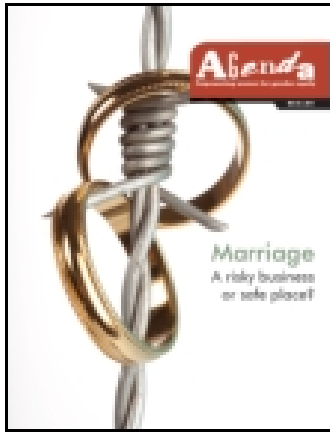


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Mind the gap: Imagining new ways of struggling towards the emancipation of sexual minorities in Africa

Pierre de Vos

abstract

The dignity of individuals who experience same-sex sexual desire or act upon such desire is seldom fully respected by the law and by other citizens. Although human rights are often invoked as part of an emancipatory strategy aimed at restoring the enjoyment of full citizenship for all sexual minorities, the potential success of such a strategy remains in doubt in many parts of the world – also in most parts of the African continent. In this article the author argues that there are at least three powerful reasons why invoking a human rights discourse as an emancipatory tool for those who experience same-sex desire is particularly difficult on the African continent. First, as members of sexual minorities become more visible and as individuals who experience same-sex desire and engage in same-sex sexual acts increasingly become associated with the notion of ‘homosexuality’ (as an identity) – as a fixed, universally applicable Western creation – same-sex desire is increasingly being characterised – especially by politicians and African elites – as being ‘un-African’, a Western imposition, something that did not exist on the continent before the colonial (or neocolonial) encounter. The human rights framework can then be depicted as attempting to impose acceptance of these ‘un-African’ tendencies on a vulnerable community whose traditional values and practices have already been decimated by colonialism. Second, this dynamic is exacerbated by the fact that the human rights discourse is often invoked by Western governments and the media in terms of a discourse of modernity and progress: those countries that recognise the rights of sexual minorities are considered modern, which by implication casts those countries that do not as un-modern or pre-modern. Lastly, individuals who experience same-sex desire are often stigmatised as only half human, as ‘pigs and dogs’, as creatures who cannot ever be full citizens and are therefore not entitled to the protections offered by human rights. In the light of these difficulties, the author proposes tentative strategies to engage in the struggle for the emancipation of sexual minorities centred around the notion of human dignity.

keywords

human dignity, human rights, colonialism, sexual minorities, South Africa, Uganda

Introduction

For several years I conducted a day-long seminar for students from across the African continent on discrimination against men and women who experience and/or act on same-sex sexual and emotional desire. The students, from countries as far afield and different as Egypt, Ghana, Uganda, Eritrea, Kenya,

Zimbabwe, Nigeria, Cameroon, South Africa and Ivory Coast, were all studying towards a Master’s degree in Human Rights offered by the well-known and respected Centre for Human Rights at the University of Pretoria.

On the first occasion on which I conducted the seminar I ran into some serious difficulties. As a South African constitutional

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law scholar, I invoked the South African Constitution, which in 1994¹ became the first in the world to include a specific prohibition on sexual orientation discrimination in its justiciable Bill of Rights. I imagined that – armed with a fair knowledge of this human rights framework as developed by the South African Constitutional Court – I would easily convince the students of the need to protect individuals who experience same-sex desire and/or act on it. At the time I was still vaguely invested in the idea that human rights were ‘trumps’ which (when invoked) ended the political argument (Dworkin, 1978). According to this view individual rights are “political trumps held by the individuals” who “have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them” (Dworkin, 1978:xi). Many of the students were not at all convinced.

Even when I attempted to tease out the underlying abstract principle that necessitated the equal protection of individuals who experience same-sex desire or act on it – *that of equal concern and respect*, that is, the idea that the political community must treat the respective fate of its members as “equally important and respect their individual responsibilities of their own life” (Dworkin, 2013:330) – I had a difficult time of it.

... many of the students could not fit the discussion about the prohibition on sexual orientation discrimination and the demand to treat sexual minorities with equal concern and respect into a human rights framework.

It was as if many of the students could not fit the discussion about the prohibition on sexual orientation discrimination and the demand to treat sexual minorities² with equal concern and respect into a human rights framework; as if the human rights framework could not be applied to sexual minorities; as if said sexual minorities could not possibly be the bearers of the same rights that the students enthusiastically supported when invoked in other spheres of life to protect other marginalised and vulnerable groups.³

In this article I reflect on why I had such difficulties, focusing particularly on South

Africa and Uganda, and explore ways in which one might engage in such discussions and in struggles for the emancipation of sexual minorities in ways that take cognizance of the history of human rights and the complex set of power relations within which such struggles occur.

Human rights and the prohibition of sexual orientation discrimination in post-apartheid South Africa and beyond

South Africa’s Constitution is often held up as a shining example of the radical impact that a set of enforceable human rights can have on a set of interlinking discriminatory practices in a country. In the 20 years since South Africa became a democracy and included prohibition of unfair discrimination based on sexual orientation in its Constitution, the South African Constitutional Court has handed down a string of important judgments affirming the legal equality of all citizens, regardless their sexual orientation.⁴ (It has also used the prohibition against discrimination to strike down laws discriminating on the basis of race, HIV status, gender, disability, religion and nationality.) Ultimately this led to adoption of the Civil Union Act (Act 17 of 2006) by the South African Parliament, a law that provides for the legal recognition of same-sex marriage in South Africa and purports to extend the same rights and status to same-sex couples who enter a Civil Union marriage that is afforded to heterosexual couples under the traditional marriage regime.⁵

However, despite these dramatic legal victories, prejudice against men and women who experience same-sex sexual and emotional desire remains deeply embedded among the majority of South African citizens (Roberts and Reddy, 2008). Despite the legal prohibition against discrimination on the grounds mentioned above, prejudice based on race, sex, gender, HIV status, nationality, disability, religion and the like has not been eradicated in South Africa. A 2008 study surveying social attitudes in South Africa confirmed that legal advances made with the assistance of the powerful antidiscrimination clause in the South African Constitution has not led to a dramatic change in entrenched negative attitudes towards sexual minorities. Although the survey deploys the identity category

'homosexual' and does not frame its research question in terms of societal attitudes towards sexual minorities and specific acts associated with us, it nevertheless provides some indication of societal attitudes in this regard.

What the survey reveals is that despite the legal gains, the number of respondents in South Africa who indicated their belief that "homosexuality"⁶ is "always wrong" only declined marginally, from 84% in 2003 to 82% in 2007 (Roberts and Reddy, 2008:9; Mubangizi and Twinomugisha, 2011:339). A Pew Research Centre survey (asking a different research question) published in 2013 found that 61% of South Africans surveyed believed that "homosexuality" should never be accepted, with little change from previous years (Pew Research Centre, 2013). There might be conceptual problems with the conflation of the concept of 'homosexuality' with that of same-sex sexual acts or desire implicit in the surveys quoted, because of the particular Western roots of the notion of a 'homosexual' identity. As 'homosexual' identity is historically contingent, it may be impossible to invoke 'homosexual' identity in South Africa as a monolithic, stable and fixed concept that mirrors that of the 'average' gay man or lesbian living in New York, Sydney or London (De Vos, 2000:197; Achmat, 1993: 96; Munroe, 2012: xiii; Epprecht, 2012:230).

Despite the variations in the survey results and despite conceptual difficulties with such surveys in the South African context and elsewhere on the African continent, what is clear is that there is a huge gap between the promise of sexual equality contained in the South African Constitution and the attitudes of a majority of South Africans. While the prohibition of sexual orientation discrimination contained in the South African Constitution has led to significant legal changes, and while – in formal legal terms – it has led to eradication of discriminatory measures against those of us who experience same-sex desire or act on it, these legal victories have not radically altered the lived experience of sexual minorities in South Africa. (Once again, these legal advances impact differently on different people, depending on other factors such as the person's class, race, gender and whether he or she lives in a rural or urban setting (Ossome, 2013).)

For example, acts of violence and discrimination directed at certain members of the sexual minorities are well documented in

South Africa (Kelly, 2009; Matebeni 2013; Mubangizi and Twinomugisha, 2011:339). At the same time, given the historical inequities of apartheid, many white men who engage in same-sex practices and identify as gay now have access to the financial resources to render themselves far more visible and to insulate themselves from much of the violence and discrimination experienced by other sexual minorities in the country (Hoad, 1999:564).

South Africa is not the only country on the continent where there appears to be a gap between the legal status of sexual minorities and their lived reality. Elsewhere on the African continent same-sex sexual acts are legal in Benin, Burkina Faso, Cape Verde, Congo, Chad, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Gabon, Guinea-Bissau, Madagascar, Mali, Niger, Rwanda and São Tome and Príncipe (Itaborahy and Zhu, 2014:16). While accurate data about attitudes regarding same-sex sexual desire and acts in these countries are not available, anecdotal evidence suggests and some academic authors assert (Kennedy, 2006) that same-sex sexual acts are widely frowned upon across the continent and that absence of legal regulation does not reflect general acceptance of sexual minorities. The fact that some same-sex acts are criminalised in the majority of countries on the continent, despite the fact that such criminalisation contravenes the provisions of the Covenant of Civil and Political Rights (Human Rights Commission, 1994; *Toonen v Australia*, 1994), an international human rights treaty which has been signed and ratified by governments across the continent, provides further evidence of the gap that exists between the guarantees contained in widely accepted human rights treaties, on the one hand, and the practices of states and beliefs of the majority of the populations of those states, on the other.

The existence of this gap is not surprising. A 2014 study by Pew Research Centre found extraordinarily high degrees of intolerance towards 'homosexuality' in parts of the continent. When asked whether they personally believed that 'homosexuality' is morally acceptable, morally unacceptable, or is not a moral issue, 98% of respondents in Ghana, 95% in Egypt, 93% in Uganda, 88% in Kenya and 68% in Senegal indicated that they believed it was always morally unacceptable (Pew Research Centre, 2014). However, it must be noted that such surveys do not

accurately capture the complex nature of attitudes towards sexual minorities. In many countries in Africa there appears to be a *de facto* “culture of tolerance (or indifference) to same-sex sexuality” despite the sometimes harsh laws and elite homophobic rhetoric (Epprecht, 2012:226). As long as same-sex sexuality is expressed in private and takes “place under the umbrella of heteropatriarchal constructions of family, faith, and African identity” some societies are willing to turn a blind eye (Epprecht, 2012:26; Gaudio, 2009; Morgan and Wieringa, 2005; Nkabinde, 2008; Njinje and Alberton, 2002; Murray and Roscoe, 1998).

Further, in noting this discrepancy I am not asserting or assuming that the African continent is a monolithic entity: not all individuals in all parts of the continent who experience same-sex desire and act upon it experience extreme forms of prejudice in their daily lives. First, there have been legal gains in countries such as Cape Verde, which in 2004 became the second nation on the continent to decriminalise homosexual acts over the age of consent (16 years, equal to the heterosexual age). A handful of other countries, including Gabon, Mauritius, Central African Republic, Rwanda, and Sierra Leone, have since signed or signalled their intention to support the UN General Assembly’s resolution to include sexual orientation within the Universal Declaration of Human Rights (Epprecht, 2012:227). Second, the intersectionality of race, gender, class, sexuality, ethnicity, nationality and other markers of identity and the interplay between such factors render any generalisation about the lived reality of individuals in a particular country solely based on their sexual orientation (however this concept might be defined) meaningless (Young and Meyer, 2005).

In this regard it is important to emphasise that not all people in all parts of the continent who experience same-sex desire or act on it embrace a monolithic Western-style gay, trans, bisexual or lesbian identity. As I have pointed out above, where sexual desire is expressed privately and where members of sexual minorities do not ‘come out’ in the Western sense, and where they fulfil their familial obligations and in effect live ‘bisexual’ lives, they might not experience the opprobrium as reflected in the surveys, which explicitly invoke Western-style sexual identity categories such as ‘homosexual’, ‘gay’ or ‘lesbian’ when testing the attitudes of populations.

However, with this caution in mind, I contend that – as is the case in certain other parts of the world⁷ – there is a vast gap between the promise held by human rights principles relating to sexual orientation discrimination and the lived reality of many members of the sexual minority. This gap between the promise of equality contained in the South African Constitution and in international human rights treaties, on the one hand, and the lived reality of sexual minorities on the other, in certain instances stem from the widespread fear, hatred, ignorance and prejudice of vast sections of the population of a country. This is exacerbated where the condemnatory attitudes are reflected in discriminatory legislation which clashes directly with the human rights guarantees contained in some domestic Constitutions and in international human rights law treaties.

For example, Uganda signed and ratified the Covenant on Civil and Political Rights on 21 June 1995 which prohibits sexual orientation discrimination, yet in 2014 its Parliament adopted a law that imposed heavier criminal sanctions against same-sex sexual acts, in contravention of its international human rights obligations. It is to this Ugandan legislation that I will now turn to illustrate the yawning gap between what that country’s international human rights obligations require regarding the legal regulation of same-sex desire and the actions of its government.

Uganda: Criminalising ‘Western-style homosexuality’

In early April 2014 more than 30 000 Ugandans gathered at a stadium in the capital city Kampala “to give thanks” to President Yoweri Museveni for passing the ‘Anti-Homosexuality Act’ (Figures 1 and 2). At the event Museveni told the crowd: “There is a fundamental misunderstanding between us and the liberal west. They say that homosexuality is sex. But it is not sex.” He continued: “There are other words [in Luganda] for sex. I won’t tell you those words.” The crowd laughed. “But if you take homosexuality, they [the Ugandan people] don’t call it ‘sex’. They call it *ekifire*” (which means they are half-dead, yet they are still living) (Hodes, 2014).

Although the Ugandan court recently nullified the Act on technical grounds,⁸ the content of the Act and the manner in which its adoption was used by the Ugandan



Figure 1. Gay and lesbian activists attend Uganda's first gay pride parade in Kampala, Uganda, in 2012. Photo: EPA.



Figure 2. Protesting in London against anti-gay legislation in Uganda, 10 December 2012. Photo: www.glaad.org

President to bolster his own popularity gesture at why invoking the human rights paradigm has been so unsuccessful in addressing the legal and social marginalisation and oppression of sexual minorities in many parts of the African continent. At the start, two preliminary legal points must be made: first, from a legal perspective, Uganda is not a promising environment to pursue a human rights-based strategy for the emancipation of sexual minorities. This is because the Ugandan constitutional text, which was amended in 2005 to prohibit same-sex marriage,⁹ does not lend itself to interpretations that could be used to challenge the legal prohibition of same-sex sexual acts. Tamale noted after this amendment was passed that the amendment is likely to “legitimize” human rights violations against sexual minorities in Uganda, including acts such as loss of employment, assaults and murder (Tamale, 2007:55). Second, the existing legislation regulating especially male same-sex sexual acts already imposes harsh penalties. Although the Ugandan Penal Code Act of 1950 does not explicitly mention same-sex sexual acts, it contains provisions which could be used to punish same-sex sexual acts. The Code states that any person who “has carnal knowledge of any person against the order of nature” (s 145(a)) or “permits a male person to have carnal knowledge of him or her against the order of nature” (s 145(b)) commits an offence and is liable to imprisonment for life. The Act also criminalises attempts to commit these so-called “unnatural offences” (s 146). The Code also prohibits acts of “gross indecency”, which are punishable by imprisonment for 7 years (s 148).

These so-called ‘morality offences’ have been directly imported from the colonial British penal laws, which frowned upon any form of non-penetrative sex and considered it sinful (Tamale, 2007:56; Jjuuko, 2013:386). This is a pertinent point because, as Tamale has pointed out, the criminalisation of same-sex sexual practices introduced during British colonial rule was not aimed at protecting the traditional African family, as the colonisers believed “that the traditional African family was inferior to their nuclear monogamous one and considered the former barbarous and ‘repugnant to good conscience and morality’” (Tamale, 2009).¹⁰

Given the fact that harsh criminal sanctions for same-sex sexual acts are already on

the statute books in Uganda, it might seem strange that the Ugandan Parliament thought it necessary to pass the Anti-Homosexuality Act. But it may not be coincidental that some members of Uganda’s sexual minority have become more visible in Uganda in recent years, breaking the implicit rule that private same-sex sexual acts may be tolerated as long as individuals also fulfil their other patriarchal familial duties, marry and produce children, and hide their non-normative sexual practices (Nyazi, 2014). Visibility may have led to an elite backlash exploited by politicians chasing popularity (Epprecht, 2012:223). Although the Act purports to deal with same-sex sexual acts, its wording is telling in that it rhetorically attempts to conflate same-sex sexual acts with ‘homosexual’ identity. The rhetoric in the Act is thus significant, as I will attempt to illustrate below.

... the conflation of sexual acts with the identity of ‘homosexuality’ suggests that its drafters wished to link certain sexual practices rhetorically to a Western-style (and hence ‘alien’ or ‘un-African’) sexual identity.

First, it is important to turn to the wording of the Act to determine what it actually says. The Act is both shocking and conceptually peculiar. It defines a “homosexual” to mean “a person who engages or attempts to engage in same *gender* sexual activity” and “homosexuality” as same-*gender* or same-sex sexual acts (section 1). Given the obviously constructed nature of gender (as opposed to sex, which is supposedly based on biological characteristics), it is unclear how a judge in Uganda will be able to decide what the ‘gender’ of an accused person or their sexual partner is. The conceptual confusion – if one accepts that generally accepted categories of sex and gender are distinct from one another – may suggest a rejection of the Western-imposed taxonomies of sex and gender; it suggests an investment in the idea that sex and gender are both biologically determined and that sex and gender are thus interchangeable. In this view sex equals gender and both are biologically determined and fixed. Moreover, the conflation of sexual acts with the identity of ‘homosexuality’ suggests that its drafters wished to link certain sexual practices rhetorically to a Western-style (and hence ‘alien’ or ‘un-African’) sexual identity.

Section 2 of the Act states that a person commits the “offence of homosexuality” not only if he or she actually engages in sex with somebody of the same sex (or gender), but also if he or she “touches another person with the intention of committing the act of homosexuality”. “Touching” is defined as including touching with any part of the body; with anything else; through anything. This means that a person kissing, fondling, caressing “with the intention of proceeding to have sex with somebody else of the same sex” (or gender), commits a crime.¹¹ If convicted, the person must be sentenced to life imprisonment. The law could thus require a court to sentence a person to life imprisonment for kissing or touching another person.

It is important to note that the wording of the Act focuses on the crime of “homosexuality”, rhetorically conflating same-sex sexual acts with the identity of being a ‘homosexual’. Thus, legally the Anti-Homosexuality Act focuses on sexual acts, but rhetorically it aims to link such acts to the category of ‘homosexuality’. Furthermore, the Act states that a person who purports to contract a marriage with another person of the same sex commits the “offence of homosexuality” and shall be liable, on conviction, to imprisonment for life (section 12).¹² Once again an act (getting married) is rhetorically conflated with an identity (“homosexuality”).

The wording is telling because while same-sex sexual acts (the ultimate target of the legislation) cannot easily be dismissed as a Western import (Evans-Prichard, 1970; Herdt, 1997; Hoad, 2007), it is far easier to dismiss ‘homosexuality’ as an identity as a Western import (Hoad, 1999:561). After all, the notion of ‘homosexuality’ as an identity in opposition to heterosexuality only arose in Europe towards the second half of the 19th century, and it is hard to contest the claim that a monolithic, universal ‘homosexual’ identity did not exist on the African continent prior to the colonial encounter of dispossession and oppression (De Vos, 2000:197). In this manner the Act can be rhetorically presented as targeting the Western, imported notion of ‘homosexuality’ into Uganda (despite it targeting certain acts), something that purportedly sullies the ‘purity’ of the nation. It thus promotes the discourse that those who champion the rights of sexual minorities are engaged in a neocolonial project which aims

to impose ‘depraved’ and ‘un-African’ values on the people of Uganda.

The Anti-Homosexuality Act further states that a person who attempts to commit the offence of homosexuality commits a felony and is liable, on conviction, to imprisonment for 7 years (section 4). This means a person who attempts to kiss or caress another person “with the intention to commit the crime of homosexuality” could be found guilty of a crime and must be sentenced to 7 years’ imprisonment. The Act furthermore states that a “victim” of “homosexuality” cannot be penalised for any crime committed as a direct result of his or her involvement in “homosexuality” (section 5).¹³ The section provides an incentive for one of the parties to same-sex conduct to testify against the other party, providing indemnity to him or her on the basis that he or she was the “victim” of the so-called “homosexual act”.

This section does two things: first, it allows one of two parties to a sexual act to protect themselves against prosecution by claiming to be the victim, which renders it more likely that one person will testify against another. Second, it exposes individuals who engage in same-sex sexual activity to assault and worse: where one person assaults or kills another person and alleges that the victim of the assault tried to have sex with him or her, this may provide a complete defence to that assault or murder and could render the aggressor innocent. It is a legal provision that endangers the lives of every Ugandan who experiences or acts on same-sex sexual desire or is alleged by others to experience or to have acted on such desire. The section thus places the members of sexual minorities who engage in certain forms of erotic and/or sexual pleasure with others beyond the protection of the law and renders his or her life not worth protecting. It signals that the person cannot count on the protection of the law in the same manner that other citizens of the country can. The member of the sexual minority is thus in effect expelled from the polity, seen by the law as not worthy of the same protection as other citizens, and is thus not viewed as a full citizen because of certain erotic or sexual acts rhetorically associated with the notion of ‘homosexuality’. The member of a sexual minority, having been defined as somebody who threatens the nation by wishing to import ‘foreign’, Western notions of ‘homosexuality’ into the nation, is placed

beyond the scope of the laws of the country and in effect becomes a non-citizen. The Anti-Homosexuality Act thus appears to have been drafted and passed into legislation as a political strategy (more than a legal one) aimed at curbing the “infiltration”, normalisation and legitimisation of non-heteronormative possibilities in the imagination of the Ugandan nation (Nyazi, 2014:37).

In the light of the discussion of the Ugandan Anti-Homosexuality Act in this section, I now turn to the difficulties associated with invoking a human rights discourse to challenge the discrimination, persecution and oppression of sexual minorities across the continent.

The limits in invoking the human rights paradigm to challenge discrimination

The political discourse deployed to oppose equal citizenship for sexual minorities on the African continent invokes several interrelated tropes that weaken the effectiveness of human rights activism (and the language of human rights) in challenging the discrimination, persecution and oppression of sexual minorities. Deployment of some of these tropes in similar or related guises is not unique to the continent – as recent comments by Russian President Vladimir Putin demonstrate (CBS News, 2014) – but for the purposes of this article I focus only on the specific dynamics on the continent.

First, as members of sexual minorities become more visible and as individuals who experience same-sex desire and engage in same-sex sexual acts increasingly become associated with the notion of ‘homosexuality’ (as an identity) – as a fixed, universally applicable, Western creation – same-sex desire is increasingly being characterised – especially by politicians and African elites – as being ‘un-African’. It is thus seen as a Western imposition, something that did not exist on the continent before the colonial (or neocolonial) encounter.¹⁴ It is characterised as a foreign imposition of the imagined decadent West, as a sin, crime, psychosis, pathology alien to the African continent (Nyazi, 2014; Hoad, 1999:563). Discussing an attitudinal study done in South Africa, Roberts and Reddy (2008) point out the prevalence of this argument among those who believe that same-sex

sexual desire and acts are unacceptable. They conclude that this attitude among a majority of South Africans “conceals a moral and cultural view that African societies are somehow unique and therefore immune to what is perceived to be a western and European import”.

As colonialism has had as one of its major effects the erasure (or at least weakening) of the uniqueness of various African cultures and traditions through the imposition of values, standards and ways of being in the world that conform to an idealised Western norm, arguments in favour of respect for the rights of sexual minorities can themselves be attacked as a form of neocolonialism. Additionally, Reddy argues (2002:172) that in South Africa these attitudes are further entrenched through the logic of xenophobia, which is also deeply embedded in the attitudes of a majority of South Africans. Embedded in powerful anti-European and anti-Western attitudes and clustered around military metaphors that depict same-sex sexual desire (or at least its manifestation in the identity category of ‘homosexual’) as alien and foreign, this trope of argumentation assists to stigmatise such desire and the identities around which such desire is constructed as invasive and threatening to the nation and the national character (Reddy, 2002:172). This kind of desire is thus further stigmatised as a transatlantic phenomenon, characterised by “decadence”. In this view it is:

a white, colonial, import brought into the country by colonialists. The assumption here is that the colonialist (and their behavioural practices) are a problem to political and social stability.¹⁵

Another implication of the rhetoric that same-sex sexual desire and acts are ‘un-African’ closely tracks the anticolonial nationalist attitudes that understandably prevail, especially among elites, in many post-colonial African countries. By invoking the existence of a uniform and coherent national identity – often ironically centred around the geographical state whose borders were imposed by colonial powers – political elites often assert that same-sex desire and practice and the possible identity associated with such practices and desires are irreconcilable with this national identity. Gay men and lesbians, in this view, “do not belong, they become ‘squatters’

in society, and therefore need to be displaced” (Reddy, 2002:172).

By presenting those who experience same-sex sexual desire and act on it as individuals to whom no rights accrue, (some) African leaders and the majority of the populations (or at the least a majority of its elites) of some African countries in effect withdraw citizenship rights from sexual minorities on the basis of a preferred gender identity. Where such arguments take firm root, it has a profound negative effect on the ability successfully to invoke human rights protection to challenge legal and other forms of discrimination, marginalisation and oppression of sexual minorities. As human rights primarily (although not exclusively) attach to *citizens*, and as sexual minorities are defined not only as being outside the nation but as demanding to be included in the nation (thus threatening the idealised purity of the nation), the rhetorical move allows opponents of sexual equality to argue that sexual minorities are not worthy of (and not entitled to) legal protection or of human concern. In fact, the very life and continued existence of the nation depends on fighting any attempts by sexual minorities to be included in the nation and to be protected by ‘human rights’.

Much like the US government defined individuals it incarcerates at Guantanamo Bay as “enemy combatants” and thus as falling outside the protection of both domestic US laws and international human rights provisions, the ‘homosexual’, defined as being outside the nation and an enemy of the nation, can be depicted as falling outside the protection of domestic laws and the protection that would normally be afforded by international human rights treaties.

Third, the way in which countries on the continent that discriminate against sexual minorities are depicted in some parts of the Western media (relying on arguments that a specific country is violating the rights of sexual minorities) and by some human rights activists fighting against the oppression of sexual minorities may reinforce perceptions that demands to respect the rights of sexual minorities are part of a neocolonial project and inherently racist. This dynamic is not only at play when the human rights discourse is invoked to challenge discrimination against sexual minorities, but it remains one of the most potent arguments against the deployment of human rights in defence of sexual minorities.

In this view the human rights corpus falls within the historical continuum of the Eurocentric colonial project, in which actors are cast into superior and subordinate positions (Mutua, 2002:11-12). Mutua uses an extended metaphor to make this point, arguing that a “grand narrative” underlying the entire human rights discourse invoked by international organisations and Western governments is one that pits “savages, on the one hand, against victims and saviors, on the other” (10). In this grand narrative, international organisations and Western governments play the role of patronising “savior” (much as Western governments supposedly did during the process of colonisation) of a minority of victims (members of the sexual minority). Western governments and international organisations (and, one can add, Western media outlets) thus depict African governments and the majority of their citizens as “savages” who do not respect the most basic rights of their fellow citizens and need to be reprimanded and corrected by Western governments and non-governmental organisations in order to help protect the innocent victims of this ‘barbarism’.

When invoked in this manner, human rights can be stigmatised as in essence representing a set of normative commitments that neatly dovetail with the arrogant and superior attitudes of many in the West towards African governments and the citizens of African countries. This is a particularly acute problem when Western governments and NGOs invoke human rights to advance the interests of sexual minorities on the continent. Often relying on a discourse of modernity and progress (a discourse that is commonly invoked in human rights debates), “those countries that recognize the rights of sexual minorities are considered modern, which by implication casts those countries that do not recognize such rights as un-modern or pre-modern” (Franke, 2012:5; Chang, 2014:3012).¹⁶ There is a real problem with this discourse in that it sets out to postulate the West as the archetype of inevitable progress, while the African continent is implicitly presented as a ‘backwards and undeveloped’, lacking in civility and respect for individuals. This is the same kind of rhetoric previously deployed as part of the colonial project (Chang, 2014:312; Massad, 2002).

When same-sex sexual desire and same-sex acts (conveniently brought together and given unity under the rubric of ‘homosexuality’) can be presented as a proxy for all the

geopolitical and moral evils besetting the nation, for derailing economic and spiritual advancement, and darkening the future; when those branded as ‘homosexuals’ can be depicted as existing beyond the borders of citizenship or even humanity, and thus not capable of being bearers of rights; and when human rights themselves can be branded as part of the neocolonial project to denigrate Africans as “savages” and arguments can be made that those who defend the rights of sexual minorities are merely patronising, meddlesome “saviors” of the supposed victims on the receiving end of “African savagery” (Mutua, 2002:10); it becomes strategically and politically difficult (one may ask whether it also becomes ethically problematic) to invoke the human rights discourse in the fight against the oppression of sexual minorities (Chang, 2014).

Finding different ways of talking about the rights of sexual minorities in Africa

How do we restore the humanity and citizenship of sexual minorities in countries on our continent where legal regulation and social attitudes have a potentially devastating impact on the ability of individuals to survive and to live lives of dignity, in which joy, pleasure, love, and desire also feature? There are no easy answers to this question. In this article I leave open the question of whether in certain contexts, at certain political moments, in particular settings, the deployment of a human rights discourse (and an appeal to human rights before courts and other judicial bodies) may be the (or one of the) means through which to wage the struggle for our emancipation as members of a sexual minority. Instead, given the powerful rhetoric invoked against the use of a human rights discourse in support of the emancipation of sexual minorities on our continent, and because of real political concerns about the manner in which this discourse is often deployed by well-meaning Western governments and NGOs, I believe it is worth exploring other strategies to help restore the full dignity and citizenship of sexual minorities across the continent.

In this concluding section I offer tentative suggestions about possible strategies to be pursued. I do so with some hesitation, aware

of my own positionality as a white male South African and hence of the possibility that my suggestions may easily be interpreted as yet another prescriptive intervention by somebody whose race, gender and academic field (human rights law) may mark me as a carrier of the neocolonial values and attitudes often associated with others who invoke a human rights paradigm in attempts to advance emancipation of sexual minorities on our continent.

But where do I start? Perhaps where I began, by recalling that in the third year that I conducted the day-long seminar for students from across the African continent on discrimination against men and women who experience and/or act on same-sex sexual and emotional desire, I spent the first 3 hours engaging students not in the nitty-gritty technicalities of non-discrimination law, but rather in a broader and more abstract discussion about the idea of the inherent human dignity of all human beings. The idea of inherent human dignity is, of course, often linked directly to the protection of ‘universal’ human rights (Donnelly, 1982:301; Beylveld and Brownsword 2001:13; Waldron 2009:2, 73; Schroeder, 2012:324). It seems that the concept of dignity precedes and justifies human rights (Griffin 2008:31; Beylveld and Brownsword 2001:13, 21; Waldron 2009:2), although this assumption has been criticised (Schroeder, 2012).¹⁷ The students and I discussed what it could mean to say that all human beings possess inherent moral worth and equal dignity. Under which circumstances – if ever – can legal rules refuse to recognise the inherent human dignity of all? Does it ever make sense not to recognise the inherent human dignity of a group of people you do not like?

From the discussion a consensus of sorts emerged: if it is ever possible for legal rules to treat a person differently from others, it could only be on the basis that the person did or may do something that would harm others. A lively debate ensued about what kind of acts would cause harm. The students who argued that same-sex sexual acts harm them or society at large were hard-pressed to explain exactly how they were harmed. Were they forced to do anything they do not want to do? No. Was anything taken away from them: the ability to love, to prosper, to live peacefully? No. Does respect for individuals who engage in same-sex acts make it impossible for others to marry and have children? No. Many students were stumped, because once you

accept that it is not inherently harmful to others merely to be different from a perceived norm, it becomes difficult to argue that those who experience same-sex desire and act on it must be denied equal concern and respect because of their inherent human dignity. I contend that this line of reasoning becomes especially potent when the colonial origins of the animus towards sexual minorities are explored and uncovered.

Recognising that our struggle is as much a struggle about the past as about the present, academics and activists need to do far more work to uncover and make known the evidence of the existence of same-sex sexual love in various parts of our continent. Moving away from the problematic earlier scholarship of Western anthropologists who tried to understand the evidence through a particular Western lens – as if practices of same-sex love in a particular part of our continent at a particular time could be easily understood as fitting into the patterns of modern-day homosexuality in New York, Paris or London – academics and activists from our continent need to study and write about particular past practices of same-sex activity and love through a far more particularised lens, focusing on what is known about the social and political context in which such practices occurred.

Perhaps most difficult would be the need for activists and academics to find ways of talking about those of us who experience and act on same-sex love that would help to restore our citizenship without perpetuating the trope of ‘victim’, waiting to be rescued by the Western ‘saviour’ wielding a toolkit of human rights. Exploring an ethics of recognition (Shaffer and Smith, 2004) and recognising that the emancipation of sexual minorities requires multidimensional strategies, what is also needed, I contend, is for African queers to talk about our queer lives in ways that focus on the particularity of our experiences.

Avoiding the trap of always trying to fit our experiences neatly into a Western master narrative of a the ‘homosexual’, discovering his or her sexuality, struggling with this sexuality, then triumphantly coming out of the closet as a fully formed and proud ‘homosexual’, the multiplication of such particularised narratives about the lives of sexual minorities might begin to open up political and social spaces in which we may be recognised as individuals, as members of our community, as brothers and sisters and sons and

daughters and friends, and not as symbols of an imagined Western form of decadence.

Lastly, and implicit in what I wrote above, I contend that it is important to challenge the idea that a person’s identity is monolithic – that someone who experiences and acts on same-sex desire is nothing more than a homosexual. Instead it is important to explore the intersectionality of our identities and to explore the fact that each of us has different facets to our identity. Our race, gender, religion, ethnicity, and sexual orientation all intersect and overlap to create layered levels of experience and subordination that are often overlooked when considered separately (Crenshaw, 1991:1242-1245).

Someone who experiences same-sex sexual desire and acts on it is also a brother or sister, a son or daughter and member of the same race, ethnic group, gender, somebody who speaks the same language or lives in the same region. Exploring ways to convince potential allies who share many of your own identity traits that you have in common certain characteristics that may make you vulnerable to marginalisation and oppression by others can begin to build bridges between groups (Eskridge, 2008:378). Building alliances with others who may also face discrimination and oppression – especially women’s groups – can empower us to join forces to advance a political agenda of emancipation outside of the often alienating human rights discourse.

To be sure, such work is difficult, potentially dangerous and often slow to show results. But once you recognise that the human rights trajectory may not provide a quick-fix emancipation of sexual minorities on our continent, embarking on the path to build alliances and to convince important groups in society that same-sex desire and same-sex acts do not harm individuals or society as a whole, may seem like an important start.

Notes

1. Since replaced by the Constitution of the Republic of South Africa, 1996. Section 9(3) of the Constitution reads as follows:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

2. I use the term 'sexual minority' as an all-encompassing term referring to individuals who identify as homosexual, or gay and lesbian as well as men who have sex with or desire men and women who have sex with or desire women, as well as gender non-conforming individuals, and individuals who identify as intersex or transgender. The term is not unproblematic, although it is chosen to move away from the use of terms such as 'homosexual', 'gay' and 'lesbian' – which are often coded as white and middle class – and terms like 'men who have sex with men' (MSM) and 'women who have sex with women' (WSW) – which often implicitly refer to people of colour, poor people, or racially and ethnically diverse groups outside the perceived Western mainstream. (See Young and Meyer (2005).) The term 'sexual minorities' does not adequately capture the reality that many men and women who experience and/or act on same-sex desire also enter into different sex relationships, get married and have children and in effect live what for want of a better term could be called bisexual lives. (See Marc Eppecht (2012), pp. 226 and 231, and Marc Eppecht (2006).) It is also somewhat inelegant in that it bunches together gender non-conforming, transgender and intersex individuals with men and women who experience or act on same-sex sexual desire, which may lead to confusion as not all gender-non-conforming, intersex or transgender individuals experience or act on same-sex sexual desire. I have nevertheless chosen the term and use it throughout in a deliberate attempt to be inclusive while trying to avoid identity labels such as homosexual, gay and lesbian for the reasons stated above. See generally Chan (2013). I am nevertheless forced to use terms like 'homosexual' and 'homosexuality' in certain instances, for example, when referring to surveys or legislation which employ such terms.
3. This inability of students may well partly stem from their failure to acknowledge or recognise the ways in which marginalisation and oppression on the basis of race, class, gender, sexual orientation, ethnicity and other forms of identity and positionality intersect. In short, it may partly be due to a failure to recognise the intersectionality of oppression and the links between various forms of oppression. See Crenshaw (1989, 1991), Valdes (1995-96) Purdie-Vaughns and Eibach (2008). For an argument about the way in which class and sexual orientation oppression intersect but are often ignored by sexual minority activists on the continent see Ossome (2013).
4. *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1998 (12) BCLR 1517 (CC); *Satchwell v President of the Republic of South Africa and Another* [2002] ZACC 18; 2002 (6) SA 1 (CC); 2002 (9) BCLR 986 (CC); *J and Another v Director General, Department of Home Affairs, and Others* [2003] ZACC 3; 2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC); *Du Toit and Another v Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as amicus curiae)* [2002] ZACC 20; 2003 (2) SA 198 (CC); 2002 (10) BCLR 1006 (CC); *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005); *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC) (23 November 2006). The Court has defined 'sexual orientation' relatively broadly. In *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* it stated (at para 20):

... sexual orientation is defined by reference to erotic attraction: in the case of heterosexuals, to members of the opposite sex; in the case of gays and lesbians, to members of the same sex. Potentially a homosexual or gay or lesbian person can therefore be anyone who is erotically attracted to members of his or her own sex.
5. The Civil Union Act allows for both heterosexual and same-sex couples to enter into a 'Civil Union', but a Civil Union is defined as the "voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of either marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others". For a critique of the racial and gender dimensions of the Civil Union Act see Bonthuys (2007). Bonthuys argues that the Civil Union Act strengthens the position of marriage as the ideal for all other relationships and implies that other forms of marriage, in particular customary marriage, are inflexible and incapable of accommodating same-sex couples. She also questions the premise of the Act based on a global gay identity which does not accord with the identities or practices of many African people who have same-sex relationships. Further, she argues that the acceptance of same-sex practices within African communities is often conditional upon the adoption of very stereotypically patriarchal roles and identities within these relationships. This is similar to the way in which the Civil Union Act reserves legal recognition for those same-sex relationships which mimic marriage.
6. As noted in note 2 above, I use 'homosexuality' in this case to mirror the language of the question asked by the survey.
7. Eppecht (2012:226) points out that:

It is not self-evident that homophobia is a uniformly continental issue, that African cultures are inherently homophobic, or that Africa is the worst place in the world to be gay. On the contrary, many countries in Africa appear to have a de facto culture of tolerance (or indifference) to same-sex sexuality that amounts to freedom from discrimination, notwithstanding sometimes harsh laws and elite homophobic rhetoric. In addition to enjoying same-sex relations while still fulfilling social obligations of heterosexual marriage and the appearance of virility/fertility (de facto secretive bisexuality), traditional 'covers' for sexual and gender non-conformity include spirit possession, woman-woman marriage, and distinct occupational or other social niches such as the 'yan daudu' of northern Nigeria or the *gordjigen* of Senegal.

8. The Court did not invoke the Bill of Rights as the Constitution of Uganda does not expressly outlaw discrimination on the basis of sexual orientation. According to art. 21 of the Ugandan Constitution, "men and women of the age of eighteen years and above have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and its dissolution". See Mubangizi and Twinomugisha (2011:339–340).
9. Constitutional (Amendment) Act 2005 (following Constitutional (Amendment) Bill 2005, Bills Supplement No. 4 of 1-04-2005, *Uganda Gazette* No. 18, vol. XCVIII OF 1-04-2005 (Bill No. 6 of 2005)).
10. The notion that legal prohibitions against same-sex sexual acts and concomitant expressions of 'homophobia' by African elites is rooted in colonial discourses of deviant and peculiar African sexualities and in a contemporary neoliberal, global LGBTI agenda which seeks to universalise white Euro-American sexual norms and gender expressions is widely held. See Ekine (2013:78), Hoad (2007:xii) and Massad (2007).
11. The content of this provision has some common characteristics with apartheid era legislation in South Africa, most notably the 'men at a party law' adopted in the late 1960s as an Amendment to the then Immorality Act of 1957; section 20A (1) stated that: "A male person who commits with another male person at a party an act which is calculated to stimulate sexual passion or to give sexual gratification, shall be guilty of an offence." In one notable case in 1987 a conviction under the section was reversed on appeal by the Supreme Court because the court ruled that 'a party' was not created when a police officer entered a room in a gay bathhouse because the two men in the room jumped apart when he switched on the light. See Cameron (1993).
12. Section 12 reads as follows:
- (1) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for life.
 - (2) A person or institution commits an offence if that person or institution conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of seven years for individuals or cancellation of licence for an institution.
13. Section 5 reads as follows:
- (1) A victim of homosexuality shall not be penalized for any crime committed as a direct result of his or her involvement in homosexuality.
 - (2) A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings.
14. Hoad (1999:563) points out examples of the rhetoric of "un-African homosexuality" abound. For example, see Vusie Ginindza, 'Away with all the lesbians and gays', in *Times of Swaziland*, 6 March 1996 and Themba Shongwe, 'Gays are sick, says the King', in *Times of Swaziland*, 30 March 1997, pp. 1-2. See also Phillips (1997).
15. A similar argument is made by Hoad (1999:561), where he argues:
- Lesbian and gay human rights circulate transnationally and appear as an extremely unstable placeholder for a set of desires, anxieties, claims, and counter claims concerning modernity and cultural authenticity in the discourses of post-colonial nationalisms, which are themselves transnational. Within these national discourses, such rights are frequently described as a threatening imperialist import. It is asserted that their point of origin is outside the space, norms, and psyche of the nation and that their mode of circulation is dangerously foreign, embedded as it is in Western nongovernmental organizations (NGOs), Western funded local NGOs, universalist human rights discourse, and problems of Third World development at the state level.
- Hoad (1997:570) refers to, amongst others, the comments made in 1997 in Namibia by Alpheus Naruseb, SWAPO's secretary for information and publicity, who said:
- It should be noted that most of the ardent supporters of these pervers are Europeans who imagine themselves to be the bulwark of civilisation and enlightenment. They are not only appropriating foreign ideas in our society but also destroying the local culture by hiding behind the facade of the very democracy and human right [sic] we have created."
16. See Franke (2012:5): "Modern states are expected to recognize a sexual minority within the national body and grant that minority rights-based protections. Pre-modern states do not. Once recognized as modern, the state's treatment of homosexuals offers cover for other sorts of human rights shortcomings."
17. The Constitutional Court in South Africa has endorsed the notion that the protection of the inherent human dignity of every human being lies at the heart of the non-discrimination provision in the South African Bill of Rights. See *National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others* 2000 (2) SA 1 (CC) 1 42, where the court remarked as follows:
- The denial of equal dignity and worth all too quickly and insidiously degenerates into a denial of humanity and lead to inhuman treatment by the rest of society in many other ways. This is deeply demeaning and frequently has the cruel effect of undermining the confidence and sense of self worth and self-respect of lesbians and gays.

References

- Achmat Z (1993) "Apostles of Civilized Vice" "Immoral practices" and "unnatural vice" in South African prisons and compounds 1890-1920', in *Social Dynamics*, 19, 107.

- Anti-Homosexuality Act, 2014, available at: https://hivos.org/sites/default/files/the_ugandan_anti-homosexuality_act_2014.pdf, site accessed June 3, 2014.
- Beyleveld D and Brownsword R (2001) *Human dignity in bioethics and biolaw*. Oxford: Oxford University Press.
- Bonthuys E (2007) 'Race and Gender in the Civil Union Act', in *South African Journal on Human Rights*, 23, 526–542.
- Cameron E (1993) 'Sexual orientation and the Constitution: a test case for human rights', in *South African Law Journal*, 110, 450–472.
- CBS News (19 January 2014) 'Putin: Russia must "cleanse" itself of homosexuality', available at: <http://www.cbsnews.com/news/putin-russia-must-cleanse-itself-of-homosexuality/>, site accessed October 3, 2014.
- Chan PCW (ed) (2013) *The Protection of Sexual Minorities: Progress and Stalemate in Developed and Developing Countries*. London: Routledge.
- Chang S (2014) 'The postcolonial problem for global gay rights', in *Boston International Law Journal*, 32, 309–354.
- Crenshaw K (1989) 'Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics', in *University of Chicago Legal Forum*, 140, 139–167.
- Crenshaw K (1991) 'Mapping the Margins: Intersectionality, identity politics, and violence against women of color', in *Stanford Law Review*, 43, 1241–1299.
- De Vos P (2000) 'The Constitution made us queer: The sexual orientation clause in the South African Constitution and the emergence of gay and lesbian identity' in C Stychin and D Herman (eds) *Sexuality in the Legal Arena*. London: Athlone Press.
- Donnelly J (1982) 'Human Rights and human dignity: An analytic critique of non-Western conceptions of human rights', in *American Political Science Review*, 76, 303–316.
- Dworkin R (1978) *Taking Rights Seriously*. Boston: Harvard University Press.
- Dworkin R (2013) *Justice for Hedgehogs*. Boston: Belknap Press.
- Ekine S (2013) 'Contesting narratives of Queer Africa' in Sokari Ekine and Hakima Abbas (eds) *Queer African Reader* (pp. 78–91). Oxford: Pambazuka Press.
- Epprecht M (2006) "'Bisexuality" and the politics of normal', in *African Ethnography*, 48, 187–201.
- Epprecht M (2012) 'Sexual minorities, human rights and public health strategies in Africa', in *African Affairs*, 111, 443, 223–243.
- Eskridge WN (2008) *Dishonorable Passions: Sodomy Law in America 1861–2003*. New York: Viking.
- Evans-Prichard EE (1970) 'Sexual inversion among the Azande', in *American Anthropologist*, 72, 6, 1428–1434.
- Franke K (2012) 'Dating the State: The moral hazards of winning gay rights', in *Columbia Human Rights Law Review*, 44, 1–46.
- Gaudio RC (2009) *Allah Made Us: Sexual outlaws in an Islamic African city*. Hoboken, NJ: Wiley-Blackwell.
- Griffin J (2008) *On human rights*. Oxford: Oxford University Press.
- Herdt G (1997) *Same Sex, Different Cultures: Exploring Gay and Lesbian Lives*. Boulder, CO: Westview Press.
- Hoad N (1999) 'Between the white man's burden and the white man's disease: Tracking lesbian and gay human rights in Southern Africa', in *GLQ: A Journal of Lesbian and Gay Studies*, 5, 559–584.
- Hoad NW (2007) *African intimacies: Race, homosexuality, and globalization*. Minneapolis: University of Minnesota Press.
- Hodes R (2014, 2 April) 'Uganda throws a party to celebrate passing of anti-gay law', *The Guardian*, available at: <http://www.theguardian.com/world/2014/apr/02/uganda-celebrates-anti-gay-law>, site accessed July 3, 2014.
- Itaborahy LP and Zhu J (2014) *State-Sponsored Homophobia: A world survey of laws*. Geneva: ILGA.
- Jjuuko A (2013) 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality', in *Human rights, sexual orientation and gender identity in The Commonwealth: Struggles for decriminalisation and change*. London: Institute of Commonwealth Studies, School of Advanced Study, University of London, pp. 381–408.
- Jjuuko A and Tumwesige F (2013) *The Implications of the Anti-Homosexuality Bill 2009 on Uganda's Legal System*. Brighton: Institute of Development Studies.
- Kelly A (2009, 12 March) 'Raped and killed for being a lesbian: South Africa ignores "corrective" attacks', *The Guardian*, available at: <http://www.theguardian.com/world/2009/mar/12/eudy-simelane-corrective-rape-south-africa>, accessed September 3, 2014.
- Kennedy B (2006) 'Homosexuals in the periphery: Gay and lesbian rights in developing Africa', in *Nebraska Anthropologist*, paper 21, 59.
- Massad J (2002) 'Re-orienting desire: The gay international and the Arab world', in *Public Culture*, 14, 361.
- Matebeni Z (2013) 'Deconstructing violence towards black lesbians in South Africa' in Sokari Ekine and Hakima Abbas, *Queer African Reader* (eds) (pp. 343–353). Oxford: Pambazuka Press.
- Massad J (2007) *Desiring Arabs*. Chicago: University of Chicago Press.
- Morgan R and Wieringa S (eds) (2005) *Tommy Boys, Lesbian Men and Ancestral Wives: Female same-sex practices in Africa*. Johannesburg: Jacana.
- Mubangizi JC and Twinomugisha BK (2011) 'Protecting the right to freedom of sexual orientation: what can Uganda learn from South Africa?', in *Stellenbosch Law Review*, 22, 330–351.
- Munro BM (2012) *South Africa and the Dream of Love to Come: Queer Sexuality and the Struggle for Freedom*. Minneapolis: University of Minnesota Press.
- Murray SO and Roscoe W (eds) (1998) *Boy Wives and Female Husbands: Studies in African homosexuality*. New York: St Martin's Press.
- Mutua M (2002) *Human Rights: A Political and Cultural Critique*. Philadelphia: University of Pennsylvania Press.
- Njinje M and Alberton P (2002) (directors) *Everything Must Come to Light*. Johannesburg: Out of Africa Films.
- Nkabinde NZ (2008) *Black Bull, Ancestors and Me: My life as a lesbian sangoma*. Johannesburg: Fanele.
- Nyazi S (2014) 'Queer Pride and protest: A reading of the bodies at Uganda's first Gay Beach Pride', in *Signs*, 40, 36–40.

- Ossome L (2013) 'Postcolonial discourses of queer activism and class in Africa' in Sokari Ekine and Hakima Abbas (eds) *Queer African Reader* (pp. 32–47). Oxford: Pambazuka Press.
- Pew Research Centre (2013, June 4) 'The global divide on homosexuality: Greater acceptance in more secular and affluent countries', available at: <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>, site accessed July 5, 2014.
- Pew Research Centre (2014, April 15) 'Global views on homosexuality', available at: <http://www.pewglobal.org/2014/04/15/global-morality/table/homosexuality/>, site accessed June 20, 2014.
- Phillips O (1997) 'Zimbabwean law and the production of a white man's disease', in *Social and Legal Studies*, 6, 471–491.
- Purdie-Vaughns V and Eibach RP (2008) 'Intersectional invisibility: The distinctive advantages and disadvantages of multiple subordinate-group identities', in *Sex Roles*, 59, 377–391.
- Reddy V (2002) 'Perverts and sodomites: Homophobia as hate speech in Africa', in *Southern African Linguistics and Applied Language Studies*, 20, 163–175.
- Roberts B & Reddy V (2008) 'Pride and prejudice: Public attitudes towards homosexuality', in *HSRC Review*, 6, 4, available at: http://www.hsrc.ac.za/HSRC_Review_Article-121.phtml, site accessed July 2, 2014.
- Schroeder D (2012) 'Human rights and human dignity: An appeal to separate the conjoined twins', in *Ethical Theory Moral Practice*, 15, 323–335.
- Shaffer & Smith S (2004) *Human Rights and Narrated Lives: The Ethics of Recognition*. London: Palgrave MacMillan.
- Tamale S (2007) 'Laws and human rights' in S Tamale (ed) *Homosexuality: Perspectives from Uganda* (pp. 55–70). Kampala: Sexual Minorities Uganda.
- Tamale S (2009, Nov 18) 'A Human rights impact assessment of the Anti-Homosexuality Bill', Public Dialogue, Makerere University, published in *Constitutionally Speaking*, 14 January 2010, available at: <http://constitutionallyspeaking.co.za/prof-sylvia-tamale-a-human-rights-assessment-of-the-anti-homosexuality-bill-in-uganda/>, site accessed on January 3, 2015.
- Human Rights Commission (1994) *Toonen v. Australia, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994)*. University of Minnesota Human Rights Library, available at: <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>, site accessed 31 January 2015.
- Valdes F (1995-96) 'Sex and race in queer legal culture: Ruminations on identities and inter-connectivities', in *Southern California Review of Law and Women's Studies*, 5, 25.
- Waldron J (2009) *Dignity, rank and rights*. 2009 Tanner Lectures at UC Berkeley, NYU School of Law, Public Law Research Paper No. 09-50, available at: <http://ssrn.com/abstract01461220>.
- Young RM and Meyer IH (2005) 'The trouble with "MSM" and "WSW": Erasure of the sexual-minority person in public health discourse', in *American Journal of Public Health*, 95, 1144–1149.



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