

# What about the law?

**A case study of the protective structures concerning young girls sexual and reproductive health and rights in Mbarara, Uganda.**



## **ABSTRACT**

A case study done in Mbarara, Uganda, investigating to what extent the law about defilement is implemented. Included in the study is also a survey presenting the existing protective structures for young girls in Mbarara who have been subjected for defilement. The focus is on sexual and reproductive health and rights for young women in Mbarara and a holistic gender perspective is used in the analysis. The study reveals a doubtful implementation of the paradoxical law and poor protective structures.

**Keywords:** Implementation, law, protective structures, Uganda, sexual health.

‘Defilement is the most outstanding offence and that is an offence that is committed against children that are below the age of eighteen years. The penalty for that is death, only that it has never been executed.’

Mr Ruzinda Herbert, lawyer in Mbarara, Uganda

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## ABBREVIATIONS

ANPPCAN	African Network for Prevention and Protection against Child abuse and Neglect
CRESS	Child Raise Education and Support Service (collaboration between ANPPCAN, FIDA and HAR)
CID	Criminal Investigation Department
FIDA	Federación Internacional De Abogados (International Association of Woman Lawyers)
HAR	Hope After Rape
LC	Local Council (level I-V)
MOH	Ministry of Health
MUST	Mbarara University of Technology and Science
SCiU	Save the Children in Uganda
Sida	Swedish international development assistance
SRHR	Sexual and Reproductive health and Rights
STI	Sexually Transmitted Infections
Ush	Ugandan Shilling (100 Sek = 20 000 Ush)
ULRC	Uganda Law Reform Commission
WHO	World Health Organisation
YSRHR	Youth Sexual and Reproductive health and Rights

## DEFINITIONS

*Age of sexual consent* – when a person has the ability to refuse or accept a request for sex (ULRC 2000:xxiii)

*Capital Offence* – a crime with is punished by death.

*Defilement* – having sexual intercourse with a girl below eighteen years of age, with or without her consent (ULRC 2000:32)

*Fiduciary incest* – When a trusted authority (i.e. a teacher) have sexual intercourse with a child (Ginnie 2004)

*Sugar daddy* – An older man who gives gifts, sodas, small money, token or handkerchiefs so a girl submits to sexual intercourse. (CID 2004)

*The Penal Code Act* – An act to establish a code of criminal law in Uganda. Commencement: 15 June, 1950 (The Penal Code Act 1950:2734).

*Youth* - Those aged 15-24 (WHO Youth)



## 1 INTRODUCTION

This is a needed and important study about young women's sexual health and rights, which presents horrifying material that has to be highlighted. Mbarara district in Uganda is racking among the highest number of cases of defilement in Uganda.

'It is an alarming situation, but that alarming situation has been like that for some time.'

*Kabakyenga*

We can pretend this alarming situation don't exists, but if thinking about all these young women makes you want to do something.

Read this study.

## **2 AIM AND BACKGROUND**

### **2.1 The purpose and aim of the study**

The Ugandan Law is very clear in the sense that sex under the age of eighteen years is not only illegal, but, at least officially, punishable with harsh sentences. And there is a very wide gap between the actual sexual practices on one side, and what considered illegal on the other hand and therefore the aim on this study will have focus on the degree of implementation of the law and other regulations concerning defilement in Mbarara, Uganda. The aim is also to assess and gain knowledge about the protective structures for girls in Mbarara subjected to defilement. The study will be analysed with a holistic gender perspective, since norms, traditions and lifestyle are essential to the issue.

#### **The main question**

- To what extent is the law about defilement implemented in Mbarara, Uganda?

#### **Sub-questions**

- What does the Ugandan law say concerning defilement?
- How do the protective structures for girls in Mbarara subjected to defilement appear?

### **2.2 Background to the study**

When policies does not achieve the goal they were set to, usually it is the management who gets the blame. The ones who made the decision are questioned and studies and evaluations are done concerning the actual decision and the decision-makers. But you also need to look at the implementation of the decision, the whole policy processes. You can tell a lot from studying the implementation. According to Carol Baker Health policy studies are not very popular and research within health is often focused on the management. But she claims that when studying policy process you have to be aware of that the policy exist in a very complex reality, and even if the management can be a part of a problem you have to look around to get the whole picture (Barker 1996:5f).

Policies can be slippery to study because they are dealt with on many different levels at the same time, and a decision is often made in relation to what has happened before and what is believed to happen next. Decisions are also often interrelated in a big network and together they form a strategy of how to handle practical issues (ibid). So when studying the implementation process of the Penal Code Act and the specific law about defilement and how it is implemented you therefore have to see to all levels of implementation, and also combine that with history and future.

There is an importance in investigating how defilement cases are handled, since too few studies have been done on sexual coercion correlated to health (Population Council 2004:1).

‘In spite of the sound arguments - based on public health concerns, human rights, equity, and social justice - calling for a strong focus on sexual and reproductive health, in many countries the concept of comprehensive reproductive health care is still insufficiently understood and applied’.

*Paul Van Look, director for WHO*

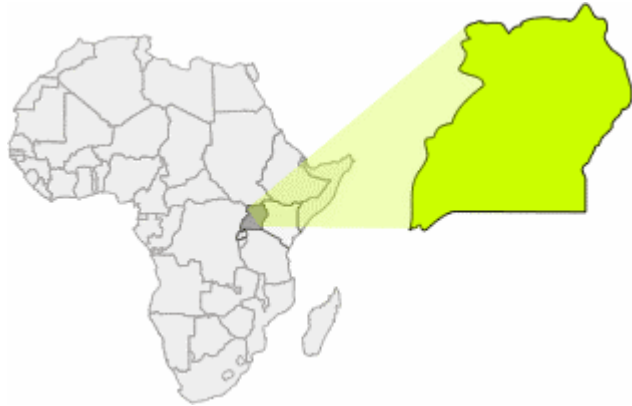
In Uganda this is an alarming situation and since the death penalty for defilement never have been executed even though defilement is very common, maybe there can be some problems within the process of implementing the law (Agardh 2004).

### 3 THE COUNTRY OF UGANDA

#### 3.1 National characteristics

Uganda is an East African country which borders with Kenya to the East, Democratic Republic of Congo to the West, Sudan to the North, Tanzania to the South and Rwanda to the South West (ULRC 2000:1).

In Uganda today you can find 52 different tribes, of which Buganda and Bynyoro are the largest. The total area of the country is 241 574,6 km<sup>2</sup>, where open water accounts for 36 909,3 km<sup>2</sup> (Seftel 1994:35).



Uganda is a country with a chaotic history with a long and terrible civil strife, which led to many people's misery and death. From 1952 when the first national party, Uganda National Congress (UNC), was formed up till today Uganda has been through several severe crisis (Seftel 1994:9). After the independence in year 1962 Milton Obote became Uganda's first Prime Minister and the nation was born (reborn) after being an English colony since 1894 (Seftel 1994:31). The years between 1971-1979 Uganda saw it's worst days under the cruel military regime led by the feared Idi Amin. When Yoweri Kaguta Museveni seized power in 1986 Uganda became a land of peace, and with the exception of the rebels up in the North it has been that ever since (Jeppsson 2004:17).

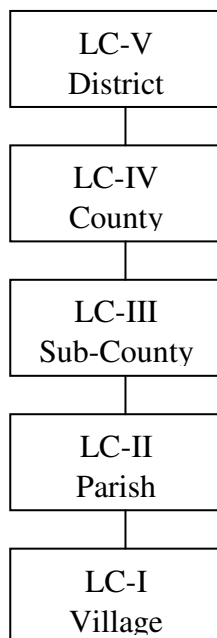


Fig 3 Levels of LC's  
(Jeppsson 2004:19)

During the continuing civil war Uganda started in 1981-86 to build up a democratic system where people could select councils among them selves to all the different levels from LC I-V (Fig 1). This was a step on the way to creating a civil society in a country which now for a long time had been suffering from the ongoing civil strife. Uganda was in 1996 divided in to 39 districts, which later on changed to 45 in 1997. Each district was divided in to counties, all counties in to sub-counties, a sub-county in to parishes and all parishes contains a number of villages (Jeppsson 2004:18-20).

The process of decentralization within the health sector worked well on the district level and a District Health Community (DHC) was soon established. Here the different districts could perform their own planning, budgeting and providing social services. Since the decentralization providing social services has been a main responsibility for the DHC (Jeppsson 2004:23).

Corruption is a phenomenon, which is deeply embedded in Uganda's culture. The political instability and economic degeneration that Uganda faced up till 1986 made it possible for corruption to spread in the country (Ruzindana 1998:v). In the work of decentralization 42 000 'ghost workers' were found, which the corruption had made possible to hide (Villadsen 1996:8). And the government had to come up with an anti-corruption strategy which should lead to a better and more effective situation (Ruzindana 1998:vii).

## **3.2 Court system**

In Uganda you find two types of courts: the local courts and Courts of Judicature. The local courts are subordinate to the Courts of Judicature. They handle civil cases, minor criminal cases and cases of customary nature. Appeals lie from the LC I to LC II to LC III to the Chief Magistrate Court. The order: the Supreme Court, the Court of Appeal, the High Court and the Magistrate Courts. The Magistrate Courts usually handle cases of sexual offences and the High Courts handles cases capital offences and defilement (ULRC 2000:2).

### **3.2.1 *The Penal Code Act***

The Penal Code Act was commencement in 1950 and since then it has gone through some smaller revolutions. It is more or less the British law, which Uganda inherited by the colonials. Initially Uganda had a different way of settling matters, but when the Englishmen came they brought the Penal Code Act with them and made it in to an African version. The Indian Penal Code Act also played a big role in Uganda, since the Indians seemed more related than the Englishmen. The Ugandan Penal Code Act therefor is a joined Penal Code Act with British, Indian and African influences (Herbert 2004).

When Uganda became independent in 1962 the Penal Code Act did not change very much, because the political and legal system in Uganda was already running independently by the time of independence (Herbert 2004). A big change was in 1995 when the Constitution gave special protection to vulnerable groups like woman and children and are at the same time allowing customs which is against the dignity of the woman, as long it is written (ULRC 2000:16).

The Penal Code Act is divided into several parts depending on what sort of crime was committed; 'Offences against the state', 'Offences against other states', 'Offences against the republic', 'Offences against the person', 'Offences against morality' etc. (Tamale 2004).

#### **The law about defilement**

Before 1990 defilement could only be committed by a man against a girl of fourteen years and below and the maximum penalty was fourteen years imprisonment. Today law number 129 in The Penal Code Act is now called 'Defilement of girl under the age of eighteen' and is it located under the section 'Offences against morality' (ULRC 2000:32).

‘Any person who unlawfully has sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to suffer death’ (The Penal Code Act 1950:2783)

This definition implies that a man or a boy can commit defilement against a girl below the age of eighteen years. The offence can not be committed by a woman or a girl against a boy. So for instance if a boy age seventeen have sexual intercourse with a girl at the same age, he commits defilement. The consent of the girl is irrelevant (ULRC 2000:33-34).

## 4 HUMAN RIGHTS AND FUNDAMENTAL ETHICS

The following information is all taken from WHO's web site since WHO is a global authority in issues concerning health and human rights. These definitions are later on used as a foundation for the discussions in the analysis.

### 4.1 Human rights

*Human rights* – 'are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Some of the most important characteristics of human rights are that they are:

- guaranteed by international standards;
- legally protected;
- focus on the dignity of the human being;
- oblige states and state actors;
- cannot be waived or taken away;
- interdependent and interrelated; and
- universal.' (WHO Human Rights).

*Child and Adolescent Rights* – 'all children and adolescents should have the means and the opportunity to develop to their full potential. Life, survival, maximum development, access to health and access to health services are not just basic needs of children and adolescents but are also fundamental human rights. However, the protection and fulfilment of these fundamental rights depends on the realization of other rights.

These include the right to:

- Non-discrimination
- Education and access to appropriate information
- Privacy and confidentiality
- Protection from all forms of violence
- Rest, leisure and play
- An adequate standard of living
- Freedom from all forms of exploitation
- Participation, including the right to be heard' (WHO Youth).

*Reproductive health* – 'a state of physical, mental, and social well-being in all matters relating to the reproductive system at all stages of life. Reproductive health implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Implicit in this are the right of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choice, and the right to appropriate health-care services that enable women to safely go through pregnancy and childbirth' (WHO SRHR).

*Sexual health* – 'a state of physical, emotional, mental and social well-being related to sexuality; it is not merely the absence of disease, dysfunction or

infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled' (WHO SRHR).

*Sexual Rights* – 'embrace human rights that are already recognized in national laws, international human rights documents and other consensus documents. These include the right of all persons, free of coercion, discrimination and violence, to:

- the highest attainable standard of health in relation to sexuality, including access to sexual and reproductive health care services
- seek, receive and impart information in relation to sexuality
- sexuality education; respect for bodily integrity
- choice of partner; decide to be sexually active or not
- consensual sexual relations
- consensual marriage
- decide whether or not, and when to have children
- and pursue a satisfying, safe and pleasurable sexual life' (WHO SRHR).

## **4.2 Fundamental ethics**

When providing services to victims WHO declines a few fundamental ethics to take in consideration:

- *Autonomy* – The right of the patient to make decision on their own behalf. All steps taken in providing services are based on the informed consent of the patient.
- *Beneficence* – The duty or obligation to act in the best interest of the patient.
- *Non-maleficence*– The duty or obligation to avoid harm to the patient.
- *Justice of fairness* – Doing and giving what is rightfully due (WHO 2003).

When put in to practice these ethics can appear in following way:

- awareness of the needs and wishes of the patient;
- displaying sensitivity and compassion;
- maintaining objectivity (WHO 2003).

And in the study this will be enlightened in the analysis. It will be taken in consideration during the discussion of the degree of implementation of the law of defilement.



## 5 THEORETICAL FRAMEWORK

### 5.1 Policy implementation

The policy implementation is a part of the policy cycle where you also can find fields like policy administration, organisational behaviour and management. And the actual implementation part is when you put a decision into practice, when you translate the decision into action (Howlett 2003:185).

Until the 1970s, implementation was a part of the policy cycle where you assumed nothing would go wrong. If a goal was not properly achieved, research and changes were done in the other fields. It was assumed that once a decision was done there was no problem carrying it out. But later on it was found that lots could go wrong within the process of implementation and then several studies started to focus on this specific field. Researchers now found that many problems were rooted in the way the implementation was done (Howlett 2003:185).

Today the processes of agenda setting, policy formulation, implementation and evaluation are seen as closely interconnecting, where earlier there was a more accurate distinction between them. And keeping the steps divided put the theory far from reality. Generally it is known that policy processes should be used more as an ideal way of working, since most people involved in policy making are well aware that the process is often less rational than such models assume. Working with policy has to consider the impact that other forces have on the process, that strong organisations can put new issues on the agenda. Even other unexpected occurrences can arise and the process has to be flexible to be able to work properly and effectively (Jönsson 2002:47f).

But finding simple answers how to achieve a successful implementation of social programs is a hard task. There should be research done before the implementation takes place to find out the conditions under which the programs perform optimally. Defining and describing these conditions is essential to get the most out of it. You also have to know when and where to be more simple and direct, and when to be co-operative (Bossert 1984). Lack of knowledge about the local regulations can lead to do more harm instead of good, and if it goes further to a legal process the way to handle data can be crucially important for the whole process (WHO 2003).

Politicians are of course significant actors in the process of implementation, but most of the daily activities and administration routines are in the hands of public servants. And since the laws in former colonies often are presented in less systematic form, the public servants have a big responsibility to ensure a successful implementation process (Howlett 2003:187).

In this study the theory will focus on the implementation process, and when studying implementation of a policy processes you can use different types of models. One way is to study the *translation*, by looking at how the policy is understood by the ones who decide it and compare that to how the ones who are

supposed to put it in to practice understand it. Other aspects to look at could be the *reliability*, in what degree the implementers actually follow their directives and *rationality*, how well the goals set up are achieved. But chosen for this study is the most classical way of analysing an implementation process, which is the ‘*top down*’ and ‘*bottom up*’ model (Jeppsson 2004:27f).

### **5.1.1 ‘Top down’ and ‘bottom up’ model**

It is assumed that in a ‘top down’ model the policy formulation has occurred at national or international level between policy makers. And this approach is often driven from an ideal model of ‘perfect implementation’.

A perfect implementation model suggest that:

- Adequate time and sufficient resources are available.
- The required combination of resources is available.
- Policy is based on a valid theory on cause and effect.
- The relationship between cause and effect is direct.
- Dependency relationships are minimal.
- There is an understanding of, and agreement on, objectives.
- Tasks are fully specified in correct sequence.
- Communication and co-ordination must be perfect.
- Those in authority can demand and obtain perfect compliance.

(Jönsson 2002:155)

In the 1970s there was a so-called ‘top down’ verses ‘bottom up’ debate. On one hand some stated that it was easier and more effective if the implementation policy was decided ‘top down’ and on the other hand the ‘bottom up’ model who focused on studying the actions of those who were affected by the policy (Howlett 2003:186). Both of these models showed valuable insights and together they came to form a more scientific way of studying the implementation process. Now the research focused on question of enforcement (Howlett 2003:186).

A common problem with implementing health policies is that misunderstanding and confusion can arise in the practical work if the framework is not clear. The already existing networks of patrons, relatives and friends are important to consider in implementing health policies, since they can show an underestimated power (Jönsson 2002:156). And another aspect to be aware of is in this discussion is what Baker calls the *elite theory*, which also is known as ‘Not what you know, but who you know’. This theory contains the belief of the importance to know the right people to be able get your way through, and when analysing the process of implementation this aspect is valuable to have in mind (Baker 1996:83).

## **5.2 Holistic gender perspective**

In public health research the terms ‘sex’ and ‘gender’ are often used as synonyms. But in gender research the term ‘sex’ defines the biological differences between a man and a woman, whether the term ‘gender’ instead refers to social, cultural and

historical constructions of femininities and masculinities. Gender is essential to the health and illness through social norms, traditions, economic circumstances, lifestyle choices and social interaction. Women are subordinated in many aspects and disadvantaged in ways that have not been properly researched and understood yet (Wamala 2002:212).

Sarah P. Wamala also takes on a wider perspective within the gender theories when she puts another angle to the issue.

‘My interest in these questions is twofold: to show the impact of culture on the health of woman and men, and to describe some paradoxes and discrepancies often encountered in public-health programs aimed at improving sexual and reproductive health.’

(Wamala 2002:34)

She claims that men’s and women’s different sexual behaviour depends on cultural values, norms, beliefs and how they look upon sexual pleasure. That the women are often more vulnerable while the men act the way they are expected to. And there seems to be a big gap of knowledge about this issue and sometimes sexual health programs can do more harm than good. There is a need to understand the link between gender research and health and to see the dominant position of the male within the structure of public health, because this has a negative affect on both genders and their health. The currently policies is shifting towards a more equal participation, but it has to be followed up to see if the changes done are making the situation better for both genders. Many family planning programs have failed because only focusing on the woman and not looking at the whole picture with culturally defined age- and gender-based power dynamics (Wamala 2002:213-220).

One of the more holistic perspectives is presented by Phillimon Ndubani who claims that the gender theories is most adequate when using a constructive perspective. He claims that the gender perspective building their theories assuming everything starts out from the relationship between the man and the woman, and therefore is not broad enough. According to Ndubani sexuality is so much more than just a relationship (Ndubani 2002:21). He highlights the discussion of ‘constructed relationship-sexuality’, and he refers to the way society characterises our sexuality. And even though sexuality today is more becoming a ‘clinic’ phenomena, our history has marked us with strong beliefs that gives us somewhat a conservative way of looking upon how we should act and behave when it comes to our sexuality (Ndubani 2002:19).

## **6 METHODOLOGY**

### **6.1 Pre-visit**

In December 2003 I went to Mbarara to meet with the research team to discuss the study and the possibilities for me to carry it out. I spend ten days in Mbarara talking to NGO’s, making study visits at the hospital and meeting people that

could be relevant to the study. The research assistant Winnie Semakamba was assisting as a note taker in all the interviews and focus groups discussions.

## **6.2 Data Collection and Sampling**

The strategy chosen for the study is diverse sampling to establish a more general theory and when studying the implementation of the law it is done on different levels and in different areas within public and private structures. Because in a qualitative study data should come from multiple sources, e.g. observations, interviews, diaries and journals to give a rich and 'thick' description of the area studied (Hallberg 2002:142). Key informant interviews and focus group discussions were done, which were widely spread through out the different levels and also within different organisations.

The study was mainly made in Mbarara, but to meet with the bigger organisations (HAR and ANPCCAN) I had to go to Kampala. The choice to go to Mbarara to conduct the study was decided on the fact that there already is an ongoing study within a collaboration project between Lunds University and MUST.

## **6.3 Study design**

The study was designed with the aim of getting as much relevant information as possible to be able to make a trustworthy analysis with focus on the implementation process concerning the law and regulations for defilement. A literature review was done to find out about the essential theories and methods, national characteristics of Uganda and of course about YSRHR in Uganda. Interviews, focus groups discussions and observations were conducted during my stay in Mbarara and Kampala. And finally documents from different organisations, investigations and evaluations were studied.

### **6.3.1 Case study**

The inductive approach that a case study offers was a suitable approach and relevant to the amount of time, resources and the size of my study. And the information were gathered through observations, interviews and relevant documents and the study had a theory and methodology based on relevant literature. The study is an in-depth study since empirical material is collected from a broad area, and at the same time validated through the use of academic theories and methodology. A clear definition of the object for the study and the aim of the study was done early since it is essential to be able to do a quality research (Hamle 1993:45).

Interview studies are often facing critique that says that findings are too few, that it is not trustworthy to draw conclusions and make generalisations. It is said to be paradoxical when the aim is to obtain general knowledge and then only focus on a few cases. But focusing on a few cases offers the possibility to make a more detailed investigation of the person, the behaviour, opinions, the context etc. And

from this the researcher tries to reveal a pattern that can't be seen otherwise (Kvale 1996:102f).

### **6.3.2 Interviews**

#### **Qualitative research interviews**

The method, chosen in consideration to the aim of the study, is qualitative research interviews, which aims at obtaining uninterpreted descriptions. The subjects try to describe as well they can what they think, how they feel and how they act. The qualitative research interview is a way of gathering information of a relevant theme from the interviewee's world. And rather than having prepared with preformulated questions implies an openness (appendix 1) to be able to discover unexpected phenomena (Kvale 1996:32f).

#### **Key informant interviews**

In consultation with the research team the study population was chosen and it was essential to the study to find interviewees from different levels of hierarchy in the society, to meet with the 'average citizen' as well as the 'elite'. So the study population for this study consists of lawyers, policemen (working with family issues), FIDA, religious leaders (Muslims, Catholics and Protestants), ANPPCAN, policy makers, district leaders, HAR, authorities within YSRHR, school personnel, doctors and Save the Children UK. Fifteen structured individual interviews was conducted with strategic selected key informers, people who have distance to the situation and are able to speak freely about the subject.

Some of the interviews needed an interpreter and during these interviews there was no point in recording so the assistant took notes. The tape recorder was used during all the other interviews as much as possible, but in one interview the interviewee got more relaxed and spoke more freely when he understood the recorder was broken.

#### **Focus groups discussions**

Since sexual health and rights is a very sensitive issue the research assistant always had to be the first contact. She knew how to present the study in a careful way, so that people felt safe participating in a focus group discussion. And people from the community have more credibility to recruit participants to a focus group discussion than the researcher because they can speak the language and they know the culture, and in some studies it can make an enormous difference. It is important that the focus group discussion is as pleasant and convenient for the participants as possible so they feel comfortable to express their opinions (Krueger, Kit 5 1998:52-58).

Three focus group discussions were made and the focus groups were containing 'average people'. The people were randomly picked and woman and men were separated. To make it as convenient as possible for the participants we went out to find them and had the discussions where they were at. The woman we found sitting in hair saloons and we had a fruitful discussion with them while they were

having their hair braided. The men we found sitting outside the hospital, since there were lots of people sitting outside the hospital visiting or waiting for someone getting treatment.

We chose not to use a tape recorder since we believed it could make the participants suspicious and inhibited, so instead the assistant took good notes and listened and note inconsistent comments and after every focus group discussion we rushed home to write down everything we could remember. The use of an assistant made it possible to pay full attention to people's behaviour and study the dynamic of the group, for example note if someone is dominating the group (Krueger, Kit 6 1998:46f).

### **Content analysis**

The method of content analysis was used to analyse the material from the interviews and focus group discussion because it is an often used approach when analysing transcribed interviews and observations. It gives the researcher a good overview of the situation and comparing answers and behaviours becomes an easier task when using this model of scheduling findings (Graneheim 2003:1).

Reality can be interpreted in many different ways and how people experience and understand things is dependent on subjective interpretation. In qualitative research you have to keep that in mind when analysing the text and observations. Usually a text can involve multiple meanings and on top of that you also have the researchers interpretation when working with the text. This is an important issue when looking at trustworthiness and findings in qualitative content analysis. The concepts when using the qualitative content analyse are manifest and latent contests, meaning unit, condensing, code and theme (Graneheim. 2003:3f). Appendix 2 shows the meaning unit picked from the transcribed interview with the religious leader for the Catholics, and out of the meaning unit the condensed meaning unit is formed and from that finally the code. Each code forms different themes, and each theme is then made in to a separate schedule as to see in appendix 3.

Verbal communication is often put at disadvantage in the transcription process and when transcribing you also try to write down how a message is communicated, that is the voice or implied that emerges from the reading of the text. So it is valuable for the analysis notice silence, sighs, laughter etc., as they may show an underlying meaning (Graneheim 2003:7).

### **6.3.3 Observations**

The note taker for the study, Winnie Semakamba, was during all the interviews and focus group discussions making notes of how we were received, how the interviewee reacted and responded to the questions and also the overall impression she got while the interview was conducted. These notes were taken in consideration when doing the final analysis. It is very valuable to the analysis to notice non-verbal communication such as body language and behaviour. The note

taker should write down things like head nods, support, interest or level of agreement etc. (Krueger, Kit 4 1998:76-78).

#### **6.3.4 Documents**

When doing a qualitative study it can be useful to bring in some quantitative material already done by someone else (Magne 1991:183) and that is why in this study document based on quantitative research is used. In combination with my qualitative research it makes the analysis and my conclusions trustworthy. The relevant documents were mainly collected from the organisations SCiU, HAR, ANPPCAN and ULFC.

#### **6.4 Limitations**

My aim is to present the existing protective structures in Mbarara without any own opinions or values, but when doing field studies sometimes there can be situations and behaviour you don't understand since you are not familiar with the context (Magne 1991:133). So I am aware of that during the process of interviewing and analysing all material, my limited knowledge might sometimes make me draw the wrong conclusions. Because a researcher always brings in own experiences and values in a study, and the limitation of knowledge gives the study a subjective perspective. There is no way a study can be neutral because it is always coloured by its creator (Magne 1991:31).

Since the object of the study is a very sensitive subject people sometimes tended to be suspicious, and maybe they were not as outspoken and honest, as I believed them to be. And also the fact that I am white changed the way people spoke and behaved, many of them were much more confident talking to my assistant.

My assistant and me had different opinions about a few areas within YSRHR, which can have been inhibiting when she took notes during the interviews. And also the fact that she belongs to the target group of the study might have made her uncomfortable sometimes.

When travelling long distances on poor roads, being on time was sometimes difficult. And being late for one meeting I lost some valuable information from SCiU. Also I only got to interview personnel from LC V, when I know I should have done interviews with staff from all the different levels of LC's.

#### **6.5 Earlier research**

Health policies have increasingly become more and more of a political issue and over time studies have been done on the process of planning and managing health policy processes, but not much have been done in studying the actual implementation process (Jeppsson 2004:13). So within public health there has been very little research about the issue of implementation. Studies that can be found usually focus on a specific and very limited topic (Jeppsson 2004:62), like

the research Uganda Law Reform Commission presented in 2000 done on the age of sexual consent, which was a limited area within YSRHR in Uganda.

An interesting and relevant study of implementation is the one Jönsson presented in 2002. A study of national drug policies in Laos and Vietnam, which is a study containing both policy formulation and policy implementation (Jönsson 2002). And also there is Dr. Jeppsson, who in his research on the decentralization process address the whole health sector from a perspective of policy implementation (Jeppsson 2004).

### ***6.5.1 Literature Review***

A literature review of the theory used was done, where Carol Barker's and Michael Howlett's research about implementation processes was highly relevant. And here Barker's implementation theory, which was connected to health care policies, was a primary choice. And when studying the gender perspective Sara P. Wamala was the most interesting since her holistic view includes the whole picture of the issue. The feministic perspective was also considered, but since it is more focused on just the woman and her relation to a partner the choice was to go with Wamala. Another reason for highlighting her material is because she is Ugandan, which made it natural to bring her in to the study. A model, facts and inspiration are gathered from dr Jeppsson's latest study since it is done in Uganda with focus on the implementation process within the health system.

Concerning the study design, the theory about conducting focus groups Richard A. Kruger offers a "kit", which was very pedagogical and easy to use. And preparing for qualitative interviews Kvale and his content analysis was a brilliant tool.

Even though ULRC's report is mostly about the age of sexual consent, lots of discussions can be linked and their conclusions were interesting and valuable. And of course the current law about defilement and other parts in the Penal Code Act was essential to the study. The quantitative material and statistics concerning the cases of defilement is mostly gathered from ANPPCAN's and SCiU's annual reports. And finally the daily newspaper is added in to the study to present a bit of reality, how the Ugandans handle and look upon defilers in the media.



## **7 PROTECTIVE STRUCTURES FOR GIRLS IN MBARARA**

One of the aims of the study was to assess and gain knowledge about the protective structures for girls in Mbarara subjected to defilement, so in the following chapter the findings about this will be presented.

### **7.1 Rights and ethics for young women in Mbarara**

You have to bear in mind that Uganda is a poor developing country and it wasn't too long ago a brutal civil strife strike the country. The population of Uganda is grateful for the peace that seems to settle, even though the rebels are still fighting in the north. And there is a feeling that even if the situation is bad for young woman today, they should not complain since they live in a peaceful country and they can feel safe. So the discussion about discrimination, education, privacy, protection, rest, standard of living, freedom, participation and YSRHR have for a long time not been important. But when the Constitution in 1995 gave special protection for women, this discussion about YSRHR became a prioritised topic. Also the discussion about behavior against woman subjected to defilement started to develop seriously. Along with this the discussion concerning how to provide services to victims of defilement grew bigger, and the discussion about awareness, compassion and objectivity is now slowly taking place.

### **7.2 The incidence of defilement**

During the study lots of information was collected and to make an enormous discussion easier to analyse a defilement analytic model was done. This gives an overview over the whole discussion of incidence of defilement.

### 7.2.1 Defilement analytic model

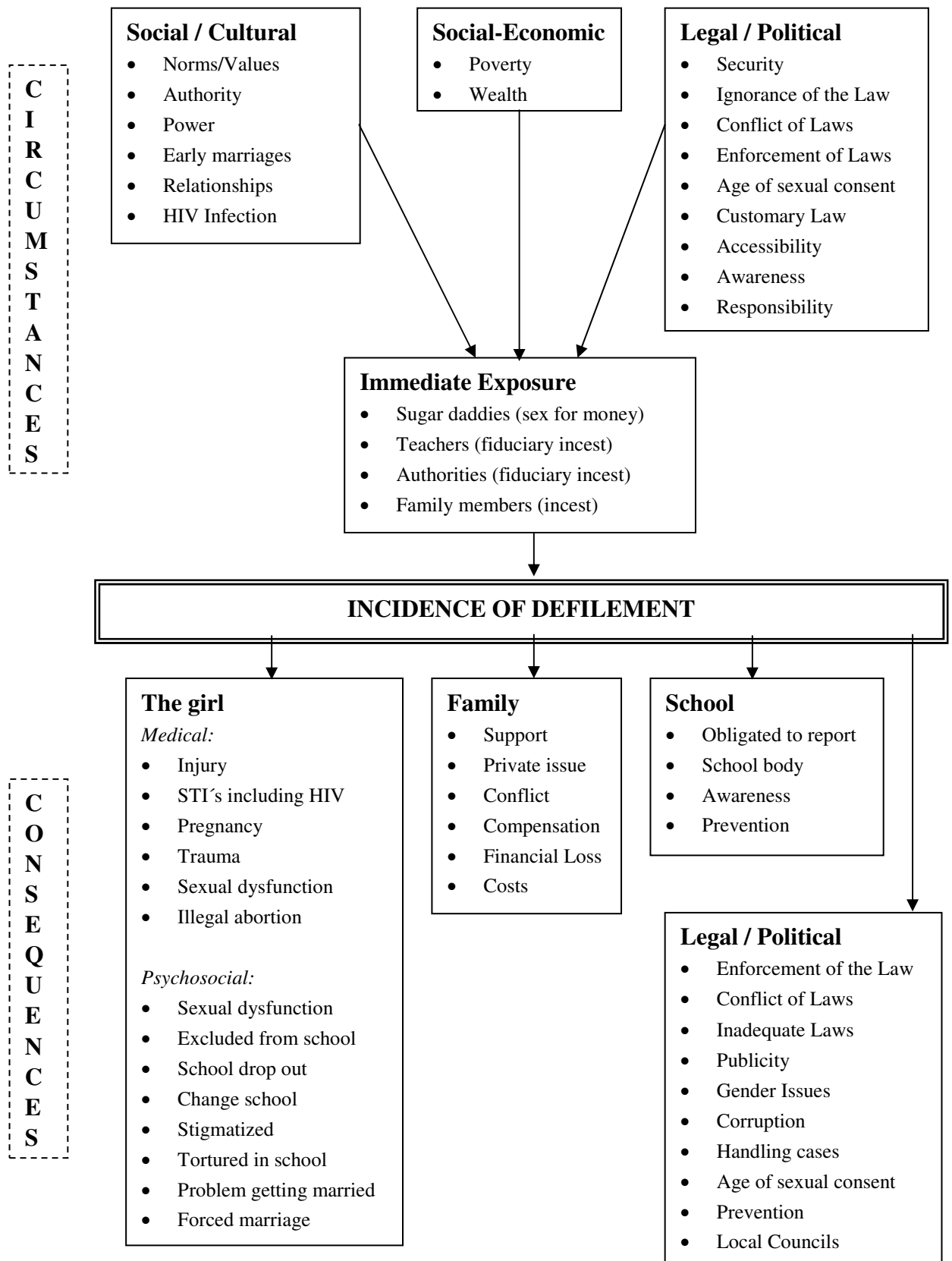


Fig 4. Defilement analytic model

### 7.2.2 *Circumstances*

When looking at circumstances under which defilement can occur it can be divided into three different areas; *Social/Cultural*, *Social-Economic* and *Political/Legal*. The aspects discussed within these three then leads on to the fourth group called *Immediate exposure* where the four most common types of perpetrators are discussed (Fig 4).

#### **Social/Cultural**

The culture in Uganda is strong and can in some cases even be above the law and the social life and the everyday living is characterised by the culture in many ways. Therefore the discussion about the social circumstances and the cultural circumstances are put into one.

Dealing with *norms and values* in Uganda is a very complex issue. The 52 different tribes originally all have their own languages and also different way of looking upon laws and regulations. Then add the 45 relatively new districts, which the country is divided into and then finally the strong beliefs and religions. Here we have a mixture of strong forces, which is necessary to combine to find an appropriate structure to handle defilement. This is the struggle Mrs Kabakyenga talked about where Ugandans have to understand each other's norms and values.

‘How can you arrest the uncle? Because she has slept with the uncle, which is normal.’

*Clare Kabakyenga*

In setting the issue of defilement on the agenda *authorities* and people in *power* of course play a big role, but morality is very strong when it comes to sexual health so fighting for these issues is extremely controversial. Sara P. Wamala, who is one of the front figures fighting for woman's sexual health and rights is suggesting the law shouldn't forbid teenagers to practise sex, instead they should be provided with as much information as possible. Because of this Wamala was in 2003 selected to be Uganda's worst woman of the year along with Kony (the rebel leader in north Uganda) who was the worst man of the year. This attitude towards the issue tends to make people avoid discussing the subject.

The situation with the tradition of *early marriages* in Uganda is extremely paradoxical when according to Islamic religion a woman is supposed to get married at the age of fifteen.

‘According to our religion the girls can marry at the age of 15 years.’

*The Kaadh Abdulu Kaduyu (muslim leader)*

And even though the law is very clear in the sense that defilement should be punished with a harsh sentence, early marriages are not an offence according to the Penal Code Act if the parents agree to the marriage. Also often harmless

*relationships* between teenagers is a difficult issue since sexual intercourse is against the law even though they are in love and want to practise it.

‘Then the age of sixteen or eighteen those are very critical cases for us, in the sense that this girl might have been, how should I put it, convinced that this guy really loves her.’

*Ruzinda Herbert*

Because according to the Penal Code Act it is still a capital offence to have sex with a girl younger than eighteen, whether she is consenting or not. The boy’s age is immaterial and so is the love. And young women going to the prisons to give food and presents to their boyfriends is not a rare sight in Uganda (Herbert 2004).

‘Of course that is still defilement. The girl is below the age of what, of eighteen years. She can not consent to that. The boy is charged for defilement.’

*Ruzinda Herbert*

Some people also tend to believe that being infected with HIV can make a man so desperate so it drives him into rape and defilement, because the virus can decrease the possibility to practise sexual intercourse and also the chance of getting married.

‘Because when somebody is stressed after tested positive he runs to rape and defiling.’

*Abdulu Kaduyu*

### **Social-Economic**

The incidence of defilement exists in every social group and is not connected to *poverty* or *wealth* in any particular way. But there is a different way of how the upper-, middle- and lower class tend to look at each other in that manner, and also how they solve the issue of defilement. The poor families can settle with a goat or a (forced) marriage and since reporting the incidence to the police cost money it will be excluded. The rich can pay of the debt with money or expensive gifts, or if they get arrested they can bribe their way back to freedom because of the wide spread corruption.

‘Defilement is as common among rich as among poor people’

*Reverend*

‘On our view the big people are the ones to rape, because they have a lot of money to give the kid.’

*Focus group 3*

‘Most likely areas among poor people especially among poor people.’

*ANPCCAN*

It seemed like all the interviewees thought that defilement was more common in some other social group than their own. They all expected the problems to be bigger among others, except for the religious leaders who all of them claimed that the issue is the same no matter which group of society you belong to.

### **Legal/Political**

The law about *age of sexual consent* is a way of trying to find a *secure* society for the young girls to grow up in. It is a way to protect them and to keep them safe from people taking advantage of them, to protect them from early pregnancies and the exposure of STI's and HIV (ULRC 2000:xxi). But since the law is (mostly) British and not originally developed by the Ugandan's it becomes a problem with *enforcement of the laws* with a population that doesn't identify with the system. This leads to *ignorance* and the citizens don't respect the Penal Code Act. And the way the *customary law* is carried out creates a *conflict of laws* even though it clearly says that 'Any written law or culture in conflict with and provision of the Constitution is invalid' (ULRC 2000:17) people tend to ignore that fact.

'There is a big battle between the culture and the law as a result of the contradiction. And where religion is strong people participate in cultural activity in secret.'

ANPPCAN

Most of the interviewees believed the maximum punishment for defilement was imprisonment and even though they were handling cases of defilement people were not sure, so the *awareness* about the Penal Code Act and the harsh punishment for defilement seems low.

'I'm not very sure of the punishment for defilement'

Doctor

In Uganda a large part of the population is in to agriculture and living in the rural areas *accessibility* to the public protective structure is not always beneficial. Transport is a non-affordable cost for the poor families and the high frequencies of illiteracy among the people is a contributing factor to lack of information about the law, children's rights and YSRHR.

If the girl has been defiled marriage can be a problem since virginity is still valued in Uganda, so it's up to the parents to protect her from being sexually abused and to keep her away from premarital sex. The parents are the once who are *responsible* for the girl up till the day she gets married, and the bigger the dowries the better the deal.

'The parents have to look after you.'

Doctor

'The parents may see her as a burden.'

Ruzinda Herbert

### **Immediate exposure**

The young girls who have been subjected to defilement have mostly been abused by someone close to them (ANPCCAN Ugandan Chapter 2003:13), which was confirmed by the interviewees. There were four types of perpetrators mentioned in the interviews. The first one is the *sugar daddies* who buy sexual favours for

money or small gifts. The word prostitution was not accepted for this behaviour, and the girls called their sugar daddies for boyfriends and friends helped each other out finding a decent sugar daddy.

‘They meet in bars, discos or through friends.’

*School nurse*

Another type of abuse is the *teachers* who practice a so-called fiduciary incest where a trust is misused. The teachers for example offer higher grades to someone who will consent to have a relationship with him, or he can lower the grades if she refuses. And pupils are taught not to be alone with a teacher, to avoid defilement.

‘In cases when the teacher ask a pupil to take things to his home it’s very good to go there in company with other children.’

*Doctor*

In the school environment with surroundings there are other *authorities* that also can abuse the young girls, and together with the teachers this falls under the category of fiduciary incest. A girl at boarding school or even at university is an easy target for as well sugar daddies, teachers and other authorities. She is often without money, far away from her family and doesn’t dare tell anyone about the abuse. The final perpetrator is the own *family member*: father, mother, brother, sister, cousin, uncle, aunt etc., which is classified as incest. But a visiting guest immediately becomes an uncle or an aunt, which make this more complicated. Also the old traditions and the system of the tribes is very complex concerning who is related to whom and in what way.

### **7.2.3 Consequences**

The incidence of defilement has consequences on many levels at the same time. In this study they are presented in terms of four; *The girl, the family, school* and finally *legal/political* (Fig 4).

#### **The Girl**

Statistics shows that even though most of the defilement cases go unreported the number of cases are increasing, and in 2002 the number of reported defilement cases were totally 4495 in Uganda. Still in most cases the girl keeps it to her self because of the strong values involved with her keeping her virginity and the fear of getting stigmatised. Sometimes the girl might tell her mother, who then chooses how or if to go further (ANPPCAN Uganda Chapter 2003:1). The pressure on the girl also showed when some of the interviewees referred to the defiler as the victim, and claimed that the way the system treated the defiler was a major problem. So if the process of handling these cases were more humanitarian, then the number of reports were believed to increase.

‘You keep quiet, because you have to choose to feel guilty for putting somebody you know in prison. And when you do that also everybody will know. You keep quiet and you are the only one to suffer.’

*Focus group 2*

‘You don’t tell anybody. If there is no problem you don’t tell anybody.’

*Focus group 3*

‘Even in normal circumstances you just don’t talk about it, so when it comes to rape it’s worse.’

*Headmistress*

- Medical consequences for the girl

Non-consensual sex can cause *injuries* on the sexual organs, which can lead to a greater risk acquiring an *STI* or even *HIV*. And if the sexual intercourse should lead to a *pregnancy* for a girl in Uganda that means either giving birth to a baby or have an *illegal abortion*, which both can be life threatening for the young girl. Finally non-consensual sex usually is a very *traumatic experience* for the girl and can do great harm to her physically health and *sexual function*.

- Psychosocial consequences for the girl

One of the most important reasons to why the girl don’t tell any one about the defilement is because she is afraid to be *stigmatised*. If the information comes out she can unfortunately be suffering the consequences for the rest of her life.

‘If she is known that her has undergone such an unfortunate, people will start; Oh you might have HIV/AIDS, oh what, what and what. It pulls her down more.’

*Headmistress*

‘People look at the girl with a different attitude if she has been defiled.’

*Reverend*

Other pupils at the school can *torture* her for what she has been through and if she gets pregnant in most cases she *drops out of school* or she might even be *excluded from school*. Many families try to solve this problem by letting their daughter *change school*, but sometimes the rumour reaches the new school before she gets there herself.

As already mentioned there can be *problems with getting married* if you are not a virgin, which terribly enough can make the parents to *force* their daughter into *marriage* with the man who defiled her.

‘When the girl is pregnant, the boy and the girl are forced to marry.’

*Reverend*

After being defiled the lust and the passion for sexual intercourse can be ruined and *sexual dysfunction* is a common issue of defiled girls.

### **The Family**

Terrible consequences don't only strike the girl, because an incidence of defilement often affects the whole family. The family is the base where the girl gets *support* even though others may think otherwise.

‘Supporting the victim, the young girl is the government to support them.’

*CID*

And in the incidence of defilement it is in many cases treated like a *private issue* and kept within the family. But families and neighbours can come in *conflict* with each other if defilement has occurred and the parties are not happy with the agreement of the *compensations*. It can be a *financial loss* for the family since a needed dowry might not be accurate any longer, and of course if the family decide to report the incidence there are a lot of *costs* to keep the case going. For example the hospitals are said to be free of charge but there is still a fee of 20 000 Ush to do an examination which is one of the first necessary steps when reporting to police (appendix 4).

### **School**

Since defilement is a capital offence the school is *obligated to report* any knowledge of such offences, but some schools choose handle it within their own *school body*. In most cases the headmaster is aware of the issue and gives the teacher a warning or the teacher might get fired, but there is no report to police. The ULRC claims that if an authority defiles a girl the defilement should be stiffer than otherwise because the authorities at school are the ones caring for the children's wellbeing (ULRC 2000:43).

The parents are to come to the principal and the principle is supposed to arrest the teacher.

*Scavia*

‘They have obligations, but sometimes the headmaster maybe his friend is the teacher. They will find maybe of settle it there and then and they will not take the person to the police.’

*Doctor*

Within the schools there is a great *awareness* about defilement and many schools try to *prevent* this to happen with information and discussion with the pupils. The school nurses (if there are any) can offer support and counselling and some schools invite health workers and others handle this information themselves using the school nurse or similar. NGO's like HAR do fieldwork where they go out in schools and do preventive work.

### **Legal/Political**

The discussion about legal and political consequences because both the discussions integrate with each other throughout the whole study.



There is a vital part in the ULRC report where they discuss how the *enforcement of the law* becomes an even harder task since the number of incidence of defilement increases. And the lack of personnel to *handle the cases* like doctors, judges and other key persons is one of the most inhibiting elements in the process of dealing with this growing issue (ULRC 2000:134).

‘This points to the huge backlog of cases within the justice system. In addition, a significant number of defilement cases encountered prosecution problems. All this points to an urgent need to review the legal framework for protecting children from sexual abuse to make more effective an expeditious.’

*ANPPCAN Uganda Chapter 2003:20*

As a consequence of this the *Local Councils* takes on more responsibilities, which they are not competent to handle. And lots of the reported cases stay at the LC I-level and don’t go further to the police, as they should.

‘Sometimes even when they are reported the LC’s decide to take over.’

*Theresa Ginnie*

From totally 4495 reported cases of defilement in 2002 only 38 were handled in High Court, where the majority got sentenced to 1-6 year’s imprisonment (ANPPCAN Ugandan Chapter 2002:17). Within the national vision of reducing the number of defilement cases in High Court, they are aiming to bring down the cases with girl’s aged fifteen and above. The magistrates who then will have the authority to sentence up to life imprisonment can handle these cases, and this can reduce some of the backlog and the justice can be done more effectively. A problem here (like everywhere else) is the wide spread *corruption*, which affects the whole policy process throughout the legal system. This cripples the implementation and undermines the protective structures for the young girls. And when the *age of sexual consent* being at eighteen combined with the death penalty makes a lot of people pay a lot of money to save them self’s and even though corruption itself, according to the CID, is an offence it exists on all levels in society.

‘In our society almost everybody is corrupted so because of poverty so everyone want’s money.’

*Doctor*

Among the interviewees (who were aware of the death penalty) the majority thought there should be a change of law. They thought the law was *inadequate*, and that the death penalty scared people from reporting defilement. And this makes that the problem of *conflicting laws* still remains, if not develops to an even bigger gap. Instead of meeting the customary law half way the Penal Code Act and the customary law grow stronger on each side.

‘We think imprisonment instead, rather than sentence to death’

*ANPPCAN*

One way of dealing with the issue of defilement is of course the *preventive work* and since the awareness of incidences of defilement is high there is a lot of this going on in many areas. Education and information is straight forward and honest, through i.e. picture books (“Child Sexual Abuse - a true story. Maria’s experience.” or “What is Child Sexual Abuse and what can you do about it? A booklet for children” from HAR) and magazines (“Child Link” from ANPPCAN). Even the youngest children get proper information about what defilement is, where they can turn if they are subjected to it, and what support they can get. And policemen get special training in how to handle this sensitive issue.

‘So we are training our girls to report to Police, like now we are going around schools teaching them, choosing school leaders whom they tell their problems.’

*Rwashana, Selina.*

To strengthen the preventive work CRESS was established, which is a national network with ANPPCAN to do the advocacy, HAR offers the counselling and training and FIDA helps out with legal aid. This network is a collaboration with partners who have long experience working with *gender issues* and whose main goal is to work with child empowerment activities and community mobilisation (ANPPCAN Uganda Chapter 2003:10). And alongside with them there is another collaboration called the Bridging committee, where the LC 5, CID and DPC (District Probation Committee) work closely together to develop a structure to protect the young girls of Uganda.

The Human Rights Office is one of the collaborators to CRESS, but according to the ANPPCAN’s annual report there were no reports of defilement to the Human Rights Office in Mbarara (ANPPCAN Ugandan Chapter 2003:14) and we got the same answer when visiting their office. They told us they didn’t handle these issues and they didn’t want to discuss it with us, and ANPPCAN doesn’t have any chapter in Mbarara.

The SCiU is the big founder of many of the projects working with young girl’s health. Their main objective is “To promote increased activism concerning prevention, protection and rehabilitation of children from exploitation and sexual abuse.” (SCiU 2004:7). And the projects they support are everything from big organisations like ANPPCAN to smaller projects over a weekend. For example in the Annual Implementation Plan they present a project called “Child participation in policy influence”, which will be going on for a year and Mbarara is one of the districts where this should be implemented (SCiU 2004:11).

Another aspect to the whole situation surrounding the incidences of defilement is the *publicity*. The published material concerning cases of defilement in the daily papers is horrifying, and there is no anonymity for either the victim or the defiler. In the biggest morning paper The New Vision a few cases are listed every day.

‘A man who defiled his ten-year-old sister has been sentenced to five years in jail by Masaka High Court Judge Kibuuka Musoke. Akim Lwajali 28, a resident of

Kalungu subcounty, Masaka district, defiled his younger sister, a primary two pupil, on June 28, 2002. He pleaded guilty to the offence.'

*The New Vision, s 3, 2004-06-17*

## 8 IMPLEMENTATION OF THE LAW ABOUT DEFILEMENT

When analysing to what extent the law of defilement is implemented the theory of ‘top down model’ will be used as framework, and the main discussion will be built upon the ‘perfect implementation’. On top of this the implementation process is analysed from a holistic gender perspective. And essential for the analysis is also the ‘defilement analytic model’, which is the main theme throughout the discussion. Within the analysis there are a few specific aspects that will be taken in consideration; laws and regulations, time and resources, power, responsibility, cause and effect and finally there will be a few words about the ‘bottom up model’.

### 8.1 Laws and regulations

The main objective of the law is to find way of creating a secure society for the young girls, a way to protect them from abuse, early pregnancies and the exposure of STI’s and HIV. The High Courts are the only one to handle capital offences like defilement and the Constitution should be above both the culture and the religion. But since the situation appears the way it does there might be some *misunderstanding of, or disagreement on the objectives* within the protective structures working with the implementation process.

#### 8.1.1 Penal Code Act

The Ugandan Penal Code Act is not exactly Ugandan in the sense that Ugandans where the ones to develop it. This have lead to a problem of enforcement and the huge project of forming the Penal Code Act to be more Ugandan like, is taking time. And when the law of defilement is under the section of ‘Offences against morality’ it is not just bureaucracy restraining the development, but also the strong beliefs connected to the issue. And it was obvious that Dr Tamale were very upset when discussing this.

‘The Penal Code act talk about different offences eg ‘Offences against the state’, ‘Offences against other states’. And the defilement is put under ‘Offences against morality’ isn’t that horrible? It’s all about morality.’

*Dr. Sylvia Tamale*

Also the punishment for defilement has been seen of many people as harsh and unrealistic and only one maximum sentence of death has been passed, however it was never executed (ULRC 2000:45). This shows that the harsh punishment doesn’t have support from the citizens and it is functioning. In the ULRC report they therefore suggests that the maximum penalty should be reduced from death to life imprisonment.

#### 8.1.2 Customary Law

To achieve a successful implementation of a new legal system, there has to be research done before the implementation process since defining and describing conditions makes it perform more optimally. When applying a new system with

lack of knowledge about the local regulations can do more harm than good. Implementing a policy when people don't believe in it can be a big problem, complications may occur during the process and misunderstanding and confusion can easily become an issue. And since the Penal Code Act mostly is inherited from the British Penal Code Act the customary law is in many ways stronger, and people tend to prefer following the old cultures and handling issues according to them. The traditional networks of local councils, elders, relatives and friends are more important in the process than the legal system. It is obvious that there is a conflict of laws between the Penal Code Act and the customary law. And the non-systematic form that the mixture of the both of them creates makes people ignore it. The tradition and norms also contradict with the children's rights (ULRC 2000:19), so the rights that WHO have set up are not ensured and the most important contradiction is the early marriages.

### **Early marriages**

In 1995 the Constitution decided the 'age of marriage' to eighteen, but still the Customary Law and Muslim Practice allows people to marry off their daughters at younger ages if the parents agreed to it. And since the term 'unlawful sexual intercourse' was added into the Penal Code Act the husband of a fourteen year old girl can not be charged for defilement since he is having sex with his wife, which then is not unlawful (Tamale 2001:89f).

'The lawful one is only that one which where people are what, married. That one is lawful. But anything outside marriage, that turns out to be unlawful.'

*Mr. Ruzinda Herbert*

'Once one is married it is an automatic ticket that it has to be a consummation of that what, that marriage. And that is through sexual intercourse. How old she is doesn't matter.'

*Mr. Ruzinda Herbert*

This paradox has a great impact on how Ugandans look upon defilement, and they seem to be very forgiving when it comes to early marriages. This is a big issue within public health and YSRHR and the way the culture allows this to happen is frightening. According to WHO a woman should be able to make her own choice of partner and decide if she wants to be sexually active or not. She shouldn't be forced into non-consensual sexual relations or non-consensual marriages, but in Uganda I am sorry to say that many young women are. The way the customary law looks upon woman is not acceptable. It is claimed that woman under the age of eighteen are dependent in mind, and at the same time they are expected to be mature enough to be a mother at the age of fourteen.

That girls up to seventeen and up to eighteen, between there, are also dependent in mind.

*CID*

The whole system of settlement where for 10.000.000, a car, or a goat (depending on which class you belong to) is undermining the development of YSRHR for the Ugandan woman and she is trapped within a tradition.

### **8.1.3 A wider perspective**

The occurrence of teachers, authorities and family members defiling young women are not unique for Mbarara and Uganda. It is a common issue all over the world in every society, but because it happens everywhere doesn't say nothing can't be done to prevent it, rather the opposite! When analysing a complex issue like this a wider perspective has to be considered. And with a lot of different aspects in a big process you can sometimes ask yourself whether the hen or the egg came first. Trying to find the source of the incidence you can begin with investigating if the specified *tasks were fully specified and followed in the correct sequence* to be able to structure the behaviour. The big problem with defilement is that it often is seen as a private issue and a enormous taboo, and in Uganda the importance of being a virgin until marriage makes that even taboo.

'We still value virginity in Africa. It's a very big virtue to women who don't do it until after eighteen, until marriage.'

*Headmistress*

As been said earlier the clans, tribes and extended families have their own way of dealing with matters. And it is my belief that even though the Penal Code Act is specified it is not followed at all since the families usually handle defilement cases themselves, which is far away from what WHO talks about concerning safe sexual experiences, free of coercion, discrimination and violence. The process of implementation has to be restructured because it is obviously not working and I was surprised when no one in the focus groups did mention reporting to LC's, when it is supposed to be the one to go to if not the police are around.

### **8.1.4 Awareness**

When working with national policies and making them functional in a city like Mbarara, *communication and co-ordination* between the head quarters and the branches *must be perfect*. But in a developing country where computers and phones not are very common, communication and co-ordination can sometimes be a problem. Within FIDA the link between the head quarter in Kampala and the branch office in Mbarara seemed strong and the branch was working strictly after the guidelines from the head quarter. FIDA also seemed to be a very important organisation in Mbarara where a lot of people turned to get sufficient help.

On the other hand there was the Human Rights Office (HRO) in Mbarara which didn't even let us in, with the comment that they don't work with sexual rights. It was horrifying to find out that a heavy organisation like HRO not are working with these issues, even though it is an alarming situation in Mbarara today! And I'm also sorry to say that HAR, SCiU and ANPPCAN don't have any offices in Mbarara – yet.

### **Information**

The bigger organisations ANPPCAN, SCiU and HAR all present bigger annual reports, and these reports make it easy to follow the work and the affect the organisations have on the society. In all of the reports there is a trend of increasing cases of defilement, which implies the importance of the organisations. How common defilement used to be can not be told because it is first now this is put in to statistics in a structured system.

The annual reports are very essential to influence the political work surrounding the issue of defilement and the implementation of the law. But at the same time there must be an open communication with the citizens to try to make a behaviour change among the population. This is a great task in Uganda since illiteracy is very common, and people are therefor not aware of their rights in the way they should be. They handle things the way they have been told to, and in many cases it is not according to the Penal Code Act. Uganda should encourage more preventive outreach work like FIDA and HAR do, and produce more of the picture books about defilement, since they are easy to understand even if you are illiterate.

‘People need sensitisation about this problem.’

*Focus group 1*

### **Publicity**

Ugandan media plays a big role in highlighting defilement through printed media, radio, TV and Internet both by reporting and general discussions. In the year of 2002 printed media presented 347 cases of defilement all over Uganda (Mbarara included) (ANPPAN Ugandan Chapter 2003:5)

Following news-items are from the biggest morning paper The New Vision.

‘A primary school teacher on Friday appeared in court over defiling a pupil. Alfred Katenya, a teacher at Kayando Primary School in Bugiri district, reportedly defiled the girl on April 13.’

*The New Vision, s 8, 2004-06-17*

‘At least 25 girls have been defiled in the district since January. Criminal investigations officer Victor Draolega said in an interview recently that four suspects had been taken to court and the rest were freed because of insufficient evidence.’

*The New Vision, s 9, 2004-06-17*

This way of publishing information contradicts to everything the WHO discuss when it comes to autonomy for a victim, beneficence, justice of fairness and most of all about maintaining objectivity. And of course also with the children’s rights when it comes to privacy and confidentiality. The defiled girl’s future will in most cases be destroyed when the news gets out and as Ndubani claims that the issues connected to sexuality is about much more than just a relationship between a man and a woman, it also plays an essential part in society. The girl will definitely suffer hard consequences after being exposed in the media. And because of this

the ULRC argues and say that published information about defilement cases can do great harm to the victim, so they suggest punishment for publishing this kind of information should be a fine on 500 000 Ush, imprisonment for 6 month or both (ULRC 2000:96).

## 8.2 Time and resources

In 2002 a total number of 4 495 defilement cases was reported to the police all over Uganda (Mbarara included) and since the High court in the same year only were able to handle 38 cases and HAR only could handle 12 cases, there is a need of big changes. There is no doubt that *adequate time and sufficient resources* not *are available*. It is too many cases and too few personnel and as always there is a lack of money.

Getting closer to WHO request that a person should be legally protected and guaranteed by international standards, Uganda is now trying to develop the process of implementing the law about defilement and decreasing the number of cases waiting for a trial. At the moment the aim is for the chief magistrate to handle defilement cases where the victim is at age 15-18. Because as it appears today the legal process is way too long, too complicated and too expansive for most people.

‘There are very few judges also so they are trying to reduce this, what the visions have been at least aiming at, to bring down to the magistrate, to a magistrate level, chief magistrate to handle and at a certain age.’

*Mr. Ruzinda Herbert*

Another huge problem is the costs for the victim and her family. Not only do they loose dowries if she is not wed, but also during the filing process where there officially should be no costs, for example in a police investigation, today there is anyway.

‘There are cases maybe from the other side of the district and they don’t have transport to go there for the investigation, so sometimes they ask the complainers to contribute some money or get a car so that they can go and carry out the investigation. So sometimes the cost can be, but officially there shouldn’t be any costs.’

*Theresa Ginnie*

‘We are given money. We are given transport money to bring them to come up and testify against the trial so that we don’t lose a good case of defilement.’

*CID*

Since there is a lack of almost everything needed it is obvious that *the required combination of resources* is not *available*. And with problems solving the existing cases, the new cases just end up on a pile on someone’s desk. This might be one other factor why people prefer to take care of the case themselves and have a quick solution instead of going the legal way as they are supposed to.



‘You see it is very very many cases countrywide. I think the biggest percent is defilement. Because it’s the biggest much of the backlog is defilement cases.’

*Mr. Ruzinda Herbert*

The amount of time and resources is of course very essential, but how you use the existing resources and prioritise is a key-factor so in the end it all comes down to power.

### **8.3 Power**

According to Bakers elite theory you have to know the right people to put your issues on the political agenda, and in Uganda I would argue it is even more complicated since there is a very complex political system. Here like in other former colonial countries the system have not developed in their own context, since they were based on norms and values from elsewhere. Thereby they have a problem to develop to an independent, autonomous nation (Barker 1996:91).

The problems with enforcement, conflicts between laws and what appears to be inadequate laws is a big issue for the implementation process and people tend to not trust the legal system. Museveni have kept most of the Ugandans safe for over two decades and the memory of the brutal civil strife makes people re-elect him every election. But keeping the same president for over 20 years in a corrupt country like Uganda can bring on some difficulties in the development process and the elite theory with it’s political elite feels accurate. In July 28 2005 Uganda were planning a referendum, where the public could vote between continuing being govern by a president in a republic system or a democracy with a multiparty system. Terribly enough the referendum was cancelled in the last minute because of several reasons, of which I guess lack of money was the most important. With Museveni the peace is kept, but I’m afraid YSRHR has low priority as it is today and not much is changing there. Because in a rather slow developing and patriarchal society like Uganda where people depend on men, the discussion about gender issues tend to fall outside the agenda. But thanks to strong women (like dr Tamale) new winds are blowing into the patriarchal system. And for example is the law about age of sexual consent a hot topic at the moment.

In keeping an eye in the implementation of the law the NGO’s play an important role and they also work as an engine in developing the work with sexual health and rights and lifting gender issues on to the political agenda. Plus that they have to increase the awareness that men and women in Uganda do have different norms on how they look upon sexual pleasure and they also have a task to fill the big gap of knowledge about sexual health with relevant information. For example correct information about HIV infection without scaring people from having relationships. I have a lot of faith in this work and network and collaborations like CRESS and the Bridging committee pushes the process forward. And I am very keen on what the projects ANPCCAN are planning for will do for the young woman in Mbarara.

### **The age of sexual consent**

Dealing with the process of the implementation of the law about defilement and the law about the age of sexual consent in this patriarchal society is complicated. Especially when men high up in the hierarchy tend to believe “*that girls up to eighteen are dependent in mind and they submits to whatever*”. This attitude definitely undermines the ongoing discussion whether the age of sexual consent should remain at eighteen or be lowered to sixteen. The parties who are struggling against each other here are on one side the ones for maintaining the age at eighteen years (i.e. HAR). This side tends to avoid the discussion about pleasure and desire and claims that the body of a sixteen-year-old girl not has developed fully to be able to go through a pregnancy.

‘Oh, once Ugandans wanted to reduce the age of 18 but we defended it and we meet parliamentarians, religious leaders but we succeeded.’

*Selina Rwashana*

And on the opposite side there are the ones who would like to see a lowering of the age. They highlight the fact that in Uganda today lots of people still practise the traditional way to marry off the daughter at fourteen, which say she is mature enough and she is a financial burden to the parents. Instead of talking about a specific age of sexual consent they prefer to focus on forcible sexual activities, which should instead be covered under ‘rape’ (Tamale 2001:88-89). This party also talks about the joy, the excitement and the pleasure sexual activities can involve, which is a very controversial discussion. And the fact is that the average age for the first sexual intercourse is ten years for girls and eight years for boys. And also there is the problem of young girls lying about their age to frame someone for defilement since it is very hard to prove the age of a girl (ULRC 2000:34), so they use the harsh law against the young men.

‘We shouldn’t forbid teenagers to discover sex, instead we should provide as much information as possible. It should be an open climate, open to discuss and talk about sexuality.’

*Dr. Sylvia Tamale*

When ULRC in 2000 wrote their report about the age of sexual consent, in the end the majority was pro a lowering of the age. But strangely enough when the report was presented you could read following; ‘*The age of consent to sexual intercourse should be retained at eighteen years*’ (ULRC 2000:xxiv), which was a surprise to many.

Why the ULRC suggested the age to remain at eighteen is an ongoing discussion and corruption and lobbying is two strong words often connected to the debate. This decision about YSRHR in Uganda is according to me a violation against what WHO declines about discrimination and it is a decision made with lack of participation from several strong parties. The debate about pursuing a satisfying, safe and pleasurable sexual life for young women is not existing at all, so again we have the patriarchal system deciding what the young women can and cannot do.

## 8.4 Responsibility

The NGO's in Uganda have an enormous responsibility to observe the legal process, the implementation of the law, to influence the political process and finally to fight for a better situation for the young girls and a change of the existing law. These big missions are up to the NGO's (obviously except for the Human Rights Office in Mbarara, who didn't do anything in this area and didn't even let me in!), but the family and the school are the ones looking after the young girls in their everyday life. The families are the ones who support her in every way, and if defilement happens to her, she has to depend on the family to handle this in the best way possible. If the girl is lucky enough to have a family dealing with it in a way legally right for their daughter, they have to go through a complicated and expensive process. So who's responsibility is it to make this process more effective and to encourage the families to struggle?

### Decentralization

Authorities and politicians can of course be held responsible, but taking care of the young girl's everyday life might not be their area. They are accountable for steering the ship of the process of implementation, and finding the right solutions for the problems. The MOH have after decentralisation more of an informative role, to guide the districts and to give feedback on the implementation process. But even though the decentralisation has led to big changes the communication is still vertical, top-down, between MOH and the districts and it's leaving the districts little to say. This means that all the districts are still implementing a national policy (Jeppsson 2004:49). So today the construction of health services is a responsibility of central level. But several levels have decided to take own responsibility for their districts to increase the access to health services. This means that *dependency relationships are minimal* in most cases. And even if the guidelines are strict it is up to the people on the grass root level to implement the decision. In a country with sometimes a confusing system the public servants have the biggest responsibility to carry out what ever is decided. So that lives most of the responsibility and the power in the hands of the LC's, and in a country infected with corruption I would say independent LC's can be a risk. The 42 000 'ghost workers' which were found in the process of decentralization, is a sad proof of what opportunities can create.

Lots of the LC's are also village leaders and may have conservative values when it comes to handling defilement cases. The typical form of a traditional "trial" where people gather in the village to decide the punishment constrains heavily with the human rights, about how the girl should be legally protected. And the public "trial" will most likely destroy her life and spoil her possibilities to become a wife and mother.

## 8.5 Cause and effect

It is no secret that the High Court have an enormous backlog when it comes to defilement cases, and the way it is working now is not effective enough. But when trying to find out why the policy is not working we have to see if the *policy is based on a valid theory on cause and effect*.

### Values

The aim of the policy is to protect young women in Uganda from exploitation but it is build, which have been said earlier, on the old British law. And the values and beliefs about YSRHR and sexual rights in the Penal Code Act are not valid in Uganda. According to the holistic gender perspective you have to consider sexuality as a social phenomena and therefor you can not make a policy without paying respect to how the society looks upon sexuality.

One of the factors discussed which can lead to the incidence of defilement is the social-economic factor, but according to what people told me during the interviews this has nothing with poverty or wealth. The only specific thing that came up was the Sugar daddies who pay (often poor) girls for sexual intercourse, but otherwise the financial situation is not a contributing factor to whether defilement is more or less common. I would say that most of the causes are found in the traditional values and beliefs and particularly in how the women are seen as a property in the Ugandan patriarchal society. The way the men are dominant within protective structures have a negative effect on both women and men, since the changes done are not good enough. And even though a lot of things are happening in this area and a lot of programs are going on, there must be more focus on participation from the women and it has to be looked upon with a holistic gender perspective.

### Corruption

Another very important factor in this discussion is of course the wide spread corruption, which often makes it impossible for *those in authority to demand and obtain perfect compliance*. Corruption exists on all levels in the Ugandan society and it makes maintaining the law very difficult.

‘For example, there is a teacher you know who keeps raping and they always release him. Because he pays them some money.’

*Focus group 3*

Punishment for corruption exists, but the problem is way too big to be able to handle so most of the cases of corruption seem to disappear. And since there is a lot of corruption even among the police, who are the ones to notice and prevent this behaviour, the situation becomes paradoxical and the battle impossible to fight.

The traditional values and beliefs combined with corruption are the two most important factors why the implementation of the law not is working. I can see that *the relationship between cause and effect is direct* in this case and this is also

what many of the interviewees told me as well. But they also told me that in a developing country corruption is sometimes the only way to put food on the table for your family.

## **8.6 The 'bottom-up' model**

I brought this part into the analysis because of two reasons, first I think more has to be done after my study because this study creates new questions important for the implementation process. The second reason is the opinion about the punishment many interviewees expressed for defilement being too harsh and they believed that if the sentence was lower more people would not only follow the law, but also report if an offence was done.

‘If you reduce it to life imprisonment I think more cases would come through the justice system.’

*Mr Mugumya Topher*

Also taking in consideration that the Penal Code Act is (mostly) British, I can see a need of change. Why is the British Penal Code Act kept, and who decide that it should be? In doing an overview of the development and decision making process the ‘bottom up’ analysis is a great tool to study the degree of participation on different levels in the policy process. I would therefor suggest further research investigating the changes of the Penal Code Act towards a more Ugandan version. To what extent does the implementers participate in the decision making and in what way?

## 9 CONCLUSIONS

The Penal Code Act is on one hand very clear with its harsh sentence of death penalty for defilement (which never been executed), but on the other hand paradoxical when it comes to allowing early marriages. The implementation of the law about defilement is overall inadequate and the protective structures for young girls in Mbarara are doubtful but developing to get better. But the work must go hand in hand with gender research to maintain a holistic perspective.

The two most important factors affecting and crippling the implementation of the law and the development of the protective structures are traditional values and the wide spread corruption. Some other aspects are:

- Lack of information
- Lack of resources
- Schools have their own bodies with own regulations
- Politicians accept early marriages
- Poor accessibility of legal and medical support
- Inadequate prevention
- Terrible attitude against young women and the ignorance of human rights (including YSRHR) and fundamental ethics.

The incidence of defilement has horrifying consequences for the girl, her family and also affects the legal and political system on many levels in Uganda. I keep wondering why a, in many other ways a spectacular and tremendous, country is allowing their own men to cause injury, HIV, unwanted pregnancy, trauma and sexual dysfunction to their young women who are the future of Uganda.

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## **APPENDIX 1**

### **The interview guide**

The interview guide was made very open and contained a few different themes. In the beginning of the interview I presented a scenario with a fifteen-year-old girl who was asked by her teacher to carry his books to his house and there he forces her to have sex with him. And after that the themes were presented in following order:

- Where can she turn?
- Report
- Support
- Obligations for the school
- Costs
- Consequences
- Penal Code Act
- Social economic factors
- Underage marriages
- Sugar Daddies
- Corruption
- Prevention

The same interview guide was used both in the interviews and in the focus groups discussions.

## APPENDIX 2

### Content analysis part one

Meaning unit	Condensed meaning unit	Code
In my opinion the girl should first go to the parents,	The girl should first go to the parents	The girl
parents go to Local Councils	parents then go to Local Councils	Report
and the LC's are the one to give a go ahead to police.	LC's are the one to give a go ahead to police.	Report
Some parents are weak so they are bribed so they can't go to police.	If parents are weak they can be bribed and they don't go to police.	Settlement
Parents tend to solve it before they report the case to get some money from the man who has defiled.	Parents tend to solve it and get some money from the man who has defiled.	Settlement
Sometimes when the girl is above fifteen	There can be settlement if the girl is above fifteen	Settlement
Principals are aware of the case. They should know the case	Principals are aware of the case.	School
The parents are to come to the principal and the principle are supposed to arrest the teacher.	the principle are supposed to arrest the teacher.	School
When you want the case to smooth you have to pay something	you have to pay to have your case handled	Costs
First you have to pay the LC's to write a letter to police	pay the LC's to write a letter to police	Costs
and then you pay the police some costs for a follow-up.	pay the police some costs for a follow-up	Costs
<ul style="list-style-type: none"> <li>- There are traumatised</li> <li>- Puforating the uterus</li> <li>- Pregnancies</li> <li>- School dropouts</li> <li>- Shameful (the whole village will know about it)</li> <li>- You will have a problem getting married</li> <li>- Abortion</li> <li>- Giving a birth to a child you don't want.</li> <li>- Parents are effected</li> </ul>	Consequences for defilement	Consequences

Meaning unit, condensing and code (religious leader, catholic).

### APPENDIX 3

#### Content analysis part two

Costs			
Police	Legal	Medical	Others
pay the police some costs for a follow up (catholic)	Parents have to pay a legal fee to the lawyer (ANPPCAN)	Parents have to pay health costs. (ANPPCAN)	It involves travelling costs, so they lose interest. (ANPPCAN)
The police are given money to transport people to testify. (police)	All trial expenses are inquired by the court (police)	For examination you pay 20.000. (men)	ANPPCAN don't charge any money (ANPPCAN)
Police needs money to carry out the investigation. (FIDA)	Lawyers are given by court (police)	Government hospitals they don't pay. (woman2)	pay the LC's to write a letter to police (catholic)
At the police they pay for the facilities (woman1)	Pay a lot to lawyers (woman1)	The hospital is free (Marie Stopes)	TASO cater for HIV victims. (police)
Police don't act if they don't get anything (girl school)	The lawyers are there. The state is there. (lawyer)		There are no costs for the family. (lawyer)
The costs may incur facilitating the police. (lawyer)	Pay for the lawyer (Marie Stopes)		The LC's, the police, the court, and the judiciary system is a part of the state. (lawyer)
Pay the police (Marie Stopes)	You have to pay a lawyer. (Muslim)		Everybody asks for money (Marie Stopes)
It costs to report to police (Muslim)			Security personal who wants money for the case. (head mixed school)
Pay for transport and fuel (Muslim)			Defilement cases involves costs (Muslim)
			the responsibility of the state to take on all such costs. (lawyer)

Theme (costs)

# APPENDIX 4 Police Form 3

POLICE FORM 3 (app)

CASE FILE No.

Police Station... K.A. Bwanda...

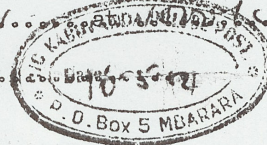
Date... 16.5.2014...

THE MEDICAL OFFICER.

KABUYANDA  
.....  
H.I. SEMINT  
.....

Please examine 1.4.1. Mrs. T.M.A.E. who is a  
complainant in Defilement/Rape case and furnish us with areport  
sent to you on 16.5.2014.....

By..... Officer D.K......



Please follow the foot note.

1. How old is the Female?..... 15 years.....
2. Is the hymen raptured?..... Yes.....
3. If the hymen is raptured, how long ago?..... Long ago.....
4. Are there any injuries or inflammation around the private part?  
..... No.....
5. Are injuries or inflammation as in (4) above consistant with  
force having been sexually used?..... N/A.....
6. Are there any injuries on thighs arams elbow e.t.c. No
7. Are there injuries or Bruises as in (6) above consistant  
with putling some force?  
..... N/A.....
8. Is the female strong or capable of putting some force of  
resistance?..... Yes.....
9. How old are the injuries as in (4) and (6) above.  
..... N/A.....
10. Are there any signs of V.D.?..... No.....
11. Does the Viginal area show any sperm?  
..... No.....

SIGNATURE: M. O.

RANK: M.O.

