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Defilement and the Ugandan Criminal Justice System

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ABSTRACT

Defilement stands out from the obstacles suffered by the Uganda's children. Defilement, a sexual offence, that involves having canal knowledge with a kid under the age of majority, regardless of sex, poses a societal hazard and hindrance. Despite the provisions of the criminal law in Uganda, official statistics on defilement continue to be climbing yearly. This anomaly has taken many legislators aback and made them confused on how to approach it. This confusion necessitated the present study that thoroughly examined defilement and the Ugandan criminal justice system. The study secondarily sourced its data from textbooks, policy briefs, newspaper publications, journal articles, technological blogs, court decisions and statutory provisions. The study recommends constant awareness on defilement risks to be raised by the government. This is because lack of legal awareness makes destruction of evidence by the victims who rush to bathe after being defiled. In certain cases, the victim shields the abuser from police. Additionally, there should be enhancing record keeping to help victims prove defilement components like age. Due to lack of birth certificates for some children, which makes it hard to determine the victim's age, the need for medical personnel to be informed of defilement cases so they can assist in prosecution, and the need to train law enforcement agents on how to handle defilement cases, record keeping should be improved. More so, there need for increase in the number of remand homes for child offenders. This is crucial given Uganda's high child-to-child sex rate. Child perpetrators need remand centres, and more remand houses should be established to accommodate the vulnerable state of defiled victims.

Keywords: Child perpetrators, Criminal justice system, Defilement, Offenders, Remand centres.

INTRODUCTION

Many children are defiled and raped by people in all spheres of life, including biological fathers, step fathers, relatives, friends, religious leaders, care givers, and strangers [1]. However, the criminal justice system has been compromised to enforce laws against defilement [2]. According to the African Charter for Prevention and Protection Against kid Abuse and Neglect [3], defilement is exposing a kid under 18 to sexual content or using them for sexual arousal and gratification. Carnal evidence of sexual contact must show that the person's penis penetrated the complainants' victims, even marginally. Medical reports showing blood, sperms, or bruising on the vaginal walls and margins may also be admissible. Youngster sexual abuse refers to sexual activity that a youngster does not completely understand, cannot consent to, is not developmentally ready for, or violates laws or social taboos. It adds that child sexual abuse is an act between a child and an adult or other child in a position of responsibility, trust, or power to satisfy the other person's sexual demands [4]. The report also outlines other conceived acts of child abuse, such as inducing or coercing a child to engage in illegal sexual activity, using a child to practice prostitution or other indecent practices, and using a child to view pornographic materials and performances [3]. Child sexual abuse encompasses various sexual behaviours between children and adults [5]. This sexual behaviour is meant to erotically abuse the older person without considering the child's reactions or effects. It includes indecent groping, penetration, sexual torture, and indecent exposure, frequently utilising explicit sexual language and exposing young stars pornographic materials. [6], observed that absolute poverty among many Ugandan families waters the ground for high rate of defilement being experienced in the country. Instructively, Article 34 of the 1995 Ugandan Constitution [7] grants children rights, and section 129(1) of the Penal Code Act [8] makes it a crime to have sex with children, punishable by life imprisonment. These laws protect children against defilement and other sexual abuses. Additionally, effective and efficient justice delivery is the main purpose of any criminal justice system. Uganda's judicial system centres on law enforcement, adjudication (courts), and corrections. Unfortunately, due to a weakened criminal justice system, Uganda's defilement statute has not reduced cases of defilement in the country. Defilers bribe police not to pursue defilement cases. This situation necessitated the present study that examines defilement and the Ugandan criminal justice system.

History of sexual defilement

Uganda has had defilement and other sexual offences since colonial times. [9] claims that before colonisation, each Ugandan village had rules or conventions that members followed for stability. These rules were rigorously based on gender, age, and status. In certain tribes, a girl was not allowed to have pre-marital sex, while in others, a man had to abduct and have sexual relations with her before marrying her. According to [10], effective techniques of redressing norms ranged from basic to violent, and public opinion was a key factor that drove people to follow community rules through positive punishments. Extreme measures were taken, such as throwing a girl with pre-marital intercourse into a river or causing a guy who raped or had sex with a young girl to lose his organ through castration or crushing. Other times, a guy must marry the girl or compensate her parents.

After Uganda became a British colony, English law was introduced [11]. On August 11, 1902, court jurisdiction was to be implemented according to English Common Law, equity, and general statutes. They have to be applied according to the powers granted by the English court procedures and practices. The 1902 order-in council authorised native courts of customary law to administer alongside colonial laws and empowered colonial authorities to implement subsidiary legislation approved by the local parliament. The native courts were disbanded, and now ordinary courts hear customary cases [12]. The Judicature Act [13] authorises the High Court and Magistrate Courts to administer Customary law if it does not violate natural justice, equity, or good conscience or conflict with any written law in Uganda. The 1995 Constitution [7] also allows non-repugnant customs that violate women's modesty.

The 1967 Constitution [14] prohibited the conviction of a person for a criminal offence unless the charge and penalty were established in the written law to avoid legal ambiguity about whether customs noncompliance is a crime. Unwritten criminal laws of rape, defilement, development, kidnapping, adultery, incest, and all other sexual offences were eliminated by this ordinance. In Uganda, the Penal Code Act [8] covers most sexual offences, including defilement, as of August 15, 2007. This Penal Code Act expanded the concept of defilement to include simple and aggravated defilement, a traditional provision for court application, and statutory aggravated defilement. This inclusion in the definition of defilement introduced a new term—"sexual act," which gave a new perspective on how defilement was initially understood [15]. Before the amendment, defilement was the act of having sexual intercourse with a girl under 18. After the amendment, defilement was referred to as performing a sexual act on another [16]. The term 'sexual act' was expanded to include other sexual acts.

The concept of Defilement of children

Defilement involves exposing children under 18 to sexual content or using them for sexual arousal and gratification. Carnal evidence that the person's penis penetrated the complainant's vagina proves sexual intercourse [17]. Medical reports proving physical evidence like blood, sperms, or bruising on the vaginal walls and margins may also be accepted [18]. Defilement is child sexual abuse. Mathews and Collin-Vezina [4] defines child sexual abuse as sexual activity that a child does not fully understand, cannot give informed consent to, is not developmentally ready for, or violates laws or social taboos. They added that child sexual abuse is an act between a child and an adult or other child in a position of responsibility, trust, or power to satisfy the other person's sexual demands. The study outlines other forms of child sexual abuse, such as coercing a child into legal sexual activity, exploiting a child for indecent practices, and exposing the child to pornographic content. Srivastava et al [19] defined child sexual abuse as the involvement of dependent, developmentally immature children and adolescents in sexual acts they do not completely understand, cannot consent to, or breach family responsibilities. For Hunt et al [20], child sexual abuse is a wide spectrum of sexual behaviours between children and adult people. This sexual behaviour is intended to erotically abuse the older person without considering the child's feelings or choices or the behavior's ramifications. It includes indecent groping, penetration, sexual torture, and indecent exposure, frequently utilising explicit sexual language and exposing youngsters pornographic materials.

Children are sexually molested by foster parents, sitters, relatives, or friends if not by their parents or cohabit. Abusers come from all walks of life. Lack of economic power and work possibilities often facilitates young child sexual exploitation. Sugar daddies exploit poor youngsters by offering financial assistance in exchange for sex. A 2002 World Bank-funded survey found that 4% of Ugandan upper primary school students were violated by their teachers in the past year. That meant 43,000 girls in primary five and seven, aged 10–15, were sexually molested by their guardians [21]. The official aim of law defilement is to protect children and youth from sexual abuse, in actual practice, the law is also being misused to sanction and control youth sexuality.

A Kenyan survey found that 50% of children receive money, jewelry, and clothes when they first had sex [22]. Young children often report compelled sexual experiences. In South Africa, 30% of youngsters report having their first sexual encounter coerced, and in rural Malawi, 55% of adolescent children report being forced to have sex. The fear of societal stigma prevents young females from reporting sexual abuse [23]. A Zimbabwean rapist may settle out of court by paying the girl's father or pride price relatives. A rural South African survey indicated that 51% of children aged 6 months to 5 years undergoing medical treatment for sexual abuse were assaulted by a

neighbour, acquaintance, friend, or stranger. Zimbabwean study indicated that half of reported rape incidents involve girls under 15 and that male relatives, neighbours, and school teachers are most likely to assault females[24].

Police report found 15.8% defilement. In 2013, a survey demonstrates that most parents and guardians neglect legal proceedings and deal with defilement suspects for pecuniary gains. To make matters worse, these parents and guardians accept bribes and collude with the offenders to change the child's age to skew justice. The report showed some of the defilement causes police handled that year[25]. On November 30, 2013, Mr. Bernhard Glaser Berry, a German national and owner of Ssesse Humanitarian Service, took custody of 21 girls ages 10-17 and sexually abused them. The victims were rescued and inspected by police. Fourteen victims had family planning implants[26].

In Kampala, a Chinese national, Yang Chengyun, was prosecuted with both aggravated and simple defilement in the same year. Orlando, his co-accused, trafficked female victims within the age range of 9-13years. The females were used for sexual exploitation and paid 20,000–100,000. Chengyun disappeared after being granted bail on July 12, 2013. An arrest warrant was issued[27].

Musiimenta reports an increase in rape and defilement against women in the past five years due to domestic violence. They said police statistics indicated 120,707 under-18 girls were defiled in Uganda in the last five years[28]. The researcher also observed that the police study indicated 14,973 defilement instances in 2010 and a rise since then.

It is equally observed that the police had negotiated defilement cases out of court which makes punishment difficult against the perpetrators. Some of the offenders escape arrest because police play double standards with defilement. The story states a 16-year-old girl in Nyararura that was defiled by her teacher, but her family had to negotiate with the perpetrator. In Kaalwanga Parish, Nebbi sub-country, a cultural leader raped a crippled girl, but discussions failed owing to pressure from the District's union for disadvantaged women[29]. Uganda Law Reform Commission[30] research found that broken marriages leave children stranded and unsupported. Children that are mistreated by step parents typically run away and become prostitutes or child labourers. Street children and orphans without care are more likely to be sexually exploited. Sometimes parents exploit their children to make money or pay off debts, as in Uganda especially in Ugandan slums. Cultural taboos against reporting defilement violations make assessment increasingly harder. Most African communities rely on children and females for money, cows, and other goods. Since the majority of bride price belongs to the girl's parents, they marry their young daughters to old men who defile them to earn monetary wealth. Defilement existed in traditional Africa, although like Buganda, girl virginity was valued. A man who defiled a girl before she married was fined a goat, one cow, and two backcloths to give to her father[6]. Uganda and Africa generally avoided discussing sex issues in public. Family relations gave and passed sex education to the girl child when she was ready for marriage[32].

CONCLUSION

Defilement causes high school dropout, early pregnancies, and sexually transmitted diseases. Hence, the study recommends for awareness on defilement risks to be raised by the government. This is because lack of legal awareness makes destruction of evidence by the victims who rush to bathe after being defiled. In certain cases, the victim shields the abuser from police. Additionally, there should be enhancing record keeping helping victims prove defilement components like age. Due to lack of birth certificates for some children, which makes it hard to determine the victim's age, the need for medical personnel to be informed of defilement cases so they can assist in prosecution, and the need to train law enforcement agents on how to handle defilement cases, record keeping should be improved. More so, there is need for increase in the number of remand homes for child offenders. This is crucial given Uganda's high child-to-child sex rate. Child perpetrators need remand centres, and more remand houses should be established to accommodate the vulnerable state of defiled victims. There is equally need to implement remedial and preventive steps to reduce vice occurrence. Preventive measures include formal and informal education, awareness, and victim and witness protection should strengthen the defilement law. This gives defilement victims privacy, self-esteem, and resources for prosecution. Additionally, parents should teach youngsters about the risks of early sexual activity and life skills to avoid being manipulated into having sex for material possessions. Finally, media and civil society should prioritise more child protection-focused subjects.

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