DEFILEMENT: A CRITICAL ANALYSIS OF THE LAW AND PRACTICE IN UGANDA.



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June, 2012

DECLARATION

I Akampereza Dianah declare that this is my original work and has never been submitted to any other institutions of higher learning or at Kampala International University for award of a degree.

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DEDICATION

I dedicate this dissertation to my family that is my husband, my beloved parents, brothers and sisters for all the support, encouragement and prayers. Heartfelt thanks to you all. God bless you.

ACKNOWLEDGEMENT

I thank God for this opportunity to reach this stage in my academic life its' been a very long journey and off course not easy at all but with God all things is possible. I thank my parents for everything, Thank you for guidance, counsel, support and encouragement may the good Lord reward you abundantly.

Special thank to my Husband Mr. Mwinganisa Johnson and my little Princess Martha Arinda thank you for being there for me during the course you a highly appreciated.

Many thanks to my supervisor who guided me through this dissertation writing process. May God bless you. Finally to all my friends, brothers and sisters I say thank you very much.

Acronyms and Abbreviations

Acronym	Description
NCC	National Council for Children
FCC	Family and Children's Courts
CRC	Convention on the Rights of the Child
UN	United Nations
UYDEL	Uganda Youth Development Link

Abstract

The study's main objective was to critically analyze defilement law and practice in Uganda and the specific objectives were to;

- To examine the existing laws in relation to defilement in Uganda.
- To find out factors and practices that aggravates defilement in Uganda.

The study was done in Kampala District, Uganda and the respondents were sampled from the police, parents and law makers, overall a sample size of thirty respondents was reached and data was gathered about the topic.

This report is organized into five chapters, chapter one covered introduction and back ground information, contain a brief overview of defilement with a critical analysis of the law and practice in Uganda as well as the broader perspective; the back ground of Laws in Uganda presented. The study objectives, significance of the study, justification of the study, statement of the problem and research questions are all noted in this chapter, Chapter 2. Brings out the related literature reviewed supplemented by case law, chapter 3 explains the methodology that was used, Chapter 4 states the field results presented, analyzed and discussed according to each study objective and finally chapter 5 presents the summary of the lessons learnt from the study, conclusions, recommendations, and areas of further study.

The study revealed that the Ugandan law on defilement seems sufficient in protecting the children against defilement but the practices in community and other factors like poverty, media, and urban lifestyle continue to put children at a risk of being defiled. The respondents showed fair knowledge of the law on defilement in Uganda.

However the study revealed that although the laws are clearly stipulated, there is need for the government to increase sensitization campaigns to popularise the law to the general public which is expected to reduce the incidence of defilement.

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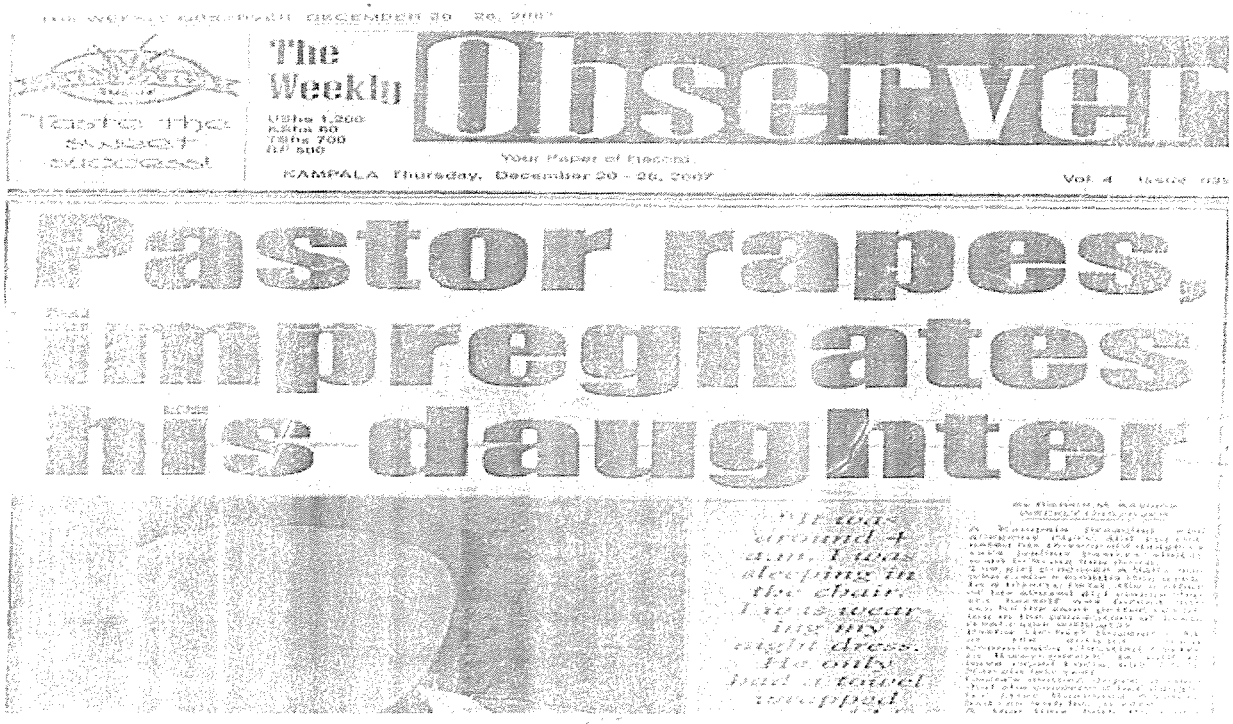
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CHAPTER ONE: INTRODUCTION AND BACKGROUND INFORMATION

1.0 Background to the study.

Uganda is one of the countries in Africa that have well stipulated laws. Ugandan law[1] defines defilement as the act of having sex with a girl under 18years, it is sad to note that often defilement involves relatives, married men or professional people in the community, some men defile their own daughters[2].



The Weekly Observer

KAMPALA Thursday, December 20 - 26, 2007

Pastor rapes, impregnates his daughter

Source: scanned from the weekly observer

The Constitution of the Republic of Uganda (1995) is clear on the definition of a child[3] in Uganda as a person below the age of 18 years. The Children Act Cap 59 provides that a child is one below 18 years, which is in conformity with the constitution.

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[1] The Constitution of the Republic of Uganda (1995).

[2] A situation Analysis by ANPPCAN Uganda Chapter (2007)

[3] Government of Uganda , The Children's Act (2004)

Defilement has become a dangerous vice in our society today and this has even led to increased cases of early pregnancies among girl children, high school dropout rate and wide spread HIV/AIDS infections among the youth.

In fact, defilement is a capital offence[4] in cases where the victim has been infected with HIV/Aids virus or is very young and has been defiled by a relative — categorized as aggravated defilement. Those defiling children aged 14-18 get prison sentences if convicted. In Ugandan law[5], sexual intercourse both consensual and non-consensual with a girl under the age of 18 is a criminal act, regardless of the age of the male involved.

1.1 Statement of the problem

Defilement is illegal under the laws of Uganda[6]. According to the current law, section 123 (1) of the penal code Amendments Act (2007) provides that "Any person who performs a sexual act with another person under the age of 18 years commits a felony known as defilement and is liable to life imprisonment."

The government has sensitized the public through print media, audio visual technology, radio, television explaining the dangers associated with defilement and penalties that befall whoever is found guilty. In the year 2006 alone 15,385 children[7] were defiled while in 2007 a total of 12,230 children and this is just a tip of an iceberg only mentioning cases that were reported to authorities leaving out cases that happen and are never reported or mentioned but impose harm to children.

However defilement cases still top police and media reports despite availability of the laws and penalties associated with defilement in Uganda. This study therefore analyses the law and practice in Uganda regarding defilement.

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[4] ibid

[5] Government of Uganda, The Penal code Amendments Act (2007).

[6] Ibid

[7] The Uganda Police report (2006) and (2007).

1.2 Study objectives

1.2.1 Main Objective

- To critically analyze defilement law and practice in Uganda.

1.2.2 Specific objectives

- To examine the existing laws in relation to defilement in Uganda.
- To find out factors and practices that aggravates defilement in Uganda.

1.3 Significance of the study

This research critically analysed the Law and Practice in Uganda. The results of the study are very helpful to the government especially the law makers to understand the relationship between the defilement law and its practice in Uganda and this should guide future reviews and improvements.

1.4 Scope of the study

The study covered all the laws of the republic of Uganda that deal or are related to defilement as well as the current issues that guide applicability of the law and practice.

Subject scope: The study focused on the Ugandan laws on defilement and also analysed the practices that have led to continuous defilement cases in Uganda.

Geographical scope: This study was done in Kampala district.

Time scope: This study focused on Ugandan laws regarding defilement that were enacted in the period of 1990 to 2011.

1.5 Justification of the study

The government of Uganda has laid out laws protecting the citizens against injustice among which defilement is highly condemned but the vice has continued to occur in our society. This study critically analysed the laws in place related to defilement and what is really practiced in

Uganda regarding the same subject. If the study results are used they should guide law makers' decision making in future and the general public to understand issues that aggravate or contribute towards defilement and the best ways to deal with it in Uganda. Despite the availability of clearly defined laws on defilement, it has continuously increased showing that there is a knowledge gap about what are the practical ways that government , community, parents, police need to do reduce its incidence. This study came up with recommendations that should be implemented if the vice is to be put to an end. A copy of the results is available in the university library.

1.6 Presentation of chapters.

This study is be made up of 5 chapters. That is:

1. Chapter 1: this chapter covered introduction and back ground information, contain a brief overview of defilement with a critical analysis of the law and practice in Uganda as well as the broader perspective; the back ground of Laws in Uganda presented. The study objectives, significance of the study, justification of the study, statement of the problem and research questions are all noted in this chapter.

2. Chapter 2. This contains literature review that was used in this study.

3. Chapter 3. This chapter explains the methodology that was used. It contains the study design, data collection tools, data analysis will all be presented and explained in here.

4. Chapter 4. Is an empirical chapter where field results are presented, analyzed and discussed.

5. Chapter 5. Is composed of a summary of lessons learnt from the study, conclusions, recommendations, and areas of further study.

CHAPTER TWO: LITERATURE REVIEW

Uganda is one of the first countries to ratify the United Nations Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child. Uganda also has in place a domestic law[8], which seeks to protect the rights of children and empower local authorities to ensure this protection in their areas of jurisdiction. Institutions for the enhancement of children's rights and welfare such as the National Council for Children (NCC), Family and Children's Courts (FCC), have been established. Uganda is a signatory to the UN Convention on the Rights of the Child (CRC), which was ratified in1990.

Children's rights to protection from violence are enshrined in the national constitution, which is the supreme law of the land. However laws on violence against children are not adequately enforced due to several factors including inadequate capacity, community interference, ignorance of the law, apathy, economic factors, corruption, lengthy procedures and the strength of traditional attitudes and customs.

2.1 Defilement Law in Uganda

Ugandan defilement law considers boys and girls below 18 years to be minors, and penalises males of any age who engage in any sexual intercourse with girls below 18. Nevertheless, it is rarely implemented in practice in Rhino Camp refugee settlement[9], both because of the financial and procedural obstacles that discourage reporting, and because of the financial incentive to girl's families to seek bride price and/or fees for 'spoiling' a girl.

Defilement is a very big threat to the wellbeing of children in Uganda. According to the crime statistics report[10], defilement is the most rampant form of child sexual abuse and the highest crime committed in Uganda. Defilement is illegal under the laws of Uganda.

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[8] The Government of Uganda, the Children's Act (2004).

[9] Briefing Paper (2006), Refuge Law Project. Faculty of Law Makerere University.

[10] The Uganda Police force report (2006) and (2007).

The statistics in the report reveal that 15,385 children were defiled in 2006. The above statistics reveal that the problem of defilement is unacceptably high and should be dealt with as urgently as possible to save millions of children. In 2007, reported Defilement cases were 12,230 compared to 15,385 in 2006 indicating a decrease by 21%. 8,354 of the Defilement cases were reported in the rural areas, compared to 3,876 cases in urban areas. The victims are mostly Pupils/Students during holidays, dependants in homes, and destitute on the streets. Occurrences are mostly through enticements and tricks.

This study had a critical analysis of the practices that led to this increased number of defilement cases in Uganda especially in urban areas like Kampala. It also clearly noted that not all the cases are reported to authorities showing that the challenge might be much higher than currently reported/ shown in the reports.

According to the law in Uganda[11], Defilement is a criminal offence; it is stated that:

1) Any person, who performs a sexual act with another person who is below the age of Eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.

3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court liable to suffer death.

This is further explained that the circumstances referred to in subsection (3) of the Penal code Act are as follows-

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

(b) Where the offender is infected with the Human Immunodeficiency Virus (HIV);

(c) Where the offender is a parent or guardian of or a person in authority over, the person whom the offence is committed;

[11] Section 129 of the Penal Code Act. Government of Uganda

(d) Where the victim of the offence is a person with disability; or

(e) Where the offender is a serial offender.

There is also provision for compensation to victims of defilement; Section 129B of the

Penal Code Act states that:

"(1) Where a person is convicted of defilement or aggravated defilement[12], 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 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 the medical and other expenses incurred by the victim as a result of the offence."

Despite the fact that the law has criminalized sexual contact with minors, and indeed it is currently a capital offence, community attitudes in some areas are less critical of this behaviour as it was historically not problematic.

Ugandan defilement law considers boys and girls below 18 years to be minors, and penalises males of any age who engage in any sexual intercourse with girls below 18 years.

CASE: Safari Innocent V Uganda[13] , the appellant was convicted of defilement of a girl under 18 years. The victim was taken for medical examination and the doctor estimated her age to be between 13 and 14years. The accused appealed against conviction on the following grounds:

- The prosecution failed to prove that the complainant was under 18years.
- It was not shown that it was the applicant who defiled the complainant.

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[12] ibid

[13] Criminal Appeal No.2/95 Supreme Court.

The Supreme Court held inter alia that:

The complainant's own evidence, the evidence of her father and the medical evidence left no doubt that she was under the age of 18years at the material time. The essential by the doctor was that the complainant appeared to be 13 and 14years did not weaken the prosecution evidence in that regard. Her father's evidence was that she was 15years when she was defiled must be correct...even if she was 13 or 14 as the doctor estimated, she was still under 18years old nonetheless and, therefore, under 18years for purpose of the purposes of the offence of defilement under section 123(1).

Conclusion: in a charge of defilement the prosecution's duty is to prove that the victim was less than 18years at the time of sexual intercourse. It needs not to prove the exact age of the victim.

The Ugandan legal system has a huge back-log of 'defilement' cases. Most cases are resolved out of court through payment to the girl's family. Boys whose families are unwilling or unable to pay may spend long periods in prison. 'Defilement' is usually detected when girls become pregnant[14] and the usual response is either a hastily-arranged marriage or the payment of a fee for 'spoiling' the girl and blighting her marriage prospects. As boys who are unable or unwilling to pay either the dowry or the fee may be ostracised, assaulted or even murdered, they often see little alternative but to leave the settlement. Although parents often bring their daughters back home when boys depart, some girls remain with in-laws who often mistreat them or blame them for their son's imprisonment or flight. Even those who return to their parents are often looked down upon and subjected to abuse.

In Nakholi V Republic (1967)[15] it was held that consent to sexual intercourse affords no defence to a man on a charge of carnal knowledge of a girl under the age of consent.

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[14] Noah Gottschalk. Uganda: early marriage as a form of sexual violence.

15 East Africa 337 Court of Appeal.

In Uganda V Rurahukayo John[16] cited with approval approval the case of Uganda V Enoch Bampabura[17] where it was held that "it was no defence to a charge of defilement that the victim was of marriageable age or that she consented".

Further cited with approval was Uganda V Joseph Mulindwa (1975)[18] wherein it was inter alia held: "consent is irrelevant in cases of defilement.... (an underage girl) is presumed to be incapable of consenting to sexual intercourse.

In most instances girls a defiled by people they trust and respect a Catholic priest[19] attached to Aripea Catholic Parish, in Arua Diocese was in police custody in Arua central police station for allegedly defiling and impregnating a 16 year old girl.

According to Byaruhanga, the girl who is a senior three student confessed that she was defiled by the priest several times under the pretext of supporting her in school. Byaruhanga explains that medical examinations carried out showed that the girl is five months pregnant. The DPC noted that according to the victim, on several occasions when the priest asked her to dress his bed, he ended up having sex with her.

Father Etrima recorded a statement at the police that denies the allegations saying this was meant to tarnish his image. According to him he has been helping to pay the girl's school fees but her parents just changed their mind and decided to accuse him of defiling her. These are circumstances that have aggravated defilement because it happens in areas, situations where no one can suspect and is only noticed when it escalates.

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[16] Criminal case Session Case 260/97 High Court

[17] Criminal Session Case No.135/92.

[18] High Court Bulletine 206

[19] http://ugandaradionetwork.com/a/story.php?s=40882#ixzz1wzhPwxgN accessed on 5/6/2012 at 09pm.

The Uganda police crimes report of 2011revealed that, as aired on NTV news at nine o'clock reported that defilement was the second highest committed crime in Uganda in the year 2011[20]. This showed that the vice is increasing in Uganda.

2.2 Existing Laws in relation to defilement

In a report to the United Nations Committee on the Rights of the Child, the government of Uganda estimated that Uganda is home to about 10,000 street children and 85% of these are homeless[21]. Another study revealed that [22]by Kids in Need, an NGO that rehabilitates street children indicates that over 20,000 street children are living in urban centres and cities of Uganda. 1,000 are estimated to be living on the streets full- time. Kampala, the capital city has the highest number followed by Mbale, Masaka, Mbarara and Kabale. Majority of these are boys with a ratio of 7 boys to 3 girls.

2.2.1The Constitution of Uganda (1995)

The Constitution, as supreme law in Uganda, defines the social norms for the care and protection of children and supersedes all traditional practices which are in conflict with the rights of the child.

Chapter 4 of the Constitution guarantees human rights and freedoms and article 34 specifies children's rights. Children's Statute, 1996 specifically addresses the issues of child care and protection.

The Constitutional provisions state age of marriage as eighteen years and above. Section 129 penalizes defilement of persons under the age of eighteen years of age and section 129B provides for payment of compensation to victims of defilement.

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[20] NTV news at 9pm,30th/may/2012

[21] MGLSD 2006.

[22] Kasirye Rogers Lugolobi, 2002.

The essential ingredients for a successful prosecution for defilement have been defined by various court rulings. In Agaya Robert V Uganda [23] , it is well stated that in order to constitute the offence of defilement, the following must be provided:

- Sexual intercourse
- Victim's age below 18years
- The accused is the culprit.

CASE: Uganda V Mugoya Wilson[24], the accused was charged with defilement of two girls under the age of 18years.

He pleaded not guilty to both counts. Held Inter alia on the matter of the burden of proof:

It is the law that an accused should never be called upon to prove his innocence. It is also trite law that an accused person should be convicted on the strength of the case established by the prosecution but not on the weakness of his defence.

Men and women of the age of 18years and above have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and as its dissolution[25]. The essence of the law on defilement is the need to protect young girls from early sexual activity. Proof that the girl is under the age of 18years is thus essential for conviction of defilement.

It is unfortunate to note that research results revealed that defilement cases still do happen in Uganda today at an increasing rate despite the fact that laws are clearly stipulated in law books and enforced by the law enforcement agencies. This study found out the reasons/ contributing factors, conditions that have led to increased occurrence of the vice in society include among others poverty, the urban lifestyle, media and technology but still as stated by the law sex with a

[23] Criminal Appeal NO.18/2000, Court of Appeal.

[24] Criminal Session Case No.170/93 High Court, Republic of Uganda

[25] The constitution of Republic of Uganda, Article 31(1).

girl below 18years whether the girl consents or not amounts to defilement a crime that is punishable under the law.

2.2.2 Children's Act (2004)

The law is clear on the definition of a child[26] in Uganda as a person below the age of 18 years. There is some controversy over age 18 among the general populace which needs to be resolved through sensitisation and education programmes for adults and children. There is need to establish a norm of care and protection of all children.

CASE: Tumuhairwe Vincent v Uganda[27] the court of Appeal held inter alia that the fact that an accused did not know the victim in a defilement case was under 18years of age is no defence. There is no need to prove the exact age of a victim.

In Uganda v Lwasa Sempijja[28] it was held that in defilement the prosecution need not to prove the exact age of the victim rather it must be proved that the girl was of the time of intercourse under the age of 18years.

Girls, in particular, are forced to assume adult roles prematurely. The government of Uganda enacted the principal law[29] that deals with children's affairs and their protection under the law. The Children's Statute is a milestone in child care and protection because it makes both care and protection legally enforceable.

The law enforcement officers have tried to punish the culprits as the law states as reported, Justice Yassin Nyanzi[30], the high judge of Arua convicted and sentenced David Okello 28 years

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[26] The Constitution of the Republic of Uganda (1995).

[27] Criminal Appeal No. 29/27 Court of Appeal

[28] Criminal Session Case No. 381/96

[29] The Government of Uganda, the Children's Act (2004).

[30] http://ugandaradionetwork.com/a/story.php?s=41009#ixzz1wzgE26eM. Accessed on 5/6/2012 at 11pm.

to 20 years imprisonment for defiling eight year old minor. Justice Nyanzi says defilement has become rampant, and sentencing such offenders to serious punishment would bar others from committing the same offence.

2.3 Factors and practices that aggravate defilement

Children in all situations are prone to sexual abuse. Both boys and girls can be sexually abused. However certain categories of children are especially at risk including the following: Orphans, child domestic workers, children living in slums, disabled children[31], children on streets, children in conflict areas, child headed households and children living with stepparents among others.

In a report by Action for Development (Acfode)[32], blamed the increase in defilement cases in the country on high levels of poverty. It was further revealed that, boda boda cyclists, taxi drivers and video hall operators exploit the situation to defile st

Children in all situations are prone to sexual abuse[33]. Both boys and girls can be sexually abused. However certain categories of children are especially at risk including the following: Orphans, child domestic workers, children living in slums, disabled children, children on streets, children in conflict areas, child headed households and children living with stepparents among others.

Literature reveals that, "Defilement commercialized[34]" which left many child rights actors mystified with the way unscrupulous people can turn a social evil into a business opportunity. The Police spokesperson was quoted as saying "Somebody can report a case to police and obtain Form 3. Once this form is obtained, he or she takes it and waves it to the possible suspect, that if

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[31] December 2008, Joshua Lubandi

[32] The Daily Monitor 26th August (2005) Page 8

[33] Joshua Lubandi, (December 2008), Africa Cinema and Culture.

[34] The Daily Monitor 27th June (2007).page 6

he doesn't part with a cow, for example, he may end up in police. The possible suspect may decide to settle for that. By the time police arrives, everyone has lost interest in the matter.

It was revealed that an estimated two million children are enslaved in the global commercial sex trade. Many of these children are either sold into prostitution to pay off family debts or forcibly recruited on the street to work in brothels, where they are required to have sex with as many as 30 men each day. Some prostituted children are just 5 years old. Often, child sex tourists travel from a richer country to one that is less developed, or they may be travellers within their own countries or region. Some child sex tourists (preferential abusers and pedophiles) target children specifically, but most do not usually have a sexual preference for children; they are situational abusers who unscrupulously take advantage of a situation in which children are made available to them[35] .This showed that poverty is among the factors that cause children engagement in sex to cater for family debts as revealed in the study chapter four gives a narrative of the issues that respondents think are the factors/ causes of increased levels of defilement in Uganda today.

Majority children on the streets[36] in Kampala are used by dishonest adults to get money from the passers-by. These shameless adults are usually the children's parents or relatives who sacrifice their own blood in exchange for money. They wake up very early in the morning to look for strategic areas where they can position babies to beg. The children are exposed to all forms of health problems including catching cough, malnutrition, and jigger infestation among others. The children are at a risk of being knocked by cars and vulgarly abused by the commuters. They suffer emotional stress and physical injuries in order to feed their "parents" who should be the ones to provide for the children. Female street children face particular problems. They are trafficked, exploited, sexually abused and latter disposed off when they have outlived their usefulness.

35 ECPAT International (2008), Combating Child Sex Tourism: Questions & Answers

36 ANPPCAN Uganda Chapter (2007).

Uganda has up to date accommodated traditions and customary practices[37] that are child unfriendly. As much as culture is important and needs to be preserved, there are certain negative customary practices that provide a platform for child sexual abuse. Inhuman cultural practices such as female genital mutilation, harmful circumcision rituals, early marriages and bride price are common in many districts of Eastern Uganda. Despite the fact that the constitution nulls all customary practices that conflict with the provisions it provisions, such customs are still practiced and the perpetuators are often left to go scot-free.

Literature revealed that, the most common form of pornographic acts among children is watching[38] blue movies (51%) followed by watching nude photographs. The study further concludes that children engage in pornography for their own entertainment rather than commercial gain. 64% of the children who were engaged in prostitution also watch blue movies. Pornography affects the moral development of children and exposing children to it is an offence.

According to laws in Uganda any person dealing in obscene publications and pornographic materials creates an offence[39]. It states: "Any person who for purposes of trade, distribution, public exhibition, makes, produces or has in his possession obscene writings, drawings, prints, paints, printed matter, pictures, posters, emblems, photographs, cinematography films, or any other objects tending to corrupt tending to corrupt morals is guilty of a misdemeanour."

Child marriages 40are an example of a cultural practice that was appropriate in earlier societies but is less functional today. The lag between the circumstances and the attitudes is seen in the problem of defilement in Uganda. The law has criminalized sexual contact with minors, and indeed it is currently a capital offence, while community attitudes in some areas are less critical of this behaviour as it was historically not problematic. Uganda is in a transition point on this

37 Dan Church Aid/ANPPCAN 2008

38 ILO/IPEC and MoGLSD (2004)

39 Section 161(1) of the Penal Code Act

40 M. Kane et al. A conference Paper, Arusha Conference, "New Frontiers of Social Policy" – December 12-15, 2005.

issue. The solution may be to work with communities to show the harm done by this practice while at the same time re- visiting the law in order to make it less punitive so that communities will be more likely to convict offenders.

It was revealed by Ultimate media sexual harassment by male teachers has been identified as one of the main reasons why girls in many African countries find it hard to remain in school[41].

It was estimated that about 7,000 to 12,000 children are involved in prostitution in Uganda. Another study conducted[42] in 2000 indicated that over 500 children were affected by prostitution in Kwame Division of Kampala District. Sixty two (62%) of the child prostitutes are also involved in drug use (ILO/ IPEC, MoGLSD, 2004).

The 1995 Constitution of the Republic of Uganda as well as the Information Act 2006 clearly acknowledge the media as a key partner in creating awareness on human as well as children's rights. This can be done through news bulletins, feature stories, documentaries and paid for advertisements among others.

[41] Arise Issue No.36, July 2004 page 4.

[42] Youth Development Link (UYDEL) supported by ILO/IPEC

CHAPTER THREE: METHODOLOGY

3.1 Introduction

In any research, methodology is the lifeline of a good research. Research methodology shows clear and workable methods that were followed, how data was collected, analysed and compiled into a meaningful report. In this chapter the researcher describes the research methodology that was used.

3.2 Research Design

The researcher used a descriptive design to get in-depth information about the topic to critically analyse the laws about defilement and practice in Uganda. Stratified random sampling was used. The respondents were grouped into three categories that is the; law makers, the police and parents; each category makes a sub group. In each sub group, random sampling of ten (10) respondents was done for easy representation of all sample categories to make an overall total of 30 respondents selected.

3.3 Data collection

The researcher used a questionnaire as a major tool for data collection. A questionnaire was formulated and designed in a structured self administered questionnaire fashion. Additional data was also collected through review of events as they were reported in the newspapers, internet, text books, newspapers, journals, law books regarding the topic understudy during the study period. This research tool was preferred because it is essential and enabled the study to come up with facts, figures, opinions and detailed information.

3.3.1 Research Questionnaire

A simple and easy to understand questionnaire was prepared in advance containing structured questions that were put together for all categories law makers, police and parents before going for data collection. This guided the researcher and also ensured that time was effectively used to cover the intended questions and to avoid making mistakes or forgetting to gather data about

certain vital questions. However, other tools like interviews and observation were also used but at a low level. The questionnaire was formulated following the research questions and objectives of the study for consistence and generation of relevant data.

3.4 Data analysis

All the information gathered from the field was sorted, edited, classified for analysis arranged manually according to research objectives. After transcribing, data was analyzed and converted into percentages for graphical presentation. Analyzing data collected enabled the researcher to examine, compare and contrast as well as interpret and develop meaningful conclusions basing on the aim and objectives of the study.

3.5 Sample Population, selection and size

This study intended to reach out to parents, law makers and the police officers in Kampala district. A sample size of 30 people was targeted for information gathering. Each category was represented by ten (10) people chosen randomly. Gender representation was given consideration in that half of the overall samples are women.

3.6 Data presentation

Research findings are fully presented in chapter four, results are presented in tables, Statistical charts and graphs with written explanations according to each study objective for easy understanding.

3.7 Ethical considerations

The researcher sought consent from the respondents selected to participate in the study before the questionnaires are delivered to them. Confidentiality was ensured and highly valued during the study and to avoid jeopardizing the whole process, respondents were not requested to indicate their names on the questionnaires.

CHAPTER FOUR: PRESENTATION, ANALYSIS AND DISCUSSION OF RESEARCH RESULTS.

4.0 Introduction

This chapter presents results of the study that was carried out on the topic; Defilement: a critical analysis of the law and practice in Uganda. The study respondents were selected from Kampala district from the Law makers, police and parents regardless of their professional background.

This study had one major objective which is; to critically analyze defilement law and practice in Uganda.

The two specific objectives that were derived from the major objective together formed a basis upon which data was gathered and analyzed to come –up with study results, these objectives were followed while formulating the research tools as indicated in Appendix 1.

4.1 Demographic characteristics of respondents

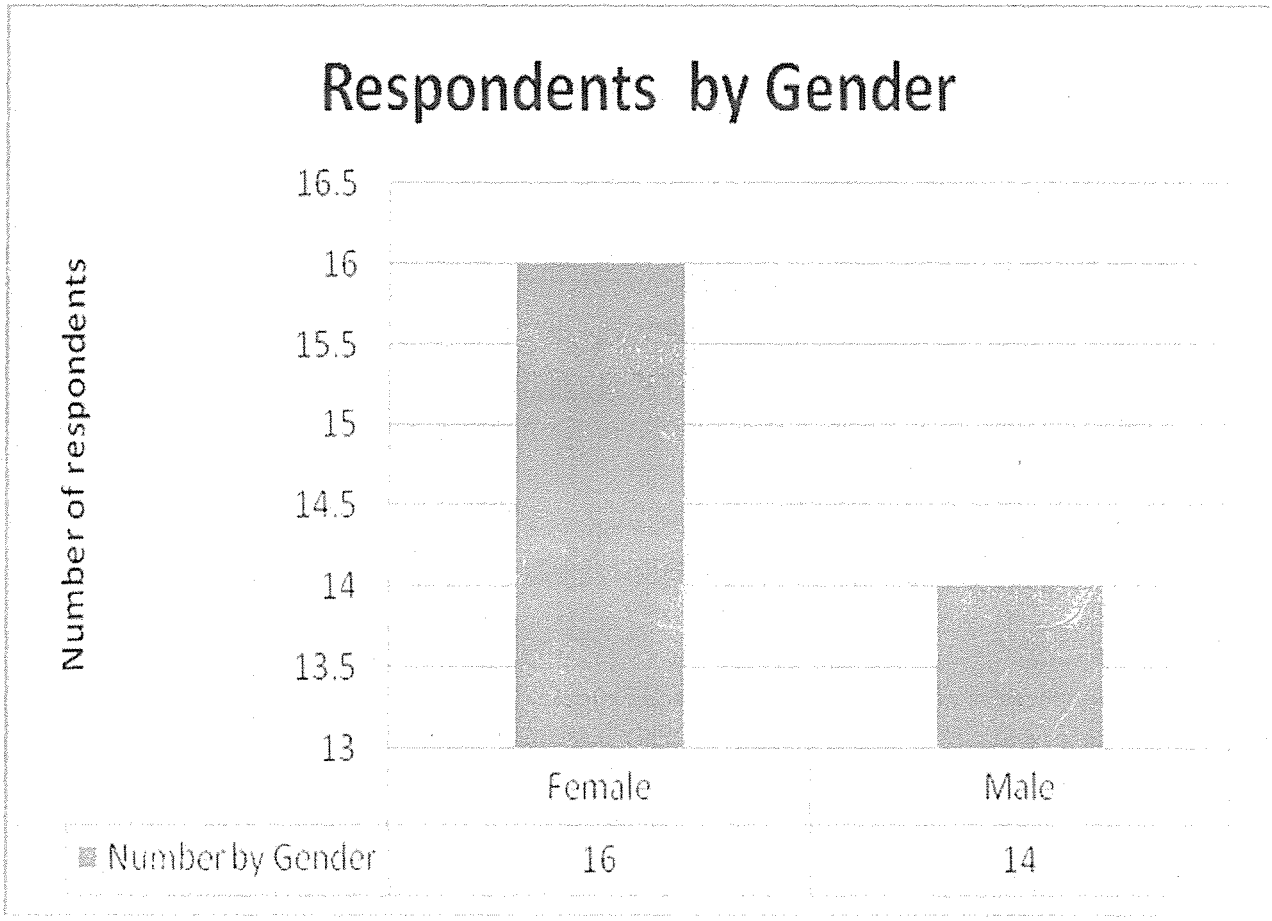
Respondents were requested to indicate their gender so that the research study can quantify how many participated by gender and also to ensure that there is gender balance in the study. The table below shows the respondents number by gender for all categories. In the study 53% of the participants were Female while 47% were Male.

TABLE 4: 1 RESPONDENTS BY GENDER

GENDER	NUMBER OF RESPONDNETS	PERCENTANGE
FEMALE	16	53%
MALE	14	47%

TOTAL	**30**	**100%**

Source: Primary data from respondents gender analysis, 2012



Source: Table 4:1 converted to graph, 2012

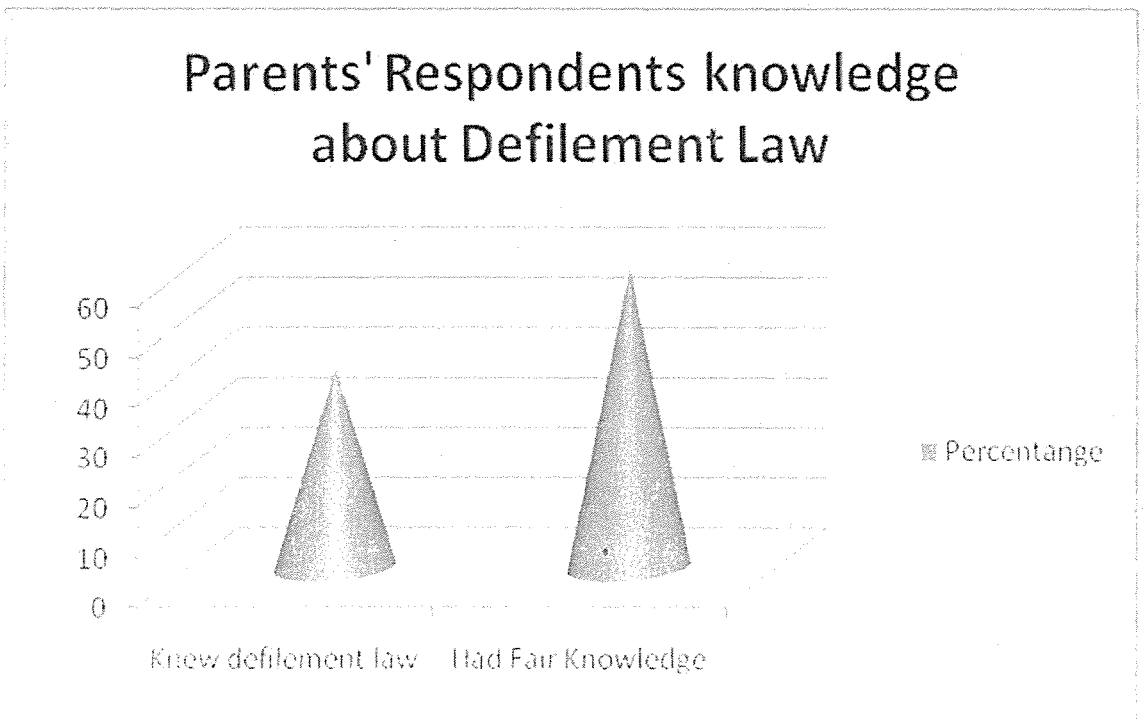
4.2 Defilement law

Among the parents who were reached only four (40%) out of ten (10) respondents knew the defilement law though sixty (60%) knew that having sex with a child below eighteen (18) years of age was against the law.

TABLE 4:2. PARENTS' RESPONDENTS KNOWLEDGE ON DEFILEMENT LAW.

KNOWLEDGE ON DEFILEMENT	PERCENTAGE (%)
Knew Contents of defilement Law	40%
Had Fair Knowledge on Defilement	60%

Source: Primary data from respondents.



Source: Table 4:2 converted to graph, 2012

The respondents further revealed that the defilement law needs to be popularised so that the general public gets to know the dangers associated with defilement and what the law states. Having the law in place is not sufficient alone to guard against defilement because the laws of Uganda are stated in English and not all Ugandans can read, understand and interpret English more especially "English law" and this causes a gap between having a law in place and the practices on the ground.

It was also revealed that there is a tendency among parents to settle defilement cases at family level by getting money from the culprit and matters end there. Respondents said this is a very bad practice in society and should be fought because it puts young girls at risk if the culprits are not fully punished by the law.

Respondents revealed that law makers should make an extra effort to teach the general public what the law states on defilement, the dangers, and penalties that befall whoever is found guilty.

4.3 Existing laws in relation to defilement.

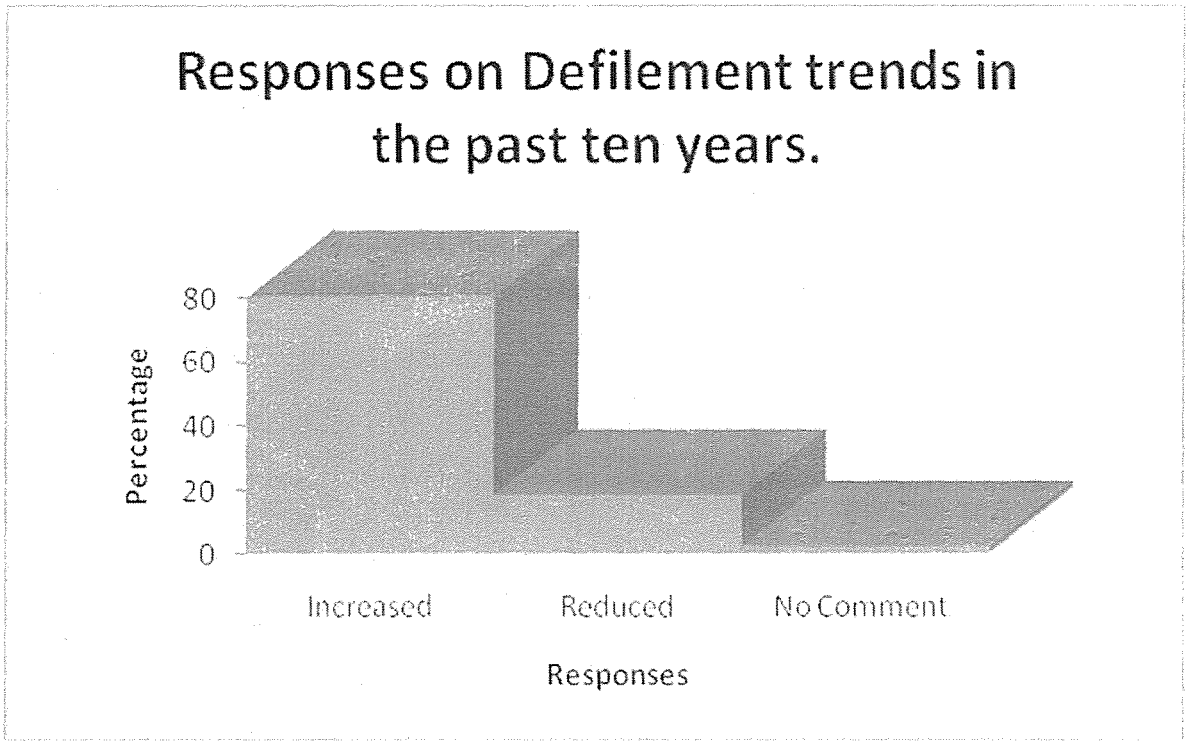
It was found out that the Republic of Uganda has a clear stipulated set of laws that guard against defilement and also criminalise defilement.

The Constitution of the Republic of Uganda (1995) the supreme law in Uganda explains the dangers of defilement as well as the penalties associated with it. However it was revealed that a bigger percentage of the citizens do not clearly understand the laws in relation to defilement in Uganda. A hundred (100%) of respondents were aware of the fact that defilement is criminalised by the law and morally wrong in Uganda.

4.4 Factors and Practices that aggravate defilement.

It was found out that defilement has increased in Uganda over the years and this carries along its negative effects such as early pregnancies, HIV/AIDS, sexually transmitted diseases, high school drop-out rate.

When respondents were asked whether in their opinion defilement has increased or reduced in the last ten years, eighty percent(80%) said that it has greatly increased while eighteen (18 %) percent said it has reduced, only two (2%) percent declined to answer the question.



Source: Primary data from the field, 2012

This shows that there is a lot that needs to be done to double the effort in the fight against defilement in Uganda.

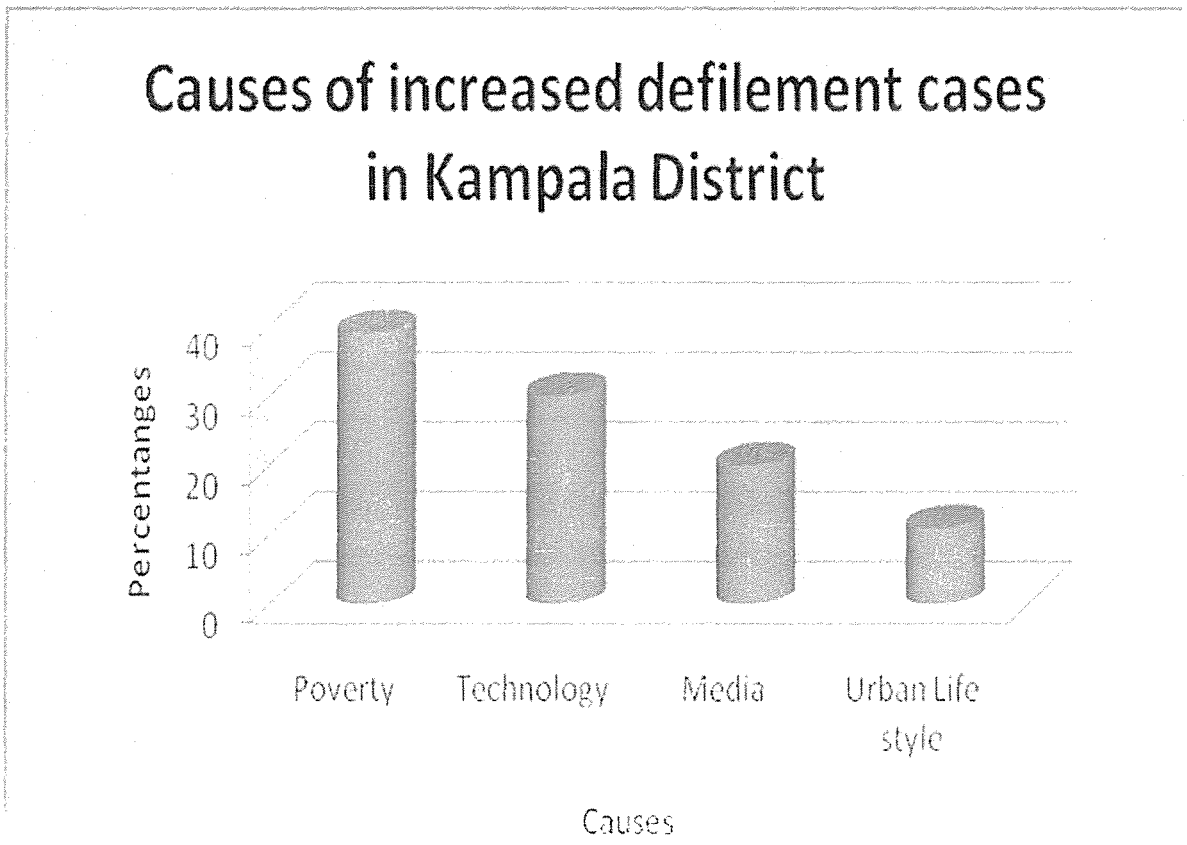
The increasing defilement cases and incidents in Uganda are majorly attributed to the following factors as revealed by respondents;

Table 4:3 CAUSES OF INCREASED DEFILEMENT CASES IN KAMPALA DISTRICT.

RESPONSE(S)	PERCENTAGE (%)
Poverty	39

Technology	30
Media	20
Urban Life style	11
Total	**100**

Source: primary data from field.



Source : Table 4.3 converted into a graph, 2012

The respondents came up with four major causes of increased defilement cases in Kampala and these were Poverty (39%), technology (30 %), Media (20 %), urban life style (11%).

Poverty: It came out clearly that Poverty is one of the leading causes of increased defilement cases in Uganda and most especially in Kampala district.

It was revealed that girls from poor families are prone to defilement especially by working class men who have money to spend on them, to pay for outings and in turn the girls pay with sex. These older boys/ men exploit girls with small favours and girls unknowingly end up being defiled.

Some of the young girls have bad groups who introduce them to expensive life style, buying expensive clothes, jeans, jewellery which their parents/ guardians can't afford and they end up taking on any offer that comes without looking at the future negative effects.

Technology: In Kampala today, having a mobile phone is regarded as number one essential. Old men have taken this as an advantage to win girls and defile them. They buy for girls expensive phones that have internet, watch films, music so that they keep in-touch with them without any other persons' knowledge and in the end girls give in to sex because they can't afford to say no to a generous man like that after all they see no effect with having sex.

Media: The liberalisation of the media and communications industry has lead to increased number of television stations, radio stations, newspapers most of which publish articles, show segments on air that cause young people to want to try out what they see which are in most cases portrayed as good, trendy, up to date. It was revealed that the increased number of televised films, soaps have made young children to start engaging in relationships as early as eight years of age in the guise of boy friend , girl friend. Others have learnt that having cross generation sex is a trendy lifestyle and these commonly referred to as a "sugar daddy" or "sugar mummy" and use it as a way of fulfilling their needs because they have a lot of money to spend. Such behaviours a copied in movies watched and portray a modern image as the way to go.

Urban Lifestyle: Urban life has a lot of temptations ranging from food, life style, exposure that all require money to spend. Where parents don't have enough money to meet all these needs in most cases young girls go out to look for them or are initiated into the system by their peers. Despite the presence of the defilement law in Uganda that should be adhered to, there is still a lot to be done to make sure that defilement is reduced and finally eradicated.

4.5 Discussion of Results

4.5.1 Existing laws in relation to defilement.

The Republic of Uganda has laid out laws on defilement and related crimes as portrayed in the Constitution (1995) that fully defines a child as any one below the age of 18years and further talks about defilement as an offence. The Constitutional provisions state age of marriage as eighteen years and above. The Penal Code Act, Section 129 penalizes defilement of persons under the age of eighteen years of age and section 129B provides for payment of compensation to victims of defilement. The respondents showed knowledge about defilement as stated by law. This shows that at least there is understanding of defilement as the law puts it though this has not led to end of practicing the vice in society.

There is need to increase information flow especially among those that do not know how to read English so that they also get to know what the law provisions are , this is expected to reduce the incidence of defilement cases in Uganda and more especially in Kampala district.

The government should come up with popular versions specifying what the defilement law states in easy to understand simplified versions.

4.5.2 Defilement law

The defilement law is not as popular among the public as revealed by responses that were got though it was revealed that all respondents were aware of the fact that defilement is criminalized according to the law and anybody who has sex with a child below 18years of age commits an offence.

Results revealed that defilement has increased in the past ten years which was showed by eighty percent(80%) who said that defilement has greatly increased while eighteen (18 %) percent said it has reduced, only two (2%) percent declined to answer the question. This can be compared with statistics in the police report that revealed that in 2007, defilement cases that were reported were 12,230 compared to 15,385 in 2006 indicating a decrease by 21%. 8,354 of the Defilement cases were reported in the rural areas, compared to 3,876 cases in urban areas. This therefore shows that defilement happens in society and needs intervention not just by

establishing the law but also going further to make sure that the practice is highly prohibited through law enforcement.

4.5.3 Factors and Practices that aggravate defilement.

Defilement continues to happen in urban areas and the factors that have continued to promote its occurrence discussed in chapter four(4.3) and the most outstanding factors are; poverty, urban lifestyle, technology, media which have in most cases put children at a risk of being defiled.

In society, Children a vulnerable and practices like opting to settle defilement cases locally at home without involving the law puts children at a greater risk of being defiled again and again especially by the rich who can pay for their way out, give poor parents money so that they keep quiet about it.

Literature reviewed also showed that poverty is to blame, In a report by Action for Development (Acfode) reported in the Daily Monitor 26th August 2005, blamed the increase in defilement cases in the country on high level of poverty and this has given "boda boda" cyclists, taxi drivers and video hall operators opportunity to exploit the situation to defile students.

Therefore, government needs to look beyond just having defilement law in place but also work towards eradicating the aggravating factors so that the vice is attached both ways.

4.6 Other findings

4.6.1 What should be done to reduce defilement

Respondents revealed that there are so many ways that the vice should be fought and this shouldn't entire be left to government or law makers, it should be every citizens responsibility.

It was revealed that parents should teach their children the dangers of early sex, avoiding bad groups in schools and communities.

The government should put regulatory measures on social media to avoid exposing the young generation to pornography.

CHAPTER FIVE: RESULTS SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.

5.1 Summary

Results of the study revealed that Uganda has laws in place that criminalise defilement however the citizens practices have over the years led to increased cases of defilement cases in Uganda and Kampala in particular because having a good law that is not translated into good practice or even guard the children against defilement is a very big waste.

The big percentage as shown in the fourth chapter of this dissertation showed that poverty, urban life style and technology are the major causes of the increased cases of defilement in Kampala district.

5.2 General Conclusion

The study results revealed that defilement is still a very big challenge in Kampala district and has led to high school dropout, early pregnancies and spread of diseases especially sexually transmitted diseases which are all harmful to children.

Therefore, the government together with all the other stake holders including parents have a very big role to play if defilement is to be reduced in Kampala. This calls for increased public sensitization about the defilement law as well as the practices that should be stopped due to their negative contribution towards increasing defilement in Uganda, so that the lives of the children are protected.

5.3 Recommendations

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

5.3.1 Existing laws on defilement

1. The Republic of Uganda has a wide range of laws that guard against defilement therefore there is need to make them popular among the citizens so that defilement is reduced in society.

2. The media and civil society need to prioritize children issues that are geared towards focusing more on child protection.

5.3.2 Defilement Law

1. The law enforcement authorities should make sure that the law takes its course especially those that are brought to court should make sure that the right procedure is followed as stated in the law.

2. There is need to reform the current defilement laws especially making them align properly with the marriage laws and the Constitution of Uganda.

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

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

5.3 Factors that aggravate defilement

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

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

3. The government should work out sustainable measures to put an end to the problem of influx of street children in Kampala district.

5.4 Areas of further study.

There is a need to study this topic on a larger scale increase the scope and representative sample, by studying different districts both urban and rural which is likely to bring in a wide range of ideas based on different perspectives.

1. It would be very interesting to study the reasons as to why some defilement cases are not report to authorities for legal action and what can be done to really encourage them to report such cases.
2. Further studies should be done on measures that should be used to curb down defilement in Uganda.

This is the last chapter of this dissertation, gives a conclusion as well as recommendations and areas of further study. The study answered all the research questions and the specific objectives stated in chapter one were attained.

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Appendix 1: QUESTIONNARE

RESEARCH TOPIC: DEFILEMENT: A CRITICAL ANALYSIS OF THE LAW AND PRACTICE IN UGANDA.

1. Sex : Male ---------- Female ----------

2. Occupation*(choose one applicable)* : Lawyer/Law maker----------Police Officer---------Parent----------*Others specify* ----------

3. Are you aware of the laws on defilement in Uganda?

   Yes----------No ----------

4. What is stated in the law about defilement? ----------

   ----

5. Do you think that the defilement law is sufficient enough to guard against defilement in Uganda? Yes--No --How/why do you think so? ----------

   ----

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

   ----

7. With a critical look at the Uganda laws in general which one do you think can / should be enforced to reduce defilement cases in Uganda? ----------

   ---------- And why? ----------

   ----

8. Do you think defilement has increased or reduced in the last ten years?

   Increased.....Decreased.....

9. What do you think are the reasons/ causes of increased cases of defilement in Uganda today?

i. _____

ii. _____

iii. _____

10. What do you think the following should do to reduce defilement in Uganda?

a) Parents:

_____

_____

b) Government:

_____

_____

c) Police:

_____

_____

d) Children:

_____

_____

e) Media:

_____

_____

11. What practices in Uganda do you think have contributed towards increased defilement cases in Uganda? _____

_____

12. What do you think should be done to reduce negative effects of these practices?

_____

_____

_____

Thank you. Be assured of confidentiality.

