



# Agenda

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# 'African positionings': South African relationships with continental questions of *lgbti*<sup>1</sup> justice and rights

Jane Bennett and Vasu Reddy

## abstract

Researchers such as Hoad (2007), Ndashe (2010), Swarr (2012) and Matebeni (2014) have raised critical questions about the discursive and material positions through which 'South Africa', as a nation, negotiates a continental context of legal, economic, and social violences against diversely identified lesbian, gay, and transgendered people. This article seeks a critical exploration of some of these debates and positionings, in order to deepen conversation on how South African legal and political activism can, or should, engage the realities of blatant efforts to recriminalise l, g, and t knowledges, bodies, lives and relationships. The article includes a brief review of current legal battles in Uganda and Botswana in particular, and engages questions of South Africans' access to information and to political engagement with these battles and their implications. It concludes with an argument for national revisioning of ourselves as simply 'separate' and/or 'privileged', and calls for renewed strategic activism capable of pan-African perspectives.

## keywords

LGBTI, activism, rights, justice, positioning, pan-African

## Introduction

From mid-2014 a petition to the South African Minister of International Relations and Cooperation, the Honourable Maite Nkoana-Mashabane, was widely circulated on social media by a coalition of NGOs, including the Coalition of African Lesbians (comprising 30 organisations working in 19 countries to advance justice for lesbian and bisexual women, and transdiverse people) and Iranti-org (a queer human rights visual media organisation). On Twitter, at #Demand Accountability, the petition read:

To:

*South African Government-Minister of International Relations and Cooperation, Hon.*

*Maite Nkoana-Mashabane, Ministry of International Relations and Cooperation*

*Chief Directorate: Human Rights and Humanitarian Affairs, Mr. P D Montwedi, Ministry of International Relations and Cooperation*

*Office of the Deputy Minister, Hon. E I Ebrahim (Ministry of International Relations and Cooperation), Ministry of International Relations and Cooperation*

*We call on the South African government to set the date for the Regional Seminar on Ending Violence Based on Sexual Orientation and Gender Identity in Africa in keeping with their commitment to do so.*

At several subsequent public seminars, both in Johannesburg and in Cape Town,

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activists and researchers motivated the importance of South Africa's realisation of its own commitment to hosting an Africa-wide summit meeting to address the scale and implications of many African countries' efforts to recriminalise homosexuality. A study on violence, discriminatory law and practices based on sexual orientation and gender identity (SOGI) commissioned by the United Nations (UN) High Commissioner for Human Rights culminated in a November 2011 report (UN High Commissioner for Human Rights, 2011) detailing violence and discrimination in all regions, including in Africa where homophobic laws, policies and practices are prevalent. South Africa committed then to host a regional meeting designed to focus on the report and to suggest how the UN should address the issue from a continental perspective. By 2014 Asia, the Caribbean, Europe and Latin America had all held their respective regional meetings, but South Africa had still not honoured its 2011 promise.

The relationship between South Africa, as the only country on the continent to have developed a wide array of legal platforms in support of people who identify as lesbian, gay, transgender or intersex (*lgbti*) and other countries on the continent is deeply complex.<sup>2</sup> On 26 September 2014 South Africa voted at the UN in favour of a new resolution aimed at the protection of people from discrimination on the basis of gender identity and sexual orientation, while several other African countries did not.<sup>3</sup> However, in the weeks before the vote it seemed by no means certain that this would happen (Thamm, 2014).

In the past few years, as State-sanctioned efforts to harass, restigmatise and recriminalise homosexuality and transgender people have escalated in Russia, India, the OIC (the Organization of the Islamic Conference) and in most African states, the question of South Africa's relationship to global and continental homo- and trans-phobia has loomed large both in the media and in debates within *lgbti* activism and in human rights-based organisations.

In this article we explore some of the central discourses in the debates on what it means to live in South Africa, 'under some legal protection', as counter-heteronormative, when we are also part and parcel of a continent which was not only central to the possibility of the overthrowing of formal apartheid, but is also home to some of the

strongest and most long-lived *lgbti* activism.<sup>4</sup> We present and critique different public discourses in order to help us think through the following question: What does it mean to live within a country whose Constitution protects people from discrimination on the basis of (at least) sexual orientation when those living non-heteronormative or gender-non-conforming lives experience gross violation both within the country and within neighbouring countries?

The argument works with three key discourses: the 'rising tide of State-sanctioned homophobia in Africa', 'Africa as the worst place in the world to live as *lgbti*', and 'South African leadership'. We maintain that each one of these discourses is widespread within international media, and that they obstruct clear-sighted South African conversation on what our responsibilities and desires may be when it comes to embedding pan-African solidarity into actual initiatives (including activism), writing, and partnership.

Courage to engage in this thinking comes from a number of recent events on South African soil, in which a wide range of voices have tackled the politics of 'queer' in continental cross-cutting exploration. These include the regional workshops of Gender Dynamix over the past few years, and in 2014 the *Queer in Africa: Response to Crisis* installation held at the Institute for Humanities in Africa, University of Cape Town, and hosted by Zethu Matebeni and Jabu Pereira. Such events, which have brought diverse people together from a wide range of continental contexts, insist on moves which reject 'the border' – not merely the borders of embodiment but those of nationality.

The article then moves to a conclusion which argues that unless South Africa is to completely abdicate from its formal commitment to full democracy, a new approach to the politics of sexuality and gender is demanded.

## Discourse on "the rising tide of State-sanctioned homophobia in Africa"

### *Conflating anti-homophobia with anti-same-sex marriage*

The quotation in the main heading above is also the heading of a report entitled *Revitalizing the Fight Against Homophobia in Africa*

by Richard Downie (2014) for the Center for Strategic and International Studies in Washington. The report asserts that restigmatisation, active state-led punishment, and recriminalisation of what it calls “LGBT Africans” has escalated dramatically in the past few years. It draws on several other reports<sup>5</sup> to document a vast range of abuses, miscarriages of justice and *lgbt*-oriented acts of violence in many different countries: Cameroon, Ethiopia, Nigeria, Zimbabwe and Uganda among them. The report concludes with a number of recommendations for the way in which the United States of America (USA) should support the struggles for “LGBT Africans” human rights on the continent: “South Africa should be given the space to chart its own course on the issue [...] but the United States can discreetly encourage that leadership, attempting to nurture rather than lead the debate” (Downie, 2104:15).

So blatant a declaration of American paternalism, alongside the assumption that South Africa is interested in being ‘nurtured’ into ‘leadership’, is probably not unexpected in the light of decades’ worth of neoliberal development approaches. The performative language confirms that American intervention in this way supports African leaders’ perception of American interference in African Affairs. The verb “nurture” is ambiguous, glossing over both influence and manipulation. We argue that Downie’s articulation

clearly reveals the shape of one of the most difficult discourses with which we, as South Africans, have to negotiate.

In 2014, to support the rights of anyone who does not live in accordance with heteronormative codes of gender and sexuality is to find oneself ‘in the pocket’ of formal and public American policy language about *lgbt* rights as ‘human rights’. While to many of us who have been engaged in international conversations with the meaning of social justice for years, the current US administrative position on lesbian and gay rights is bizarre in the light of past legal history and contemporary violations (Darkmatter, n.d.), Downie’s position is discursively powerful and operates in a way which skews and complicates activism and writing on the continent, including within South Africa.

We illustrate this first with a brief anecdote. In June 2013 President Obama ‘visited Africa’, ostensibly in fulfilment of a promise made earlier and, more likely in pursuit of stronger commitments from African presidents that trade agreements with China would be negotiated only in certain terms, favourable to US interests. His itinerary in the space of two weeks took him to three port cities, Dakar in Senegal (Figure 1), Cape Town in South Africa (he visited Johannesburg there too) and Dar es Salaam in Tanzania. Obama’s arrival in Dakar in June was presaged by a ‘street-cleansing’ of



Figure 1. A banner showing President Obama and Senegalese counterpart Macky Sall hangs at the airport in Dakar, Senegal, on 27 June 2013. Photo: AP.

particular city areas, where hundreds of local street traders and so-called ‘beggars’ were forcibly removed. Such removals also affected sex workers, the routes of city buses and taxis, and entrance into large commercial markets. It was also presaged as a highly significant diplomatic occasion, especially as Dakar had been ‘chosen’ as the ‘portal to Africa’.

In a televised and widely watched encounter between the Senegalese President Sall and Obama, Obama suggested that Senegal should understand the rights of lesbians and gay people as “human rights”, to which Sall responded that different contexts responded differently to the notion of “rights” – *“C’est comme la peine de mort. Chaque pays a sa propre position la-dessus. Le Senegal l’a abolie de puis longtemps”*. (It is like the death penalty. Each country takes its own approach. In Senegal, it was abolished a long time ago.)

The daily newspapers on the morning of 28 June 2013, *Le Populaire*, *Enquete*, and *Sud Quotidien*, were collectively jubilant over President Sall’s putdown to President Obama. The headline of *Le Populaire* read *“Obama plaide pour les homos, Macky dit non!”* (Obama pleads for homosexuals, Macky says no!) and *Sud Quotidien’s* front page triumphed: *“Macky face a Obama sur la dépenalisation de l’homosexualité: Fermeet ... Subtil”* (Macky opposes Obama on the decriminalisation of homosexuality: firm and... subtle). Throughout the day, on popular radio talkshows, comments indicating pride in Sall’s rebuff to Obama streamed in.

That morning one of this article’s authors was working at the Council for the Development of Social Science Research in Africa (CODESRIA) in Dakar, as Director of their annual residential seminar for young faculty and researchers from across Africa. Participants came from 19 different countries and the focus of the seminar was on ‘African Sexualities’ (see Tamale, 2011). The three weeks of work sought to cover questions of historiography, the impact of development discourses on the meaning of ‘sexualities’ research in many of our countries, the emergence of new economic and political formations across the continent, and the power of e-technologies in constructing desire and pleasure. Given multilingualism and diverse research interests, running the seminar was not an altogether straightforward business (we were lucky enough to have a great deal

of assistance from colleagues such as Cheikh Niang, Babare Chacha, and Awino Okech), and sessions on the politics of counter-heteronormativities (and their deep histories within diverse contexts) had been slow and tense as we found our way towards one another. While Cheikh Niang,<sup>6</sup> who has worked with questions of stigmatisation, sex work and homosexualities in Dakar, had successfully encouraged seminar participants to set aside their mistrust of “Western paradigms” in search of methodologies capable of reading past generations’ desire and sexual pleasure, the morning’s public celebration of President Sall was infectious.

Scorn was heaped upon Obama for bringing ‘finger-wagging about homosexuals and marriage’ into his dialogue with Sall, and it was not possible to return to Professor Niang’s trajectory, one intended to allow discussion of contemporary counter-heteronormativity to develop from a sense of participants’ contextually and linguistically specific questions. Not only was Macky Sall applauded for his challenge to Obama, Obama’s suggestion that lesbian and gay people deserved all the rights of others in any society created immediate linkages for most that morning to notions of same-sex marriage.

The Defence of Marriage Act in the USA, which prohibited the extension of State permission for same-sex marriage to states where same-sex marriage was illegal, had just been overthrown, and several new US states had signed same-sex marriage into law, much to the scepticism of radical queer organisers and writers in the USA, such as Jaspir Puar (2007), the Audre Lorde Project (see <http://alp.org/>), and Amber Hollibaugh (see [http://en.wikipedia.org/wiki/Amber\\_L.\\_Hollibaugh](http://en.wikipedia.org/wiki/Amber_L._Hollibaugh), and also Hollibaugh (2000)). Obama was riding high on the wave of a liberal discourse which linked the right to same-sex marriage with broad civil rights movements. For the Senegalese celebrating their own president’s panache, the American’s mention of homosexuality assumed ideas about same-sex marriage (Obama did not, in fact, mention this), and rejection of homosexuality became immediately conflated with the ‘spectre’ of same-sex marriage.

Within such a conflation, State and religious leaders can become very close in their deployment of homophobia, and an anti-imperialist thread of defiance, especially against the USA, finds itself in bed with

fundamentalism and ministerial manipulations. Uganda's President Museveni (2014) took exactly this position in his defence of the decision to sign the Anti-Homosexuality Bill into law on 24 February 2014:

it seems the topic of homosexuals was provoked by the arrogant and careless Western groups that are fond of coming into our schools and recruiting young children into homosexuality and lesbianism, just as they carelessly handle other issues.

Uganda's Anti-Homosexuality Bill's provisions included renewed criminalisation of homosexuality (adding heavier possible sentences to the 'crime' of 'sodomy' already criminalised under Uganda's Carnal Knowledge Against the Law of Nature Act, a legacy of colonial law (Penal Code Act 1950)) and, more significantly, prohibition of same-sex marriage, of any form of 'promotion' of homosexuality, and required people to disclose evidence of homosexuality wherever they may see it.

First the Nigerian Parliament, in 2006, and then Goodluck Jonathan in 2013, took a very similar position in the formulation, articulation, and eventual ratification of Nigerian recriminalisation legislation. From its earliest formulation in 2006 it was named the 'Anti-Homosexuality and Prohibition of Same-Sex Marriages Bill'. As Dorothy Aken'ova (2011: 138) describes:

the short title of the Bill was misleading: it was the Bill prohibiting Same Sex marriage in Nigeria. This gave the impression that same-sex relationships were not already penalized in Nigeria and suggested that there had been some clamour that sought to legalize unions in the form of marriage. This was misleading to the international communities and to the population at large.

### ***South African influences on continental anti-same-sex marriage legislation***

It is worth asking about timelines. In 2006 debates on same-sex marriage had begun to surface in the USA, but the overthrow of the Defence of Marriage Act<sup>7</sup> was 7 years away, and only five states supported same-sex marriage. The Nigerian Bill's inclusion of same-sex marriage within its provisions may

be more directly linked to the fact that South Africa ratified the Civil Union Act in November of 2006 (see Reddy (2006)). As the edited collection of articles by Judge *et al*, *To Have and to Hold: the Making of Same-sex Marriage in South Africa* (2009), argues, the only reason the South African Bill passed was the requirement by the African National Congress that its members vote with the party position for the Bill. Despite Johnny de Lange's<sup>8</sup> spirited defence of the Bill as law in solidarity with the goals of the South African liberation movement, many parliamentarians spoke openly about their discomfort, and popular opinion was deeply sceptical of its merits. The Act as passed exempted religious authorities from legal requirements to marry same-sex couples, and to this day a married lesbian minister of the Methodist church, Ecclesia de Lange, remains banned from her congregation.<sup>9</sup>

While extension of the constitutional protection of lesbian and gay people from discrimination into legal possibilities for marriage did open new doors for many, it simultaneously ratcheted up the stakes for homophobic institutions. South Africa's position on the continent became triply fraught: in the competitive and difficult tensions of continental politics the country's support of the rights of protection afforded to people on the basis of sexual orientation, the access offered to 'same-sex' marriage, and the overt welcome the African National Congress had given to the USA since Mandela's inauguration, place us on slippery ground.

In a series of workshops offered by Carla Sutherland (currently associated with the Columbia University School of Law) in April 2013 she outlined a broad framework for understanding the global context in which notions of homosexual equality can be fought for as rights. Her presentation stressed two issues: firstly, that bodies as powerful as the OIC, the Papal See,<sup>10</sup> and the Russian bloc are very unlikely to separate American-affiliated calls for the connection between 'homosexual rights' and 'political freedom' from American-affiliated drones; and secondly, that while advocacy for same-sex marriage in the USA emerges from a very long (and deeply unfinished) narrative of queer, counter-racist, and feminist struggle where formal decriminalisation has preceded any notion of access to marriage by decades, in many of the contexts in which the 'West' is (mistakenly) read as

'gay-friendly', decriminalisation is not a legal option. Yet questions of getting married are embedded into the legal and popular debates on homosexuality through which lesbian and gay people, in countries as diverse as Uganda, Nigeria, Zimbabwe, and Malawi, have recently been subjected to recriminalisation and environments of dangerously deepened hostility. South Africa is implicated in these discourses of recriminalisation and hostility. We argue, on the one hand, that it is critical for activists and researchers to acknowledge this, and on the other, that such an implication puts special responsibility on us to address what it means to live on the continent as non-hetero-normative people.

### Discourses on "the world's worst place to be gay"

*Homogenizing wounds*, a documentary released on BBC3 (<http://topdocumentary-films.com/worlds-worst-place-to-be-gay/>) suggests Africa is "the world's worst place to be gay". This quotation comes from a global news website, and is dated 18 September 2013. The news-clips accompanying it speak of Ugandan villages burning people 'suspected' of being gay, and of torture, harassment, and murder. It is a perfect example of what Zethu Matebeni (2014:61) interrogates in her piece 'How not to write about queer in South Africa':

Always paint a picture that lesbians, particularly the Black ones, are from poor townships, are victims of rape and murder, and your writing and the money you raise will save them. Always mention 'corrective rape' when you write about Black lesbians.

It would be idiotic to argue that people living outside the conventions of gender and sexuality which structure their societies are safe anywhere; and it would be equally silly to argue against the fact that contemporary African contexts are frequently mined by violence, of many types, for us. Only access to class privilege begins to offer publicly visible 'queer' people protection, and it is a corrupt protection: the price paid for wealthy lesbian, gay, and transgendered people's ability to move about unharassed, to socialise easily in public spaces, and to earn an income without fear, is the fear and violation of queer

people without resources. By 2014 there were myriad documents attesting to this.<sup>11</sup>

The discursive conundrum here for South African activists and researchers is not unfamiliar. Survivors of rape who publicly attest to their experience of assault swiftly find that the more their stories are found to be credible, the quicker they themselves fall, commodified by 'victimhood', into the status of a singular object: the raped (never to be un-raped) woman (Bennett, 2013).

In early research on farmworkers striking in the Western Cape, Asa Erikksen (2014:9) asks "what is a *farmworker*?" and takes the reader through a kaleidoscope of possible figures: the mother, the migrant worker from Zimbabwe, the one who has been on the land for six generations, the one who motivates the strikers and engages the NGOs. The act of naming is, we take from Butler, a violation itself, and if we go there, creating constituencies of (for example) 'black South African lesbians', the swift vengeance of visibility strikes down any hope of complication too confusing for language or emotion, too deep for superficial description.

The point is, then, that the more recognition of the complex and lethal forms of homo- and trans-phobic violences circulates within research agendas, public media, and performative pieces, the more a crude and imperialising homogenisation of 'South African black lesbians' – for example – congeals. Assumptions about the meaning of suffering and violation become glib, fodder for a neoliberal development tale capable of wrapping itself around gender non-conforming people, provided they present themselves as victims, calling piteously to the international world for assistance. Occluded within the assumption is inherent racism (Lahiri, 2012; Gleckman-Krut, 2014), and the corollary erasure of white and or well-resourced *lgbti* complicity with violation, tortured yet vacuous efforts towards valuable activism, or (and rarely) brilliance of a moment. Most importantly, the assumption of a permanent and helpless victimology distorts the herculean battles publicly fought towards *lgbti* justice.

Within South Africa there are many contemporary voices which try to tackle the discursive tangles inherent in 'naming violation'. In, for example, the *Daily Maverick*, Sisonke Msimang begins: "I was asked last week what it takes to tell the stories of black

lesbians in South Africa.” She goes on to suggest that “what it means” is, firstly, to see in such a telling the impossibility of talking about the death of Michael Brown or Travvyon Martin (far away in a different country), and secondly, she summons the killing of Gift Makau in Ventersdorp on 13 August where “the community doesn’t accept gays” (Msimang, 2014):

I pore over the papers. I want to know whom she loved. I would like someone to tell me whether or not she wrote poetry. Who was her first love? What are the names of her siblings? Was she the first- or the lastborn? These questions do not explain the crime but their answers render Gift a subject. They will tell me about the contours of her heart and perhaps these are the facts that matter the most. These are the kinds of minutiae that stick in your head, that stay lodged there long after you have turned off the radio.

They are the sorts of details that make old ladies in church suck their teeth dismissively when their pastor suggests that homosexuality is unnatural. They remember Gift and her poetry or the way she protectively walked her

brother or sister home each day and then had no one to protect her when she needed it. These are the ‘facts’ that make ‘lesbian’ mean something that is flesh and blood and breathing. Something that is as soft as it may be hard, something that is tender and belongs to us all.

Msimang then turns to the micro-minutiae of someone’s life to negotiate a truce between the public word, an assassination, and a woman – “Gift Makau”, and there are others who similarly take up representation against its own vulnerability to co-optation. A powerful performance piece widely acclaimed in 2012, *I Stand Corrected*, by Mojisola Adebayo and Mamela Nyamza, begins with a marriage ceremony-to-be at the “Rainbow Community Church” where the character Charlotte Browning tries to keep the impatient wedding guests entertained as they all wait for the other bride, Zodwa Ndlovu. Zodwa never turns up – she has instead been gang-raped and murdered, “corrected” from the perspective of her male rapist. The performance, with one body/voice alive and broken in grief and the other, ‘dead’ and love-longing, demands anguished questions about love and desire, where same-sex love serves as a rationalisation for rapists’ energy.



Figure 2. On 21 March 2013 Zanele Muholi, visual activist and founder of Inkanyiso production, was honoured for her extraordinary work of capturing the lives of black *lgbt* individuals in South Africa. Muholi was overall winner in the ART category at the Index Freedom of Expression Award ceremony hosted by SAGE Publications and Index on Censorship, an international registered charity organisation, that defines and defends freedom of expression in London. The first *lgbt* activist to win an award at this event, Muholi was praised by Kirst Hughes, CEO of Index on Censorship, saying that “Zanele has shown such extraordinary courage and determinations, she has faced intense pressures and discriminations but she stood up to those attempts that try to stop her”. Photo: Inkanyiso.org

Zanele Muholi (Figure 2) has long documented the funerals and mourning ceremonies accompanying the deaths of black South Africans murdered for their refusal for conforming to sexual and gender conventions, and in the first phase of her project *Faces and Phases* (2007–2011) she includes as the final image of the collection “Busi Sigasa”, the interactive portrait of a woman who has been assassinated. As Kylie Thomas has argued, while Muholi’s work has been widely celebrated for her insistence on black lesbian visibility, in the face of South African homophobia and hatred Muholi’s images demand not simply the recognition of lesbians’ living and dynamic presence but the grief of what may be lost, through death, passing (a face and a phase) (Thomas, 2010).

“Busi Sigasa” images an open-jacketed figure, looking out towards the left, backgrounded by long grass, a small flat-topped building, a tall iron structure (a lamppost, a water-tower? A transmitter?). Unlike many of the preceding photographs, the figure’s eyes do not engage the viewer’s directly; they look slightly up, towards a horizon. The earring in the right ear glints, the sunlight strikes the figure’s open face. The image is dated 2006. In March 2007, Busisiwe Sigasa died of AIDS (about which she was publicly ‘out’ as a political activist and poet); she contracted HIV as a result of rape ([www.blacklooks.org](http://www.blacklooks.org)). The figure in “Busi Sigasa” draws the *Faces and Phases* collection to a close, not meeting the viewer’s own eyes, turning elsewhere for interlocution.

There are few similarities between Msimang, Adebayo and Nyameza, and Muholi: they work in different media, articulate and embody their theory/art differently, and inhabit very different trajectories within a broad narrative of what it means to create a language of nuanced defiance against stereotype, suffering and death. What can be clearly glimpsed, however, through such a brief presentation of their voices, is the fraught terrain of critical engagement with discourses on violence and *lgbti*: the bodies of Busi Sigasa and Gift Makau are buried; the dynamism of Msimang, Xaba, Muholi, Nyameza, Adebayo, and others is catalytically alive.

**Extending resistance to homogenisation**

If such a story of multiple lenses is required for language about South African *lgbti*, of course it follows that the same is true for the

contexts of Nigeria, Uganda, Kenya, Ethiopia, Zimbabwe, Senegal, Botswana and more. The broad discourse of *homophobic Africa* ignores not merely the kaleidoscope of material and psycho-social experiences of ‘being’ and ‘living’ *lgbti*, but of course the fact that ‘Africa’ involves 53 states, and to begin to count the ‘contexts’ would be ludicrous.

in the face of South African homophobia and hatred Muholi’s images demand not simply the recognition of lesbians’ living and dynamic presence but the grief of what may be lost

In a short article we cannot unpack in depth what the recognition of socio-political complexity would mean, were South African *lgbti* work to take aboard an engagement with ‘Africa’. One way to start, however, would be to both note and discuss the multiple, Africa-wide voices who actively challenge homo- and trans-phobia: in law courts, in organisations, as scholars, as writers and artists, and as individual activists. In 2014 we witnessed at least two critical moments, one where a team of Ugandan human rights lawyers successfully led a challenge to the Anti-Homosexuality Act in Uganda, and another where an advocacy organisation, Lesbians, Gays, and Bisexuals of Botswana (LegaBibo) took the Botswanan state to court for its refusal to allow the NGO to register – and planned to go back again in October 2014.

The lead petitioners from Uganda’s Civil Society Coalition on Human Rights and Constitutional Law, who filed the challenge to the Anti-Homosexuality Act<sup>12</sup> were Joe Olaka-Onyango, Fox-Odoi-Oywelowo, Morris Latigo, Paul Semugoma, Jacqueline Kasha, Julien Pepe Onziema, and Frank Mugisha. The consortium of *lgbti* activists, a doctor, an MP, lawyers and professors, along with two other organisations,<sup>13</sup> argued that the mere fact that the Act was passed by an inqorate parliament was enough to render it unconstitutional. The argument won easily, trumping years of legal recriminalisation efforts and attendant implicit permission to harass, detain, and violate.

*The Observer* of 8 April 2014 published a public address by Joe Olaka-Onyanga, a Professor of Law at Makerere University and a long-standing and prolific writer on the meaning of human rights law. According to the popular newspaper, Olaka-Onyango tackled three recent pieces of legislation passed by the Ugandan Parliament: the Public Law and

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Management Act, designed to tighten the powers of police; the Anti-Pornography Act, which includes legislation on “respectable dress”; and the Anti-Homosexuality Act. He concluded: “We live in a time of legal gymnastics, a time when the law is being openly used as a mechanism to consolidate and perpetuate dictatorship and autocracy [...] we are witnessing the legalization of mob injustice” (Olaka-Onyango, 2014).

LegaBibo of Botswana, where homosexuality is criminalised, took the Government of Botswana to court on 18 March 2014. Arguing that the Constitution of the country protects people’s rights to freedom of expression, to protection of freedom of assembly, and to protection from discrimination and inhuman treatment, the group demanded their right to be registered legally as an NGO. This right was denied them in 2012 by the Director of the Department of Civil and National Registration. Without registration it is difficult to organise publicly, to run advocacy campaigns, to raise funds, and to meet openly as a political group.

The 18 March case was represented by Dr Unity Dow, a former high court judge, a novelist, and a woman whose first legal challenge to the Botswana Court involved the rights of a child to be afforded the nationality of its mother, where the father comes from another country. This case (*Attorney General of Botswana v Unity Dow, 1991*) is one of the earliest in the suite of 1990 law suits which

revolutionise women’s legal rights across Southern Africa, and Unity Dow (Figure 3) is legendary in many feminist and human rights activist circles. According to the website of Iranti-org, “the courtroom (that morning) was filled with LGBTI people from across Botswana to support the organisation, all dressed in red T-shirts with the advocacy message, ‘Free to organize. It’s our right’” (Iranti-org, 2014).

These two legal moments hint at the intense and knotted realities within different country contexts. While there is no doubt that recriminalisation and outspoken State-based homophobia are forms of terrorism, it is simultaneously true that bold initiatives and strategic vitalities not only keep *lgbti* activism alive in repressive contexts, but garner support from heavyweights in the human rights arena. This is exciting, and without strong knowledge of such work it is difficult for South African-based thinking to understand what it may mean to engage beyond national borders.

**Discourse on “South Africa must be applauded for its leadership on this issue”**

This quotation comes from a recent piece in the *Daily Maverick* by Shehnilla Mohamed (9 October 2014), in which she comments on South Africa’s recent support in Geneva for a renewed UN Resolution protective of people’s



Figure 3. Dr Unity Dow, LegaBibo legal representative, preparing herself to present the case against the Government of Botswana in court. Photo: Ayanda Msiza, Iranti-org

rights to protection against discrimination on the basis of sexual orientation and/or gender identity (27th Session of the Human Rights Council). Her article concentrates on the overtly political (rather than extraordinary work done by the Coalition of African Lesbians, Iranti-org, and other activists) and includes South African Ambassador Abdul Minty's acknowledgement that people within South Africa remain deeply vulnerable to discrimination on the grounds of sexual orientation and gender identity. The article nonetheless reinforces a common discourse: "As the economic powerhouse on the continent [...] South Africa must show leadership".

While it is true that positioning itself internationally in alignment with its own Constitution (and thus supporting the UN SOGI Resolution) seems appropriate, to claim that South Africa – through its national authority – should claim "leadership" around the issue of homo- and trans-phobia is problematic from several perspectives.

Firstly, the point made by Mohamed on the treatment of *lgbt* people within South Africa is well-rehearsed and deeply founded. As we write, Nadia Swanepoel, a transgender woman, has embarked upon a hunger/fluid strike in protest against Home Affairs' gross incompetence in processing essential identity documentation, and she is far from alone in experiencing such discrimination. There is a very resilient body of work which documents the struggle to access rights, support, and protection from violence for South Africans who live counter-heteronormative lives, as already discussed.<sup>14</sup>

There is also a growing body of work which documents the experiences of sexual refugees to the country. In 2012 Heidi Martin completed research on the experiences of those who had travelled to Cape Town from Kenya, Zimbabwe and Uganda, seeking refuge from home-based homo- and trans-phobia. The qualitative study documents a wide range of abuse, misery, loneliness, and alienation. One interlocutor concludes:

I wish I had never left. My mother hated me, but she still knew me; she threw me out, but she still called me her son; here, I am hated; even the others (referring to 'other trans people' he has met) hate me, they say I am strange; no-one helps; they wish I was dead just like they wish the

other Zimbabweans were dead. This place is terrible. (Martin, 2012:78)

The notion of South Africa as a "leader" within the protection of SOGI rights and dignity sounds a note of cacophonous disharmony against such a voice.

the micro-dynamics of South Africa's jockeying for economic and political traction within different forums do not prioritise questions of sexual orientation and gender identity

Secondly, the meaning of South Africa as a "leader" has been in difficult contestation from 1994 on. In its economic movement from "pariah" to "middleman" to "hegemon" (Miller, 2008), South Africa has generated mistrust, potential allies, and competitors (especially Nigeria). The exportation of South African companies across the continent (Pick 'n Pay, Shoprite, MTN, Eskom, Protea Hotels, SA Breweries, to name a few) is in direct counterpoint to the explicit political discourses of Mandela, Mbeki and Zuma which publicly position South Africa as a newcomer to continental democracy-building and as a country seeking friendship rather than "leadership". In reality, the micro-dynamics of South Africa's jockeying for economic and political traction within different forums do not prioritise questions of sexual orientation and gender identity: they rather concern new trade linkages, military processes (including the sale of arms), and the alleviation of human and political crises. Any expectation that *lgbt* rights form a core concern of South Africa's government-driven interests in continental diplomatic and economic relationships strikes us as naïve.

Lastly, of course, the call for national leadership in an issue entails a sense of 'nation' as a platform for socio-political activism. To reject this as a South African is difficult – it would mean rejecting centuries of struggle by thousands against colonial versions of 'our country', and it would mean that very personal connections with anti-apartheid work needed to be rearranged, revisited in our hearts and narratives of how we have been formed as a 'new nation'. It may be far too soon to do this; much *lgbt* activism in the country draws on the Constitution as a legitimate basis for its advocacy

work, and no South African living lacks a family network embedded in what it meant to live underneath the matrix of apartheid policies. Too tight a hold on 'the nation' purely in patriotic terms, however, could blind debate on the possible shape of connections between South Africans and those in other continental contexts fighting against homo- and trans-phobia.

Firstly, no one nation's laws can be seen as 'imposable' on another (what if the tables were turned?); much more importantly, some of the most powerful *lgbti* work on the continent has been done by NGOs made up of people from different countries (such as the Coalition of African Lesbians), powerful activists have travelled widely from one context to another, and by the combination of physical meetings, social media-based connections, e-spaces, and publications which have included a pan-African 'diaspora' (a diaspora within the continent and beyond). In this sense, the leadership of continental-oriented *lgbti* advocacy has been queer – misaligned to 'nation', connected to the K of Zethu Matebeni's *Reclaiming Afrikan* (see <http://zethumat.wordpress.com/2014/07/01/reclaiming-afrikan-queer-perspectives-on-gender-and-sexual-identities>). Introducing the collection, Matebeni (2014:4) explains:

The use of "k" in Afrika signals an appropriation of an identity and belonging that is always detached from a "queer" person. "Queer" in this book is understood as an inquiry into the present, as a critical space that pushes the boundaries of what is embraced as normative. The artists and authors included in this text are "queer" themselves and occupy spaces that speak back to hegemony.

The engagement – never static so never a point of reference – of K is quintessentially a refutation of what it is that the 'national' offers as a mode of leadership, a mode of identification, or a mode of strategy.

## Conclusion

In April 2010 a group of activists meeting at a strategic planning session in Nairobi drew up, as an exercise, an 'African LGBTI declaration', which is reprinted in Sylvia Tamale's

(2011:182) edited collection, *African Sexualities: A Reader*. The declaration begins:

As Africans, we all have infinite potential. We stand for an African revolution which encompasses the demand for a re-imagination of our lives outside neo-colonial categories of identity and power. For centuries, we have faced control through structures, systems and individuals who disappear our existence as people with agency, courage, creativity, and economic and political authority. As Africans, we stand for the celebration of our complexities and we are committed to ways of being which allow for self-determination at all levels of our sexual, social, political and economic lives. The possibilities are endless. We need economic justice; we need to claim and redistribute power; we need to eradicate violence; we need to redistribute land; we need gender justice [...] overall, we need total liberation... as long as African LGBTI people are oppressed, the whole of Africa is oppressed.

We would argue, firstly, that the pan-African of this position is a central starting-point for South African-based work with questions of gender and sexual diversity, especially because we are very deeply connected with each other on this continent across cognate struggles (gender justice, HIV, diseases now such as Ebola) and, secondly, that the struggle for *lgbti* justice is deeply intertwined with decolonialism and the rejection of neocapitalist modes of 'development'.

In concrete terms, for South Africans this entails at least three strategic trajectories. Firstly, if South Africans are to engage with integrity in questions of decriminalisation of homosexuality and of support for transgendered and gender non-conforming people, beyond the country's borders, we need to work very hard at strengthening our collective knowledge of the contexts in which our '*lgbti*' family members live. Knowledge of criminalisation, stigmatisation, and violence is not enough: what of political histories, languages, performance artists, popular songs, favourite sporting stars; what of the way another context may sound, smell, or feel? How can we contribute, as South Africans, not simply to dialogue with 'fellow *lgbti*' across the country, but to the decolonisation of knowledges about 'Africa' herself?

What will it take for 'us' to become (first) 'Africans' (AfriKan as Matebeni suggests?) and (next) located within our own intensive, dynamic, and multi-faced 'South-African' bodies? After all, our borders are porous, and we cannot claim in 2014 that South Africans do not share our daily interactions without fellow Africans.

The second point is connected to the first; if South Africa's Constitution does offer *lgbti* people living here a different legal context from that faced in Ethiopia, or Zambia, or Cameroon, we need to work much more intensively with those who enter 'our' space in the hope of some form of protection. Organisations such as Gender DynamiX, or Iranti-org, have been doing this for a few years, and it entails slow, painstaking, and brutal work at the coalface of 'the nation': Home Affairs, the police, hugely overworked and poorly resourced organisations aiming to support refugees and to battle against xenophobia, hospitals and clinics.

Sbusiso Kheswa, Director of Gender DynamiX, writes of the experience of Tiwonge Chimbalanga (one of the two imprisoned by the Malawian courts in 2010), as she emigrated to South Africa in the hope of a different life: she has dealt with violence, medical neglect, and (at the time of writing), still had no documentation (Kheswa, 2014:72). It is no secret that South Africa's approach to those with refugee status, of any kind, is replete with mismanagement at best, and blatant cruelty at worst. This strikes us as key terrain for demanding accountability from local government actors, and for strengthening NGO engagement.

The third trajectory for which we argue seeks to queer the notion of 'leadership', South African or otherwise, on the direction of *lgbti* continental struggles. The truth is: gender non-conforming people and those whose sexuality challenges pre-given conventions core to the possibility of neocapitalist notions of labour-generation *must*, and *will*, and *do* find 'ourselves' in contradictory and mind-boggling positions. Sometimes 'at the front' (writing, punching back, voicing, making the first move), sometimes 'at the back' (ignored, jumped on, rejected, erased), sometimes shuttling wildly between the pin-pointing of categories, devices, the modals of 'ought', and the vice-grip of the need to eat, and be housed. 'Leadership' here entails explaining that you could be killed tonight

for who you are, and that in the moment breath streams through the words, you are not (yet) killed; you are, perhaps, performance art, in Peggy Phelan's (1997) sense of the term.

She argues that performance art, of all representational modes, has the power to transcend the interests of commodity capital because of its reliance on the immediate present for meaning: that meaning cannot be captured, sold, categorised, or become 'useful' (Phelan, 1997). If anything, South African relationships with continental questions of *lgbti* justice and rights are necessary, yet complex. 'Leadership' is not our business; perhaps, though, attention, solidarity, redistributions, rage and bent love may be.

## Notes

1. The acronym *lgbti* is widely deployed in both activist and policy work, and by 2014 had been critiqued by many (e.g. Bennett, 2010; Gunkel, 2010; Matebeni, 2014) for its homogenisation of diverse experiences, and its collusion with a politics whose goals align only with those of the liberal state (i.e. access to those 'rights' already named by that state as part of citizenship). In this piece it is difficult to ignore the power of the term, and we use several other approaches to categorisation, and aim to signal our discomfort with '*lgbti*' by italicising the letters.
2. For a detailed breakdown of the legal context focusing on LGBT rights across several domains addressing legislation in African countries, see [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Africa#Legislation\\_by\\_country\\_or\\_territory](http://en.wikipedia.org/wiki/LGBT_rights_in_Africa#Legislation_by_country_or_territory).
3. Algeria, Botswana, Cote d'Ivoire, Ethiopia, Gabon, Kenya and Morocco voted against the Resolution; Namibia, Congo, Burkina Faso and Sierra Leone abstained.
4. This is by no means an exhaustive list, but some organisations we are thinking of here would be the Coalition of African Lesbians, Rainbow, GALZ (Gays and Lesbians of Zimbabwe), LegaBibo (The Lesbians, Gays & Bisexuals of Botswana), SMUG (Sexual Minorities Uganda), FARUG (Freedom and Roam Uganda), GALCK (Gay and Lesbian Coalition of Kenya), INCREASE (International Centre for Sexual Health and Reproductive Rights).
5. For example, Human Rights Watch (2013), Itaborahy and Zhu (2013)
6. His research articles on homosexuality in Senegal had been discussed by the workshop participants; we include one of them in the references.
7. The Defence of Marriage Act prohibited same-sex marriage from federal recognition in the USA. This meant that up until 2014, when it was struck down, a same-sex marriage legalised in one state would not necessarily be recognised in another.
8. The Deputy Minister of Justice and Constitutional Development at the time.

9. See Luis de Barrios, 'Court rejects fired lesbian minister's appeal', October 1, 2014, available at: <http://www.mambaonline.com/2014/10/01/court-rejects-fired-lesbian-ministers-appeal/>
10. In a recent interview the Pope reaffirmed the Church's view that homosexual acts were sinful, but homosexual orientation was not; and stressed the importance of not marginalising gay people but rather integrating into society in a non-judgemental way (see <http://www.bbc.com/news/world-europe-23489702>). While an interesting development on the part of any Pope in a long time, this does not change the Catholic Church's formal position on homosexuality.
11. See for example, *Queer in Africa Reader* (Ekine and Abbas, 2013).
12. The Anti-Homosexuality Bill was signed into law by President Museveni on 24 February 2014 after originally being introduced to Parliament in 2009. It broadened criminalisation of lesbian and gay sexual behaviour, and deepened penalisation. It also criminalised any form of education on homosexuality and required mandatory reporting of same-sex desire or activity by third parties.
13. Human Rights Awareness and Promotion Forum, Centre for Health, Human Rights and Development.
14. See, for example, work by Thabo Msibi (2011), Vasu Reddy (2006), Zethu Matebeni (2014), Mary Hames (2011), Nonhlanhla Mkhize *et al* (2010), Mikki van Zyl (2005), referenced below, and the reports from organisations such as OUT (<http://www.out.org.za/>), Iranti-org (<http://www.iranti-org.co.za/>), Gender DyamiX (<http://www.genderdynamix.org.za/>), and the Durban Lesbian and Gay Community and Health Centre (<http://www.gaycentre.org.za/>).

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