the challenges in enforcing courts orders which has made it possible for defilement perpetrators to go unpunished.

4.5. Does Uganda have stringent laws on defilement?

The Penal Code provides for the offence of defilement and prescribes the punishment thereof. Section 129 of the panel case Act Cap 120 as amended defines defilement of persons less than 18 years of age and prescribes a maximum sentence of life imprisonment for simple defilement. i.e. defilement of persons between the ages of 14-18 and aggravated defilement which carries a maximum sentence of death. The law goes ahead to prescribe circumstances²⁶ under which defilement may be termed as aggravated. Where the person against whom the offence is committed is below the age of fourteen years; these are where the offender is infected with the Human immunodeficiency Virus (HIV) ,where the offender is a parent or guardian of or a person in authority over, the person against who the offence is committed and where the accused is a serial offender. There have been many convictions where the prosecution has been able to prove that the accused persons committed this offence.

In addition to the above the Penal code also penalizes child to child sex. Where the young offender is above the age of criminal responsibility which is 12, the child will be sentenced in accordance with part V of the Children Act cap 59. Holding children accountable and punishing them for the commission of offences goes to a great extent to prove that the law is strict.

²⁵ Who responded on condition of anonymity therefore his full name and work will not be indicated.

²⁶ Article 129(4) of the Penal code Act

The law therefore cannot be faulted for being lenient. This however was not the case before the Penal Code Amendment of 2007. the law as it stands is able to deter would-be and effectively punish offenders. The only problem that occurs in the prosecution of these cases is the ignorance that has engulfed our society and mistakes done in the investigation and preservation and tendering of evidence before courts which greatly undermines the prosecution's case against the accused and in most cases leads to acquittal of these accused persons.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0. INTRODUCTION

In this Chapter, the researcher presents conclusions on the findings and makes recommendations to improve the area of study.

5.1. CONCLUSIONS

5.1.1 Defilement reports still on the increase

The study indicates that reports of defilement cases are still on the increase in Kampala both perpetrated by the adult members of the community and sex amongst the children themselves. What was not ascertained is whether there is an increase in the incidences of defilement or more cases are reported because of increased awareness.

5.1.2. Causes of Defilement

The study indicates that economic vulnerability was the major the cause of defilement. Children mostly girls give to sex with older men in order to be given money or gifts. Other causes of defilement in Kampala are substance abuse, peer influence, lack of parental guidance and moral decadence.

5.1.3. Laws on defilement

The study indicates that Uganda has stronger laws against defilement but the problem is about enforcement. There is no political will to enforce those laws. These laws have been treated as mere pieces of paper not worth the ink with which they are written.

5.1.4. Implementation of court orders in defilement cases

The study indicates that to a big extent, court orders in defilement cases are enforced. However, there still exist some isolated cases where some people convicted of defilement do not serve their sentences due to corruption of both court and prison officials.

5.2 RECOMMENDATIONS

There is need to train law enforcement agents on how to deal with cases of defilement because victims of defilement in most instances need reassurance that the reporting of the case will not harm them further by questioning their integrity or publicizing the information.

There is also need for detention centers for child offenders, and establishment of more remand homes which take into account the fragile state of victims of defilement.

There is also need for improved facilitation of the Police and other law enforcement agents in terms of training and logistics to enable them investigate defilement cases successively.

There is need for increased access to justice of the indigent people and more specifically solving the case backlog in courts of law.

There is need for medical personnel to be made aware of cases of defilement so that they can assist in prosecution of defilement cases by carrying out vigilant and reliable sexual assault medical reports.

This law on defilement therefore needs to be reinforced by preventive actions such as formal and informal education and creation of awareness; protection of victims and witnesses. This provides for privacy and restores the self-esteem of victims of defilement; and provision of resources for effective prosecution.

Corruption should be stopped both in the judiciary and the prison services in order to have courts administer justice without favour and the defilement convicts serving their full sentences respectively.

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APPENDICES

APPENDIX I

RESEARCH QUESTIONNAIRE

Dear Sir/ Madam,

Many greetings

My name is Bitanako Darius. I am a student of Kampala International University pursuing a Diploma in Legal Laws.

I am currently carrying a research on the enforcement of court orders over defilement cases in Uganda.

I therefore humbly request you to spare a few minutes of your precious time to fill in this questionnaire.

All the information given will be treated with confidentiality and anonymity and will be used only for this research.

Please tick or write the relevant information in the space provided below.

Thank you very much for your positive response.

Background Information

- 1. Name.....
- 2. Age.....
- 3. Sex:
 - (i). Male ☐
 - (ii). Female ☐
- 4. Work place.....

5. Position Held.....

6. Number of years in service.....

7. Education level:

(i). Primary ☐

(ii). Ordinary level ☐

(iii). Advanced level ☐

(iv). Diploma ☐

(v). College or University degree ☐

(vi). Masters ☐

(vii). Others, state.....

8.

a) What is defilement?

b) What are the causes of defilement in Uganda?

c) Are the defilement cases well handled by the courts of judicature?

.....

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.....

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9. Are the courts orders enforced on the perpetrators of defilement

.....

.....

10. What do you think should be done to effectively enforce court orders in defilement cases

.....

.....

11.

a) does the local government have any role in enforcing court order on defil

b) yes ☐ No ☐

c) What are these challenges that the local governments encounter in executing its role if any.....

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APPENDIX IV

Map of the area of the study

