

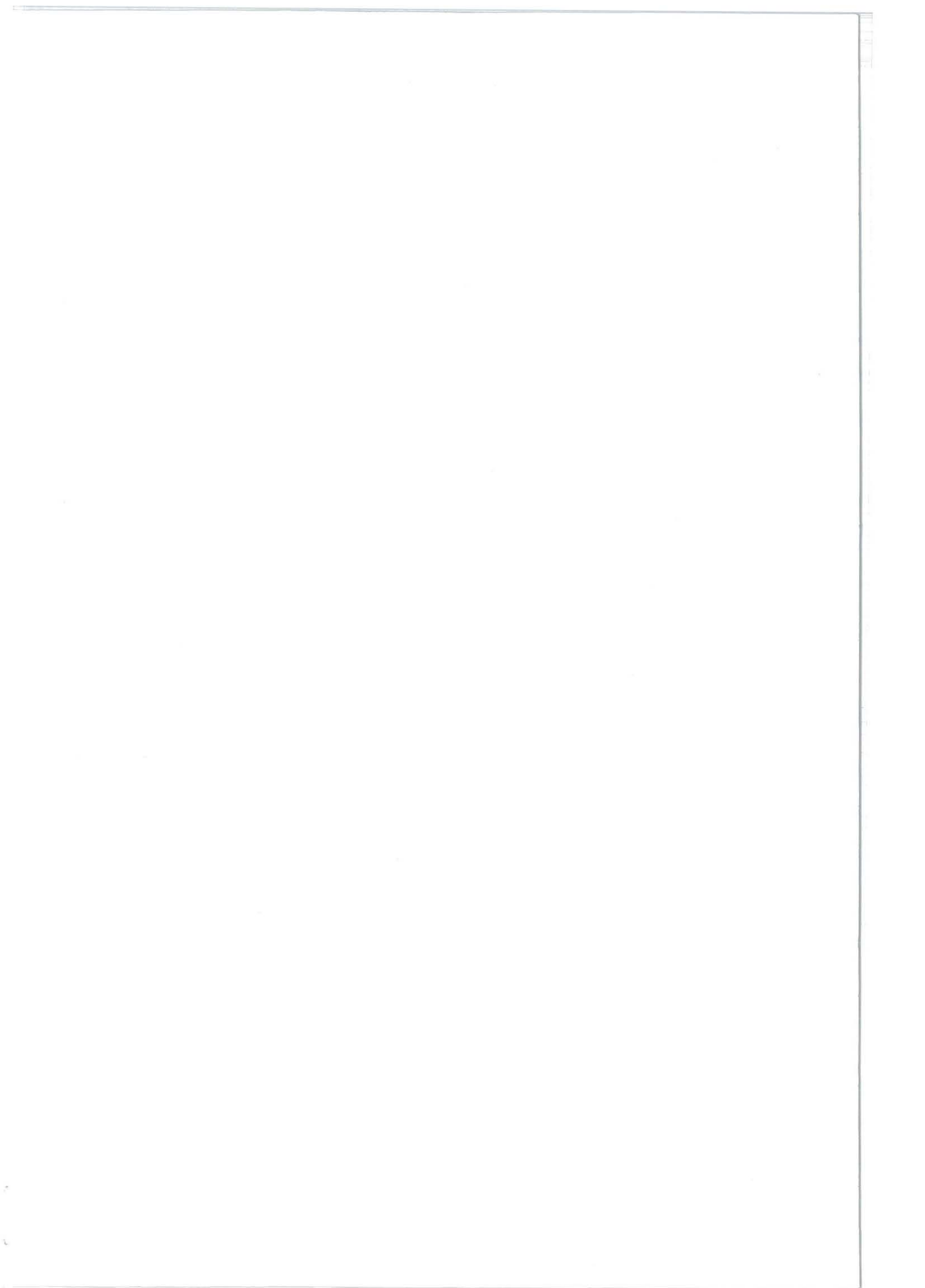
**THE ENFORCEMENT OF COURT ORDERS OVER DEFILEMENT
CASES IN UGANDA**

BY

**BITANAKO DARIUS
LLD/22014/102/DU**

**A RESEARCH DISSERTATION SUBMITTED TO THE FACULTY OF LAW
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF DIPLOMA
IN LAWS**

OCTOBER 2011



Declaration

I Bitanako Darius, declare that this work is as a result of my own research and it has never been submitted to any other University for the former graduates.

Signature

.....

Bitanako Darius

Date

.....

Approval

This dissertation has been under my supervision and now ready for submission

Signature

Mchuma Caroline Sikuku

.....

Supervisor

Date.....

Dedication

I dedicate this research book to my beloved Mother Josephine Bitanako, my Brother Major David Muhanguzi, and my father Mr. Emmanuel Bitanako and the entire family of Mr. Emmanuel Bitanako. This work is part and accomplishment of your prayers, money and comfort you have given me. May you live longer until the end of the world.

Acknowledgment

I would like to extend my sincere gratitude to Ms Mchuma Carolina my supervisor for her invaluable suspension, guidance and commitment to wards the completion of this report.

More thanks to my friends especially the Chief Magistrate Road Vincent Mugabo and others for availing me detailed information about this report. Special thanks to my parents Mr. and Mrs. Emannuel Bitanako and my brother Major David Muhanguzi, Mugume Martin for their tremendous support financially and materially.

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TABLE OF CONTENTS

Declaration	ii
Approval	iii
Dedication.....	iv
Acknowledgment.....	v

CHAPTER ONE: INTRODUCTION 1

Introduction	1
1.2 Back ground of the study	1
1.3 Statement Of The Problem	4
1.4 Specific Objectives	5
1.5 General objectives.....	5
1.6 Research questions	6
1.6 Hypotheses of the Study	6
1.7 Significance of the study	6
1.7.1 To the local communities.....	7
1.7.2 To the researcher.....	7
1.9 S cope of the study.....	7

CHAPTER TWO: LITERATURE REVIEW.....8

2.0 Introduction	8
2.1 Education	8
2.2 Defilement.....	8
2.3 Defilement of boys.....	9
2.4 Types of defilement	9

2.7	Aiding defilement.....	11
2.8	Compensation	11
2.9	Evidence on defilement	12
2.10	Who is the victim of defilement?.....	13
2.11	Who is the offender?	13
2.12	Case law	14
2.12.1	Omuroni Vs Uganda.....	14
2.12.2	NAKHOLI Vs REPUBLIC.....	14
2.12.3	NFUTI- MUKIZA V UGANDA 1999/EA 220.....	16
2.12.4	Mbale six year old found HIV	19
2.13	Causes of Defilement in Uganda	19
2.13.1	Cultural factors	20
2.13.2	Psychological /Health Factors	22
2.13.3	Parental neglect.....	23
2.13.4	Working parents.....	23
2.13.5	The lack of ethics by the teacher.....	23
2.13.6	Distance.....	23
2.13.7	Media	24
2.13.8	Idleness,.....	24
2.13.9	In adequate accommodation.....	24
2.13.10	Lack of sex education.	24
2.13.11	Lack of strict laws.....	24

CHAPTER THREE: RESEARCH METHODOLOGY	26
3.0 Introduction	26
3.1 Research Design.....	26
3.2 Study Population.....	26
3.3 Sample flame work	26
3.3.1 Sample flame	26
3.3.2 Sample techniques	27
3.3.3 Sample procedures.....	27
3.4 Methods of Data Collection	27
3.4.1 Questionnaire	27
3.4.2 Interviewing.....	Error! Bookmark not defined.
3.5 Sources of data collection.	28
3.6 Data analysis.....	28
 CHAPTER FOUR: FINDINGS, DATA ANALYSIS AND PRESENTATION.....	 29
4.0 Introduction: Function of the Prison Service.....	29
4.2 Section 57 Rights of Prisoners	29
4.3 Admission of Prisoners into Prison.....	30
 CHAPTER FIVE: CONCLUSIONS, SUMMARY, RECOMMENDATIONS	 50
REFERENCES	60
APPENDICES.....	61
APPENDIX I: QUESTIONNAIRE FOR CIVIL SERVANTS.....	61
APPENDIX II: MAP OF THE AREA OF STUDY.....	63

CHAPTER ONE

INTRODUCTION

1.0 Introduction

This chapter gives an over view of the Research Report, the background of the study, the statement of the problem, the purpose of the study, and the objectives of the study, research questions, scope of the study and its significances to the judicial officers, local communities and the researcher (reader) as regards to the challenges faced in enforcement of court orders over defilement cases in Uganda; case study: Kampala High Court. The researcher was of the view that, this Research Report has helped enhance the reader's understanding on these challenges judicial officers face in enforcing court orders over defilement cases in Uganda.

1.2 Back ground of the study

Kampala High court is found in the central region of Uganda in Buganda central region. This research report was chosen to be conducted in this region simply because most of the defilement cases are handled by the high court since they are capital cases. More so, it is the area where the learned Judges sit.

According to corner Blacks Law dictionary defined defilement as a verb and a noun.

Defile as (a verb) means to make dirty, to physically UN clean, to desecrate, to many corrupt some.

Defilement (noun) means on act of defiling a condition of being defilement.

Section 129 of the panel case Act Cap 120 as amended defines defilement of persons less than 18 years of age.

Section 129 (1) provides any person who performs a sexual Act with another person who is below the age of eighteen years commits a felony know as defilement and is in conviction liable to life imprisonment.

(2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen tears commits an offence and is conviction, liable to imprisonment not exceeding eighteen years

3)_ any person who performs a sexual act with another in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is on conviction by the High court liable to suffer death.

(4) The circumstances referred to in subsection (3) are as follows-

(a) Where the person against whom the offence is committed is below the age of fourteen years;

(b) Where the offender is infected with the Human immunize fervency Virus (HIV)

(c) Where the offender is a parent or guardian of or a person in authority over, the person against who the offence is committed.¹

(d) Where the victim of the offence is a serial offender.²

(e) Any person who attempts to perform a sexual act with another below the age of (18 yrs) eighteen years in any of the circumstances field in subsection (4) commits an offence and is liable on conviction to imprisonment for life.

¹Black law dictionary penal code Act cap 120

² Section 129 penal code Act cap 120

(f) Where a person is charged with an offence under this section, as person shall undergo a medical examination as to his or her Human deficiency virus (HIV) status.

In this status,

Ability means a substantial functional limitation of daily life caused by physical ointment barriers resulting in limited participation; an offender means a person who has a previous conviction for offence of defilement or aggregated defilement.

Canal Act means

Penetration of the Vagina, mouth or anus, however slight, of any person by a sexual organ.

The unlawful use of any object or organ by a person on another person sexual organ "means a virginal or penis.

CHILD TO CHILD SEX

Where the offender in the case of any offence under section is a child under the age of twelve years, the matter shall be a dealt as required by part V of the children Act.

Where an offence under section 129 is committed by a male and a female child upon each other when each is not below twelve years if age, each other when each is not below twelve years of age, each of the offender shall be dealt with as required by part X of the children ACT.

Section 129 (B) Payment of Compensation to victims of defilement.

- (1) where a person is convicted as defilement or aggravated defilement under section 129, the court may in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim of the offence sexual and psychological harm caused to the victim by the offence.
- (2) The amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence.

Section 130 of the penal code. Act cap 120 provides, for defilement of idiots and imbeciles.

Any person who, knowing a woman or girl to be an idiot or imbecile has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape but which provide that the offender that the woman or girl was an idiot or imbecile commits a felony and is liable to imprisonment for fourteen years.

1.3 Statement of the Problem

According to the human right watch (2003) defilement was more on the disabled young girls; young school girls from poor families manifested itself in habitual sexual molestation which is more commonly in girls than in boys.

Defilement is far more prevalent in rural areas like / hung sub-county. Where most of the parents are ever concentrating on business and office works meaning that they send house boys to take children to school and

also leaves the children at home also leaves the children to use that chance to defile young girls.

The above sexual abuse is a phenomenon which has been in existence in all areas of the world and has contributed to death of young girls and high rate of school drop outs.

However the research aims at how courts have been handling defilement cases in Uganda.³

1.4 Specific Objectives

This project aims to highlight the procedure for the arrest, investigation, trial and judgment of court of competent jurisdiction against the accused person is charged over an allegation of defilement of a minor in Uganda court of justice.

This project may also proceed further to examine the relevance of collaborative evidence in another to grant conviction against the accused person charged over an allegation of defilement.

This project further seeks to demonstrate how the prosecution can adduce satisfactory evidence of sufficient penetration of the minor by the accused person.

1.5 General objectives

This project aims to highlight the causes of defilement in Uganda.

To find out how court proceedings are conducted over defilement cases in Uganda.

To find out how defilement cases are handled in police.

To examine the challenges faced in handling defilement case

³ Section 129 penal code Act cap 210

1 - Police

2 - Courts

3 - Victims

(how does the law protect defilement victims eg. where rehabilitation, follow up)

~~Research Questions~~
① How has the police handled defilement cases?
② What challenges are faced during the prosecution of defilement cases?

To suggest possible measures to overcome defilement in Uganda.

1.6 Research questions

- This project will be guided by the following questions:
- What is defilement as defined by the ~~penal~~ code Act Cap 120 as amended.
- What are the causes of defilement in Uganda?
- Do ^{re-framed} people who are convicted on defilement serve their sentence?
- How has the courts of judicature reacted to defilement cases in Uganda?
- What procedure is followed after the conviction of the accused person into prison.

1.6 Hypotheses of the Study

- Hypotheses of the Study was find out the procedure for the arrest and trial of defilement suspects.
- Further still, to find out how the high court conducts proceedings over defilement cases.
- Find out the age bracket of defilers in Uganda

1.7 Significance of the study

The researcher was of the contention that the findings of this research study have been of help to the following categories of persons and in a variety of ways as here below stated:

1.7.1 To the local communities

To make the local community aware of the age bracket of defilement that is from fourteen to eighteen years that one is called simple defilement. Fourteen years and below, that is aggravated defilement.

To further make the public aware of how justice is done to the victims of defilement.

1.7.2 To the researcher

- (i) As a law student, the researcher (reader) has understood the task that entangles court orders over defilement cases and as he or she prepares to become a legal officer.
- (ii) The reader might also have known and discovered the pertinent role that judiciary plays in collaboration with the public in backing up the efforts of the Local authorities in the delivery of services to the general public.

1.9 Scope of the study

This project will be central based that is Kampala district majoring in areas like Kampala International University Library, Makerere University library, Chief Magistrate Courts of Buganda road, the High Court of Kampala, Police and Prison head quarters.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Who is a child?

According to convention on the rights of the child article one: for the purpose of the present convention a child means every human being below the age of 18 years unless the law applicable to the child majority is attained earlier.

But according to the 1995 constitution of Uganda article 35(5) provides that children shall be person under the age of sixteen years.

2.1 Education

The law on education state that all persons have a right to educate article 30 of the constitution and article 34(2) a child is entitled to basic education which shall be the responsibility of the state and the parents of a child.

According to United Nations and human right watch says that girls should also be given free education without discrimination as it was done in early days when girls were denied the right to education.

2.2 Defilement

Defilement means the unlawful sexual intercourse of person with a girl who is below 18 years.

According to section 129(1) of the penal code act cap 120 as a mended defined defilement as any person who performs a sexual with another below the age of 18 years.

Convention on the right of a child 1995 constitution of Uganda penal code act cap 120

Commits a felony known as defilement and is liable conviction to life imprisonment.

2.3 Defilement of boys.

The fact that male defilement is not recognized under the Uganda law would appear to amount to a kind of "apartheid" in this era of gender equality in other jurisdictions such as Australia, Canada and south Africa the law relating to the protection of minors covers boys and girls if the law is aimed at protecting all children from sexual exploitation and abuse of adults, it should not discrimination violates article 21 of the constitution which provides for equality before and under the law in all spheres of political, economic social and cultural life and every other respect. The constitution therefore prohibits any form of discrimination against any persons including children on ground of sex among others.⁴

2.4 Types of defilement

There are two types of defilement these are simple defilement and aggravated defilement.

Factors that make defilement aggravated:

According to the amended penal code Act cap 120 section 129(4) any person who performs a sexual act with another person who is below age of 14 years commits a felony called aggravated defilement.

Ugandan law reform 2001, on the study of rape and defilement,

on sexual assaults and offences against morality, where the offender is infected with the human immune deficiency virus (HIV) or where the

⁴ Convention on the right of a child 1995 constitution of Uganda
penal code Act cap 120

offender is the parent or guardian of on a person in authority over the person against whom the offence is committed.

2.5 Forms of Defilement

This refers to a situation where a man has sex with a child who is under age of 18 years this is usually committed by teachers at school who threaten girls with dismissal or failing them in their studies.

Male friends and relatives who visit homes and are made to share a room (2) with young girls at night take advantage and defile a girl who is often frightened to report.

Men or boys who waylay girls and defile them.⁵

2.6 Ingredients of Defilement

The essential ingredients for a successful prosecution for defilement have been defined by various work rulings. In the case of *Agaya Robert Vs Uganda* a criminal appeal number 18, 2001 and in the case *Bassita Vs Uganda* crime appeal no 85/1995 the Supreme Court laid.⁶

Down the ingredients of defilement which the prosecution must prove beyond reasonable doubt.

Uganda law reform 2001 study of rape and defilement sexual assaults and offences against morality by E *Bassita Vs Uganda* crime app 18 2001

That the victim was at the time alleged commission of the offence below the age of 18 years.

⁵ Uganda law reform 2001 study of rape and defilement.

Sexual assaults and offences against morality by E

⁶ Uganda law reform 2001 study of rape and defilement sexual assaults and offence against morality by E

That there was unlawful sexual intercourse is signified by the proof of penetration however slight of the assailant's penis into victim's vagina. The participation in the alleged sexual intercourse.

2.7 Aiding defilement

As with the offence of defilement that lay some one who is actually committing the offence having unlawful sexual intercourse with a girl below the age of 18 years can be found guilty with the perpetration. This is consequence of the section 19 of the penal code which deals with principle offenders.

In the case of Kaonde, Fred and Mutagayika Silas Vs Uganda crime appeal No 31/1998, the two appellants were convicted of defilement / 129(1) of the penal code Act Kayondo the first appellant had the complainants hand.

Thus court found that the prosecution proved beyond reasonable doubt that it was A, who had sexual intercourse with the complainant while A2 aided and abetted the defilement.

Both were guilty of defilement under section 129 of the penal code Act. Both were sentenced to 7 years imprisonment.

2.8 Compensation

Where a person is convicted of defilement or aggravated defilement under section 129 of the penal code Act the court may in addition to any sentence imposed on the offender order that the victim of the offence be paid compensation by for any physical sexual and physiological harm caused to the victim by the offence (penal code).

2.9 Evidence on defilement

Where as normally in sexual offences the evidence of the victim is the best evidence on the issue of generation and even the identification, where this is not available, other cogent evidence can suffice to more these factors.

In the case of Bassita Hussein Vs Uganda crime sexual intercourse or penetration may be proved by direct or circumstantial evidences.

Sexual intercourse is proved by the victims own evidence corroborated by the medical or other evidences.

Through desirable it is not a hard and fast rule that victim's evidence and medical evidence must always be adduced in every case of defilement to prove sexual intercourse or penetration.

Absence of victims evidence not necessary fatal to prosecution case in sexual offences.

In the case of defilement case an accused can be convicted of the crime on the basis of testimony by the witness, other than the victim example medical evidence, eye witness; it was hard in the case of Bugarwa Fred Vs Uganda criminal appeal No 39/1995 Supreme Court.

Identification of accused proved with ought testimony victim in defilement. Uganda Vs Mugisha Franco criminal session case No 69/ 1999 High court- the accused was indicated on defiling a four year old girl at the trial which took place almost two years later the child victim was un-able to testify.

A voice dire did not been conducted and the judge was of view that she did not understand the duty of the court and was not posse of sufficiency intelligence to understand the duty of telling the truth.

Issue, whether or not without direct testimony of the victim as to identify of the assailant, it can be proved beyond reasonable doubt that was the accused that had sexual intercourse with her.

2.10 Who is the victim of defilement?

It is very different to, gain an accurate picture of who is most likely to be the victim of defilement a number of research studies have been carried out which indicate that No particular age group or is likely to be the victim of defilement generally girls are more likely to be the victim of defilement perhaps the most significant faction in the research is the a bused is far more common than has been accepted past.

2.11 Who is the offender?

While the abuse of children occurs commonly in the home abuse from strangers accounts for substantial proportion of un-known amendments. Offender comes from the section of the society and although predominantly male, women also offend. It is important not to fall into the trap of stereotyping individuals or groups as the only people likely to commit such crimes.

The images of the dirty old man or dirty Mac-brigade does not reflect accurate picture of the child abuse. The term pedophile is used generally to ascribe people who sexually abused children. A more defilement is essentially a state in which an individual is pre-disposed to use children for sex gratification. There is damager of using this term to classify one type behavior as research has revealed that there are many defilement behavioral patterns.

These range people from people suffering from mental hand cap or illness whose behavior may be more readily compared to that of a child and who see children as non threatening to very sophiscated and calculating

individuals who act a life style and position in society that enable than readily indulge in the abuse ,of children.

It is important topic to remember that there is no easy way of recognizing children risk victim offender you must be alert to the possibility of defilement in almost any situation.

2.12 Case law

1.12.1 Omuroni Vs Uganda supreme court criminal law-
Defilement-circumstantial evidence draws adverse inference from prosecution failure to produce victim in court.

Held

The evidence was circumstantial as the victim who would have given direct evidence as the only eye witness did not testify but non-tieless constituted sufficient proof of the offence of which the appellant was convicted, say it was amply corroborated by impendent evidence that the victim was accused the appellant as the accusation was made contemporary onerously with the offence and therefore was part of requested and in an exception to hear say rule. Appeal dismissed.

2.12.2 NAKHOLI Vs REPUBLIC

Court of appeal at Nairobi (sir clement de lasting, Vs-P- pestffus and s pry, A). April 24, 1967)

Criminal law defilement – consent is no defiance under penal code 5. 14()k but is a defense under penal code, 5,139(k). Kabala Vs Uganda (1999)1 EA 148

Held

In order to prove the commission of the offence of defilement three facts had to be established, firstly, that there had been penetration of the female sex organ by the male sex organ, secondly that the female was below the age of 18 years and thirdly there was a male person who had engaged in the sexual intercourse. In case of a sexual nature the court had to warn itself of the danger of acting on the un corroborated testimony of a complainant but having done so it could convict in the absence of corroboration. If it was trustful; *Chili and another Vs Republic* (1967) EA 722 followed have the prosecution case, in the form of the complainant's testimony had sexual intercourse with a man on 16th July 1993- with regard to the complainant's age here was ample evidence justifying the trial.

Judges finding that the complainant was under the year of age at the material time and there were no grounds for faulting, to warn herself of the requirement for corroboration caused no failure of the requirement for corroboration implicating the accused.

The criticism of the trial judge for accepting the evidence of the complainant and her mother was unjustified. In the circumstances, the conduct of the two was not so abnormal as to render their evidence unreliable. The only apparent contradiction in the prosecution evidence related to the date and time the complainant was defiled. If this were to be regarded as a discrepancy, and a close scrutiny of the complainant, her mother or the doctor had deliberately lied to the court.

According to the judgment learned judge Karakara page 152 East Africa law reports 1999 volume 1 paragraph 2, cited the learned counsel also attacked the conduct of the complainant, Nakiyiga (PwI) and her mother, Nabonoba Lukiya defilement inconsistent the occurrence of the alleged defilement of

the complainant by the appellant. After the incident the complainant went to and attended.⁷

School normally. Apparently she had no stress after medical examination the doctor (Pw4) asked the complainant to return to the hospital for a vaginal swab to determine the presence of super Matozoa but she did not go back. Her mother (pw2) did not bather to ensure that she returned. In the circumstance , its contended the leaned trial judge should have insisted on some collaboration implicating the appellant as the culprit counsel relied on Rex v profit (1942)9 EAACA at 611

2.12.3 NFUTI- MUKIZA V UGANDA 1999/EA 220

Held

A first appellate court had a duty to subject the entire evidence on record to a fresh and exhaustive scrutiny, make it own findings of fact and draw its own conclusion bearing in mind the fact that it did not have the opportunity to see the witness as they defied

Okeno vs. Republic [1972] EA 32 applied – The slightest penetration surfaced to constitute the offence of defilement and in was not necessary to prove rapture of the victim hymen. In this instance the medical evidence showing that the complainant's valve was inflamed and that sperm was present in her vagina was sufficient to the necessary penetration.

Habyalimana vs Uganda criminal appeal number 68 of 1998 followed. The fact that the complainant had not given evidence was not fatal to the conviction; Akol vs Uganda criminal appeal number 23 of 1992 SC UR AND Mwindu vs Uganda criminal appeal number 1 of 1997 (UR)followed . There was sufficient evidence to support the conviction and the trial judger findings could there for not be faulted

7

JUDJEMENT

Kato okello and kitumba jja : This appeal is against the conviction and sentence imposed on the appellant by the high court (Rugadya Atwoki J) sitting at mukono 16 April 1999 where by the appellant was convicted of defilement centrally to section 1231 of the penal code act and was sentenced to 12 year imprisonment.

Mogoya vs Uganda 1999 EA at 202 crime-defilement –requirement for collaboration whether collaboration required both as to commission of offence and identity of the accused whether conviction on or un collaborated testimony faulty

HELD

In case involving sexual offences there was a need for collaboration of both the evidence proving that sexual penetration of the complainant took place and the complainant evidence implicating the accused in the commission of the offence However the court could convict on the un collaborated evidence of the complainant if it warned itself of the dangers of doing so and was satisfied that the complainant evidence was truth full Kibale vs Uganda [1998] LLR 123 (SCU) and Chila and another vs Republic [1967] EA 722 followed . The nature of the collaboration required was evidence which confirmed in some materials particularly not only that the crime had been committed but also the accused had committed it . The prosecution case against the appellant in this case had been weakened by the fact that the complainant testimony contained contradiction that cast some doubt on her credibility as a witness

The failure of the prosecution to call two of the doctors who had examined and treated the girl together with its failure to call the complainant parents further weakened its case. In light of these weaknesses- the court of appeal

erred in failing to address its mind to the need for collaboration connecting the appeal with the offence. It also erred in failing to advert to the necessity of the trial courts and the court of appeal as the first appellate court, to warn them of the legal requirement for collaboration implicating the appellant. In the circumstances it was unsafe to uphold the appellant's conviction.

Appeal allowed conviction in respect of court and quashed and sentence set aside.

Cases referred to in a judgment.

`A` means adopted

`AL` means allowed

`AP` means applied

`APP` means approved

`C` means considered

`D` means distinguished

`DA` means dis approved

`DT` means doubted

`E` means explained

`F` means followed

`O` means over rolled

Judgment

The confession was admitted against him at his trial. In his defense the appellant made unsworn statement denying both offences

He was convicted on defilement on both courts and sentenced to terms of imprisonment for 15 years

On each account It was ordered that the sentence was concurrently.

2.12.4 Mbale six year old found HIV

Patrick Kamba a 39 year old man from Mbale district eastern Uganda Busaja zone cell in northern division Mbale municipality is accused of defiling a 6 year old primary one and infecting her with HIV/ AIDS

The fact are that Kamba met the young girl near river Nabataea when she was coming from school heading to her grand mothers place at around 12: 00 the suspect Kamba promised to direct her to mothers after Kamba reportedly accused her of stealing his neighbours maize and egg plants and threatened to take her to the police – he later called some people who knew the child and informed them that she had stolen egg plants. However when the mother went home after being called by the kneeboard over the alleged theft , she became suspicious she checked the girls private parts and found some fluids coming out . Residents arrested Kamba and handed him to the police . The victim was taken to Mbale hospital where they were both checked and found Kamba infected with HIV/ AIDS.

Uganda vs Patrick Kamba

2.13 Causes of Defilement in Uganda

Study findings indicates that early servility is occasioned by factors such customs and cultures of particular communities the living environment alcoholism and drug abuse ,poverty peer influence and HIV/AIDS pandemic . The variance with these factors have made the implication of the difficult , this has made the determination of the stage a consent vary contravatural .

2.13.1 Cultural factors

Certain norms , and values contribute the incidence of sexual offences among the cultural causes Ane imbalu (circumcision) tradition like the Bagisu the culture o-f treating grand daughters as wives ,the culture of abduction and that of taking girls "no" to mean yes .

In Mbale circumcision is a major factor that enhances the practice of defilement a key informant said "Said during circumcision, a number of ceremonies are formed in this period, people are allowed to have sex indiscriminately as a cleansing are many, boys who have finished circumcision a lot of illicit sex takes place. Women sleep with freshly circumcised boys under the illusion that they will give birth to boys.

Another factor that promotes defilement is which craft .This is very pronounced in Masaka and Mbale. Traditional healers incite defilement by telling their clients

Uganda law reform 2001 study of rape and defilement.

The issue of girl "yes" or "no" towards sexual advance future prominently in Kitgum, Mbale and Kamuli, a key informant in Mbale and in terms of cultural practices ,If you consider having inter course with a girl ,traditionally the girl is not supposed to agree I you are a young man you must attempt to force this girl or way by her and society accepts this

This was echoed in Kitgum there for a man will most cases force a girl into sex even if the latter is genuinely resisting hence causing defilement.

Another cultural factor that was cited is that young girls "visiting the bush" in some cultural girls visit the bush and help each other to pull the labia major, where boys find them in

Other contributing factors to defilement is the increasing broken marriages, the HIV /Aids, poverty and lack of morals, peer group pressure, copying of foreign culture, absence of the willing sexual partner, redundancy men desire to have sex with available sex at the time and transited gathering (worship or discourse) hence causing defilement

Insecurity is also another contributory factor to defilement , it was revealed that during war insurgencies , there's a lot for defilement particularly by the soldiers during the operations .In our community the people in the forces are sexually starved so in the argue to satisfy their sexual desires / they get any girl who may or may not be willing . Before 1990 there were causes of defilement of both sexes due to cattle rustling

Since 1986 Uganda has been experiencing insecurity in northern Uganda because of the Lords Resistance Army (LRA) headed by Joseph Kony.

Girls who were abducted by Joseph Kony rebels for a number of days were defiled and married off to the rebel leaders. If the husband died either at the war or sickness the girl wife be put aside for virtual cleaning and married off to another rebel for some few months.

Some commanders have four to five wives where the rebel leader Joseph Kony has over 30 wives at the same time.

Estella- a girl who was abducted by the rebels and later rescued by the UPDF (Uganda People Defence Force)

Pamela was another girl who was defiled due to insecurity in northern Uganda by the rebels of LRA (Lords resistance army).

I am an orphan my mother was poisoned and father was hit by a stray bullet when rebels attacked our village -4 men pulled me out of my bed my grand

mother pleaded with them to leave me . I struggled to resist but they were powerful and ended up defiling me.

Girls under guns

2.13.2 Psychological /Health Factors

Several psychological /health problems sexual offences. These problems were stated to include the HIV/AIDS scourge, mental problems high sex libido and shyness of inferiority complex.

The AIDS scourge encourages men to go for young girls some people want to spread the disease while other fear to get it from grown up women.

High sexual libido is noted to be a major factor in defilement. Some men have a high sexual libido and admire any girl they see and up defiling them. A female respondent in Mbale said older women are sexually active.

Their sexual desired cannot be satisfied by their age mates eventually they go in for young boys "

The desire by men to have sex with virgins sometimes makes them defile young girls. It was also found out that men who are partially impotent and elect only once in a while tend to go with who ever girl they come across once they get an election

The study further revealed out that the adolescent age may lead to some boys to defile because they develop uncontrolled desire for sex at this stay

"failure to live and convince girls to have sex can force them to have sex with animals".

2.13.3 Parental neglect

This is one of the major causes of defilement most children are in attempted to by parents and they get guidance from peer groups or school environment hence falling easy prey to pressure from men.

2.13.4 Working parents

Children with working parents normally lack parental guidance and love – lack parental responsibility exposes children to defilers who may leave at home with the young girls. Young girls are then lured into the means homes with sweets ground nuts bananas etc who defiles the girl in his house

2.13.5 The lack of ethics by the teacher. Teachers have an ethically become to close the girls child to the extent of sending them to their houses and there after taking advantage of in the disguise of helping them hence existing defilement.

2.13.6 Distance –Walking long distances to fetch water and to go to school with nom community responsibility control makes children easy fall victims of defilement as they are easy defiled forcefully or taken up by small gifts.

In the case of Uganda vs Kizza Bosco case no HCT 05-cr-sc 0125 of 2003. On 27th day of July 2002 at about 6:00 pm day of July 2002 at about 6:00 pm the victim went to fetch water, the accused approached her grabbed her tone her clothes and knickers and forcefully had sexual intercourse with her.

The victim tried to make an alarm but the accused held her mouth. he had sexual intercourse with her for about 30 minutes where a lot she felt a lot of pain .After that she escaped and ran away while making an alarm which was answered by some one she did not know. The matter was reported to the victims grand father who in turn reported to the local council one chairman who mobilized and arrested the accused.

2.13.7 Media - The media have got some pornographic videos /movies it telecasts that induce children into early sex Most of these materials are not censored and also on radio talk shows are not conveniently aired These forces the children and the youth to explore them lean any meaningful sex education hence causing defilement.

2.13.8 Idleness, also compels children especially school dropouts to start sex at much earlier age than their colleagues who are at school.

2.13.9 In adequate accommodation in overcrowded homes creates circumstances where children have to share rooms with relatives and house boys who normally defile them.

Story about the girl called Nina, who is a ten year old she goes to Katende primary school her parents are both teachers at Katende primary school. One morning Nina reported to her mother that she had a discharge from her private parts and she had great pains from her abdomen.

Nina was taken for a treatment at the clinic at the clinic Mr. Kizito leant that her daughter had contracted a sexual transmitted disease. Later when the nurse and her mother asked her if any had touched her or played with her private parts Nina told them that the house boy goes to sleep with her at night. They found that Nina was defiled by the house boy

2.13.10 Lack of sex education.

Among the use both home and school has not exposed the youth to sex issues. So lack of it coupled with the need to explore has led them to venture into sex at early ages

2.13.11 Lack of strict laws has also contributed to much defilement. For example LC1 Chairman of Bususwa zone broke down into tears as a resident of Bususwa zone Kamuli pleaded guilty to have defiled a thirteen

year old girl at Kakiri School. Apparently she had no stress. After medical examination the doctor (pw4) asked the complainant to return to the hospital for a vaginal swab to determine the presence of the spermatozoa but she did not go back. Her mother (pw2) did not bother to ensure that she returned. In the circumstances, it is contended, the learned trial judge should have insisted on some corroboration implicating the appellant as the culprit. Counsel relied on *Rex v Prohit* (1942) 9 EACA AT 611.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter explains the method that the research have used to select the geographical ones from which researcher was centered out and methods of the respondents selection it also explains the methods of the respondents selection it also explains the methods that were used to collect processes and analyze data

3.1 Research Design

The research was largely cumulative technique were used in presenting statistical measurement of respondents views

3.2 Study Population

The study about this topic of enforcement of court orders over defilement cases in Uganda was carried out mainly in the central region mainly in Kampala specifically at Buganda road chief magistrate courts Kampala high court of Uganda, Luzira prisons central police station. With these places the research has been broadly covered and has made it largely presented.

3.3 Sample frame work

3.3.1 Sample flame

A total of sixty respondents were used in this researcher as shown in this research as shown in the table categories of sample.

Categories of respondents	
NGOs official	2
Police officer	10
Judge	2
Magistrates	5
Prisoner	10
Local population	30

3.3.2 Sample techniques

Using a convenient sample of techniques of the respondents was selected for this study

This convenient sampling techniques was used because it was cheap and time saving trying to figure out who should be selected for the study.

3.3.3 Sample procedures

Quantitative technique was used to get views from the people and also gather information or data on defilement in the Kampala high court of Uganda and the chief magistrate courts of Buganda road.

Quantitative sampling was used to come up with a number of respondents who participate in the study

3.4 Methods of Data Collection

3.4.1 Questionnaire

These were used to collect data from magistrates, judges since these people respondents are literate and able to understand the languages being used

3.4.2 Interviewing

These were held by the community members since they cannot be administered with the questionnaires on the study topic

3.5 Sources of data collection.

This study has been used both secondary and primary, primary data was collected using interview guide which were given to NGO officials, judges and magistrates. This was because there people were literate for community members focus was put on group discussion which were held using interview guides.

Secondary data was through document analysis in the form of report news papers and journals for the period under the study were read and the required information is collected from them.

3.6 Data analysis

The data collected through questionnaire and the entries was analyzed quantitatively analysis was used to establish the degree relatedness of independent dew dependant variables used for the study to draw conclusions based on the result of the analysis

CHAPTER FOUR

FINDINGS, DATA ANALYSIS AND PRESENTATION

4.0 Introduction

This chapter presents the research findings of the study about enforcement of court orders over defilement cases in Uganda and it has included functions of the prisons service, Admission of prisoners, Bail applications. This chapter also indicates how defilement can be reduced or eliminated in the communities.

Function of the Prison Service

The function of the service shall be

- (a) To ensure that every prisoner detained legally in a prison is kept in humane, safe custody, produce in court when required until lawfully discharged or removed from prison.
- (b) To facilitate the social rehabilitation and reformation of prisoners through specific training and educational programmes;
- (c) To perform such other functions as the minister after consultation with the prisons authority may from time to time assign the service.
- (d) To ensure performance by prisoners of work reasonably necessary for the effective management of prisons;

4.2 Section 57 Rights of Prisoners

Subject to the constitution and this Act a prisoner is entitled to the following.

- (a) A prisoner shall be treated with the respect due to his/her inherent dignity and value as a human being;
- (b) No prisoner shall be discriminated against on the grounds of race colour, sex, language, religion, political other opinion national or social origin, property, birth or other status;
- (c) Freedom of worship, whenever conditions allow.
- (d) To take part in cultural activities and education aimed at the full development of the human personality;
- (e) To under take meaningful remunerated employment;
- (f) Have access to the health services available in the country without discrimination of their legal situation.

4.3 Admission of Prisoners into Prison

No person shall be received or admitted into prison custody without a valid commitment or a remand warrant, order of detention, warrant of conviction or committal signed with a court seal or authenticated by a person authorized to sign or authenticate such warrant or order under the provision of any law.

The officer incharge shall satisfy himself or herself before the admission of any person into prison custody that.

- The particulars of each person accurately described in the warrant or order of detention accompanying such person;
- Such warrant or order of detention has been properly issued or authenticated.

The officer incharge shall not admit any person in custody if the person is severely tortured and is in a bad health condition.

The officer incharge shall not refuse to admit a person into prison custody only by reason of an error on the face of the warrant or order of detention but shall take steps as soon as is practicable, to have the error rectified.

Every prisoner on admission shall be provided with written information on the following:-

- The regulations governing the treatment of prisoners of the category;
- The disciplinary requirements of the institution.
- The centralized methods of seeking. **Information and making (complaints procedure) Sec 58 Prisons Act 2006.**
- All other such matters as are necessary to enable the prisoner to understand both his and her rights and obligations so as to adapt to the life of the institution.

Where a person is sentenced in a place where a prison has not been established or a prisoner is under the authority of the Commissioner General temporarily transferred to a police cell or lock-up, such prisoner may be detained in a prison cell or lock-up for a period not exceeding one month or for such further period as the commissioner general may authorize.

A person shall not admit a juvenile prisoner into a prison designated for adult prisoners. **Section 59 Admission of Female Prisoners with Infants.**

- Female prisoners shall be admitted and confined in separate prisons, or part of the prison set for female prisoners.
- Subject to such conditions as may be prescribed a female prisoner may be admitted into prison custody with her intent.
- A female prisoner who is a pregnant prisoner or nursing mother may be provided special facilities needed for their conditions.
- An infant referred to in subsection (2) shall be supplied clothing and other necessitates of life by the state until the infant attains the age of (18) months in which case the officer incharge shall on being satisfied that there is; **Sec 59 Prisons Act 2006**

A relative or friend of the infant, able and willing to support it, causes the infant to be handed over to the relative or friend.

Where there is no relative or friend who is able and willing to support the infant, the Commissioner General may subject to the relevant laws entrust the care of the infant to the welfare or probation authority as the commissioner general may approve for that purpose **Section 60 custody of female prisoners.**

A female prisoner shall at all times during detention or imprisonment be under the care custody and supervision of a female prison office. **Section 61 particulars of prisoners to be recorded.**

Upon admission of any person into custody, the officer incharge shall record or cause to be recorded in the relevant registers particulars of that person. **Section 62 search of prisoners on admission to custody.**

Every prisoner shall on admission to a prison and subsequently at such times as the officer incharge may determine, be searched and all prohibited articles removed from his or her possession; and the search shall be conducted by a prison officer of the same sex as the person being searched and shall not be conducted in the presence of a person of the opposite sex.

On admission to a prison, all money clothes and personal effect belonging to such prisoner which he or she is not permitted under this Act to retain shall be placed into the custody of the officer incharge after the items have been properly entered in prescribed registers.

The articles referred to in subsection (2) shall be returned to the prisoner on his or her release or discharge from prison.

The officer incharge shall keep or cause to be kept an inventory of all money, clothes or personal effects place in his or her custody. Section 63 prisoners to be in custody of the officer incharge.

Every person committed to prison shall be in the lawful custody of the officer incharge during the whole period of the imprisonment and shall be subject to prison discipline and the provisions of this Act.

The officer incharge shall ensure that every person committed to prison under a warrant or order, is detained in accordance with the provisions of the warrant or order until the person is lawfully released from prison.

Section 64 custody of unconvinced prisoners.

Prisoners who are not convicted are presumed to be innocent and shall treated as such and they shall be kept separate from convicted prisoners.

Where a prisoner is committed for remand in a prison by order of a court or other competent authority, he or she shall be handed over to the custody of the officer incharge with the warrant of commitment, and officer incharge

shall detain the prisoner in custody for a period indicated in the warrant and cause the prisoner to be discharged at such time or as at the terms of the warrant in question may specify.

For the purposes of his or her defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is a variable to receive visits from a legal advisor, and for these purposes, the prisoner shall if he or she desires to be supplied with writing materials and the interviews between the prisoner and the legal advisor may be within sight but not within the hearing of a police or prison officer. **Section 65. Certain Prisoners to be treated as un convicted prisoner.**

Where a sentence of imprisonment imposed on prisoner requires confirmation by the high court and the prisoner elects to postpone serving the sentence until the high court makes a confirmation or other order, he shall be treated as a convicted prisoner.

Where a prison sentence is confirmed by the high court under sub-section (1) the period spent by a person in detention as an un convicted prisoner shall be counted as part of his or her term of imprisonment. **Section 66. Release on bail, where a person is arrested in respect of a criminal offence.**

In the case of an offence which is triable by the high court as well as a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days;

In the case of an offence triable only by the high court, the person shall be released on bail on such conditions as the court considers reasonable, if the person has been remanded in custody for three hundred and sixty days

before the case is committed to the high court. Section 67 – Prisoners required as witnesses.

Whenever the presence of a person confined in a prison is required by a court or other competent authority, the court or other competent authority may issue an order addressed to the officer incharge requiring production before the court or other competent authority of the person in proper custody at a time and place to be named in the order.

The officer incharge shall cause the person named in the order to be brought up as directed and shall provide for safe custody during his or her absence from prison.

A court or competent authority may endorse on the order requiring the person named in the order to be again brought up at any time to which the matter in which the person is required may be adjourned.

A prisoner taken from a prison in pursuance of an order made under this section shall, while outside the prison, be kept in custody as the officer incharge may direct and while in custody shall be deemed to be in lawful custody.

Section 68. prisoners to be subjected to prison discipline and to obey laws, orders and directions relating to prisons and prisoners during the whole time of imprisonment whether he or she is within the premises of the prison or not. Section 69 prisoners entitled to food

A prisoner shall be provided with food of nutritious value adequate for health and strength by the prison administration at the usual hours and the food shall be of wholesome quality, well prepared and served.

Drinking water shall be available to every prisoner whenever he or she needs it.

Section 70 Prisoner to have exercises: every prisoner not employed in out door work shall have at least one hour of suitable exercise in the open air daily.

Section 71. Prisoners to make complaints to prison authorities

A prisoner shall have opportunity each day of the week to make a request or complaint to the officer incharge of the prison or the officer authorized to represent him or her.

A prisoner may make a request or complaint to the inspector of prisons during his or her inspection without the officer incharge or other members of the staff being present.

A prisoner shall be allowed to make a request, or complaint without censorship as substance but in proper form, to the commissioner general, the judicial authority or other proper authorities through approved channels.

Section 72

Petitions

Any prisoner may petition the president, but in exercising that right, shall address the president through Commissioner General.

Section 73. Removal of prisoners to other prisons.

A prisoner on being sentenced or during confinement may be removed to any prison established under this Act.

A sentence of imprisonment lawfully imposed upon a person may be served partly in one prison and partly in another prison.

The Commissioner General may, by general or special order, direct that a prisoner be transferred from the prison to which he or she was committed or in which he or she is detained to another prison

At the commissioner general's discretion a prisoner shall, if practicable be kept in and released from a prison situated in the area to which the prisoner belongs.

A prisoner who is being transferred or conveyed from one prison to another prison or place shall, while outside the prison, be deemed to be in the custody of the prison officer.

A prisoner who escapes from the custody of a prison officer referred to in subsection (5) shall be deemed to have escaped from lawful custody.

Section 74. Treatment of prisoners who are insane or mentally abnormal

- Insane and mentally prisoners shall not be detained in prison an arrangement shall be made to remove them to a mental hospital as soon as possible. Where a medical officer or officer is of the opinion that a prisoner is insane or mentally abnormal, the officer shall take all necessary action to produce his or her judgment under the mental treatment Act; if a magistrate adjudges such prisoner to be a person of unsound mind the prisoner shall be removed promptly from the prison and confined in a mental hospital.

Where a prisoner removed to a mental hospital is entitled to be discharged, the medical superintendent in charge of the mental hospital shall notify the

officer incharge of the prison room which the prisoner was removed and the prisoner shall be delivered into custody if still liable to be confined in prison and if not so liable be released.

The period during which the prisoner has been detained in the mental hospital shall be reckoned as part of his or her term of imprisonment.

Section 75 removal of sick prisoners to hospital.

In the case of illness of a prisoner confined in a prison where there is no suitable accommodation for that prisoner the officer incharge on the advise of the mental officer may make an order for his or her removal to a hospital and in cases of emergency the removal may be ordered by the officer incharge without the advise of the medical officer.

A prisoner who has been removed to a hospital under this section shall be deemed to be under detention in the prison from which he or she was so removed.

Where the medical officer incharge of a hospital considers that the health of a prisoner removed to hospital under this section no longer requires his or her detention there, he or she shall notify the officer incharge who shall cause the prisoner to be brought to the prison if he or she is still liable to be confined in the prison.

Every reasonable precaution shall be taken by the medical officer incharge of a hospital and the other officers and employees of the hospital to prevent the escape of a prisoner who may at anytime be under treatment in the hospital.

The officers and employees of the hospital shall take such measures to prevent the escape of the prisoner as shall be necessary be nothing shall be done under the authority of this section which in the opinion of the medical

officer incharge of the hospital is likely to be prejudicial to the health of the prisoner. **Section 76. measures for security of prisoners in hospital.**

Where in any case from the gravity of the offence for which a prisoner may be in custody or for any other reason, the officer incharge considers it desirable to take special measures for the security of a prisoner while under treatment in the hospital, the officer incharge shall leave the prisoner into the charge of fit and proper persons, not being less than 2 in number, one of whom shall always be with the prisoner day and night.

The persons under subsection (1) shall be vested with full power and authority to all things necessary to prevent the prisoner from escaping and shall be answerable for his or her safe custody until such a time as he or she is handed over to the officer incharge on discharge from hospital or until such time as his or her sentence expires, whichever may first occur.

If a prisoner escapes while in hospital, mental hospital or leper settlement, no prison officer shall be held answerable for the escape, unless the prisoner shall have been in the personal custody of the officer. **Section 77. Right to information.**

A prisoner shall be informed of provisions of this Act, rules and administrative instructions applicable to him or her.

The provisions of this Act and any rules, standing orders or administrative instruction made or issued under this Act relating to the treatment and conduct of prisoners shall be printed in the official language and in any other language that the Commissioner General may determine and shall be made available to every prisoner immediately on admission to a prison or if a prisoner is unable to read and understand any of the languages in which the provision have been printed, the officer incharge shall ensure that the contents of those provisions are orally explained to the prisoner.

Section 78. Contact with outside world

Communications, other than communication with legal representatives, between prisoners and their relatives and friends shall only be allowed in accordance with this Act, subject to such restrictions as the officer in charge may think are necessary for the maintenance of discipline and order in the prison, and the prevention on of crime.

On admission a prisoner shall be entitled to write and receive a "reception letter" and to receive a visit and or transfer to another prison a prisoner shall be entitled to write and receive a transfer letter.

Section 79. Re arrest of a prisoner released erroneously.

If the Commissioner General reasonably suspects that a prisoner has been released from a prison erroneously, he or she may issue a warrant for the re-arrest of that prisoner, which warrant may be executed by any police officer or prison officer and shall serve as authority for the detention of the prisoner in a prison.

Section 80. Imprisonment in lieu of default of payment of fine.

Any imprisonment which is imposed by court in lieu or default of payment of fine shall, prior to the expiration of the imprisonment thereof, terminate whenever that fine is paid or is lawfully levied under the process of any law authorizing the levy of the fine provided that courts shall be encouraged to pass community orders as alternative to imprisonment where an offender fails to pay a fine.

Section 81. Restraint of a prisoner in a separate cell

- Where the officer in charge consider it necessary
- To secure or restrain a prisoner who has
- Displayed or threatened violence,

- Been recaptured after escape from custody or in respect of whom there is good reason to believe that he or she is contemplating escape from custody.
- Been recommended on medical grounds for confinement in a separate cell by a medical officer; or.

For the good order and discipline of a prisoner to be isolated and not to work or communicate with other prisoners, the officer in charge may order that such prisoner be confined in a separate cell for a period not exceeding fourteen days as is or she may deem necessary.

Stripping prisoner naked or poured water in a cell of a prisoner, depriving him or her of food and administering corporal punishment and torture is prohibited.

Section 82, Foreign Prisoners

A foreign prisoner or admission to a prison shall as far as possible be given similar treatment as a prisoner who is a national, in particular a foreign prisoner shall have the same access as a national prisoner to education, work and vocational training.

The religious precepts and custom of a foreign prisoner shall be respected.

A foreign prisoner shall be allowed reasonable facilities to communicate with his or her family diplomatic or consular representatives of the state to which he or she belongs.

A prisoner who is a national of a state without diplomatic or consular representation in Uganda or a refugee or stateless person shall be allowed similar facilities to communicate with the diplomatic representative of the

state which takes charge of his or her interests or any national or international authority whose task it is to protect such persons.

Humanitarian international organizations shall be given the opportunity to assist all prisoners including foreign prisoners.

Foreign prisoners shall be informed promptly after reception into a prison, in a language that they understand and generally in writing of the main features of the prison regime, including relevant rules and regulations.

Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counseling.

Section 83. Release of prisoners on full remission

The officer in charge shall be responsible for the due discharge of a prisoner immediately upon becoming entitled to release.

A prisoner who is due for release, but is still under treatment by the medical officer shall be discharged from prison to a medical or social service outside the prison as necessary.

A prisoner shall be discharge before noon on the date on which be or she is entitle to be released but if the date falls on a Sunday or a public holiday, he or she shall be released before noon on the day preceding the Sunday or public holiday .

Sec 84. Remission of part of sentence of certain prisoners

A convicted prisoners sentenced to imprisonment whether by one sentence or consecutive sentences for a period exceeding one month may be industry

and good conduct earn a remission of one third of his or her sentence or sentences.

For the purpose of giving effect to subsection one, each prisoner on admission shall be credited with the full amount of remission to which he or she would be entitled at the end of his or her sentences if he or she lost or forfeited no such remission.

Sec 85 Loss of Remission

A prisoner may lose remission as a result of its forfeiture as a punishment for an offence against prison discipline and shall not earn any remission in respect of any period spent in hospital through his or her own fault or while malingering, or while undergoing confinement as a punishment in separate cell.

Section 86 Grounds for grant of further remission by the president.

The Commissioner General may recommend to the minister responsible for justice to advise the president under article 12 (4) (d) of the constitution to grant a further remission on special grounds.

The Commissioner General may restore forfeited remission in whole or in part.

For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years imprisonment.

Section 87 Habitual Criminals to be released on license only

A habitual criminal sentenced to imprisonment whether by one sentence or consecutive sentences for a period of three years or more who is released under section 83 of this Act shall be released on license.

A license under sub-section (1) shall be granted by the Commissioner General and shall authorize the prisoner to be at large in Uganda or in any other territory with the government of which reciprocal arrangements have been made under subsection (10) or in any part of Uganda, or other country as shall be specified in the license.

The Commissioner General shall revoke or alter such license at his or her discretion.

A licence granted under this section shall be in the prescribed form and shall be granted subject to the prescribed conditions, the Commissioner General may waive any conditions in the case of a particular prisoner.

If a prisoner released on a licence granted under this section is convicted to any offence or fails to comply with any of the conditions of the licence by any act or omission that is not of itself an offence, the prisoner shall be liable on conviction to imprisonment for a period not exceeding three months and to have his or her licence forfeited by order of a magistrate.

Where a licence under this section is forfeited or revoked, the prisoner whose licence is forfeited or revoked shall, after under-going any other punishment to which he or she has been sentenced undergo a further term of imprisonment equal to the portion of his or her imprisonment as remained unexpired at the date of his or her release on licence, calculated without any remission previously earned or granted.

Whenever a licence is revoked by the Commissioner General any magistrate shall, on the production to him or her of a certificate of such revocation signed by the Commissioner General, issue a warrant for the apprehension of the person to whom the licence was granted.

The person on being apprehended shall be brought before a magistrate or some other magistrate exercising jurisdiction in the same area who shall make out his or her warrant for the recommitment of the person to prison undergo the residue of the sentence as remained unexpired at the date of the release under licence calculated without remission previously earned or granted.

Where a licence is forfeited by order of a magistrate under subsection (4) the magistrate shall make out a warrant for the recommitment of the person to prison to undergo the residue of his or her sentence that remained unexpired at the date of his or her release under licence calculated without any remission previously earned or granted

The minister may, by statutory order declare any other country to be a country with the government of which reciprocal arrangements have been made by the Uganda Government for the surrender of persons whose licenses have been revoked.

Where a warrant has been issued under subsection 7 for the apprehension of a person whose licence has been revoked, it shall be lawful for the magistrate issuing the warrant to forward it for execution to any court having jurisdiction in such other country.

A warrant issued by a court having jurisdiction in another country for apprehension of a person who, in such other country, has been released on a licence and whose licence has been subsequently revoked may be executed in Uganda in the same manner and subject to the same conditions as if the provisions of part II of the extradition Act applied to such warrant.

For the purposes of this section, habitual criminal means a person who has been sentenced on four separate occasions to imprisonment for any offence

contained in chapter XXVI to XXXIX inclusive of the Penal Code Act or for any attempt to conspiracy any such offence.

Section 88 Review of sentences

The Commissioner General shall submit to the minister responsible for justice a report on the general condition and conduct of every prisoner under-going imprisonment for life or for a term exceeding seven years or at such lesser period as the minister or the Commissioner General desirable.

A review referred to in subsection (1) shall include:-

- A statement by the officer in charge of the prison, where the prisoner concerned is detained on work and conduct of the prisoner,
- A report from the medical officer on the mental and physical health of such a prisoner with particular reference to the effect of imprisonment on the health of the prisoner;
- From the social worker about the community attitude and possible reintegration of the prisoner back into community.

Section 89. Release on parole

A prisoner serving a sentence of imprisonment for a period of three years or more may be allowed by the Commissioner General within six months of the date he or she is due for release on conditions and for reasons approved by the Commissioner General to be temporarily absent from prison on parole for a stated length of time which shall not be greater than three months.

The Commissioner General may at any time recall a prisoner released on parole.

A prisoner who fails to return to prison on the completion of the period of his or her parole or when informed that he or she has been recalled under

subsection (2) commits an offence and may be arrested without warrant and is liable on conviction to the same punishment as if he or she has escaped from prison.

A prisoner when released on parole who contravenes the conditions imposed upon him or her commits an offence and is liable on conviction to imprisonment for a period not exceeding six months.

Section 90 social relations and after case

Special attention shall be paid to the maintenance and improvements of relations between a prisoner and his or her family as are desirable in the best interests of both.

From the beginning of a prisoner's sentence consideration shall be given to his or her future after release and he or she shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the prison as may promote social rehabilitation.

The service in conjunction with other services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary that released prisoner be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

The approved representatives of the agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.

It is desirable that the activities of the agencies shall be centralized or co-ordinate as far as possible in order to secure the best use of their efforts.

A report provided for by Mr. George Musisi a legal officer Foundation for Human Rights Initiatives, initiatives on an interview.

We do not receive many defilement cases. But the few incidences that we receive we liaise immediately with the responsible police station, defilement being a criminal case to see that the offender is apprehended and brought to justice.

We work therefore hand in hand with criminal investigation department of the police together with the director of public prosecution (DPP) office to see that the case is fixed for hearing before courts of law and to ensure that the courts of law and to ensure that the victim gets justice.

Some of the challenges include corruption in the police force and the judicial system which stalls investigations and sometimes even the files are stolen/lost in the system.

Another challenge is the under finding in the police which leads to poor investigation being done eventually the offender is acquitted by the courts.

Bail is a constitutional right which is provided for under article 23, 6) and this is also provided for under section 75 of the magistrate Courts Act which provide 75,1) where any person appears before a magistrates court charged with an offence for which bail may be granted the court shall inform him of his right to apply for bail.

When an application for bail is made the court shall have regard to the following matters in deciding whether bail should be granted or refused

- The nature of the accusation,

- The gravity of the offence charged and the severity of the punishment which conviction might entail
- The antecedents of the applicant as they are known,
- Whether the applicant has a fixed abode within the area of the court jurisdiction and

Where bail is not granted under the provisions of section 74 of this Act the court shall.

- Record the reasons why bail was not granted
- Inform the applicant of his right to apply for bail to the High Court or to a chief magistrate, as the circumstance may require.

A magistrate's court before which an accused person other than a person accused of an offence punishable by death, appears or is brought may at any stage during the proceedings release him on bail that is to say on taking from him a recognizance consisting of a bond, with or without sureties for such an amount as is reasonable in the circumstances of the case to appear before such a court on such a date and at such a time as is named in the bond.

Notwithstanding anything contained in subsection (1) of this section,

- a chief magistrate may in any case triable by a magistrate's court, direct that any person to whom bail has been granted by a court presided over by any magistrate (other than a chief magistrate within the area of his jurisdiction) be released on bail.

CHAPTER FIVE

CONCLUSIONS, SUMMARY, RECOMMENDATIONS

When a prisoner is received into the custody of the Prison authorities, whether at prison or elsewhere, the officer who receives him/her shall first satisfy himself/herself that the prisoner is the person named in the warrant. In the event of any doubt arising. Immediate steps shall be taken to resolve the doubt by communicating with the Police or relevant Court.

An Officer in charge cannot refuse to receive a prisoner merely on the ground that the prisoner denies his/her identity, but only if he/she has good reason to believe the person arrested and brought to prison is not the person named in the commitment warrant. In similar way, an officer in charge may not refuse to accept a person on the ground that there is a material error on the face of the commitment warrant or that it is addressed to the officer in charge of another prison,

Where a prisoner who denies his/her identity is held in custody, he /she should be allowed at once to petition the Minister of Justice and if he/she so desires, communicate with his/her Lawyer or friends.

No prisoner can be received into a prison, in Uganda on a warrant issued in another Country. In any case of doubt the officer in charge will communicate at once with the Commissioner General., or if this is not Possible, will obtain advice from the nearest Magistrate. The cases of doubt s to the correctness of an order of a Court or as to its proper interpretation, officers in charge should seek advice from the DPC or Registrars, Magistrates or Justices until they have submitted the question to the Commissioner General for instructions his undesirable that officers in charge should enter into correspondence with Magistrates and Justices and Legal questions. This

instruction does not apply to obvious clerical errors, to which the attention of those concerned may properly be called by the officer in charge.

The attention of officer in charge is directed to Section 298, Chapter 107 (Criminal procedure Code), Laws of Uganda, 2001.

Detailed instructions as to the order in which sentences shall be served and the computation of remission are contained in Chapter 87(I), The attention of officers in charge is directed to Section 320, Chapter 107 (Criminal Procedure Code) Laws of Uganda, 2001

The attention of officers in charge is directed to section 8 and 9, Chapter 107 (Criminal Procedure code) Laws of Uganda, 1964 regarding the treatment of a prisoner who elects not to serve the sentence imposed upon him/ her pending confirmation of the sentence by the High Court. Any prisoner having elected to await confirmation of sentence cannot re-elect to commence serving his/her sentence before confirmation is received.

Section 64 of the Prisons Act, 1964 requires the Commissioner General to keep a personal record of every prisoner. Such record (Prisons Form 3 and 4) shall be completed so far as possible, at the time of admission of the prisoner and thereafter as necessary. NO copy of any portion of the record shall be given to any unauthorized person. The personal record of a prisoner should not be handed to any person other than a person employed within the Department without the direction of the Chief Justice, a Magistrate or Justice or the Commissioner General. The circulation of prisoners' personal records within an establishment should be restricted as far as possible.

Prisoners' personal records will be kept under lock and key when not in actual use. A register of all prisoners' records will be maintained for the purpose of recording the transit of prisoners' records.

The loss of prisoner's persona] record will be reported to the Commissioner General together with a f11 report of the circumstances; where considered necessary the Officer in charge will report the loss to the Police for investigation.

Immediately following reception at a Prison, Finger Prints of all prisoners (excepting civil prisoners) will be taken on Prison Form 66(W) and forwarded to the Criminal Record Officer for classification.

The photographs of every prisoner (excepting Civil Prisoners will be taken as soon as possible after reception and in an event within 48 hours of reception. A print of the photograph will be pasted in the prisoner' Record, the negative, contained in an envelope. being securely fastened to the inside cover. Detailed instructions for the documentation of prisoners will be issued from time to time by Commissioner

General

Particular attention should be paid by officers in charge to directions given by Magistrates or Justices regarding the examination and observation of persons remanded in custody. Where a medical or other report is called for, the officer in charge should ensure that the report is availed to the Court before, immediately or when the prisoner is next produced.

Every person remanded on a capital charge shall be kept under observation at all times (if necessary in separate cellular accommodation) and the officer in charge shall inform the medical officer of anything unusual in the general behaviour and demeanor of the prisoner.

The name of every prisoner under observation, whether located in Hospital or elsewhere, will be entered in an occurrence book and any unusual occurrence in the Hospital, or amongst any prisoners under observation, whether by day or night, will be recorded by the officers employed in the

Hospital or any controlling the prison. A separate book will be kept for day and night records respectively; and any entries will be initialed by the Officer in charge and the Medical Officer at the next morning visit.

Every prisoner shall be examined by the Medical Officer on the day of admission (or as soon as possible after his/her admission and in any case not later than the first working day after his/her admission, and pending such Examination will be kept separate from other prisoners if considered necessary, until certified fit by the Medical Officer to be located with other prisoners.

Where possible each prisoner will be placed in a separate cell or compartment while awaiting his, her turn for examination, bathing etc. If the number of prisoners is greater than that of the receptionists, they will be placed temporarily in especially reserved cells in the prison until they have been seen by the Medical Officer.

Subject to any direction given by the Medical Officer, every prisoner shall bathe on admission and as often thereafter as may be required or directed. There facilities exist; prisoners should bathe daily after work and before the evening meal. Prisoners will have their hair cut in accordance with the Provisions laid down in Section 52 of the Prisons Rules, 2001.

Remand prisoners who are admitted into prison wearing beards or moustaches, will be permitted to retain them provided that they are kept trimmed, otherwise beards and/or moustaches will not be grown by prisoners whilst in Prison. A remand prisoner who had a beard or moustaches will not be permitted to remove his/her beard or moustache without permission of the officer in charge and where it is known that the prisoner is required to make further appearances at Court or is required to attend an identification parade, he/she will not be permitted in any way to alter his/her

appearance except upon instructions of the Medical Officer when a full report of the circumstances should be forwarded to the Court.

On prisoners being admitted to prison a clear Distinction shall be made between convicted and un-convicted persons males and females, adult and juvenile persons and care shall be taken to keep them segregated. The un-weaned child of a female prisoner may be admitted into a prison and, save in exceptional circumstances, should not remain in prison beyond the age of twenty four months. Details of the child shall be recorded in the prisoner's record on reception. Any child so received into prison male supplied with suitable clothing and goods at public expense.

Where the child of a female prisoner has been weaned whilst in prison the officer in charge, will obtain from the Medical Officer a written certificate that the child is in a fit condition to be removed from its mother and will then take all possible action in conjunction with and with the approval of the Welfare Officer, District Probation Officer to have the child handed over to a relative or friend of the prisoner. The name and address of the person receiving the child will be entered in the prisoner's record. In cases where it has been impossible to trace a relative or friend of the prisoner who is willing to accept custody of the child, the matter will be referred to the Commissioner General.

No weaned child of a female prisoner will be received into prison with its mother unless it has been established without doubt that it has not been possible to find a person who would accept the custody of the child while the woman is in prison. Any child admitted to prison in the absence of a suitable foster parent will not under any circumstances be permitted to remain with its mother beyond the age of four. If at this age the officer in charge has not been successful in finding foster parents, the case will be referred to the Commissioner General of Prisons.

All cash, property and clothing of convicted prisoners will be given up on admission. The method of accounting for personal clothing and valuables is contained in Chapter 4 of these Standing Orders (Reception Duties),

Wedding rings of married women prisoners may be retained by such prisoners without question. In such cases the risk of loss or damage will be explained to the married woman prisoner and she will be required to sign the property book as having retained the ring in her possession on her responsibility. When such a prisoner is discharged, a careful check will be made to ensure that the ring is still in her possession when discharged.

On the recommendation of the Medical Officer, any article of property may be retained by the prisoner while in prison. Such recommendations would only be made in regard to dentures, trusses, artificial limbs, hearing aids, wigs, surgical boots or supports and articles of a like nature. In every case where such article is retained by the prisoner, he/she will be required to initial in the property book that he/she has retained such article, and he/she will initial an entry in his/her Prisons Form 3 or 4 to the effect that he absolves the Prison authorities from any claim for loss or damage of such articles.

When a prisoner is wearing an abdominal belt, truss chest protector, or other medical or surgical appliance the attention of the Medical Officer will be specially called to the fact.

Civil un-convicted prisoners may be permitted to retain their own clothing at their own risk but should be required to hand over, for safe custody all money, valuables etc.

The personal clothing of all prisoners should be washed on admission either by the prisoner or under laundry arrangements. Where the prisoner is found to be suffering from an infectious disease or in cases where the Officer in charge considers it desirable, the personal clothing of the prisoner will be

disinfected. No article of leather, rubber or plastic should be placed in a hot disinfectant.

Such articles may be disinfected by GAMMA powder. In any case where the clothes of a prisoner are in such a condition as to be incapable of further use, the Officer in charge may order the same to be destroyed. A record of such destruction, giving a full description of the articles destroyed shall be made in the prisoner's record. In such case the prisoner will be issued with clothing on release.

Any prisoner who is to serve a period of more than four years in prison may be permitted to send part of his/her clothing or property to his/her relatives or friends.

Such dispatch of property will be made through the out going supplementary property book No. 241. Dispatch may be by handing over to the relative or friend, or by registered parcel post.

Notification will be sent to the Commissioner General on the day of reception of any prisoner who has been released formerly on license and whose license has not yet expired.

No prisoner may hand to or authorize the handing to any other prisoner any part of his/her personal property for any reason whatsoever. Should a prisoner claim that another prisoner is in possession of his/her property, he should be advised to await release and seek legal advice.

Every convicted prisoner shall on admission be provided with a complete set of clothing and equipment as laid down in Appendix I of these Standing Orders and he/she will be responsible for the safe keeping and care of these items. All such clothing and equipment shall be clean and in a good state of repair at the time of issue. Every prisoner will be offered a toothbrush on

reception. The brushes will be considered consumable articles and may be retained by the prisoner on release.

Special attention must be paid to the accurate recording of a prisoner's age, and for the purposes of administration and statistical record a clear distinction will be made between:

Those of the apparent age of 5 years up to 21 years who may, in opinion of the Officer in charge be suitable for treatment as young prisoners (provided that every person under the apparent age of 17 years shall be treated as a younger. prisoner).

A specific age for youthful offenders and adults will be determined by the Medical Officer in the course of Medical Examination on admission.

When an Officer in charge receives a report from the Medical Officer of disagreement with a Judicial finding on age, he/she should report the facts to the Commissioner General giving full details of the prisoner and the Court Case No, etc.

All convicted prisoners will be examined for scars and distinction marks on the body. This will be done when the prisoner is naked but not in the sight of another prisoner. A record of such marks will be made in the prisoner's record. The following are the chief characteristics to be observed:

Height, Build, whether proportionate, Lanky, bulky, small, thick-set, Spare, stout, bony, muscular, etc

Permanent scars and marks Moles, tattoo mark etc.

Growths or tumors, distorted features or deformities, whether deaf and dumb, or blind, or partially so.

Shade of complexion. Color of hair and eyes Shape of face, whether oval, broad, narrow, long, round etc.

Loss, or partial loss, or reformatory of limbs, Loss of power of limbs, Defects in speech Involuntary muscular spasms of the head, face, body or limbs, When a prisoner has been circumcised, the fact will be recorded. The marks will be verified on discharge and any change by medical intervention or other cause noted, All previous records relating to the same prisoner will be brought together on reception and if he/she is transferred to another prison during his/her sentence all such records will accompany him/her.

The service number, rank, name and unit of all serving members of the Forces received into prison on remand or conviction will be notified by the Officer in charge to the Commanding Officer of the person's unit as early as possible after admission.

The religious persuasion given by a prisoner on admission will be recorded and will remain his/her official religion until such time as he/she receives authority from the

Officer in Charge to change his/her religion: A prisoner should not be authorized to change his/her religion unless the Commissioner General is satisfied, after consultation with the recommendation of the Officer in Charge and the respective Minister of religion, that the change is a genuine change of conscience, that it is desirable and in the best interests of the prisoner in the case of the convicted.

This authority should not be granted to remand prisoners. The arrival of a prisoner on transfer from another

Prison will be reported to the Officer in charge. The officer who receives a prisoner will satisfy himself/herself that all the usual documents are brought with him/her and he/she will sign for them. If there are any personal papers

or property brought with the prisoner, they will be checked in the presence of the escorting Officer and the. Prisoner himself/herself Any omission or irregularity the documents will be reported immediately to the Officer in charge and a note there of made on the back of the receipt (Prisoner Form 14).

In conclusion, the above topic of enforcement of court orders over defilement cases in Uganda has been done majorly in Buganda road court, Uganda Human rights initiative and High court Kampala. In this conclusion further defines how the prisoners are treated after conviction and this is majorly done in chapter four and five.

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APPENDICES

APPENDIX I

QUESTIONNAIRE FOR CIVIL SERVANTS

The Researcher Bitanako Darius is a student of Kampala International University pursuing a Law. He is currently carrying a research on the enforcement of court orders over defilement cases in Uganda.

Dear respondents, I hereby humbly request you to spare some few minutes of your precious time to fill in this questionnaire, and all the information given will be treated with confidentiality and anonymity. Tick or write the relevant information in the space provided below. I have the pleasure to thank you more sincerely in advance for your compliance.

Background Information

1. Age.....
2. Sex:
 - (i). Male ☐
 - (ii). Female ☐
3. Respondent's Position.....
4. Number of years in service.....
5. Education level:
 - (i). Primary ☐
 - (ii). Ordinary level ☐
 - (iii). Advanced level ☐
 - (iv). Diploma ☐
 - (v). College or University degree ☐
 - (vi). Masters ☐
 - (vii). Others, state.....
6.
 - a) What is defilement?
 - b) What are the causes of defilement in Uganda?

- c) With the support of the judiciary and the constitution of the Republic of Uganda (1995), how are the defilement cases handled in the courts of judicature?

.....
.....

7. What do you understand by the term aggravated defilement?

.....
.....

8. Which services do judges lender to defilement victims in Uganda.

.....
.....

9.

- a) Are there challenges faced by the local governments in the due cause of delivering these social services to the public? Yes or No ☐ ☐

- b) What are these challenges that the local governments encounter as they deliver these services to the public if any?

.....

- c) How are the local governments coping up with these challenges you have stated above to ensure that service delivered is not impeded?

.....

10. Judicial services in Uganda are diversified into different courts what is the hierarchy of courts in Uganda?

.....

APPENDIX II

MAP OF THE AREA OF STUDY

