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Gender, Sexual Variations and Sexual Rights: the African Challenge

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Abstract

This paper synthesizes and ventilates on various scholarly contributions and debates that are premised on gender and sexuality, and pigeon-hole these to singularly address the contentious discourse of sexual rights within the African context. The narrative explores the progressive development of 'sex' and 'sexuality' themes from their prior marginal positions in public and official discourses, to their eventual embrace and mainstreaming; thanks to the HIV and AIDS pandemic that touched the very core our social fabric. The intertwined, yet distinct relationship of gender and sexuality as social constructs is discussed here. It is noted that sexuality, though basically categorized as essentialist, is however shaped by social forces and essences. The plurality of sexuality, as defined by the essences, manifests itself in form of sexual identities and orientations which are seen to be culturally and historically specific. Variations in sexuality are anchored in explanatory paradigms that, by and large, are reducible to the competing essentialist versus social constructionist theoretical orientations. The Cultural Influence Models of Sexuality of Carol Vance (2007) and Rubin Gayle's (2007) model of The Sex Hierarchy are highlighted to underpin some of the arguments here. Gayle's discussion is critical in engaging debate on the rights-approach to sexuality, and whether or not sexual rights should be universalized as a human right. In the paper, conversations on this are carried out with a focus on the African context, and against a backdrop of ongoing debates in international forums. How for instance, have African states and governments approached the rights issue as demanded by sexual minorities, and which is largely considered unAfrican, adulterating and of western civilization origins? This is the challenge.

Key words: Africa, gender, sexuality, sexual rights, homosexuality, sexual pluralism

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Introduction

Prior to the advent of HIV and AIDS, issues and conceptualization of sexuality were not items of overt talk and interrogation in the official and general public circles, particularly on the African continent. Sex and sexuality were considered private and sacrosanct subjects. Human sexuality research was mainly the terrain of bio-medicine and perceived in terms of deviance, disease and abnormality, and in need of correction and cures (Nyanzi 2006). So, when the HIV and AIDS scourge hit the world in the 1980's, the earlier marginal 'sex' and 'sexuality' themes were thrust in the mainstream of developmental debates and discourses. Seen as the critical purveyor of the epidemic, the sexuality domain became an area of interest particularly in regard to relevant information and knowledge that would enable researchers and development agents mitigate the problem. Africa was thus compelled to talk sex.

The unease and stigmatized manner in the way sexual matters were perceived at the societal level was projected by the silence, disinterest and lack of bold stance with which international bodies treated the subject. In the United Nations for instance, sexuality, in the pre-HIV and AIDS days, was viewed as something to be circumscribed and regulated in the interest of public health, order or morality (Saiz 2004). Neither do any international women's conference declarations prior to 1992 refer to women's sexuality – not the Women's Convention in 1981, nor the Nairobi Forward looking Strategies of 1985.

Even after the discovery of the AIDS pandemic, the use of the term 'sexuality' in official documents was still abhorred; no single international instrument relevant to human rights prior to 1993 makes any reference to 'sexuality'- other than sex as a biological term. The introduction of this term as a subject for formal interrogation was initially done at the International Conference on Population and Development (ICPD) held in Cairo in 1994 – this, in spite of sustained opposition from a number of delegates (Petchesky 2000). The sheer avoidance of the use and applications of sexuality in conversations at the pinnacles of international forums, by implication, confined its derivatives and more contentious 'sexual minorities' and 'sexual rights' to the margins of development. The 1993 World Conference on Human Rights in Vienna and the United Nations Declaration on the Elimination of Violence Against Women that was issued later in the same year, were considered critical departures towards the recognition of sexual violence as human rights violation, and hence, of sexuality as at least a legitimate concern within the context of international human rights discourse.

Statement of the Problem

With sexuality debates being gradually embraced in international circles, there was need to problematize 'sexual rights' as an aspect of human rights, as demanded by sexual minorities and other human rights activists. At the United Nations, a vigorous, impassioned and sustained campaign and contributions by the feminist and LGBTI movements, sex workers and people living with HIV and AIDS, reinvigorated 'sexual rights' conversations. In the women caucuses, the Fourth World Conference Women's (FWCW) in Beijing in 1995, went further toward formulating a concept of *sexual rights* as an international human rights principle through its famed paragraph 96, although in fact, the phrase 'sexual right' does not appear anywhere in the statement. Sexual diversity and sexual orientation, although strongly

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advocated for and extensively discussed during the conference, were again omitted from the final document, in which the term 'sexual rights' was replaced by 'human rights for women' (Petscheky 2005). What, by wide consensus, is believed to be the breakthrough in directly addressing the 'divisive' sexual rights and orientation issues was a 2004 report by Paul Hunt, the UN Rapporteur on the Right to Health. In the report made to the Human Rights Commission and which did not go well with a number of delegates, Hunt says, "Sexuality is a characteristic of all human beings. It is a fundamental aspect of an individual's identity…fundamental principles and norms must incorporate… the right of all persons to express their *sexual orientation*..." (in Correa et.al 2007:164).

But if sexuality and the appendage concepts of sexual rights, orientation and identity were finding contested reception at the world bodies, then the African terrain was to be more tenacious to penetrate. Generically speaking, sexuality is an extremely sensitive topic in Africa. According to Makau Mutua, and in particular reference to sexual orientation, the charged nature of this subject in the African continent is because of "the deeply socially conservative landscape and the domination of political space by Christianity and Islam….homophobia is not necessarily homegrown in Africa because much of the revulsion of homosexuality can be traced to Christianity and Islam..." (Mutua 2011:452). Sylvia Tamale adds a cautionary rider to this in another context; "Because in Africa many acts related with sexuality are criminalized or highly stigmatized, analysts need to treat the territory with care and sensitivity. Most importantly, researchers need to recognize that there is no uniform or monolithic way of experiencing sexualities within one culture or community" (Tamale 2011:12).

Gender and Sexuality

Gender and sexuality are conventionally seen as separate but overlapping categories; both are social and cultural constructs. In addition, gender and sexuality are about values and meanings, and are concerned with norms that permit and constrain certain forms of social and sexual expression. Gender has even been conceptualized as an individual's inner sex or psychological sense of being a male or female (like in the case of the transgender) irrespective of one's outer sex identity as determined by one's sexual organs. Both, ultimately, are about power (Runenborg 2008). That notwithstanding, gender provides the critical and analytical lens through which any data on sexuality must logically be interpreted – what Tamale (2011) would refer to as 'gendered sexualities'. Hence, the conjoined relationship between gender and sexuality extend to profile the kinds of sexual relationships that are permitted and proscribed in different contexts. In a nutshell, the duo touch some of the most intimate and personal aspects of a human beings social and emotional existence. Despite the largely agreed intertwined relationship between the gender and sex, Gayle Rubin deconstructed gender/sex system into two separate domains in which they were recognized as distinct systems (Rubin 2007). By implication, one can be discussed without due reference to the other as will be the case here when we converse sexuality issues.

Sexuality is largely conceptualized as a multi-dimensional category with an array of attributes and essences. Spheres of operations of sexuality include gender, reproduction, the family, love, intercourse and socialization (Padgug 2007). But still, some analysts tend to define sexuality within the limits of biology, the individual and the private; the public sphere being that of culture, society and history. The counterargument here is that *biological sexuality* is only but a precondition of *human sexuality*. It is "…a set of potentialities, which is never unmediated by human reality, and which becomes transformed in qualitatively new ways in human society" (Padgug 2007: 19). Human sexuality cannot be compared with that of

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other species because of its richness and the potential for other social institutions and relations layered upon it, thus making it distinguishable from animal sexuality which appears limited and predefined in a narrow, constricted physical sphere.

So, although the foundation of sexuality is its essentialist being, biology, it is generally shaped by extraneous forces. Core to this are the social contexts within which individuals operate. Biology, therefore, sets a limitation to what is 'naturally' possible, but in itself, it does not determine sexuality as such. Sexuality is shaped (and also shapes) by social forces and institutions that include race, ethnicity, class, gender, religion, nationality, and other social identities and relationships (Epprechty 2009). Within these institutional frameworks, are various dimensions of sexuality that include sexual knowledge, beliefs, values, attitudes, and behaviours as well as, procreation, sexual orientation, and personal and interpersonal sexual relations (Tamale 2011). The social forces and dimensions vary from one society to another and eventually mould and condition an individual's erotic possibilities. Hence, the forms, content, and context of sexuality always differ. There is no abstract and universal category of 'the erotic' or 'the sexual' applicable without change to all societies (Padgug 2007).

The World Health Organization (WHO) offers a comprehensive working definition of the term 'sexuality' in "Defining Sexual Health" (2002):

> Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.

The definition underscores the human-ness as well as the social essence of sexuality. It further underlines the fundamental importance of sexuality in the lives of all human beings. According to Anna Runeborg, although sexuality constitutes a natural part of human life;

> It is often neglected and mainly dealt with in relation to reproduction, disease, violence and oppression. Sexuality related issues are often fraught with unease, shame, and conflict due to cultural, religious, political, social, economic and other factors outside the control of individuals particularly those who have less powers in societies" (Runeborg 2008:1)

Yet, issues sexuality ought to be faced headlong as they are human and universal. Africa and the African people are no exceptions when it comes to discourses on sexualities; contentious though the subject is.

Sexual Variations: Orientations and Identities

It has been mentioned elsewhere here that there is no monolithic way of experiencing sexuality, and that sexuality is a group of essences. The plurality and 'essences' of sexuality are nuanced within two major, but distinct forms of categories; *orientations* and *identities*. The formations are represented through organized groups, generically initialized as LGBTI's (Lesbian, Gay, Bisexual, Transgender, Intersex), LGBTIQ's (Lesbian, Gay, Bisexual,

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Transgender, Intersex, Queer), and so on. These and other peripherally related groups are generally referred to as 'sexual minorities' – a term that connotes their marginal position in the sexual arena. In many societies, these groups and individual members are challenged with family and social legitimacy, thereby driving them to solitude lives and exposing them to self and social risks and dangers.

> Discrimination of LGBTI can be in form of criminalization of homosexuality, institutionalized homophobia, abuse in state institutions, pathologizing, forced medications and cruel treatments, neglect of the existence and needs of the LGBTI people with disabilities, diminished access to health-care, work place discrimination and violence and harassment from official state representatives including execution. Social repression with or without state tolerance can be manifested in form of verbal abuse, silence, ridicule, hate crimes, corrective rape of lesbians, honor related violence, and forced marriages (Samellius and Wagberg 2005: 21).

Sexuality is universal; it is a shared phenomenon by all humanity. However, being a group of 'essences' and socially shaped, there are sub-categories within it. Within its universal trajectory, sexuality has been conceptualized as being culturally and historically specific. Anthropologists are at the fore of documenting the diversity of human sexuality as expressed around the universe, thanks to the discipline's strength of cross-cultural comparisons. What comes out from a number of ethnographies, for example, is that both 'heterosexual' and 'homosexual' behaviours are not the confines of any particular socio-cultural groups. Evidence to this effect certainly emboldens essentialist arguments that locate sexual orientations and identities to the individual and biology. However, according to Robert Padgug, 'behaviour' and 'identity' should be seen distinctly;

> 'Heterosexual' and 'homosexual' *behaviour* may be universal; however, homosexual and heterosexual *identity* and consciousness are modern realities. These identities are not inherent in the individual. In order to be gay, more than individual inclinations or homosexual activities are required; entire ranges of social attitudes and the construction of particular cultures, sub-cultures, and social relations are necessary. To 'commit' a homosexual act is one thing; to be a homosexual is something entirely different (Padgug 2007:22).

'Identity' suggests relational behaviour to other like-characters. It is therefore a behavioural continuum of a particular social content, consciousness and relations that tend to set a group of people aside. Sexuality is thus relational and dynamic.

From a diachronic perspective, although erotic relationships of same sex is said to have existed in all times and cultures, homosexuality received a distinct identity in the latter part of the 19th century when it became politicized and ideoligised. This, according to historical evidence, is the critical time in the conceptualization of homosexuality as the distinguishing characteristic of a particular type of person, and a new awareness of the 'self' among the homosexuals. That tells that sexual identities and orientations are historically and culturally specific and selected from a variety of other identities (Weeks 1996).

Is sexual identity therefore a choice (as suggested by Weeks) or a destiny? Does the universality of sexuality imply that orientations and identities are immutable and innate, and hence unchangeable? And yet again, we still allude to sexuality's cultural specificity in its

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assumed universality. These presumptions require interrogations through theoretical underpinnings.

Theoretical and Conceptual Orientations

Like most gender discourses, theories on variations in human sexuality attempt to explain sexual variations within the essentialist/socio-cultural dichotomy. Apparently, this paradigm seems attractive in explaining the nature and diversity of human behaviour.

Essentialism is mainly defined as that belief in the true essence, the untainted and pure, the inner truth;"….that which is most irreducible, unchanging, and therefore constitutive of a given person or thing" (Fuss 1989:2). Relative to sexuality, it connotes the 'natural' and 'innate' that has not been compromised by the extraneous; the social. In this context, Irving Singer states that "in all sexological matters there must be a single, basic, uniform pattern ordained by nature itself" (Singer 1973:15). For Bronislaw Malinowski, sex is a powerful instinct and there should exist powerful means of regulating, suppressing and directing this instinct. It is an all-powerful instinct that demands fulfillment against the claims of moral, belief and social restrictions (Malinowski 1963). The sex 'id' must be contained and repressed by the social fabric. Sexual urges (and by implication, variations) are therefore natural urges that require mainstreaming by, and, into one's culture so as to be in sync.

Can sexuality be culturally constructed and socially organized? For the Social Construction theorist, yes, culture maps on the natural body and hence shapes the order of sexuality. At the core of the Social Construction theorist is 'the intricate and multiple ways in which our emotions, desires and relationships are shaped by the society we live in' (Weeks 2004:17). For instance, are our sexualities culturally and historically specific? For the constructionists, the answer will be, yes. Physically identical acts may have varying social significance and subjective meaning, depending on how they are defined and understood in different cultures and historical periods. Hence, sexual acts do not carry a universal social meaning.

There does not seem to be any unanimity on the relations between the natural and the social among both the essentialists and the constructionists. For the former, the natural provides the raw materials and *determinative* starting point for the practices and laws of the social. For example, sexual difference (male and female) is taken as prior to social differences (man and woman as social constructs) that are presumed to be mapped onto the biological subject. On the other hand, for the latter, what we may consider 'natural' is actually a product of the social, as is the case with heterosexuality among most societies globally. In such cases, societies construct a particular sexual identity (like heterosexuality) and go on to 'naturalize' it as the original form.

Carole Vance (2007) came up with a constructionist related paradigm and which she calls the Cultural Influence Models of Sexuality. As expected, the model rejects advocates of essentialism and universalism in explaining sexual behaviour, and instead, calls into attention sexuality as the basic material – a naturalized category – on which culture works. The emphasis on this model is on culture and learning as key agents in shaping sexual behaviour and attitudes. In the model, the core of sexuality is reproduction and hence heterosexuality is given preeminence in sexuality, other orientations merely taking the back seat.

Though culture is capable of shaping sexual expression, our sex drives and impulses, which are anchored on the biological and hence universal, are thought to be so powerful – sometimes even exceeding the social regulation and taking a different turn all together. Finally, culture is seen as encouraging or discouraging the expression of generic sexual acts, attitudes and relationships:

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> Oral-genital contact, for example, might be a part of normal heterosexual expression in one group but a taboo to another, male homosexuality might be severely punished in one tribe yet tolerated in another (Vance 2007: 44).

This section ends with a discussion of Rubin Gayle's model of The Sex Hierarchy which attempts to classify sexual behaviour into a sexual value system commonly used by societies to rank what would be considered 'good', 'normal' and 'natural' sex, and distinguish this from the 'bad', 'abnormal' and 'unnatural' sex. Based on the American society, the 'good', 'normal', and 'natural' – and hence 'blessed sexuality', ought to be "heterosexual, married, monogamous, procreative, non-commercial, in pairs, in a relationship, same generation, in private, bodies only, vanilla". On the other hand the 'bad', 'abnormal' and 'unnatural' – and hence 'damned sexuality' would be "homosexual, unmarried, promiscuous, non-procreative, commercial, alone, in groups, casual, cross-generational, in public, pornography, with manufactured objects and sadomasochist" (Rubin 2007:153). 'Blessed Sexuality' is found within Gayle's 'charmed circle' of The Sex Hierarchy, while 'Damned Sexuality' is located within the 'outer limits' of the circle. Sexual expressions that are 'blessed' enjoy privileges and concrete benefits from society while the 'damned' ones face legal and social sanctions.

In another context, Gayle projects another aspect of The Sex Hierarchy: the need to draw and maintain an imaginary line between 'good' and 'bad' sex. In the thesis, most of the discourses on sex – whether religious, political, psychiatric or popular – delimit a very small portion of human sexuality capacity as sanctifiable, safe, healthy, mature, legal, or politically correct; and hence 'good' sex. These, he says, includes heterosexuality, married, monogamous, reproductive and, at home. The 'line' distinguishes this from other erotic behaviours thought to be the work of the devil, dangerous, psychopathological, infantile or politically repressible; the 'bad' sex that include transvestites, transsexuals, fetishes, sadomasochists, for money, and cross-generational. Arguments are then advanced on where to draw the line and to determine what other activities may be permitted to cross over into acceptability. Contestable sexual areas on part of the 'line' they ought to fall include unmarried heterosexual couples, promiscuous heterosexuals, masturbation, long-term stable lesbians and gay couples, lesbians in the bar, promiscuous gay men at the baths or in the park. And, according to Gayle, unmarried couples living together, solitary sex, and some forms of homosexuality are moving in the direction of respectability, and hence acceptability (Gayle 2007: 152).

Human Rights, Sexual Rights and the African Question

Gayle's discussion of The Sexual Hierarchy Model ushers in the conversation on the rights-approach to sexuality. The Model recognizes a binary system in terms of sexual values where societies dichotomize sexuality into the 'good' and the 'bad'. So, do those members of society whose sexual expressions are located outside the 'charmed circle' have a right or sense of entitlement within this privileged circle? Are their sexual traits 'abnormal', 'bad' and 'unnatural'? I intend to engage in this discourse within the context of the African sexual script.

There are a number of moral and philosophical questions that stalk the rights issue and the demand for sexual autonomy by men and women who feel coerced into a 'prearranged' form of sexuality. For example, are our sexual orientations and identities natural or are they culturally constructed? Should they be expressed freely without limitations or should they be checked? Are our identities and orientations of equal social value? Do they all need social

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recognition? Is heterosexuality the natural and normative form of sexual expression? Is it an institution of women oppression by men? Is gayism natural? Is everything natural good, or everything unnatural bad? Is every natural behaviour right or unnatural behaviour wrong? Is sex life a personal/private life that should not be interfered with by the state? With these begging questions, it is apparent that sexual rights cut to the core of deeply held beliefs about the nature of being human, individual and group identities, and the moral order.

Like any other form of human rights, sexual rights are intended to liberate certain sections of society from what they may consider to be oppression to exercise free expression of their sexuality. Sexual rights have therefore the potential to emancipate the 'sexually oppressed'. Sexual rights are particularly contentious because they address aspects of life that are considered to belong to the private and the sacred domain, and are grounded in religious and cultural beliefs about the nature of humanity and its relation to the fundamental power of life (Maticka-Tyndale and Smylie 2008). In this regard, the pursuit for sexual rights is perceived to be intended to transgress the nature of humanity as seen through religious and cultural lenses. More so, issues of sexual rights are often given a cold shoulder by development planners as they are considered peripheral to 'crucial' areas such as housing, food security, education, health, employment and socio-economic inequalities. The rights of sexual minorities are seen to be important only in so far as they matter in the causing or alleviating HIV/AIDS.

Sexual rights are anchored on human and legal rights. The rights approach is rooted in the Universal Declaration of Human Rights that was adopted by the United Nations General Assembly Resolution 217(A) III of 10th December 1948 – based on the idea that everybody is born with, and possesses the same rights regardless of where they live, their gender, sexual orientations, race or religious, cultural or ethnic background. Human rights are thence regarded as inalienable rights that a person possesses.

The rights approach therefore obliges governments to address the unique needs of men and women (Maina-Ahlberg and Kulane 2011). The World Conference on Human Rights held in Vienna in 1993, stated that all human rights are *universal*, *interdependent*, *indivisible* and *interrelated*. These principles, by implication, interface sexual rights with 'developmental' priorities of education, food security, housing, health, employment, etc. Further to this, a group of human rights experts met in Yogyakarta, Indonesia and on 26th March, 2007 launched the Yogyakarta Principles on the Application of Human Rights Law in relation to Sexual Orientation and Gender Identity. The Principles are intended as a coherent and comprehensive identification of obligation of states to respect, protect, and fulfill the human rights of all persons regardless of their sexual orientation and gender identity. However, opinion by the treaty bodies condemning state laws and policies have no enforcement power and are not even recognized as legally binding by many governments.

Prior to the Yogyakarta meeting, the World Health Organization (WHO) had in 2002 attempted a working definition of Sexual rights in "Defining Sexual Health":

> Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the right of all persons, free of coercion, discrimination and violence, to: the highest attainable standard of sexual health, including access to sexual and reproductive health care services; seek, receive and impart information related to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual

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> marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe and pleasurable sexual life.

The responsible exercise of human rights requires that all persons respect the rights of others.

The opening statement on WHO's definition suggests that sexual rights need to mirror human rights that are already sanctioned by nation-states or other legitimate international bodies and gatherings. Despite the alignment of sexual rights with human rights, the broad international support for human right treatise and consensus statements, and the well established health and development gains of a rights-approach, attempts to reach international consensus on sexual rights have met considerable resistance (Maticka-Tyndale and Smylie 2008). We earlier alluded to the opposition encountered within the International Conference on Population and Development (ICPD) held in Cairo in 1994 in the course of defining 'sexuality'; and the hostility towards Paul Hunt, the UN Rapporteur on the Right to Health, in his bold move to introduce the terms 'sexual rights' and 'sexual orientations' in a report made to the Human Rights Commission in 2004. More resistance to the entrenchment of unregulated sexuality and the quest for sexual autonomy through the rights demands can be documented. For instance, the Pakistan representatives led other delegates in opposing the inclusion of sexual orientation in a draft resolution to the Commission on Human Rights in 2003, claiming it was an insult to the world's 1.2 billion Muslims. Similarly, Roman Catholics and Muslim clerics resisted the inclusion of homosexuality in the 1994 International Conference on Population and Development Program of Action (ICPDPoA), the Beijing Platform for Action, UN, 1995, and United Nations General Assembly Special Session on HIV/AIDS (UNAIDS 2002) platforms and resolutions (Maticka-Tyndale and Smylie 2008).

A significant number of the African delegation at the Fourth World Conference of Women in Beijing was among those who resisted the issue of sexual rights. To them, the rights issue was a Western driven agenda and contrary to African mores; hence it was 'unAfrican'. More so, to them, sexual issues were not thought to be priority; Africa had other pressing developmental considerations.

The notion of a single 'African sexuality' – which some feminists would tag as 'African sexual slavery' – has continued to preoccupy discourses on the direction sexuality in Africa should take. Imminently, debates on sexual rights as demanded by sexual minorities, human rightists, and other like-minded people have strong undertones of a 'natural', singular sexuality that is in sync with African culture. The contention of an 'African sexuality'- thought to be the natural order - has been blamed on earlier epidemiological studies that, apparently, reiterated colonial stereotypes about a monolithic sexuality in the continent that was devoid of homosexual and bisexual 'adulteration' until when introduced through foreign influence. More theoretically informed research has steadily chipped away such stereotypes, showing the existence of plural nature of homosexuality in different contexts (various in Epprecht 2009:3).

Advocates of 'African sexuality' are however critiqued for 'monolising' and 'essentializing' a wide range of behaviours, practices and relationships associated with sexuality in different parts of Africa. Even in transsexual identity, behaviour considered relatively recent in the African sexual scenario …" It is detrimental to assume that African communities historically had no transsexual people in their midst and that one's assigned sex was immutable" (Mbugua 2011:242). The argument here is that all kinds of love found in the world are also to be found in Africa, "unless there is something unimaginably aberrant about Africans" (Ratele 2011: 407).

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> To argue that Africans who engage in same sex copy foreign, un-African activities is to claim a different, marginal and otherworldly identity for Africa in the world – an identity of Africans who do not experience the same kinds of feelings and thoughts as people on other parts of the continents (Ratele 2011:414).

The notion of a unique 'African sexuality' has been linked to a racist, colonial mentality and conception about the African body, erotic desires and closeness to nature. By the onset of colonial conquest, Africans were considered as an inherently degenerate group whose sexuality was unsophisticated and next to bestiality. Using the evolutionary stages of humankind and culture, of which anthropologists were greatly involved in propagating, the African was essentialized as 'natural', subhuman, uncivilized and could only be but a heterosexual in his/her sex life (Lewis 2011). According to Busangokwakhe Dlamini (2006), because the African man "was perceived to be close to nature, ruled by instincts, and culturally unsophisticated, he had to be heterosexual; his sexual energies and outlets devoted exclusively to their 'natural' purpose – biological reproduction" (Pg: 132).

Pro-homoerotic Africanists have been at the forefront of dismissing the colonial originated, skewed thinking that depicts African sexuality as mono-sexual and reproduction driven. According to them, gays have always been part of the African sexual order. Historical records indicates that from the 16th century onwards, European missionaries, adventurers and officials witnessed homosexuality in some parts of Africa and used this evidence to justify the cleansing of African societies through the indulgence of Christianity. For instance, the Portuguese who were among the first Europeans to come to Africa noted the range of sexual relations in African societies and referred to the 'unnatural damnation' of male to male sex in the Congo. Among the Pangwe of Cameroon and Gabon, homosexuality was practiced among males of all ages; the Sudaneses Zande tribe had a tradition of warriors marrying boys; and Shaka Zulu too encouraged the same of his warriors in Southern Africa (Evaristo Bernardine 2014, The Guardian, 8/3/14). A number of other authors document same sex erotic relationships among African men (Moodie et. al 1988; Kleinbooi 1994; Mclean and Ngobo 1994; Nkoli 1994; Epprecht 2005). Homosexuality is therefore considered to be as old as the African society itself and that, in pre-colonial Africa, the matter of sexual orientation was not generally contentious..."In fact the hatred of gay people and homophobia that are exhibited in Africa today has virtually no basis in African culture" (Mutua 2011:456)

So, if gays were part of the African social matrix, why do we experience cases of homophobia, disdain and violence against people having same sex relationships within the continent? It has been widely recognized that attitudes towards homosexual behaviour are cultural specific, and have varied enormously across different cultures and through various historical periods. Ratele (2011) says that the fact that as many non-African countries such as U.S.A., China, Latvia, Poland, India, are as homophobic as African states should put to rest the argument that homosexuality is 'unAfrican'.

According to Leo Igwe, history tells us that Africans have been traditionally tolerant of people with same-sexual orientation prior to the introduction of criminal provisions based on the alien religions of Christianity and Islam. This line of argument, paradoxically, blames foreign institutions in form of Western religion for the etiology of homophobic feelings in Africa. Secondly, it has also been argued that discourses on national identities tend to anchor familial scripts and the inventions of nations as biological families. Constitutions of modern African nation-states often define the family within the context of normative biological relationships and heteronormativity. In so doing, heterosexuality is given a moral high ground and social legitimacy among the body-politic of African nation-states.

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The State as Big Brother

Because of the normative manner with which heterosexuality is projected among Africans, the pursuit for 'sexual alternatives' through individual and human rights demands has been dogged by resistance at both societal and state levels. Today, over 33 countries have criminalized homosexuality in Africa. Most African leaders take the cue that tend to 'unAfricanize' plural sexual orientations and identities, and for fear of reprisals from the populace, opt to repress activities and narratives aimed at legitimizing homoerotic relations. The former Zimbabwean President, Robert Mugabe, called on homosexuality as 'unAfrican' and a 'White disease'. In 2015, when Uhuru Kenyatta, the Kenyan head of state was prodded to give his views on same sex relationships at the time the then US president, Barrack Obama was visiting, he responded by saying; "There are some things (homosexuality) that I must admit we don't share with the US. Our culture, our society doesn't accept". In the same year, the Gambian president called for gay people's throats to be slit. Other African leaders known to have had strong anti-gay feelings included former president Jonathan Goodluck of Nigeria and Yoweri Museveni of Uganda; both signed anti-gay bills into laws.

As a result of social and state disdain towards sexual minorities, many such individuals have been profiled and suffer open discrimination, stigma, arrests and even violent attacks within their own societies. This is the case in such countries like Kenya, Zimbabwe, Uganda, Algeria, Cameroon, Sudan, Egypt, Libya, Malawi, Morocco and Nigeria. In some of these countries, homosexuality is outlawed and even punishable by death (as is the case with Mauritania, Somalia, South Sudan and some provinces of Nigeria). In the countries that criminalize same sex erotic relationships, such activities are often regulated through sodomy laws in which anal intercourse is punishable. However, in spite of the efforts by state instruments to clamp down on illegal sexual expressions, sexual minorities continue to assert their presence and in some countries, are organized into embryonic groups that seek to have their rights recognized and respected. Such LGBTIQ groups include LeGaBiBo (Botswana), GALZ (Zimbabwe), GALCK (Kenya), Behind the Mask Sister (Namibia), SMUG (Uganda) and the Coalition of African Lesbians (CAL).

South Africa has been credited as having taken lead on the African continent in recognizing other erotic expressions outside heteronormativity. The 1996 post-apartheid South African constitution includes the right of privacy and the right to dignity. It states; "…..the state may not unfairly discriminate directly or indirectly against any one on one or more grounds, including ….sexual orientation". Despite this legal backing, South Africa stands out as one of the nations whose social body has refused to embrace sexual minorities. A report by ActionAid researchers reported that South Africa "is now witnessing a backlash of crimes targeted specifically at lesbian women who are perceived as representing a direct and specific threat to the status quo. This violence always takes the form of 'corrective' rape – a way of punishing and 'curing' women of their sexual orientation". Such violent attacks, not just in South Africa, but also in other countries, are frequently couched as defenses on what is traditionally African from a contaminating Western influence.

It is therefore apparent that in order to insulate and preserve culture from 'foreign adulteration', many African nation-states regulate human sexual behaviour among its citizenry. To these countries, heteronormativity is the norm; other forms of orientations and identities are meant to undermine a naturalized socio-sexual order. Sexual rights should therefore be in conformity with 'natural, socio-cultural orders'; anything to the contrary would be a counter-culture, subhuman and not to be contextualized within human rights of individuals and groups.

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However, unlike other protected classes and identities such as race, religion, sex, gender, language, national origin, marital status, age, racial and ethnic minorities, social standing, ethnicity, disability and political opinion, sexuality is a highly emotive, politicized and ideologized terrain whose conversations are more divisive than unifying. For most African governments, because of the sensitive and private nature regarding erotic relationships, discourses on sexual rights would rather be wished away and confined among the minor and the irrelevant, rather than being faced headlong. After all, sexual norms would have already been essentialized through constitutionalism that in virtually all cases justifies the 'natural' order.

Defenders of sexual minorities and advocates of sexual rights urge on and vouch for their case, cognizant of the fact that all rights are a product of struggles. Apart from the struggle for seeking legal and social legitimacy, the rights groups and individuals contend that, on the flipside, the state has no business interfering with their privacy; "These things are private. The state cannot come to your bedroom…." (Tsanga 2011: 59). The import of their argument is that as much as heterosexuality seems normalized and essentialized by the powers that be, so are all other orientations and identities natural and innate, and hence require recognition and legalization. The state cannot therefore regulate and tamper with nature. To quote;

> We are born this way. We are created this way…there is nothing wrong with what we are doing.

This statement was made by Kenya's LGBTI's under the umbrella of Gender and Lesbian Coalition of Kenya (GALCK) and appeared in the Kenya's *Daily Nation* newspaper of 19th May, 2010. This was the very first time that sexual minorities had openly appeared in public as an organized unit to celebrate their uniqueness that coincided with the International day of Homophobia and Transphobia. The group came up with the African LBGTI declaration that was dated 18th April, 2010.

Conclusion and Recommendations

Discourses on sexuality in general and sexual orientations and identities in particular are tough; more often laced with acrimony and grandstanding. This is because such debates intend to alter deeply entrenched sexual arrangements and ideologues that individuals and societies have hitherto been glued to. Yet, the fact that sexuality is experienced by diverse social and cultural layers - both vertically and horizontally - whose dimensions on its expressions are varied, calls for a more sober and tolerant conversation. Previously considered an untouchable subject, the AIDS crisis has forced development theorists and practioneers to debunk sexuality's earlier taboo status and open it up for public scrutiny. What has come out from research and discussions on this area indicates that contrary to conventional thinking, some men and women living in the Less Developed Countries – African nations included – have, and continue to engage in non-heterosexual sex. As to whether this is out of choice, or by the dictates of nature or culture, is an issue that will continue to preoccupy hours and pages of scholarly works. On this, Makau Mutua would philosophically state "there is no one natural sexual orientation because whatever orientation one has is natural. Nor should there be a socially preferred sexual orientation, because, the preference is individual" (Mutua 2011:455). The question worth answering is whether sexual orientations and preferences should be classified among the protected identities such as race, religion, sex, gender, language, national origin, marital status, age, race, etc, whose rights are widely recognized and accepted.

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Advocates of sexual rights would argue that the state, as a polity, exists for the welfare of its citizens;

> Citizens are the raison d'être of the state. The norms and structures of the state must respond to the needs of the populace. In the rights language, the state is no more an instrument for the fulfillment of the will of the citizen.
> In exchange for agreeing to be governed by the state, citizens expect accountability and not repression by the state. This is the reason for existence of individual rights – entitlements that individuals hold within the state. One of the most important categories of rights pivots on identity (Mutua 2011:453-4).

The readings, above, suggests that both the state and society should not regulate sexuality, but instead, strive to protect the rights of all the citizenry including members that identify with persons of different sexual expressions. While societies, through their own subjective interpretations, would firm what to them are culturally correct orientations, national states being products of negotiations and contract with the citizens are left to ponder with legitimacy questions on the rights of the sexual minorities within their body-politic. Using Rubin Gayle's model of The Sex hierarchy, this lot is outside the normative and socially approved 'charmed circle', and instead are found among the low ranked members of the sexual hierarchy – the most stigmatized and despised. With the core function of state governments being holistic development to all its citizenry, the sexual minorities, instead, are often subject to abuse and discrimination, and are left out in the design and implementation of critical development programs such as in health and other social amenities.

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