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16 Age of Consent Law and Moral Order

The Criminalization of Youth Sexual Relationships in Uganda

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"They arrested me for loving a schoolgirl"

In December 1998, 20-year-old Yahaya Waigongolo² of Iganga town in eastern Uganda was arrested and later convicted of having sexual intercourse with a minor, a criminal offense called "defilement." According to Section 123 of the Ugandan Penal Code (cap 106) as amended in 1990, a male of any age who has sexual intercourse with a female under the age of eighteen, whether she consents or not, is guilty of defilement. It is a criminal offense carrying a maximum penalty of death by hanging.³ The victim in this case, whom I will call Lydia, was a seventeen-year-old schoolgirl living in a middle-class section of town that bordered Yahaya's one-roomed housing row. The two young lovers had been involved in a liaison for about nine months before the arrest. They colluded to keep the affair hidden from the girl's strict father. Her father asked Lydia's stepmother to increase surveillance over the adolescent after he noticed her waning interest in school and in her childhood friends, as well as a decrease in her typical playfulness with her younger step-siblings. Lydia's increasingly visible signs of pregnancy, such as loose-fitting clothes and nausea, sent an already protective father into a state of rage, culminating in his determined efforts to find out who impregnated his daughter. Afraid that her father's anger would result in violence against her and perhaps her stepmother, Lydia easily gave up the name of her lover.

Early the next morning, two police met Yahaya at a distribution depot in town where he worked as a manual laborer loading and unloading cargo. The young man was handcuffed and escorted to the police station, inciting a wave of morning excitement and gossip in town. After being accused of defiling and impregnating the young girl, Yahaya claimed in his own defense that a week ago he had given the girl's stepmother 65,000 shillings (about US\$ 40) for medical expenses and explained that he would continue to provide financial assistance to the baby. "Work has been slow," he pleaded, "but I will provide assistance when I get paid."⁴ The girl's positive identification and Yahaya's promise to provide child support were adequate evidence to charge Yahaya with defilement.

The case sped quickly through the judicial system, and Yahaya was sentenced to twenty-six months in a state prison for capital offenders. About four months before his release, his sentence was extended by six months after the father claimed that Yahaya had defied court orders by communicating with his daughter through a letter delivered by a friend. The father brought a letter to the court to show that Yahaya was defiant and non-remorseful. Neither Yahaya nor Lydia were given an opportunity to respond to the charges. When I spoke with Yahaya in June 2002, he had been out of prison for eight months and was looking for work in Iganga town. "They arrested me," Yahaya began the narrative of his criminal conviction, "for loving a girl who was in school." Although he told me he was no longer in a relationship with Lydia, my assistant and I could not tell if his answer was a scripted attempt to protect himself from further incrimination.

Yahaya was one of many young men in Uganda imprisoned during the mid-1990s and early-2000s for having sexual relations with teenage girls under the age of eighteen. In 1990, women reformers fought a legislative battle to increase the age of consent from fourteen to eighteen and revised the maximum punishment to death by hanging. Advocates of the law believed that increasing and enforcing the age of consent would empower girls by protecting them from sexual exploitation and abuse. Borrowing from international human rights frameworks, women reformers believed that the age of consent law provided a rights-based empowerment strategy for addressing the disproportionately high HIV rates among young women and reversing the trend of out-of-wedlock teenage pregnancies. The law was intended to prosecute and deter middle-aged sugar daddies, pedophiles, organizers of child sex labor, and parents who arranged childhood marriages. Reformers hoped to challenge male sexual privilege, create new ways of thinking about who has sexual access to young females, and provide girls with a period of time during which they could obtain an education and safely mature into young adults.⁵

Their goals were somewhat met. On the one hand, the aggressive anti-defilement campaigns launched in the early 1990s led to a dramatic increase in reported defilement cases. In Iganga, reported defilement cases rose from zero in 1990 to over 50 percent of all criminal cases in 1998, according to the Chief Magistrate's court registry (see Figure 16-1). On the other hand, while reported cases increased, the law was overwhelmingly being used to arrest young men, a group not expressly targeted by the law's advocates. Specifically, the average age of males charged with defilement in Iganga was 21.5-years old.⁶ Based on anecdotal evidence and non-governmental (NGO) reports, the same phenomenon was occurring throughout Uganda. Sugar daddies and pedophiles, the intended targets of the law, often settled cases out of court with police and sometimes families, escaping formal legal punishment and imprisonment.

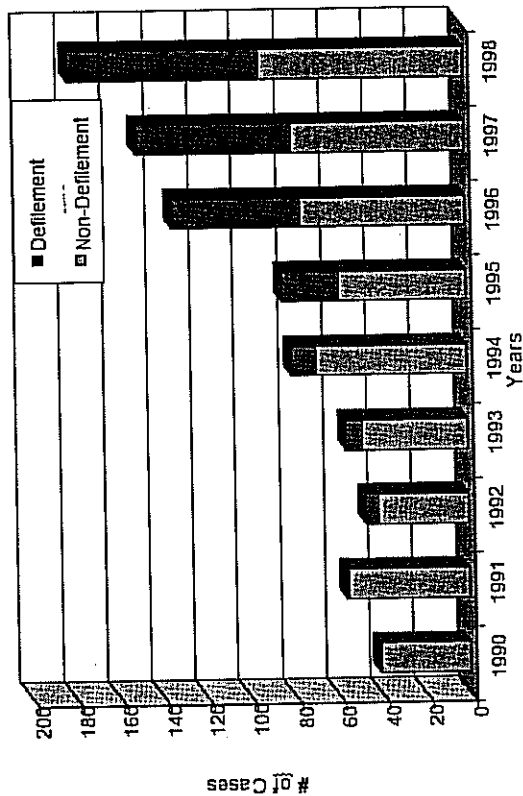


Figure 16.1.

Stories about young men being arrested for having underage girlfriends circulated almost daily throughout local communities and in the media, leading many people to believe that young men were indeed the prime target of the law. Schoolboys and other young men I interviewed expressed fear about being arrested for having relationships with classmates and young women. Moreover, fear of punishment emerged as a dominant theme in boys' love letters.⁷ In a love letter I collected in 1999, a seventeen-year-old schoolboy wrote to his sixteen-year-old love interest:

I didn't mean [for] you to decide whether to give up or to go on. But asked you to suggest which method can we play when carrying our love affairs in order to avoid being netted by your parents, who are bitterly in need of netting me.

Other letters bore warnings such as "burn this letter after reading" or "destroy this letter," so that incriminating evidence of the courtship would not exist.

During children's rights workshops I facilitated in 2002 and 2004 sponsored by Save the Children (Denmark), participants from rights agencies expressed similar anxieties about the law, complaining that the defilement cases involving consensual liaisons between young lovers were clogging the judicial system. They believed these cases served to distract the public and

legal resources from the law's intended aim of prosecuting and deterring pedophiles and sugar daddies.

Based on ethnographic research, I ask the following questions. First, why is a law that was intended to empower young women being used to systematically regulate youth relationships, when it is commonly recognized in Uganda that older men and sugar daddies are the greatest perpetrators of sexual abuse and among the greatest factors fueling the HIV epidemic among young women? Second, what does this unintended use of the Defilement Law tell us about the universality of human rights frameworks and how the notion of rights gets refracted through local histories, meanings, and power structures?

My intent is not to argue against the use of international human rights frameworks for securing women's empowerment and gender equality. Rather, as a feminist scholar and advocate, I propose that we must critically examine the complex and unintended consequences of our empowerment strategies. Furthermore, we must seek a nuanced understanding of historically produced local meanings of rights and current anxieties within communities. My investigations into the unintended uses of the Defilement Law reveal deep anxieties about female sexual agency, generational tensions, and the prolonged effects of poverty and widespread unemployment of young men. A major finding of this study is that the universalist, feminist discourse of human rights is in conflict with, or complicated by, the class-based agendas of parents, local police, and other local leaders.

FROM CULTURAL RELATIVISM TO POWER: THE ETHNOGRAPHY OF HUMAN RIGHTS

My analysis for this article engages with theoretical and methodological debates surrounding the ethnography of human rights. Hence, I will begin with a brief historical overview of anthropological perspectives on and approaches to the notion of human rights. Over the last few decades, human rights has emerged as the standard international framework through which arguments are made for protecting individuals from repressive states; arguing against certain cultural practices; providing for health care, housing, safety, and formal education; and legitimizing the claims of historically disenfranchised groups. The pursuit of human rights is commonly presented as an avenue for achieving modernity by setting the stage for freedom and securing individual autonomy, and hence fostering politically active and economically productive citizens. At the same time, two main critiques of the human rights movement have emerged. One suggests that the movement is closely aligned with social evolutionary assumptions—that societies move from primitive to civilized by adopting Western notions and ideas. The second critique focuses on the tension between claims of universality and respect for diversity.

Anthropology has had a precarious history with the notion of human rights.⁸ During deliberations to adopt the 1948 Universal Declaration of Human Rights (UDHR), the American Anthropological Association, a socially progressive and internationally-aware group within the U.S., submitted a statement expressing its opposition to the declaration. The association's contention was not that certain rights did not apply to peoples around the world. Rather, Melville Herskovitz and other authors of the argued against the UDHR on the basis that it was both Eurocentric and potentially conducive to a new form of Western colonial domination. A few decades later, anthropological critiques of the UDHR used a cultural relativist standpoint, positing that it failed to account for variations in cultural and religious values. Throughout those earlier years, anthropologists found themselves in a quagmire. They considered themselves advocates for the often disenfranchised and colonized groups with whom they did research, but they found the Eurocentric rhetoric of human rights advocates to be patronizing.

More recently, given the increasing number of women and historically disenfranchised groups entering the profession of anthropology, and also given the rise of international declarations advancing the rights of specific groups (such as women, children, and indigenous groups), the discipline has more comfortably embraced the human rights framework. Many anthropologists publicly recognize the potential transformative power of the international rights framework in addressing violations against people with whom we work.⁹ However, anthropologists and feminists argue for the need to investigate ways in which various players manipulate and interpret human rights concepts to achieve certain aims. Beverly Stoeltje summarizes these trends by arguing that the ethnography of human rights has moved from a discussion in which cultural specificity was seen as contradicting universal notions of human rights to one "in which the pursuit of human rights is approached as itself a cultural process that impinges on human subjects and subjectivities in multiple and contradictory ways."¹⁰

Rather than viewing human rights as either at odds with cultural beliefs ("cultural relativism") or as rooted in universal principles of social justice, the new critical legal anthropology pays particular attention to the myriad ways in which legal discourses and ideologies of rights are articulated in everyday practices and power relations in the pursuit of specific aims.¹¹ Informed by Foucault's theory of power, these approaches focus on how institutions that generate and circulate discourses of rights—the mass media, legal aid agencies, law enforcement, or other arbitration venues—act as powerful interlocutors through which global and national ideologies of rights are negotiated, contested, and adapted on the local level. These interlocutors play a crucial role in authorizing, legitimizing, and normalizing certain types of sexual relationships while simultaneously criminalizing, marginalizing, and pathologizing others through continual surveillance and censure.¹²

In this article, I build on these recent bodies of literature by demonstrating how a rights-based law intended to protect young females in Uganda

from sexual exploitation is deployed in local settings in ways that reinforce and uphold, rather than change, patriarchal control over the female body. When refracted through local power structures, the pursuit of human rights may play out in unexpected ways. Ironically, whereas older people and men are often portrayed as reluctant to embrace modernist notions of women's rights, they are precisely the ones who creatively appropriate the Defilement Law. They do so partly because the law provides them a state technology for reasserting their perceived traditional authority that has faded over the last fifty years.

HISTORICIZING ADOLESCENT FEMALE SEXUALITY IN IGANGA: RESEARCH SETTING AND METHODS

This article is based on several research trips taken between 1996 and 2005 to the Iganga town region.¹³ The town of Iganga is the rapidly growing administrative and economic center for the Iganga district in southeastern Uganda. It lies 120 kilometers to the northeast of Kampala, the capital, and along the Trans-Africa highway, a major international artery populated with truck stops and towns with high rates of HIV infection.¹⁴ Before British colonial rule began in the late 1800s, the Basoga ethnic group of Iganga lived in dispersed lineage groups and relied primarily on subsistence farming and livestock activities. Today, to meet the cash needs of an increasingly monetized economy, most households supplement farming with a combination of low-profit activities such as shop keeping, manual labor, driving bicycle or motorcycle taxis, trading, or repair work. Having a salaried position elevates a person's socioeconomic status, but these positions are more readily available to men. Residents view the availability of modern lifestyles (such as formal education and commercial leisure) and luxury goods (such as televisions, mobile phones, refrigerators, and cars) as desirable indicators of progress. However, access to cash income in Iganga has not kept pace with changing consumer demands, creating tensions between parents and children and increased stratification among households.¹⁵

A priority for both parents and youth is formal education. Whereas parents view their children's education as a key to family social mobility and public status, young people believe that education provides a route out of rural poverty and access to modern identities, non-kin social networks, and eventually luxury goods. In reality, however, persistent poverty severely limits young people's access to education, and it is common for youth to have many interruptions in their schooling. Young people that I interviewed frequently took a term or a year off from schooling if their parents did not have enough money for school fees, a situation particularly common for girls. This situation sometimes leads girls into transactional, sex-for-money relationships with older men. Sugar daddy relationships and perceived adolescent female sexual agency were highly contentious topics

among residents. In some cases, parents would disapprove of but silently ignore suspicions of such liaisons, as the man was, in a sense, assisting the entire household.

As observers of Africa have noted, residents hold paradoxical feelings about education. While parents want their children to attend school, education is often blamed for corrupting and spoiling youth by introducing them to ideas and people outside the kinship network and community settings. This tension between youth and adults is most clearly apparent in youth sexual relationships. As one elder remarked, "Our young people today have gone crazy. And our girls! Parts, parts, parts [vagina, vagina, vagina] everywhere." At the heart of this common critique are concerns about the loss of the role of kin in the sexual learning and marital processes.¹⁶

The ideal Basoga marriage system is exogamous and revolves around the exchange of bridewealth from the groom's family to the bride's family. As with other patrilineal groups in Africa, legitimate sexual access to a young woman is negotiated through her father.¹⁷ Anything else is considered theft, a crime committed by one man against another. The exchange of bridewealth legitimately transfers rights over a young woman's sexuality (and labor) from her father to her new husband. Family involvement in selecting and publicly approving sexual liaisons is paramount for the family's reputation and the harmonious functioning of a new marital union. Schooling and other socioeconomic changes are seen as disrupting ideal routes to marriage.

Over the last fifty years, monetization of the economy, Christianization, ideas about modernity brought in by the media, and formal education have altered the sexual expectations and experiences of young people. While oral histories I collected from elders indicate that in the past young people did have romantic and sexual liaisons before marriage, these liaisons were hidden from adults and the expectation was that they might not result in marriage. Without a doubt, dating has become a standard practice among young people, causing great anxiety among adults. As will be explored later, the Defilement Law becomes a way for parents to regain some of their historical power in the negotiation of sexual liaisons of daughters and at the same time express their disapproval of youth dating.

I used ethnographic research methods to understand how the intended use of the Defilement Law is situated within this local context of anxiety over female sexual agency and youth dating. Ethnographic research based on extended stays in the community and participant observation provides a more intricate understanding of everyday life than is often attainable through "official" data, including court documents or state records, interviews with elites or leaders, and research surveys. Complex social phenomena, particularly those involving private topics such as sexuality, require fine attention to how people say things are (*ideology*), what people actually do (*experiences and individual agency*), and how people perceive their experiences (*situated subjectivities*).

emasculating cartoon and the editorial about seductive adolescent females represents one type of anxiety about the age of consent. As this cartoon demonstrates, the anti-defilement campaign is portrayed as a war against men. But men, according to proponents of this view, are not perpetrators of sexual exploitation. Rather, they are the victims of adolescent female sexual seduction and the innocent targets of feminist attacks. Women activists are portrayed as emotional, irrational, and jealous of sexually attractive, nubile younger females. Thus, younger females are constructed as Uganda's new breed of self-interested *femmes fatales*.

Another critique against widely enforcing the age of consent portrayed the law as an attempt of the national government to interfere in private and local matters. This national interference, it was argued, shows a lack of respect for community autonomy, a lack of trust in the ability of local leaders to protect their own residents, and hence a throwback to earlier colonial days. Invocations of culture, tradition, and community self-determination emerged as common rationalizations for not meddling in private disputes concerning the age of consent.

Amidst the heated public criticism and opposition, the campaign that eventually won public acceptance was based on the image of the innocent girl-child. The symbol of the innocent child distracted the public from allegations that the law was a direct attack on men and on historical (and, thus, "natural") gender roles. The campaign tapped into the international tide of discourses and funding surrounding human rights and innocent childhood.²² This international legal tide offered the anti-defilement campaign financial and technical support from international donors. Aligning the anti-defilement movement with global rights discourses also provided a framework for reconfiguring notions of childhood and women's rights in Uganda. Nationally, the campaign folded neatly into the national discourse on modernity and human rights being promoted by President Yoweri Museveni's socially progressive agenda.²³

Fundamentally, the anti-defilement campaigns were an attack on "tradition" by policymakers motivated to make Uganda, and more specifically Ugandan women, "modern." Female reformers vocally attacked customs they considered archaic and backward, such as arranged marriages of girls and forced marriage. They sought to protect girls not only from older men, but also from parents who use bridewealth acquired through the marriage of a daughter as a source of income or who lend out daughters for domestic service in order to pay off debts. Increasing and enforcing the age of consent, according to advocates of the law, would shield young females by legally lengthening their childhood, thereby providing them a protected environment within which to mature physically and emotionally and develop skills that would ensure greater economic and social independence from males. During this extended time, young females could be shaped into modern women.

By positioning females under the age of eighteen within the protected status of children, advocates attempted to repackage girls as lacking the ability

to resist male sexual advances. Defilement, as constructed by women activists, was woven into various seduction narratives in which innocent girls are trying to overcome great odds at home, in the community, and at school. If a girl goes astray, it is not of her own will, but because her innocence was violated. She was defiled, either by being married off, seduced by a man, or impregnated and ruthlessly left to suffer. As the next section demonstrates, however, women reformers and communities may have had different ideas about which girls were protected under the law.

COMPETING CLASS AGENDAS: NOT ALL GIRLS ARE EQUALLY INNOCENT

When I began research in 1996 in Iganga, the Defilement Law was common knowledge among residents. Six years into the campaign, posters depicting a young female, usually adolescent, being preyed upon by a stalking drunkard or a sugar daddy, with a caption such as "Protect Your Friends," were regularly seen in government buildings and health clinics around the dusty agrarian town (see Figures 16-3 and 16-4). Another common theme featured a pre-pubescent girl being lured by a man holding a piece of candy or a friendly smile. The colorful print campaigns sponsored by various HIV/AIDS

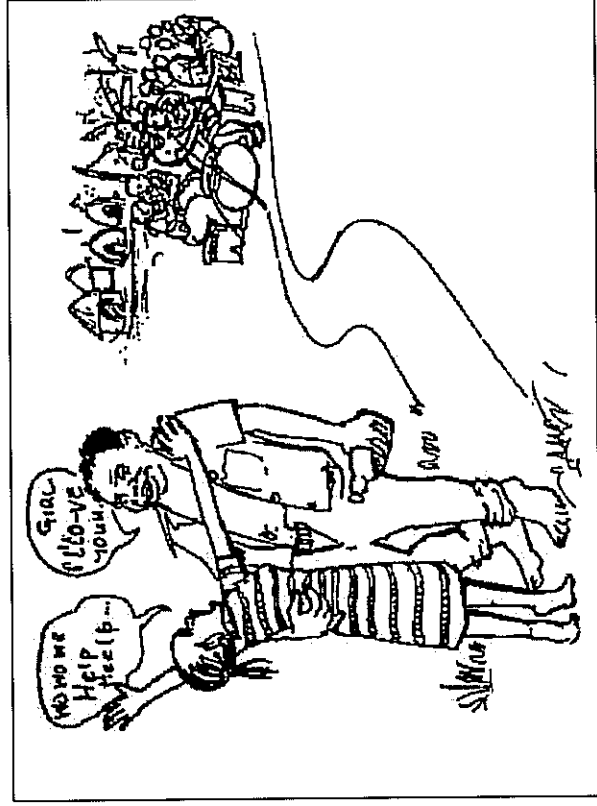


Figure 16.3.

residents would comment that defilement cases were more frequent today than in the past. However, I suspect this was more a function of increased attention than increased frequency. Given its relatively recent insertion into public discourse, I was struck by how easily the Defilement Law fit into the local landscape, especially since male sexual advances towards younger females had been historically commonplace.

Local narratives about defilement cases involving adolescent girls stimulated critical reflection about female sexual agency and about the age at which a female becomes responsible for her sexual actions.²⁴ Through these debates, class emerged as a key determinant in the culpability and innocence of the male and female involved in the case. Whereas residents of Iganga were generally aware that Uganda's new legal and public discourse expanded childhood to the age of eighteen, they held complex views about the blanket characterization of adolescent females as "children." Historically, the transition from child to adult depended less on chronological age and more on reproductive, economic, and social factors. The economic status of the girl and her family inevitably underwrote perceptions about her maturity and sexual responsibility. A resource-poor girl not attending school was perceived as making a transition out of the child category sooner than a girl from a middle-class family attending school. Likewise, a young female who has reproduced was considered taking on adult responsibilities and duties. Therefore, innocence and the state protection that accompanies the modern category of child— notions central to the reformers' conception of the Defilement Law—tended to be reserved for a young female who is considered a future modern woman and productive contributor to society. Girls of low economic and educational status, on the other hand, are perceived as sexually knowing, and therefore outside the protection of this law. Instead, residents often saw them as a possible burden to society because of unplanned pregnancies or dubious economic activity, such as commercial sex work.

This flexible social classification of the teenage girl—as an innocent child or a sexually knowing adult—has complicated local uses of the Defilement Law. Most residents of Iganga with whom I spoke held that relationships between pubescent females and older, middle-class, married males represent common historical uses of male power in the context of economic desperation and gender roles. Yet there was an increasingly vocal opinion, especially among older women, that these liaisons were becoming less acceptable, for they left the adolescent girl with limited social mobility and options.

The Defilement Law is phrased in terms of protecting "the girl-child," regardless of other aspects of identity. However, class is fundamental to social constructions of innocence, consent, and the meaning of youthful sexuality in a particular instance. The victim's degree of innocence is partly determined by her future earning potential; girls in school promise higher returns for their parents and society. Daughters from poorer families, it is often assumed in local and popular discourse, can be swayed easily into illicit sexual liaisons. Girls from wealthier families, whose family inheritance and



Figure 16.4.

and child advocacy NGOs had made their way to the walls of the makeshift, one-room, local council offices in the outlying villages. Gossip about local cases easily spread within gathering places, and rarely did I hear great shock about the numerous defilement stories reported in the media. Instead,

social reputation are at stake, are often subject to tighter parental and kin surveillance. Class and educational attainment determine a female's access to sexual respectability within wider society. The image of the pure schoolgirl has become a salient symbol of Uganda's future.

Therefore, to return to my earlier example, through the lens of class Yahaya was guilty of having sexual intercourse not just with an underage girl, but with an underage schoolgirl, a female who represented Uganda's future. In contrast to Yahaya's case stands a complaint brought against a nineteen-year-old motorcycle repair apprentice, Roland, by the father of a pregnant teenager. Unlike Yahaya, Roland had impregnated a teenage girl, Sara, who had a history of sexual liaisons with men. She was "already spoiled," to borrow the common phrase of elders. Sara's father had taken Roland to the Probate Family Office to demand child support for her unborn child. When I asked the Probate Officer why she did not refer the case to the Magistrate Court as defilement, she remarked that the girl had already been "living as an adult," by which she meant both sexually active and earning her own money. The teenage girl had stopped schooling and had spent some time with her sister-in-law in another town working in a restaurant. Because Sara was no longer in school and working in a place deemed unsuitable for respectable females, she was seen as possessing the sexual agency of an adult. Hence, Sara was not entitled to the full protection of the Defilement Law.

A similar class dynamic occurs with male perpetrators. Although residents recognize the threat of sugar daddies, their economic status provides them with access to sexual privilege not accorded to poorer men. Their sexual behaviors might be considered deplorable, but this is trumped by the reality that they provide crucial economic support for a wide social and kin network. Unlike poor men who might have limited ability to support children they conceive out of wedlock, wealthier men can afford it. Hence, sugar daddies (for their wealth) and schoolgirls (for their future promise and purity) each represent Uganda's entrance into modernity. By the same token, unemployed or poor young men and out-of-school girls epitomize failure to achieve modernity and progress. The coupling of schoolgirls and their unemployed peers represents yet another quandary in Uganda, for these relationships threaten the social order by subverting historical expectations. I turn next to the quandary of youth sexual relationships.

OMUTANGO: CONTROLLING DELINQUENT DAUGHTERS AND DISCIPLINING DEFIANT BOYS

Adults in Iganga echo the harsh commentary promulgated in Ugandan popular culture about the ways in which young females today use their sexuality for material gain. This common critique has left residents ambivalent about adolescent defilement cases. Many older residents feel that adolescent female sexual agency and the desire for modern goods have loosened social

controls over sexuality. In the words of one elder, "Our girls have gotten out of hand. They give themselves away so cheaply." According to local convention, youth sexual relations defy notions of parental authority and are often classified under the Lusoga term *obwenzi*, or sexual promiscuity. *Obwenzi* generally refers to a common sexual behavior that threatens the perceived traditional moral order. The specific social meaning of *obwenzi* has shifted historically, given the wider context and the systems of sexual regulation under threat.

When anthropologist Lloyd Fallers conducted research in Iganga in the 1950s, *obwenzi* commonly referred to cases in which a man was accused of having sexual intercourse with another man's wife, or adultery. During Uganda's post-independence period in the mid-1960s, elders recall *obwenzi* accompanying feelings of social euphoria and spoke about sexual transgressions occurring at burials, weddings, and other community celebrations with dancing, music, and inter-generational and inter-clan interactions. In the 1970s, during Uganda's economically and socially turbulent period, *obwenzi* described unmarried women who engaged in long-distance trading and were sexually liberated because they were economically and socially unattached to a particular man. Today, *obwenzi* is frequently used to mean the exchange of sex for modern material goods, such as makeup, trousseaus, and beauty products, or cohabiting without the consent of parents. Moreover, it is equated with unconstrained sexual behaviors and low morals.²⁵ Whereas in the past *obwenzi* generally referred to adult sexual behaviors, gradually it has also come to include behaviors of young people, particularly girls who act without consent of their parents and males who do not adequately provide *omutango* (compensation) to the parents.

For parents in Iganga, there is a difference between delinquent daughters who engage in *obwenzi* and innocent daughters who are seduced by men of power. Elders frequently point to the shifting nature of marriage to underscore their dissatisfaction with changes in sexual relationships. A local proverb—"One who entices you away will not pay bridewealth"—reflects the deeply felt sentiment that females too easily enter sexual unions without the approval of their parents. "Parents today do not have control over their daughters," remarks a mother of six children. Another elder exclaimed, "Girls today go from one temporary marriage to another. They run off with men, get married without their parents' knowledge. They get divorced the next day and then marry someone else."

Female laxness about entering into sexual unions is perceived to have led to the decay of the betrothal process and, more significantly, to the declining importance of the family in that process. In the ideal past, parents of the girl would look for a man for her to marry soon after menarche, which marked the end of childhood. The threat and shame of getting pregnant in the father's home leads to intense surveillance over the girl. For elders, the ideal marriage is based on an agreement between the prospective groom and the father of the female, and ultimately between two kinship groups.

The key moment in this process is the highly formal ceremony between the two kin groups known as "the introduction" (*kwándhíla*), during which the two clans are formally introduced and endorse the union, final bride-wealth is negotiated, and gifts to relevant kin members are delivered. The gift exchange in sexual relationships still occurs, but it is now frequently between a girl and her suitor. The removal of the girl's family from this exchange, and the focus on the girl alone as beneficiary of the gift, lies at the heart of moral anxiety.²⁶

The acceptance of the gift symbolizes parental consent. In that context, it becomes clear why the age of consent debate in Iganga is less about *age* than it is about *consent*. Historically, the concern was not about the consent of the girl but the consent of the parents, most often the father or another paternal clan member. Failure to get the consent of parents—regardless of the age of the girl or whether she consented—was considered the violation. Once violated, the girl is considered soiled and the parents can sue for damages done to them since, by elaboration, it is presumably more difficult to find her a husband and the bridewealth given for her will be less.

The use of the Defilement Law to address the issue of parental consent is evident in the case of a 14-year old girl who engaged in sexual relations with a teenage shop attendant. As part of the girl's evening chores, her parents sent her to town regularly to purchase goods and food. A young shop attendant often offered the unescorted girl free items and eventually invited her to his room, which was located behind the shop. One day after returning from town, the mother noticed that "the girl's way of walking has changed," and inquired about the change. The daughter evaded the topic of sexual intercourse, blaming her new stride on a boil between her legs. Concerned and suspicious, the mother took the girl to the doctor. After threats from her mother, at the doctor's office the girl finally revealed that she had been having sexual intercourse with the teenage shop attendant. The parents of the girl confronted the young man and his parents, explained that they were willing to forgive the boy and his parents, and asked them to pay a fine of 300,000 shillings (about US\$170). When the parents of the young male refused the amount, the incensed girl's parents argued, "We have been kind enough to you. What kind of person are you? You have destroyed our girl and you are not being considerate." The girl's parents reported the case to the police, and the boy was arrested and eventually convicted of defilement.

In another case, the disgruntled parents first tried other venues to pressure the young man to either marry their daughter or support the child. Unfortunately for the boy, neither he nor his widowed mother had the money. The unsatisfied parents used the age of consent law as additional leverage against the young man. After pleadings from the daughter, the case was dropped and an agreement was made out of court. From the perspective of the parents in this case, it is better to get an out-of-court settlement or arrange for child support with the young man rather than have him in

jail. For other young men such as Yahaya, however, the outcome of being a financially poor lover was not as pleasant.

Older residents in Iganga view recent social changes such as the shift from kinship to civil ties, education, and the perceived autonomy of young people as destroying the moral order. Their narratives about the sudden decline of the traditional betrothal process and the rise of youth sexual agency have become a common way for residents to explain the high prevalence of HIV and single mothers. Their solution to HIV, moral decline, and teenage pregnancy is to discipline delinquent daughters by curtailing their involvement with young lovers. The Defilement Law provides a way for expressing and resolving deep generational conflicts about youthful sexual agency and moral chaos. For many parents such as Lydia's, the Defilement Law restores some control over a daughter's sexual autonomy by punishing a suitor who, from the perspective of the parents, cannot provide adequate compensation to them or care for their daughter. Because defilement is a criminal offense, it is a crime against the state; parents technically receive no compensation as they did in the past under the rules of *omutango*. Hence, what many parents originally thought was re-instating their authority over their daughters in fact places final authority over their daughters with the state.²⁷ Just as reformers discovered how difficult it is to engineer social change in a desired direction, so too have older people in Iganga experienced unintended consequences of their actions.

SEXUAL CITIZENSHIP: RETHINKING RIGHTS AND WOMEN'S EMPOWERMENT

In this article, I have examined how women reformers in Uganda fought for the enforcement of the Defilement Law as a strategy to empower girls by offering protection from sexual abuse and exploitation. As the law's advocates envisioned it, sugar daddies, pedophiles, and perpetrators of child sex slavery were the main targets of the law. While in Iganga, I witnessed how the anti-defilement campaigns did indeed change attitudes and public awareness about the sexual rights of girls and women. But I also saw many unintended consequences of the law. More often than not, the law was used to prosecute young men. This is not to suggest that none of these young men were sexual offenders, but almost all of the judges, women reformers, and other legal professionals with whom I spoke felt that boyfriend and consensual liaisons outnumbered male pedophiles in terms of arrests. As this article has shown, young people believed that boys were the ones being targeted by protective parents, teachers, and other authorities. Their crime was not just being boyfriends, but also being economically poor and hence undeserving suitors. I do not wish to ignore that youth relationships may be sites of abuse and gender inequalities, but the secrecy and anxiety surrounding youth sexual encounters certainly does not facilitate the development

of sexually healthy individuals. Ultimately, the Defilement Law provides adults a powerful tool for asserting their authority over adolescent females and youth sexual relations. In this way, the very phenomenon that women reformers attempted to challenge—patriarchal control of female sexuality—has been strengthened and given legitimacy under the rights-based law.²⁸

What do these findings tell us about human rights as a tool for women's empowerment? I am not proposing that we abandon the rights framework for advancing gender equality or other sorts of equality. Rather, I am concerned about uncritical applications of Westernized notions of human rights without considering other forms, understandings, and meanings of rights. While attending a recent professional conference in the U.S., I was struck by comments and assumptions made by dedicated and rightfully angry panelists who were incensed by the continued gender abuses occurring around the world. A representative from a U.S.-based human rights agency declared that we (meaning feminists or perhaps the West) have to make sure that human rights are respected and observed around the world. When considering the panelist's comments in light of my findings in Iganga, four points about competing notions of rights come to mind.

First, I think parents in Iganga would contend that *their rights* have been violated when someone has had unauthorized sexual liaisons with one of their daughters, and that they, the parents, deserve compensation. Michelle Oberman argues in her historical analysis of U.S. law that the age of consent reflected the long-standing assumption that "virginity was so highly prized that a man who took a girl's virginity without her father's permission was considered to have committed a theft against the father."²⁹ In Uganda, it is precisely the idea that female sexuality belongs to a man that facilitated the widespread use of the Defilement Law, for most cases in Iganga were brought by fathers. Unauthorized sexual access to a female had been considered a violation against her male guardian, whether her father or husband. Second, what the passionate human rights advocate on the panel failed to recognize is that throughout sub-Saharan Africa and other parts of the world, rights are embedded within a dense bundle of social relations. These rights are intricately tied to the concepts of responsibility and duties to others. Hence, local constructions of women's rights are tied to their duties and responsibilities to their husbands, children, brothers, parents, and others. Often these responsibilities and duties are primary concerns to women.

Third, I propose that we rethink our epistemological approach to problems and solutions of gender inequality. In using universal frameworks and discourses, we must seek to understand how imported notions fit into local histories, power structures, and current anxieties. For instance, whereas women reformers in Uganda regard planned structural change as the *answer* to combating sexual abuse of girls, adults in Iganga see structural change as the *problem* fueling abuses of sexuality. As I have demonstrated, the climate in Uganda is marked by economic uncertainty, urbanization, and anxiety about HIV and out-of-wedlock teenage motherhood. Communities feel that

older systems of regulation—including compensation, betrothal, and the marital process—have diminished, leading to a destabilized moral order. Furthermore, senior male authority has diminished considerably in the last fifty years, occasioned by the increase of wage labor, formal education, the shift from kinship to civic networks for access to resources, and the emergence of youth romantic relationships (Parikh 2001). Within the climate of these economic and social changes, the Defilement Law has become a way for senior males to regulate young girls' sexuality, control junior males' sexual pursuits, and end youth romantic relationships. In short, the law is being used to restore the marriage process, reinstate perceived traditional hierarchies governing access to female sexuality, and, in the process, criminalize adolescent relationships. Meanwhile, the law is being used by parents to assert their historical rights over children and to reclaim some of the economic benefits culturally entitled to parents.

My final point concerns the intersection of socioeconomic class and human rights. Specifically, responses to the Defilement Law show that notions of female sexual exploitation and male criminality are determined by class. The case of Yahaya and Lydia exemplifies how the interconnectedness of criminality, class, and generation is reproduced and strengthened through patterned local uses of the Defilement Law. Residents of Iganga almost unanimously agreed that Yahaya's sentence might not have been so harsh, or might not have been pursued by law enforcement, if there were not a perceived difference in class and future social mobility between the two lovers. Like other schoolgirls, Lydia represents the modern and educated class. Yahaya, the young manual laborer represents the backward, lower class. This triple helix of class, criminality, and age is promulgated through community awareness campaigns, the media, and local talk. In this way, local parents are at odds with policymakers about what economic class of men young girls need to be protected against. While policymakers want to protect girls from businessmen and sugar daddies, parents want to protect them from men of the lower class. In the end, the human rights tool has served as an answer to class anxiety and the effect it has on gender relations. Yet to empower women, the empowerment of their entire community within global systems of inequality needs to be taken seriously. While we see marginalized women as oppressed, they are surrounded by and in various social relations with men who are also oppressed by globalization, neo-liberalism, and poverty. A global empowerment of disenfranchised women must also seek to improve the situation of their men, be it their sons, husbands, lovers, brothers, or fathers.

NOTES

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2. All names of parties involved in defilement cases have been changed to protect those involved.
3. Defilement is one of five criminal offenses. The other four offenses are murder, rape, robbery, and treason. As defilement is a capital offense, cases can only be adjudicated by one of the eight High Court circuits, the Court of Appeals, or the Supreme Court.
4. This story is based on interviews my research assistants and I conducted with Yahaya, a neighbor, the court registrar, and Lydia.
5. In the late 1980s, HIV/AIDS epidemiologic reports in Uganda showed that females ages 15–19 were disproportionately infected with HIV compared to their male counterparts by a ratio of 5-to-1 (Kamali, et al., 2000). Researchers and media reports have noted that sex between young females and older males was at the heart of this gender disparity (Frask-Blunt, 2002; Obbo, 1995; Schoef, 1992). In the early 1990s, the term "sugar daddies" began to appear as the standard word for older, married men who used their economic means to entice young women into sexual relationships.

Information about the intended perpetrators to be charged under the Defilement Law is based on interviews with women in various law reform and women's organizations. They were explicit about their target perpetrators for the Defilement Law. They also referred to the numerous studies about disproportionate rates of HIV and educational attainment between the sexes.

See Anatoli Kamali, Lucy Mary Carpenter, James Alexander Grover Whithworth, Robert Pool, Anthony Ruberantwar, and Amato Ojwiya, "Seven-year Trends in HIV-1 Infection Rates, and Changes in Sexual Behaviour, Among Adults in Rural Uganda," *AIDS* 14, no. 4 (2000): 427–34; Martha Frask-Blunt, "The Sugar Daddies' Kiss of Death," *Washington Post*, October 6, 2001; Christine Obbo, "Gender, Age and Class: Discourses on HIV Transmission and Control in Uganda." In *Culture and Sexual Risk: Anthropological Perspectives on AIDS*. Han ten Brummelhuis and Gilbert Herdt, eds. (Amsterdam: Gordon and Breach Publishers, 1995); and Brooke G. Schoepf, "Women at Risk: Case Studies from Zaire." In *The Time of AIDS: Social Analysis, Theory and Method*, Gilbert Herdt and Shirley Lindenbaum, eds., 259–86 (Newbury Park, CA: Sage Publications, 1992); hereafter cited in text as Schoepf (1992).

6. Shanti Parikh, "Sugar Daddies and Sexual Citizenship in Uganda: Rethinking 3rd Wave Feminism," *Black Renaissance / Renaissance Noir* 6, no. 1 (2004): 82–107.
7. Shanti Parikh, "Desire, Romance, and Regulation: Adolescent Sexuality in Uganda's Time of AIDS." Ph.D. diss., Yale University, 2001; hereafter cited in text as Parikh (2001).
8. For reviews of the anthropology of human rights, see Karen Engle, "From Skepticism to Embrace: Human Rights and the American Anthropological Association," *Human Rights Quarterly* 23 (2001): 536–60; Mahmood Mamdani, "Introduction." In *Beyond Rights Talk and Culture Talk: Comparative Essays on the Politics of Rights and Culture*, Mahmood Mamdani, ed., 1–13 (New York: St. Martin Press, 2000); Sally Engle Merry, "Human Rights and the Demonomization of Culture (and Anthropology Along the Way)," *Polar: Political and Legal Anthropology Review* 2.6, no. 1 (2003): 55–77; and

Wilcomb E. Washburn, "Cultural Relativism, Human Rights, and the AAA," *American Anthropologist* 89, no. 4 (1987): 939–43.

9. American Anthropological Association, *Declaration on Anthropology and Human Rights Committee for Human Rights* (American Anthropological Association, 1999); Diana J. Fox, "Women's Human Rights in Africa: Beyond the Debate over the Universality or Relativity of Human Rights," *African Studies Quarterly* 2, no. 3 (1998). <http://web.africa.uci.edu/asq/v2/i2i3a2.htm> (last accessed January 9, 2007); Dorothy L. Hodgson, "Women's Rights as Human Rights: Women in Law and Development in Africa (WILDAF)," *Africa Today* 49, no. 2 (2002): 3–26; and Ellen Messer, "Anthropologists in a World with and Without Human Rights." In *Exotic No More: Anthropology on the Front Lines*, Jeremy MacClancy, ed., 319–37 (Chicago: University of Chicago Press, 2002).
10. Stojilje, Beverly J. "Introduction to Women, Language, and Law in Africa II: Gender and Relations of Power." *Africa Today* 49, no. 2 (2002): xi.
11. See Jean Comaroff and John L. Comaroff, "Criminal Justice, Cultural Justice: The Limits of Liberalism and the Pragmatics of Difference in the New South Africa," *American Ethnologist* 31, no. 2 (2004): 188–204; Daniel M. Goldstein, "In Our Own Hands: Lynching, Justice, and the Law in Bolivia," *American Ethnologist* 30, no. 1 (2003): 22–43; Susan Hirsch, *Pronouncing & Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Sally Falk Moore, *Social Facts* (Chicago: University of Chicago Press, 1986); Dorothy L. Hodgson, "My Daughter . . . Belongs to the Government Now: Marriage, Maasai and the Tanzanian State," *Canadian Journal of African Studies* 30, no. 1 (1996): 107–23, hereafter cited in text as Hodgson (1996); Sally Engle Merry, "Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law," *American Anthropologist* 103, no. 1 (2001): 16–29; and Mindie Lazarus-Black, "Law and the Pragmatics of Inclusion: Governing Domestic Violence in Trinidad and Tobago," *American Ethnologist* 28, no. 2 (2001): 388–416.
12. Michel Foucault, *The History of Sexuality: An Introduction*, vol. 1 (New York: Vintage Press, 1978).
13. By the Iganga town region, I am referring to the town and outlying villages.
14. H. Pickering, M. Okongo, B. Nnalusiba, K. Bwanika, and J. Whitworth, "Sexual Networks in Uganda: Casual and Commercial Sex in a Trading Town." *AIDS Care*, 9 (1997): 199–207.
15. See James Ferguson, *Expectations of Modernity: Myths and Meanings of Urban Life on the Zambian Copperbelt* (Berkeley: University of California Press, 1999).
16. Shanti Parikh, "From Auntie to Disco: The Bifurcation of Risk and Pleasure in Sex Education in Uganda." In *Sex in Development: Science, Sexuality, and Morality in Global Perspective*, Vincanne Adams and Stacey L. Pigg, eds., 125–58 (Durham: Duke University Press, 2005).
17. Caroline Bledsoe and Gilles Pison, eds., *Nuptiality in Sub-Saharan Africa: Contemporary Anthropological and Demographic Perspectives* (New York: Oxford University Press, 1994); and David Parkin and David Nyamwaya, eds., *Transformations of African Marriage* (Manchester, UK and Wolfenboro, NH: Manchester University Press for the International African Institute, 1987).
18. Lloyd Fallers, *Bantu Bureaucracy: A Century of Political Evolution among the Basoga of Uganda* (Chicago: University of Chicago Press, 1965); Lloyd

- Fallers, *Law without Precedent: Legal Ideas in Action in the Courts of Colonial Botswana* (Chicago: University of Chicago Press, 1969).
19. Jean Allman and Victoria B. Tashjian, *I Will Not Eat Stone: A Women's History of Colonial Asante* (Portsmouth, NH: Heinemann Press, 2000).
 20. See Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Boulder, CO: Westview Press, 1999); Aili Mari Tripp, *Women & Politics in Uganda* (Madison, WI: University of Wisconsin Press, 2000).
 21. Jessy Muhangi, "Women Demand Castration for Men over Sex Abuse." In *The New Vision*, Kampala, Uganda, December 18, 1991.
 22. These international forums included the World Summit for Children (1990), the World Conference on Education for All (1990), the World Conference on Human Rights (1993), the World Summit for Social Development (1995) and the Fourth World Conference on Women (1995). In a series of international forums, the 1989 International Convention on the Rights of the Child (CRC) received special attention.
 23. E. Khiddu-Makubuya, "The Rule of Law and Human Rights in Uganda: The Missing Link." In *Changing Uganda: The Dilemmas of Structural Adjustment & Revolutionary Change*, Holder Bernt Hansen and Michael Twaddle, eds., 217-23 (London: James Currey, 1991); and M. Louise Pirouet, "Human Rights Issues in Museveni's Uganda." In *Changing Uganda: The Dilemmas of Structural Adjustment & Revolutionary Change*, Holder Bernt Hansen and Michael Twaddle, eds., 197-209 (London: James Currey, 1991).
 24. Sylvia Tamale, "How Old is Old Enough? Defilement Law and the Age of Consent in Uganda." *East African Journal of Peace & Human Rights* 7, no. 1 (2001): 82-101.
 25. Philip Setel, *Plague of Paradoxes: AIDS, Culture, and Demography in Northern Tanzania* (Chicago: University of Chicago Press, 1999); hereafter cited in text as Setel (1999).
 26. There has been much recent academic and media attention to transactional nature of sexual relationships in Africa and the role this has played in the spread of HIV (e.g., Schoepf 1992, Setel 1999). Less attention has been given to how communities internally regulate or deal with this phenomena and the historical trajectory of this part of the sexual economy.
 27. In an ethnographically rich article, Hodgson (1996) makes a similar analysis arguing that a female's biological, but generally absent, father did not have guardianship over his daughter in the court of law. The disgruntled father remarked, "My daughter belongs to the state now."
 28. For similar analyses of how the age of consent law was used to manipulate an unintended social agenda is found among U.S. historians. See, for instance, Carolyn E. Cocca, "The Politics of Statutory Rape Laws: Adoption and Reinvention of Morality Policy in the States, 1971-1999." *Polity* 35, issue 1 (2002): 51-72; Elizabeth Hollenberg, "The Criminalization of Teenage Sex: Statutory Rape and the Politics of Teenage Motherhood." *Stanford Law and Policy Review* 10 (1999): 267-87; Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885-1920* (Chapel Hill: The University of North Carolina Press, 1995); and Stephen Robertson, "Age of Consent Law and the Making of Modern Childhood in New York City, 1886-1921." *Journal of Social History* 35, no. 4 (2002): 781-98.
 29. Michelle Oberman, "Girls in the Master's House: Of Protection, Patriarchy and the Potential for Using the Master's Tools to Reconfigure Statutory Rape Law." *DePaul Law Review* 50 (2001): 799-826. For scholarship on kinship

and marriage in Africa that has long observed a similar pattern of male rights over female sexuality among patrilineal groups, see E.E. Evans-Pritchard, *Kinship and Marriage among the Nuer* (Oxford: Clarendon Press, 1951); Alfred Reginald Radcliffe-Brown and Daryll Forde, eds., *African Systems of Kinship and Marriage* (London: Oxford University Press, 1951); Meyer Fortes, ed., *Marriage in Tribal Societies* (Cambridge: Cambridge University Press, 1962); and Isaac Schapera, *Married Life in an African Tribe* (London: Faber and Faber, 1940).