

# IMPERATIVE DENOUEMENT OF CHILD SEXUAL ABUSE IN NIGERIA: AN EXPLORATION OF THE MEDICAL AND LEGAL IMPLICATIONS

Imosemi AF, Atatobe S.

Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Ilishan-Remo, Ogun State, Nigeria.

## ABSTRACT

**BACKGROUND:** Child sexual abuse cuts across cultures, races, ethnicity, beliefs, orientation and religion all over the world. The rate of defilement cases has been on a steady rise over the years in Nigeria. Medically, child sexual abuse is believed to be a risk factor for many diseases and the victims go through various health injuries both in the short and long terms which result in negative impacts on their lives. Children are no longer safe because most of the perpetrators of the crime still walk scot-free since many victims do not like to report the crime or even when they report the crime, the criminal justice system fails to convict and jail the accused persons thereby disappointing the victim for lack of justice and closure.

**METHOD:** Thus, this work was undertaken to examine the medical effects of child abuse on the victims and the effectiveness of our laws as in bringing defilement to a necessary end. The findings from this research showed that the health consequences of child abuse on victims extends till the long term while the culture of silence in Nigeria amongst some defilement victims prevents arrest and prosecution of perpetrators.

**RECOMMENDATION** The study recommends free medical treatment for victims of defilement to ensure extensive treatment and the criminal justice system should ensure fast-tracked trial for all accused persons.

**CONCLUSION:** It was thus concluded that not until our legal framework especially the Criminal and Penal Codes be amended to remove provisions of corroborative evidence, child sexual abuse will continue to be on the rise.

**KEYWORDS:** Child Abuse, Medical, Defilement, Victim, Sexual, Laws.

NigerJmed2019: 224- 231  
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## INTRODUCTION

Child sexual abuse or defilement is a crime that is known all over the world but what differs is what it connotes and also the punishment prescribed for it. It is a crime that develops and succeeds in secrecy and also in a culture where the victims of this evil act are seen to be the cause of their own problem, instead of the evil-doers who actually commit this crime and what it basically connotes is the rape of children with rape being one of the oldest crimes in human history.<sup>1</sup>

Defilement is one of the most heinous crimes that has destroyed the lives of many children and is still destroying the lives of many children across the

globe. In recent times the cases of defilement have grown so much that one begins to wonder if there are any laws curbing this devilish crime and act. A study carried out shows that in the north-east of Nigeria in states like Maiduguri over 77.7% children have been sexually abused while in the south, in Lagos state over 14% of school children have been defiled.<sup>2</sup> The fact that there is a serious punishment proscribed for this offence in our various criminal laws and the fact that people still perpetrate this crime calls for great concern and review of our laws.

Children have become the easiest victims for these sexual predators who are most of time their relatives or close persons to their families who instill fear into the children if they disclose the harm that has been coming to them to their parents or guardians and an instance is an occurrence which took place in November 2017 where a two

**Correspondence to:** Imosemi AF,  
Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University,  
Ilishan-Remo, Ogun State, Nigeria.  
**E-mail:** imosemia@babcock.edu.ng  
**Phone:** Tel- +234-7068025957

year old child was defiled by her school's supervisor.<sup>3</sup> This has fueled the fact that defilement as a form of sexual abuse is indeed a silent crime that is becoming rampant due to the fear of discrimination, stigmatization and even death.

Medically, the crime of defilement has led to the death of many children especially in situations where medical help does not come to the victim in time or the victim raises an alarm to expose the perpetrator. Child sexual abuse victims go through various health injuries both in the short and long terms which result in negative impacts on their lives. Victims of defilement experienced "a lifetime history of more exposure to various traumas and higher levels of mental health symptoms". They were further vulnerable to traumas in both childhood and adulthood.<sup>4</sup> Finkelhor and Browne's four paradigm of traumagenic dynamic state that defilement creates betrayal, powerlessness, stigmatization, and sexualization, which each have a negative on a child's development.<sup>5</sup>

This study examined the medical consequences on the victims of child sexual abuse in Nigeria and reviews the legal framework to see if they are effective to ensure justice for victims. All stakeholders; parents, victim, hospitals, government and criminal justice administrators are to be sensitized enough to combat the heinous crime of defilement.

## **METHODOLOGY**

The research adopted both the doctrinal and qualitative methodology. The doctrinal approach made use of a combination of rules, regulations, principles, ethics, norms and values in both the criminal and medical law to review the effectiveness of the legal structure which is based on documentary sources of information from existing legal framework that provides for the crime of defilement in Nigeria while the qualitative approach was adopted to examine the medical consequences of child sexual abuse on the victims so as to create awareness on the health injuries caused by this heinous crime through the use of relevant textbooks, journals, articles and other internet sources.

## **CAUSES OF CHILD DEFILEMENT**

Defilement is on the increase in Nigeria and this study analyzed the various causes of defilement of minors which are:

### **a. Child Marriage**

One of the many views on the increase of defilement cases in Nigeria is that of child marriages. Child marriage in Nigeria is predominant in the north than in the southern parts of Nigeria and this occurs due to circumstances such as poverty, traditions and customs, betrothal system, religious factors as well as social factors.<sup>6</sup> One of the requirements of marriage is consummation of the marriage which could even be a ground for the dissolution of marriage according to the Marriage Act and a child is not fully developed sexually as at the time of such marriage but yet the husbands would still want to enjoy his 'marital rights' and as a result of such actions that child can be damaged sexually and may have complications with respect to her reproductive organs and it could also result to teenage pregnancy and can also hinder the education of that child.<sup>7</sup> Also one of effects of child marriages is the fact that the child has the risk of dealing with Vesico-Vaginal Fistula which is popularly known as VVF and also the victim could even die after delivery as a result of Post-Partum Hemorrhage (PPH) which is the loss of blood from the uterus if it doesn't contract as well as it should.<sup>8</sup> The authors concur with this assertion since child marriages destroys the future of children and it shuts down the possibilities of many opportunities they can get during their lifetime especially education.

### **b. Poverty**

Poverty is another reason for the increase in the rate of defilement cases in Nigeria.<sup>9</sup> Most times parents find it hard to provide for their children or even provide the basic amenities that they may require in life and so to solve this problem sometimes they send their children out on the streets to hawk various goods for the sake of additional income to what they already made and when these children are on the streets there is nobody that protects them and they can easily be taken advantage of and defiled without anyone knowing what happened.

### **c. Parental Neglect**

Parental neglect is also a factor that causes the rise of defilement cases in Nigeria and most times parents or guardians are not aware of what goes on with their children and as a result may not know what goes on when they are not around because they leave them in the protection of people who

they feel are trustworthy whereas those persons are actually abusing those children sexually even without the knowledge of their parents or even sometimes it is those minors themselves that actually defile other minors because there is no one to guide their activities and actually monitor them.<sup>10</sup>

#### **d. Under-reporting of Defilement Cases**

The under-reporting of defilement cases is also another factor that affects and causes an increase in defilement cases and victims do not like to speak up most times and even if they do their parents or guardians do not take action because of the relationship between the perpetrator and the victim or sometimes they do not want the society to be aware because of the heavy stigmatization that their children or wards might face and as a result of these reasons the statistics keep rising and the offenders keep going scot-free.<sup>11</sup> As a result of the under-reporting, there is a culture of silence among rape and defilement victims which must no longer be encouraged and victims should be encouraged to speak up for their protection and for the laws to be properly implemented.

#### **THE NIGERIAN SOCIETY AND CHILD SEXUAL ABUSE.**

In Nigeria, child sexual abuse rises daily despite the laws in place to fight this crime. These perpetrators commit this crime for sexual gratification or ritual purposes. The concept of child sexual abuse even though on the increase in Nigeria, is perceived as a heinous crime and never acceptable. Legally, defilement falls under the umbrella of rape which is popularly known as the silent crime and the reason behind this concept is the fact that many people who have been victims of this crime would rather keep quiet about it than report it due to fear of the act reoccurring. Although many agencies fight against it and even the government has put laws in place to curb it yet the crime still thrives all around making many wonder if the laws are really effective or if something else needs to be done. In recent times, a lot of children have fallen victims<sup>12</sup> for various reasons and this has become a very serious problem in the country that requires the criminal justice administration to take more action in dealing with those who commit this crime.

Medically, child sexual abuse is not just violent in nature but also it leaves a lasting effect on the

health of the victims and also leads to several complications ranging from problems with reproduction to stigmatization from members of the society and also it disrupts the mental health of the victim.<sup>13</sup> These victims go through a number of effects because of the trauma that comes with being raped and they could suffer from low self-esteem, depression, social segregation and sometimes even go ahead to commit suicide just to stop the pain that arises as a result of this act of rape.<sup>14</sup> There can also be instances where the victim becomes pregnant after being raped and is confused as to whether to keep that unborn child alive or abort it so as to hide any evidence of the painful incident which took place.<sup>15</sup>

Publicly, there are various campaigns against defilement by schools, religious groups, Non-Governmental Organizations, government agencies and ministries. Unfortunately, there seems to be an attitude of silence by victims so as to avoid stigmatization, out of fear of the perpetrator or deliberate concealment by parents so as not to be labeled as irresponsible. All of these are detrimental to the health of the child and the prosecution of the accused person. The rate of the crime has increased so much that the defilement of children covers about 70% of the rape cases that are being reported in Nigeria. In Nigeria, a study carried out showed that about 14% and 35% of children out of school had been victims of rape and also statutory rape and also in the South-west and South-eastern parts of Nigeria, a survey carried out showed that 55% and 45% of teenage school children have also been defiled and also in the southern part of Nigeria, in Benin city 58% of the rape cases that were reported in the hospital had children as the victims.<sup>16</sup> Also in 2016, the United Nations International Children Education Fund (UNICEF) discovered that violence against children was on the rise and in a survey carried out showed that one out of two children had been victims of some form of physical violence and also one out of four girls have been victims of forms of sexual violence while one out of ten boys have suffered sexual violence.<sup>17</sup>

The people who take advantage and defile these minors are most time known to them either as immediate family members or extended family members or sometimes someone know to the family of these victims or sometimes, they are people who live around them as neighbours or it

could even be the people that these children have been kept in their care that is people who fall into the category of school administrators. There have been so many occurrence whereby any members of these categories have sexually abused or even defiled these children who have been kept in their care and example of one of such events was the rape of a 1 year and 4 months old baby at Ebonyi state by a 16 year old teenage boy who brutally raped the child that was placed in the care of her sister by the mother who went out to attend to her daily business.

The teenage boy who was a neighbour in the compound where they stayed took advantage of that child and he was caught while he was giving the child a bathe with the intention of stopping the bleeding and the mother of the victim stated that it took the doctors about 9 hours to operate on the child in an attempt to save the baby's life.<sup>18</sup> Another event is that which took place at Cross River State where a suspected rapist Mr. Edet James Asuquo who was suffering from Human Immunodeficiency Virus popularly known as HIV raped a 13 year old girl and also infected her with the virus in the State in fulfillment of his promise to spread the virus to other people.<sup>19</sup> Another is the case of one 48-year-old man, Mr. Sylvester Ehijere a Lagos Resident of Iyana Ejigbo who had been raping his daughters for a longtime until he was caught in March 2013.<sup>20</sup> In 2015 also in Lagos, a bricklayer one Mr. Segun Benson lured a 14 year-old girl who was a primary school student with Fifty Naira and raped the girl.<sup>21</sup> In 2013 in Nassarawa state, a two year-old child was a victim of defilement whereby the rapist was a police officer himself and this is more alarming because of the fact that even those meant to protect are also part of those who carry out this evil act<sup>22</sup> That same year 7 year old twin boys Elijah and Elisha were raped anally by a suspected gay man.<sup>23</sup>

Findings from Malawi in a survey that was carried out in 2013 by the Violence against Children and Young Women National Survey reported that out of every five girls one of them had been victims of sexual violence before they reached the 18 and within the ages of 18- 24 for men. It was also reported that one out of every seven men had been victims of sexual violence and abuse before they also attained 18 years of age and also it was discovered that when the males report the act they were bound to experience sexual violence at an

increased rate.<sup>24</sup>

In South Africa, a national study that was carried out across the country in 2013 revealed that among over 5939 secondary school students over 4.7% of them have been victims of sexual assault or rape while they were in school and only about 61.7% of them reported that crime.<sup>25</sup>

From the foregoing, it is evident that in Nigeria there is a growing pattern and trend of child abuse that need to be urgently curbed by the various stakeholders particularly, parents and the criminal justice administration.

### **Health Consequences of Child Sexual Abuse**

There are several medical implications that may happen to a victim of sexual child abuse<sup>26</sup> which include;

#### **General Health**

Victims that have history of child sexual abuse report higher somatization manifestations and more gloomy traits of overall medical status than participants without such history.<sup>27</sup> A study also asserts that victims of defilement "held more negative perceptions of their overall physical health than participants without abuse histories".<sup>28</sup>

#### **Gastrointestinal Health**

A study reports that clients with a history of child sexual abuse were 1.7 times more likely to suffer from "irritable bowel syndrome signs than those without abuse history".<sup>29</sup> Research has also found that conducted with has found that 53% of patients with gastroenterology (non-organic) GI disorders "have a history of defilement compared with 37% of those with organic disorders".<sup>30</sup>

#### **Obesity**

Samples of studies have demonstrated that clients with a history of defilement "are at increased risk for obesity [Body Mass Index (BMI)  $\geq 30$ ".<sup>31</sup> Researchers also examined a "longitudinal study of girls with and without substantiated CSA to evaluate the developmental changes in BMI from childhood to early adulthood" and results revealed that although abused girls increased body mass at a steeper rate than non-abused girls, the groups did not significantly differ in BMI until early adulthood. Sex may also moderate the relationship between CSA and obesity.<sup>32</sup>

#### **Gynecologic Health**

Research on child sexual abuse and women's

health has identified a strong link between defilement and chronic pelvic pain.<sup>33</sup> Investigations of students, several community and nationally representative groups of women have shown that revealed that people with a defilement history “report more gynecologic symptoms than non-abused comparison groups”.<sup>34</sup>

### Trauma

Trauma and early negative experiences have negative impacts on the development of the brain and women who were defiled exhibited “significantly diminished brain volume on brain scans”. The composition of the hippocampus (responsible for learning and memory), for example, “are different when compared to individuals who were not traumatized. And the biological changes in the brain are even more profound if the abuse was early, pervasive, or severe.”<sup>35</sup>

### Cardiopulmonary Symptoms

Samples of community research indicates that individuals with a history of child sexual abuse “are more likely to report experience chest pain, shortness of breath, irregular heartbeat, and ischemic heart disease”<sup>36</sup> as well as “overall poorer cardiopulmonary health”.<sup>37</sup>

## REVIEW OF THE LEGAL STRUCTURE

### 1. *The Elements of the Crime of Defilement*

It is important to note that before discussing the elements of the crime of defilement the burden of proving beyond reasonable doubt that the accused committed the offence rests solely on the prosecution and the prosecution can establish this by proving that all the necessary elements for the offence of defilement can be shown to have existed at the time of the offence through evidence.<sup>38</sup> The case must also be proven beyond reasonable doubt in order to convict the perpetrator of the crime as provided in the case of *Omoleye v State*.<sup>39</sup>

Also, under *Sections 218 and 221* of the Criminal Code, ‘the prosecution of the offence begins two months after the offence was committed’<sup>40</sup> and this is seen in the case of *Mayaki v The State* where an accused could not be convicted due to the fact that the prosecution brought the case a year after.<sup>41</sup> Also, in the case of *God Bless Ezenwata Nigeria Limited v Sunday Odioku and Ors* the Court of Appeal held thus:

“An action commenced after the

expiration of the period, within which an action must be brought, stipulated in a statute is not maintainable and the court will have no jurisdiction to entertain such case”.<sup>42</sup>

### a. *Unlawful Carnal Knowledge*

To be able to prove that the offence of defilement was committed by the defendant the prosecution must be able to prove the physical element of the crime also known as the *Actus Reus* which is that the defendant had unlawful carnal knowledge of the victim and carnal knowledge means that there must be a connection which would be complete or deemed to have taken place once there is a penetration of the female sexual organ by the male sexual organ.<sup>42</sup> This was stated in the case of *Ahmed v Nigerian Army*.<sup>43</sup> It is also important to note that carnal knowledge becomes unlawful when there is no consent from the victim but also despite this fact children cannot give consent to sexual intercourse according to our laws such as the Child Rights Act in *Section 31* and even when the accused claimed there was consent it will still be taken as though consent was not granted.<sup>44</sup>

### b. *Penetration*

*Section 6* of the Criminal Code provides “that when the term carnal knowledge or carnal connection is used in defining an offence it is implied that the offence, so far as regards that element of it is complete upon penetration”.<sup>45</sup> Penetration is a determining factor in finding out if there was carnal connection or not even if there was a release of sperm or semen and penetration however slight is sufficient and penetration is when the male sexual organ which is the penis makes contact with the female sexual organ which is the vagina and the vagina does not have to be ruptured to prove that the victim has been defiled it cannot be by using objects such as pens, sticks or any other object and in the case of *Adeoti v State* the court made emphasis that in proving the offence one of the most important element to prove is penetration and if the prosecution is not able to prove this then they will fail.<sup>46</sup>

### c. *Corroboration in Defilement Cases*

This is one of the most contentious issues in proving that an accused person actually committed the offence of defilement and once an evidence is given in corroboration it must show

that indeed the crime was committed and also by that person.<sup>47</sup> It has also been stated in some Nigerian courts that the victim must provide corroborative evidence or risk the accused person going scot-free without punishment and such cases include *Afolalu v State*<sup>48</sup> and *Ndidi v State*.<sup>49</sup>

In Nigeria to prove that the offence of defilement has occurred there has to be evidence of corroboration which must be that the girl was either under thirteen years of age or either she was under sixteen years of age at the time of the occurrence of the crime.<sup>50</sup> Also, corroborative evidence could be given through any lawful means which includes the provision of the child's birth certificate or even through evidence given by the parents of the child. The use of medical evidence is also acceptable in courts especially to link the suspect to the rape charges. For example testing samples for the Deoxyribonucleic Acid popularly known as DNA.<sup>51</sup>

Corroboration is a mandatory requirement defilement cases in Nigeria to the point that most times if any of such cases comes before the court and there is no corroborative evidence then the court can rule that there was no proof that the victim was defiled and there have been cases where the courts have stressed the importance of corroboration and one of such cases is *State v Olumuyiwa and Ors* where the court stated that even though Sections 177(1) and 178(1) of the Evidence Act are not clear provisions it is still important that there must be corroborative evidence.<sup>52</sup>

From the foregoing, it is evident that the laws on child sexual abuse need to be urgently amended particularly that the corroboration of evidence should be abolished so that victims can secure justice and closure.

## RESULTS

From the review of literature from different researches on the medical consequences of child abuse on the victims, it is evident that the victims of child sexual abuse will experience trauma, stress, Obesity, gastrointestinal disorders, pelvic pains both in the short and long-terms. Poverty is a major cause of child sexual abuse in Nigeria, therefore, not all families can afford the treatment for the resultant complications from child sexual abuse.

With the provision of corroborative evidence

under the penal laws, many cases have been quashed because most times during trial, the prosecution may not be able to provide such evidence, thereby failing to prove his case beyond reasonable doubt to ensure the conviction of the accused person. The provision of two months limitation of time to start the trial in a defilement case also impedes the criminal justice system from being effective. For these reasons, it is not certain that victims will have justice served in all cases of child sexual abuse.

Child sexual abuse or defilement is not acceptable in any form in Nigeria and the offence is totally condemned and awareness on the heinous crime is continuous by schools, religious organizations, non-governmental organizations and government ministries. Unfortunately, there still exists an attitude of cover-up or silence by the victims/family. This societal attitude will only allow the perpetrators of defilement to walk the streets freely and commit more of the offence while the victim will live with the resultant trauma and other health complications as a result of the abuse.

## RECOMMENDATIONS

The medical treatment of victims of child sexual abuse is prompt as long as the victim's parent/guardian can afford it., but since poverty is one of the major causes of defilement in Nigeria, it means not all victims can afford the treatment. In view of this, the researchers recommend that the treatment for child sexual abuse be made free for all victims especially in government owned hospitals so that they can have access to extensive treatment.

The criminal justice system should ensure fast-tracked trial for all accused persons and ensure an abolishment of the mandatory requirement of corroboration in defilement cases provided for in Sections 218 and 221 of the Criminal Code so that victims secure justice and closure. There should also be an abolishment of the mandatory time stipulated in the Criminal Code in Sections 218 and 221 where it is stated that the prosecution must bring such cases two months after the offence was committed because this would hinder the victims from obtaining justice in situations where due to some reasons or the other, they cannot take their matters to court. Parents are advised to stop neglecting their wards/children to ascertain their protection from sexual abuse.

## CONCLUSION

The laws on child defilement is long overdue for urgent reformations especially the part of corroboration of the offence. It is evident that to witness such a crime is almost an impossibility since most accused person abuse children in hidden places far from where they could get caught. Without the creation of more awareness, there will continue to be the under-reportage of defilement cases which is a major reason for the increase in child defilement cases and causes negative effect in the lives of the victim such as depression, trauma, teenage pregnancy, low self-esteem, fear of perpetrator, death as well as negative effects on the society at large. We conclude that not until our legal framework especially the Criminal and Penal Codes be amended to remove provisions of corroborative evidence, child sexual abuse will continue to be on the rise.

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