

# Stretching the Margins and Trading Taboos: A Paradoxical Approach to Sexual Rights Advocacy in Africa

S.N. Nyeck

“Only one weapon serves to kill that pain. The one that struck can staunch thy wound again!”

*Parsifal*, Richard Wagner

“During all those years in prison hope never left me – and now it never would”

Nelson Mandela

“Imperfect competition is a matter of freedom, not just power”

Ronald Burt

## Introduction

This paper is a reflection on the challenges and opportunities for governance and advocacy in a context of changing social demands in Africa. I argue that regimes of governance shape sociopolitical engagement because they delineate the spheres of influence and command between state and non-state actors. I focus on sexual rights advocacy in Africa to highlight conceptual and strategic challenges that governments and advocates face in two ways. First, I establish the ways in which regimes of governance shape social and political wellbeing and identify conceptual and practical challenges with state-centered approaches to sexual rights. Second, I offer an alternative approach to understanding why sexual rights remain peripheral to public interest in Africa and sketch strategic

implications for advocacy. The paper suggests a paradoxical approach to sociopolitical contention around sexual rights as constitutive of a necessary process through which learning opportunities through trial and error are presented to Africa.

## Conceptual concerns

The political and economic challenges that Africa faces today are, according to widely published research, daunting. Predatory and patrimonial, weak and corrupt, dysfunctional and falling apart, bottom and underdeveloped, are well-known labels too often attached to the overall performance of African states. This standard way of viewing Africa's reality as perpetually trapped in a suboptimal state performance is what I call the "failure paradigm". To the extent that "underperformance" in Africa accurately reflects institutional failure, its adverse effects establish different sets of challenges to initiatives that seek to reduce the gap between the centers of power and the periphery, or margins. By margins, I mean not just the physical distance (rural–urban) and institutional hurdles (high centralization without effective command or decentralization without real political competition) that separate citizens and rulers, but also the nature of issues that get to be taken seriously.

Sexuality, in this sense, could become a marginal issue, regardless of the relative position to or physical distance from the centers of power of those who advocate sexual rights. I use the word *marginal* as a proxy for the degrees of isolation from the geographical centers of power and from the political decision-making process. For instance, a country may well secure consensus over the provision of basic healthcare services as public goods without necessarily taking sexual health into account. Conversely, programs that target sexual wellbeing may not always reach non-heterosexual categories *as such* in their implementation phases. In these two scenarios, it takes advocacy, bargaining, and strategic planning to broaden mainstream political interest and to include sexually marginalized groups often left out in public programs. The degrees of inclusion or exclusion of marginal issues may vary across countries for different reasons. Nevertheless, the process and

techniques of political and strategic maneuvering of issues from the periphery to the center stage are interesting because they highlight, not just the difficulty in mobilizing unpopular issues but more importantly, the calculus of consent and dissent through which society is renewed. Nevertheless, consensus over what constitutes a pressing sociopolitical issue in a context of limited resources is never easy to win.

Scholarship (Jackson & Rosberg, 1982; Herbst & Mills, 2006) and advocacy concerned with marginal social issues and micro-level politics inevitably grapple with the shortcomings of the resilient African weak or “failed” state. Given the subpar ratings of African states’ performance, any meaningful engagement with African problems must, first and foremost, make sense of “failure” when thinking about possible remedies. I therefore start with two general propositions. First, the link between governance, underdevelopment and sexual rights is necessarily dialogical. To the extent that bottom up advocacy, in addition to focusing on its substantive goals, also provides governments with feedback, real measurements of change in society, and affordable options for policy adjustment, it contributes to strengthening African societies. Second, without denying imperfection within African systems of governance, scholarship concerned only with the diagnosis of problems is of limited value if answers to abstract questions cannot take the form of possible solutions to real world problems. I am more interested in thinking about midpoints for compromise rather than high-end solutions that do not take into account endogenous demands for change in Africa. From this perspective, the outcome of a dialogical engagement with the determinants of unsatisfactory state performance in Africa is necessarily negotiated and adjusted in light of the aspirations of African people and governments.

## **Why a paradoxical approach to African problems?**

A paradoxical approach is important to understanding Africa because the continent’s sociopolitical problems often contradict established beliefs about necessary and sufficient conditions for political

development. For instance, the dominant framework that emphasizes “failure” in Africa is a perfect example of inferences based on specific measurements of the performance of an ideal state. What the failure paradigm misses is that African states acquired sovereignty by acts of international recognition only and some still function without effective ownership of authority and control over administrative apparatuses (Herbst & Mills, 2006). The political history of Africa therefore suggests that the continent is on a reverse track of development in comparison to Western states. If the state emerged in Western Europe *after* a series of civil and religious wars, famine, bankruptcy and economic crashes, military coups and counter-coups, ideological and technological revolutions (Parker & Smith, 1997), the African state came into being through acts of international recognition only *before* undergoing similar purgatorial steps. Thus, without denying the reality of sociopolitical challenges on the continent, a critical approach to studying these problems should at least acknowledge the dual pressure on postcolonial states. In the case of Africa, states must engage in the coercive work of state building to acquire domestic sovereignty, while behaving as if they were already mature states that can effectively respond to the demands of their societies in transition.

State–civil society relations in Africa have since independence been punctuated by a series of clashes, blackmail, oppression and repression depending on the nature of the demands. In the past, the further civil society’s demands were from African governments’ immediate interest, the easier it was for the rulers to ignore them, or in the worst case, respond only through repression. Decentralization and the adoption of multiparty systems in Africa in the 1990s increased political participation, while the spread of new technologies of information and communication allowed civil society to seek, within the international community, alternative partners willing to support its agendas. Nevertheless, in some cases, the availability of international support precedes states’ recognition of the civil society’s agenda domestically.

Effective mobilization of sociopolitical issues by non-state actors at the international level remains incomplete unless it complements state goals or receives state support domestically. Hence the

paradox of advocacy for marginalized issues in Africa: first, with increased activism can come increased resistance. When the advocacy goal is perceived to be detrimental to the reputation of a state, as illustrated in human rights campaigns against torture or discrimination based on sexual orientation, the probability of coercing a targeted state into complying with human rights norms is small. Second, subjects of discrimination within a state rely on the same state for remedy when the international community cannot or is not willing to intervene forcefully. It therefore follows that the framework of failure does not tell concerned citizens *how* to *engage* and *re-engage* with the state *after* it fails them and *after* loyalty to their state has been compromised.

The failure *qua* failure school does not entertain, not even theoretically, the possibility that the weakness of the African state might have other consequences than doom. That is, weak states create opportunities for civil society to become consistently proactive and improve its negotiation skills when dealing with resilient non-optimal state performance and the state's domestic rivals. The register of failure takes away the pedagogical value of weakness and leaves the pathetic victimized subject only with despair. In so doing, failure in Africa takes hyperbolic features, which require only hyperbolic solutions.

The failure paradigm is hyperbolic because it is trapped in a rigid binary in terms of levels of analysis, as will be made clear in what follows. Scholars have pointed to sovereignty to explain the origin and nature of weak states in Africa from international and domestic perspectives. The international perspective merely asks, "Why do Africa's states persist?" The answer to the question is: Africa's weak states persist because of the sovereign legal command and recognition they receive from the international community (Jackson & Rosberg, 1982). The domestic approach is puzzled by the "acquiescence of those outside core state power" (Engelbert, 2009). Engelbert (2009) argues that those kept at the margin are not initiating radical political change because states use prerogatives attached to the legal command that endures and continue to extract resources from society even in times of crisis. Failure to initiate radical political change, secessions and revolutions from the

margins is attributed solely to the states' structure of command.

Thus, international and domestic analytical perspectives converge in framing civil society's engagement with the state in strictly binary and radical terms. If civil society is almost absent in the first approach, it entirely acquiesces to state power in the second approach. In other words, the legal command of states provides those at the margins with only three options: to acquiesce and remain loyal to dysfunctional state institutions, to exit with no guarantee of successful coalition building, or to domesticate and privatize the legal command through secessions. If the first option serves the patrimonial interest of dysfunctional states, the last two options serve the interest of what I have defined as the margins. No option serves both the state and the margins concomitantly.

This binary trap inherent in the failure paradigm does not encourage us to discover society the way Adam Smith did in England. For Smith, society contained spaces of influence that were not controlled by the state and that, indeed, under some conditions, shaped the state itself. The paradigm prevents us from seeing the 'wealth' of information and conceptual possibilities that marginalized social spheres offer in Africa. These spheres are not just "subject to the laws of the state, but, on the contrary, subject the state to its own laws" (Polanyi, 1957, p. 111). The paradigm is hyperbolic because it does not reflect the reality of civil society as it is emerging in Africa today, either ignoring it completely or portraying it as entirely complacent.

It follows that the framework of failure adds to the list of things that fall apart on the continent of Africa. It does not sufficiently theorize the way out of failure, nor does it indicate, as in Wagner's cosmic opera *Parsifal*, how "talking wounds" can play a pivotal role in inspiring the kinds of actions that stretch both the margins *and* the centers of power. Ideally, African governments should be able to safeguard the holy grail of state power without inflicting mortal wounds on their citizens. Nevertheless, given the overall underperformance of African states in establishing domestic sovereignty, scholars and activists should engage in the work of truth-telling to power and providing

feedback from changes in society, no matter how uncomfortable change might be. They should offer affordable options for policy adjustment and find ways to heal African wounds without breaking the spear that might have caused them.<sup>28</sup> In other words, the challenge is to find an optimal equilibrium point in this process of “socializing the state – namely, by defining limits to society’s ‘revenge’ without repudiating the state or stripping it of any legitimacy, as is too often the case” (Monga, 1996, p. 159). A paradoxical approach to sociopolitical contention treats African problems as constitutive of a necessary process that presents the continent opportunities to learn through trial and error.

## Reformulation of the question

If African and global development itself cannot take place without active dialogue with African states and their participation despite their shortcomings, the question becomes, how does one engage with the centers of power from the periphery? What types of outcomes should be expected? How does one define and operationalize success? Are certain frames more successful than others when bargaining with imperfect states? To what extent should the imperfect and mixed strategies explored below be ruled out or integrated in the advocacy for human and sexual rights in Africa? To achieve this requires a conceptual playing field that reflects Africa as it is, not as it should be or seems to be. This paper portrays this playing field as composed of imperfect actors involved in political, economic and ideological transactions. The implication for analysis is that both the centers of power and the margins can engage in sub-optimal performances for a variety of reasons. In other words, imperfection here does not mean failure. Rather, it refers to choices and strategies that, while suboptimal, can lead to outcomes in which every actor in the playing field is at least *incrementally* better off.

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28 This should not be confused with support for impunity for leaders who commit egregious acts against their people.

The playing field is strategic in the sense that actions taken by one actor influence the behavior of others. As a better illustration of what this means, we might assume that the margin represents human rights advocates for sexual rights, which do not constitute a central issue for a given African state. Transactions over rights, when initiated from the margin to the center, will cause the center to react in certain ways. Emphasis on the transactional dynamic between the center and the periphery involved in either negotiations or confrontations allows one to determine whether or not the strategy employed constrains outcomes, taking into account the nature of commodities, services, and ideas being exchanged. How tangible and intangible transaction costs are determined, signaled and distributed between a weak state and its margins reveals the state's willingness and capability to extend or restrict its influence.

Whether states respond by stretching or contracting their influence has strategic implications for political development. For instance, in responding to marginal demands, a state may choose to extend its reach to the margins, by deciding to intervene as the sole provider of goods and services. This outcome will enlarge the state by extending to new margins the control exercised by the administrative apparatuses. I call this response *extensive extension*, which often implies a risk of increased state surveillance for those receiving state benefits. In contrast, when a state responds to marginal demands by negotiating outcomes in a way that enhances its authority while delegating responsibility, it reduces its size. This response is what I call *intensive extension*; the benefits given to recipients of state services might increase political participation and responsibility. Bargaining with the state either way involves potential risks and benefits, depending on whether it responds by extending or contracting its influence. With this conceptual frame in mind, I will now examine the differing perspectives of the state and civil society on the marginalization of sexuality and sexual rights in Africa.



## Why sexuality is marginalized: State's perspective

What explains the marginalization of sexual rights as human rights in mainstream state policies in Africa? The standard answer to this question is that as far as LGBTQI rights are concerned, state-sponsored homophobia coupled with cultural beliefs explains this marginalization. A feminist perspective would additionally specify that homophobia is also ingrained in patriarchal values enshrined in cultural and state practices. To the extent that African states are not protecting the rights of their gay, lesbian and transgender citizens, they could rightly be said to be failing those wounded by homophobia, whether state or private actors cause the wounds. With the exception of South Africa, no African state explicitly recognizes groups' rights based on sexual orientation. In the absence of legal and institutional recognition, the demand for sexual rights based on sexual orientation pushes the bearers of such claims fully to the margin of public policy formation on the continent.

Just to illustrate, it is worth noting that mainstream political parties have not taken up the issue of sexual rights seriously, except for negative mobilization against gay, lesbian, or transgender citizens. This means that, from the perspective of policymakers, sexual orientation is a marginal issue highly sensitive to the so-called rule of diminishing returns. Legislators may perceive state intervention in the area of sexual and reproductive health and rights as having high value when the interventions being proposed cover all, or the majority of citizens. Indeed, in the case of negative mobilization against LGBT citizens, political appeals are framed precisely in these majoritarian terms. However, the value for legislators of further state intervention in this area may diminish as sexual orientation is added as a new category requiring state action. Sexual margins therefore delineate a relatively low position on the scale of states' choices and priorities.

The framing of sexual freedom as something that ought to be recognized as a "right" in a context

of competing ideologies does not necessarily provide affordable choices to policymakers motivated by both personal and collective goals. Homophobia is, from this perspective, one of the many tangible and intangible reasons why policymakers, from their perspective, push sexual orientation to the margins. Consequently, in accounting for the ways in which sexual margins are created in postcolonial Africa, it is important to consider the political playing field where personal and collective choices and ideational worldviews interact.

Beyond homophobia, the logic of coercion within African states also provides some answers to how sexuality is marginalized. As I argued earlier, because postcolonial African states are perennially engaged in state-building initiatives, they necessarily proceed by aggregating and abstracting from the multitudes. This phenomenon was historically manifested in the idea of single party systems used as proxies to define the boundaries and allegiances of national communities in postcolonial Africa. However, state-building processes based on the aggregation and abstraction of differences, including differences of opinion, failed to create national unity because it overpopulated the margins with resentful and disaffected citizens (Monga, 1996). The overarching objective of national unity was never met because its proponents could envision success only in hyperbolic terms. Bargaining between African states and societies was not part of their equation. Few Africans opposed change when one-party systems came crumbling down under the pressure for democratization in the 1990s. That is, in trying to formalize the idea of unity through forceful and exclusive membership in national parties, the abstract features of these politics substantially betrayed the vibrancy of civil society in Africa in the immediate post-independence era. The supposed unit of this abstraction – civil society itself – could not be added, subtracted, multiplied or divided without causing major social conflicts.

One-party systems fundamentally allowed the postcolonial state to “govern” counter political mobilizations that erupted against the centers of power. But, governance by abstraction ultimately failed because the portrait of abstraction was painted in rigid and static terms. The democratization of the 1990s and 2000s not only formalized the idea of unity through competition among political

parties, it also sharpened the portrait of civil societies, by revealing them no longer as the homogeneous space of the “people”, but instead as a complex of spheres where heterogeneous groups compete with each other over political claims and agendas.

In the post-multiparty fervor of the 1990s, the logic of coercion integral to state-building practices manifests itself less in terms of aggregating the *population* and more in terms of the logic used by states to code abstractly and legitimize the *resources* that may be open to collective action and bargains. By coding resources and defining the language that provides access to them, states legitimize certain types of mobilization and bids for access to resources and not others. As Stinchcombe (2001) notes, “The key patterning of discourse in many social devices is the exchange of *views* and *evidence*” (p. 49: emphasis added). The implication is that when a state makes resources open to collective bids, it simultaneously provides a commentary on the socio-domestic needs it is seeking to fulfill and signals its willingness to receive collective demands for this purpose. Put differently, governmental programs can also be interpreted as incentives that both foster and limit civil society activism.

This mode of operation allows postcolonial states to establish domestic sovereignty by intensively but strategically “fishing the margins”. When they invent or recode ideas and resources, postcolonial states appropriate new instruments of legitimacy not necessarily tied to their traditional administrative structure. For instance, when a state ratifies an important human rights treaty, it consolidates its international legitimacy while, at the same time, in theory it provides all citizens with additional resources to hold the state machinery accountable to international norms. But, states’ empowerment of civil society groups through international instruments does not necessarily widen or shrink the size of the margins domestically.

State practices and discourse over healthcare in Africa strikingly illustrate how this governance through abstractions works. After African states acknowledged HIV/AIDS as an “African problem”

they signed up – with the help of the World Bank – for different programs with code names such as “reproductive health, poverty reduction, and the fight against HIV/AIDS infections”. In addressing healthcare needs from the vantage point of aggregated needs, groups that needed targeted interventions, such as men who have sex with men (MSM) and orphans with HIV, were not included (Fester, 2006). Although this initial exclusion could be attributed to the fact that much of what was known about HIV/AIDS in the medical world had to be discovered through trial and error, African governments have remained dubious about explicitly using MSM as a category for intervention despite evidence that it is needed (UNAIDS, 2006, 2008). By coding access to HIV/AIDS resources as open exclusively to infected abstract persons and undifferentiated bodies, states avoid stretching the margins of the category “infected”, while at the same time projecting the image of fulfilling the democratic imperative of equal treatment of citizens. In those rare cases when a government chooses to provide special services to certain groups, that decision is never totally shielded from attack by other groups.

By choosing to prioritize mainstream policies that force citizens to congregate collectively as abstract beings and not as distinct subcategories, governments also protect themselves against opportunistic rivals. Hence, in Senegal where the government has on various occasions taken regressive and virulent positions on the issue of sexual rights, these interventions cannot be understood without taking into account the power of blackmail that religious communities might deploy against the government if it took a softer stand (Bop, 2008). In Cameroon, the *status quo* strategy adopted by the government is to resist the idea of “surplus repression” of gays and lesbians beyond what is already proscribed in the penal code (Marcuse, 1996). Although activists often talk about state-homophobia in Cameroon, this description fails to account for the Cameroonian state’s choice to maintain a *status quo* response when popular support for the government could be harnessed by

pressing for further repression (Nyeck, 2010).<sup>29</sup>

In Uganda, the special alliance between the state and evangelical Churches that led to the introduction of an anti-homosexual bill in the parliament in 2009 suggests that the shadow of potential rivals to state and government is very real in Africa when issues of sexuality are at stake. Special interest groups become state rivals because they too would like to control marginal and uncontrolled spaces through the power of abstraction. Not all special interest groups are necessarily interested in taking over the state as much as shaping the terms of debate over contentious issues, therefore making it harder for other groups to bypass them completely. They are “ideological moderators more likely to view taboo trade-offs as outrageous” (Fiske & Tetlock, 1997, p. 287). This implies that strategies from the periphery that engage with weak states without catering to their domestic rivals put a premium on the political mobilization of peripheral issues.

Contrary to Engelbert (2009), I argue that “marginal revolutions” are not vanishing in Africa. If the old playing field was two-dimensional (state–civil society or centers of power–periphery), the new one is multidimensional and in high resolution. What is changing at the margin is the dimension of the political playing field. As Monga (1996) rightly notes, apparent submission and consent to subjection are correlated with the “strength of difference”, which allows marginal groups to use subversive tactics that reveal a collective consciousness to resist oppression in Africa. As the case of Uganda shows, the most influential actor at the margin may no longer be the legal command (Uganda already had a law against homosexuality), or the traditional victim of state power (in this case, the gays and lesbians), but special interest groups such as evangelical Churches.

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29 It could be argued that the first time the government of Cameroon broke the status quo was in 2011 when the government protested against the European Union grant given to a pro-gay rights group based in Douala. The protest, however, was addressed to the E.U. through diplomatic channels and did not produce a violent crackdown based on sexual orientation. In my view, the grant itself was a strategic mistake that the E.U. could have avoided, had it taken into consideration the paradoxical nature of Cameroonian politics.

Globalization not only introduces a new logic of competition at the center, it does so by expanding the dimension of old margins and by creating new ones through what Thomas Friedman (1999) calls “super-empowered individuals” and interest groups that compete for resources and entitlements. The implication is that even if African governments genuinely wanted to adopt the language of sexual rights as human rights in public policy, they could do so only by finding a way to insulate progressive politicians from the shadow of reactionary interests. The differentiation of civil society through the logic of competition means that strategies copied from other contexts may not always be sufficient to secure a competitive advantage for a particular group over others. Simultaneously, while seeking recognition, these advocates confront two important challenges that go beyond investing in organization building: one is to change the nature of the competition among groups in the political playing field; the other is to avoid being undersold by rival groups.

## **Sexual rights: a marginal revolution?**

So far, I have used the image of the margins to delineate the relative position of specific groups on the scale of policy choices. If from the states’ perspective, the satisfaction derived from the mobilization of marginal and contentious issues tends to be negative, the marginal utility of the same issues is positively correlated with advocacy groups’ actions. Successful advocates usually present their advocacy product as increasing marginal returns to society in the long run. Hence, advocacy around sexual rights as human rights is said to contribute to the democratic development of modern states because it qualitatively extends the dimension of political representation and promotes freedom through the protection of individuals’ rights. To the extent that this noble goal is met, advocacy for marginalized causes should have feedback effects on African governments. Contrary to expectations, however, African governments and societies have responded to advocacy for sexual rights as human rights with mixed reactions. These mixed reactions have multiple explanations and I want to analyze them in light of advocacy discourse and strategy.

To say that human rights discourse and the strategic choices of sexual advocacy groups *influence* the behavior of states and other non-state actors in the playing field of imperfect political transactions in Africa is *not* to presume that these choices *alone* explain African responses.<sup>30</sup> Rather, it is to highlight the relational and strategic nature of the playing field and fully recognize that self-organized marginal groups are aware of the complexity of their political environment. It is also to suggest that without adequate frames for collective action, one cannot compare experiences across states to identify which of the many advocacy strategies work and under what conditions, or to examine how problems that result from self-organizing specifically as LGBT rights groups in one state relate to those in another state. In trying to assess the problems that sexual rights advocates want to solve, I analyze factors that may hinder success by focusing on those dimensions that pertain to the framing of advocacy and choices to be made in domestic political arenas.

*a. Operational frames and the logic of advocacy*

The way questions about sexuality are framed in Africa determines how researchers, policymakers, and activists approach and appropriate the subject. Similar to the postcolonial state's logic of governance through abstractions, sexual rights discourse in Africa operates with a set of instruments that derive their value from underlying international conventions couched in the language of human rights. In other words, like postcolonial African states, sexual rights advocacy derives its legitimacy from the international system. As already mentioned, the noble premises of international rights abstractions, more often than not, are about the behavior of ideal states and entitlements of ideal citizens. If the world were as it *should be*, advocacy for human rights, including rights that pertain to sexuality, would not be needed in the first place. Moreover, because the international system confers tremendous discretionary power to states in comparison to civil society, the abstract

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30 See the use of "colonial blackmail" and unrelated standard stories for counter-mobilizations against sexual rights in Nyeck (2010).

language of international human rights conventions does not tell human rights advocates what choices to make in domestic arenas where political actions are to take place. The abstract nature of international human rights language does not tell advocates what their action plan should look like when dealing with real politics in concrete world situations. It does not guide advocates to decide if street demonstrations, blockades, civil disobedience, parliamentary bargains or constitutional amendments should be considered separate or concomitant strategies everywhere and at any given point in time.

Thus, in light of the many imperfections of the real world of politics, the task of creating ideal entitlements derived from international norms for imperfect citizens and states should, to say the least, pursue objectives with calibrated expectations. Furthermore, because the pre-existing domestic “political environment defines the opportunities available to new groups through formal and informal negotiations with other political actors” (McGee, 2010, p. 10), advocacy that derives its legitimacy solely from international norms must either adapt to conditions prevailing in local settings, or risk being undersold by the state in response to the reaction of monopolistic forces and rivals to these claims. If there should be revolution from the sexual margins, it would need, above all, to be *a revolution away from abstractions*.

*b. Sexual rights discourse and advocacy: an innovative dynamic*

Sexual rights advocacy in Africa today renders the sociopolitical realities of sexual margins visible in empirical terms. Responding to the needs of marginalized groups, it provides a rationale for both excludable benefits (e.g. the protection of same-gender-loving people) and collective benefits (e.g. collective wellbeing, democracy and personal freedom). Unlike postcolonial states’ abstractions that govern homogeneous bodies of citizens, the abstract language derived from human rights discourse and embedded in sexual rights advocacy disaggregates the margins into specific categories demanding state intervention. Sexual rights advocacy is, primarily, about sexual citizens, not just



generic and abstract citizens; it is about gay men, lesbian women, heterosexual widows living with HIV, not just the generic 'human' in human rights discourse; it is about condoms, dental dams, excision and needles not just the generic episode of virus 'transmission.'

Sexual advocacy is innovative in the sense that it is concerned with a sphere of social life that escapes *total subjection* to the power of domestic sovereign command. Traditional African societies understood the impossibility, if not the danger, of attempting to regulate sexuality fully by ingraining it into the language and practices of ritualized spaces or imperfectly understood human behaviors, such as homoerotic practices (Wieringa & Morgan, 2005). Today, postcolonial states have taken a different course of action in relation to these domains. The ritualized legal power of African postcolonial states seems to make no provision for that which – because it has not been thoroughly researched in Africa – might be considered “things yet to be understood” (Nyneck, 2011).

With the exception of South Africa, most African states criminalize homosexual behavior regardless of the age of consenting partners. Yet, despite the requirements of the legal command, the value of same-sex practices and identities does not decrease for those involved in such relationships. Here I am using Carl Menger's (2004) definition of value as “the importance that individual goods or quantities of goods attain for us because we are conscious of being *dependent on the command of them* for the satisfaction of our needs” (p. 115). Although Menger was writing mainly about value in economic goods and services, his theory of utility is adaptable to political and non-economic goods. From the perspective of straight, gay, celibate, and transgender citizens, sexuality is not an 'exogenous good' whose consumption is perceived as limited or causing personal harm. Value derived from sexuality is something that *individuals hold individually*.

Because of the intimate link between sexuality and personal wellbeing, and because of the necessity of collective mobilization for rights, advocacy is innovative and strategic when it connects the fulfillment of private preferences to a broader democratic project. Sexuality is certainly one

area of human life in which value derives from the satisfaction of needs.<sup>31</sup> Throughout human history, sexual satisfaction has been coded as fulfillment of personal, religious, social, and political needs (Greenberg, 2004; Sindjoun, 2000; Bataille, 1957; Eppretch, 2008; Martinez Alier, 1989). Because sexuality is important to human development, its repression *tout court* inevitably populates the margins of society with groups that are forced to choose between the requirements of the repressive *sovereign command* and the necessity of what I call the *individual command* based on the importance attributed to sexuality for one's general wellbeing.

*c. Sexual rights discourse and advocacy: cognitive blinders*

Despite its ability to be creative in mobilizing the margins, sexual rights advocacy remains imperfectly grounded in the playing field of African political arenas. So far, sexual rights advocates use recourse to international instruments of recognition as the strategy to put pressure on local governments to repeal discriminatory laws, and to recognize the sexually marginalized *as such* in public programs. The use of international instruments has shaped a course of action in which advocates choose to “strike” domestically at specific targets for advocacy: those in positions of power who manage collective action, policy-making and constitutional arenas of governance. However, analysts and advocates do not always understand how these political arenas are related, their interdependence or the lack thereof, and these blinders clearly affect advocacy outcomes.

High-order pressure on African governments has produced mixed results. National campaigns to hunt down homosexuals have been initiated in Nigeria, Egypt, Burundi, and Uganda. Highly publicized detentions of gays have been reported in Malawi, Senegal, the Gambia, Zimbabwe, and Namibia. That major human rights advocacy groups continue to misdiagnose these negative counter

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31 Except where abstinence serves religious, social, or other hygienic purposes.

initiatives against sexual rights advocacy as manifestations of 'state-sponsored homophobia' only, suggests that much of what constitutes imperfection in the political playing field in Africa still needs to be deciphered by activists.

In my view, two objections could be raised to the reading of counter-movements to sexual rights advocacy as manifestations of state-sponsored homophobia only. If state sponsorship means that states indirectly back homophobic societal attitudes by upholding discriminatory laws, such a role needs further specification. First, anti-homosexual laws, where they exist in Africa, have been in the penal codes at least since independence. Although homosexual individuals have been persecuted and prosecuted in Africa, national campaigns that specifically target them collectively are a new phenomenon on the continent. *The mere existence of national laws against homosexuality does not sufficiently explain surplus repression on a national scale today.* Homophobia alone does not account for the current coalition building between specific interest groups, nor does it explain why these groups would mobilize a repressive state to solve their homophobic urges in the first place.

Sexual rights advocacy's two-dimensional playing field logically locates, at one end of the spectrum, victimized gays and lesbians and at the other end, the oppressive centralized state. This dichotomized vision of the struggle also operates within the logic of the "state failure" paradigm aimed at explaining "things that go wrong in Africa". From this perspective, African institutions are approached as things that must be "fixed", not as institutions that *contribute* to the shaping of discourses or even of the agenda of their own transformation.

To the extent that it recognizes imperfections in African societies, sexual rights advocacy tends to treat them as exogenous to its own movement. Country reports published by different international non-governmental organizations with vested interest in gay and lesbian rights in Africa speak of the urgency of the need for interventions that will contribute to these groups' acquiring domestic legitimacy, either by sheer size or by their ability to influence domestic politics. As Monga (1996)

notes, “the emergence of dominant players on the national stage with a collective conscience greater and sharper than the sum of the citizens who participate inevitably brings both virtues and risk and distortions” (p. 146). All these observations suggest that despite its dynamism and innovative rhetoric, sexual rights advocacy is still but imperfectly rooted in the playing field of African politics.

## Advocacy as “bargaining”

The critique of international state-centered approaches to sexual rights in Africa I present here should not be mistaken for a critique of the relevance of sexual rights, including those that pertain to same-gender loving people on the continent.<sup>32</sup> Rather, by showing the shortcomings of offensive and defensive strategic choices of sexual rights advocates and conservative forces in Africa, I propose a midrange approach based on the behavior of imperfect actors on an imperfect political playing field. The spirit of the bargaining approach suggested here takes the critique of sexual contract theory and its conjectural political history of fictionalized bodies very seriously.

Carole Pateman’s (1988) great work on the sexual contract reminds us of the paradoxes of contract theory of the state, even when it serves progressive ends. Pateman’s critique traces the epistemological origin and development of the “sexual contract” as the “repressed dimension of contract theory” in the political thought of Western thinkers (p. ix). Although interrogation of these paradoxes in relation to civil society–state relations in the developing world should continue, I still find the contractual perspective useful in the analysis of contexts where imperfect political transactions prevail, which are not just about attaining freedom for any particular group, but also about fostering modes of belonging that make the choice of political development affordable. The bargaining contractual

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<sup>32</sup> Questions of legitimacy qua legitimacy are not my concern here. I consider legitimate, political aspirations that expand justice and freedom in any given society.

approach is adopted here keeping in mind the “fundamental necessity”, for African societies and of marginal groups within them, of stretching the limits of political representation and citizenship. This approach is different from the abstract contractual necessity of ideal states imagined by Locke, Hobbes, and Rousseau.

In keeping with the proposition that African reality should contribute to framing discourse and policy for social change, human rights advocacy and strategy must take into consideration the transitional nature of African societies. International norms may provide guidelines for the betterment of societies, but domestic sociopolitical structures present advocates with unique and particular opportunities through which the socialization and politicization of rights occur. This socialization of sexual rights can be portrayed as an entrepreneurial undertaking through which advocacy takes the form of a bargaining strategy and also attains the “competence to build institutions that take into account the cultural realities and power relationships among the major social actors” (Monga, 1996). The socialization of rights implies that advocacy should look into existing networks of social relations in search of alternative ways of empowering sexually marginalized groups.

Gays, lesbians, and transgender African citizens are social beings and their relative positions in existing social networks reveal both disconnections and intersections. The intersections of sexual marginality with poverty, illiteracy, and disease exemplify the ways in which sexual margins are part of larger “social holes”.<sup>33</sup> According to Burt (1992), “Where an intersection occurs is merely an empirical curiosity [because] causation resides in the intersections of relations ... holes create inequality between organizations as they create inequality between people” (p. 2). Whether sexual rights advocacy acquires real power to influence policy in Africa therefore does not depend just on the magnitude of oppression it documents with respect to states’ repressive behavior toward their

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33 Social issues that intersect with sexual marginality need not be negative. I am intentionally limiting the range of this intersection to images of the gays and lesbians that disproportionately appeal to international intervention as well as nationalistic anti-homosexual campaigns in Africa.

citizens; it also depends on the *degree of freedom its frames of reference can afford to its potential subjects*. The intersection between “social holes” and marginal experiences should allow advocates and policy-makers to establish: a similarity of situations among members of the same social network, as opposed to personality (or sexual preferences per se); the identification of common incentives for strategic engagement with, withdrawal from, expansion, and embedding of specific policies; the design of communication strategies that speak to power and create meaningful links between different social actors.

## Advocacy analytics: Perspective on conflict management

I now turn to empirical data from the Afro-barometer national attitudes public survey, fourth round (2008–2009), to demonstrate the diagnostic benefit of an analytical approach to sexual rights. The fourth round of Afro-barometer surveys includes twenty African countries, from which I selected six states for illustrative purposes, based on the fact that they have been the center of controversial national debates about homosexuality in recent years.<sup>34</sup> Afro-barometer surveys do not include questions directly related to sexual orientation. Nevertheless, data inform us about social perceptions and attitudes about governance, the influence of non-governmental organizations on the central government, and policy preferences in the surveyed countries. For each category, I present the survey question and results for selected countries and derive strategic implications for advocacy. In all cases, the sample size varies between 1200 and 2400 interviewees per selected country. The Afrobarometer tables are included at the end of the chapter.

Once a given marginal issue is appropriately framed for political mobilization, the next challenge for advocacy is to design a strategy that safeguards its agenda from deadly attacks from rivals

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<sup>34</sup> The reader interested in cross-comparison for all twenty countries included in the fourth round can access data online at <http://www.jdsurvey.net/afro/afrobarometer.jsp>.

in the political playing field. If international human rights instruments provide “semantic labels” for political mobilization (Burt, 1992), they offer no guidelines to advocates about how to manage conflicts that arise after their agenda becomes known in the domestic public arena. Depending on whether or not other players on the political playing field are familiar with the new agenda, competition will inevitably take place. *A good strategy therefore will seek, not to limit competition per se, but to control the level of exposure to conflict*, especially conflicts that could totally smear the agenda and the life conditions of those at the margins.

Having engaged in the fight, advocacy for sexual rights should carefully pick its domestic battlefields. Public attitude surveys allow one to identify grey areas and capability and competence gaps in relation to authority networks, which may inspire competitive and adaptive strategies for advocates and policymakers pursuing specific ends. Public attitudes establish *relational* links between political arenas within systems of authority. Gaps in perception and delegation of responsibility therefore help identify flexible arenas within domestic authoritative structures from which advocacy could sustain confrontation, and provide a better prediction of other arenas in which conflict could destroy advocacy efforts with ease.

The imperfect field of political transactions in Africa contains both benefits and traps for latecomers and pioneers. As a latecomer on the African playing field, sexual rights advocacy can afford to choose its battlefields proportionally to its relative strength (international legitimacy) and weakness (the power of an idea as opposed to the power of massive membership). As a pioneer of ideas about human rights, including rights that recognize and protect LGBTQI people, *sexual rights advocacy cannot afford total politicization of its demands*. By total politicization I mean the assumption that all that LGBTQI people in Africa need is political or legal freedom. The more abstracted the agenda, the more it becomes vulnerable to ideological traps and bureaucratic discretion. Abstractions toward increased freedom focus on modern state institutions as guarantors of liberty and thus emphasize legal reforms; however, competition at this level also unleashes ideological forces that advocates

cannot defeat in the short run.

Thus, with the exception of South Africa, almost all battles for queered sexual rights in Africa between states, sexual rights groups and other non-state actors have had a negative effect on advocacy. That is, states and other non-governmental organizations in Africa seem to have cleverly and strategically succeeded in portraying sexual rights advocacy as a “rescue mission”. Do not misunderstand me; I am not saying that there is no reason to rejoice for lives saved from death threats and life imprisonments in Africa. What I am saying is that saving individual lives in this way should not be taken as a measure for success for work that is supposed to participate in a broader agenda for social transformation. I am further saying that every time Africa produces social pariahs, death penalties, and exiles based on sexual orientation, last-minute presidential vetoes raise the cost of advocacy. The timing of these “compassionate vetoes” as seen in the case of Stephen Monjeza and Tiwonge Chimbalanga in Malawi is evidence to the point.<sup>35</sup> Highly abstracted political arenas pushed mobilization from the margins into a non-competitive sphere because its rivals disproportionately hold discretionary and promotional prerogatives. Dominant rivals may not always have the power, or wish, to force advocacy out of a country by limiting entry, but they can raise the cost for distribution of a marginal agenda through vetoes. When discretionary rights are used solely to ameliorate a bad state reputation without ensuring it commits to future actions, then no real protection for the group is in sight and individual protections may become scarcer as the dominant player. In this case, the government of Malawi may not be able to use a “compassionate veto” twice. Knowing where bureaucratic discretion breaks and which structural holes evidence this discontinuity requires designing a strategy that effectively exploits the indiscretions of governance.

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35 See <http://www.guardian.co.uk/world/2010/feb/16/malawi-operation-against-gays-lesbians>>. Accessed August 2010.



## Holes in the system of authority: indiscretions of governance

Question 58E of the Afro-barometer survey [see table 1] has strategic implications for sexual rights advocacy because the result shows that in selected countries, responsibility for solving local conflict is *primarily* attributed to traditional leaders and local governments. To the extent that sexual practices and bodies move within specific localities, a community-based program should operate in an arena in which conflict is contained. In selected countries, South Africa included, local government is given more credit than the central government, except in Malawi. In Senegal, traditional leaders share responsibility for solving problems at the local level. This result empirically substantiates what I previously called the shadow of third party actors over the central government.

Information used to compensate for the lack of delegation by the central government should contribute to potential opportunities for the socialization of rights that local and traditional leadership may provide. The remarkable story of Nkunzi Nkabinde's life as a traditional healer and lesbian in South Africa illustrates this point (Nkunzi, 2009). South Africa may be a unique place on the continent with regard to constitutional rights afforded to LGBTQI people, but in what concerns the significance of local and traditional leadership, South Africa has more in common with the rest of Africa.

The arena of traditional leadership helps distinguish state *bureaucratic authority* from *social discretion and sponsorship*. Whereas activists often talk about state-sponsored homophobia, another embedded strategy should also explore arenas of social sponsorship and discretion that may resist the language of "rights" but provide alternative protection. Note that although local governments and traditional leaders are the most trusted institutions, this finding is correlated with the proportion of people who do not believe in non-local solutions to local conflicts. The central command ranks high only with abstract command (law and order), which, as shown in [table 2] Question 58H, is a prerogative of legal sovereignty. It therefore follows that state-centered approaches that rely mainly

on the central government to solve issues that are either personal or perceived to be local should also be expected to bargain effectively with the power of abstractions as legal and disciplining instruments of the state.

## Holes in policy preferences

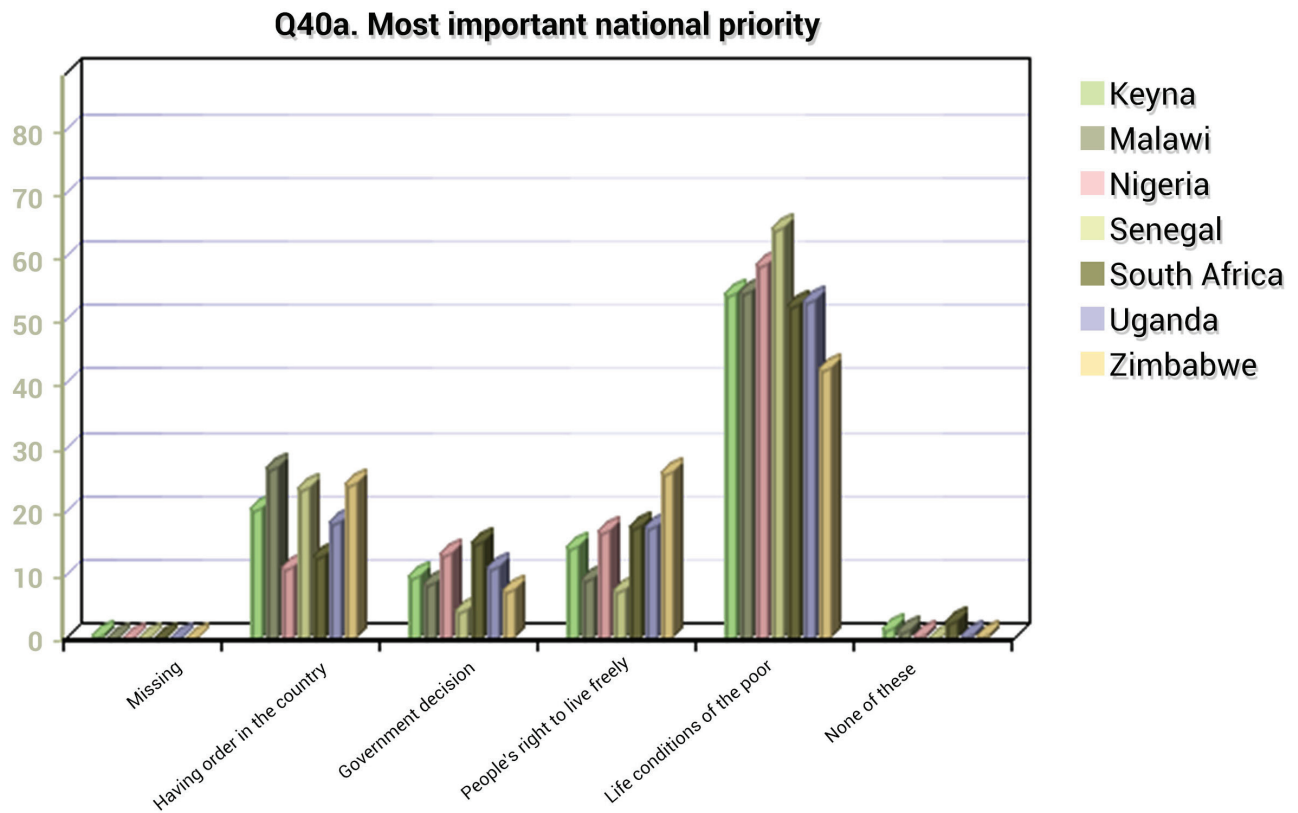
When asked about the most important national priority, respondents overwhelmingly choose ‘the economic conditions of the poor’ as a national priority. People’s right to live freely is a second or third concern [table 3]. *This finding points to the intersection of vulnerabilities, not to the rejection of freedom itself.* Chi-chi Undie (2010) argues that in every instance in which choice emerges as an issue we have to ask whose choice prevails and how the intersection of ‘choice’ and vulnerability creates both authentic and clandestine selves (p. 3). To the extent that the economic conditions of the poor supersede other needs, a political strategy to sexual rights should engage with these repertoires of vulnerability that are related to employment [table 4], health and education [tables 5 and 6]. Embedding advocacy, however, would require a proactive change in strategy (Hillman & Hitt, 1999). The pursuit of a long-term strategy could make use of social sponsorship by shifting the transactional nature of the current political and confrontational playing field into a relational one.

## Conclusion

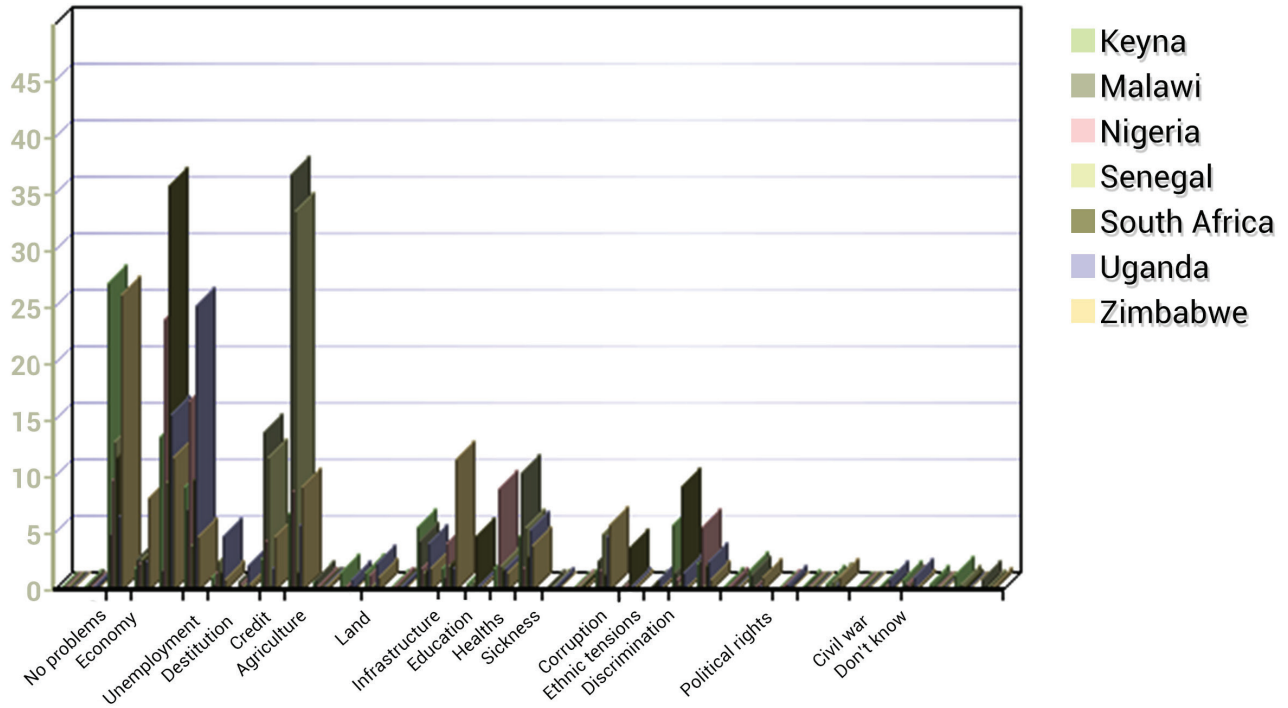
The purpose of this paper has been twofold: first, to re-conceptualize the framework of “failure” attached both to African states’ political development and to their general lack of protection of LGBTQI citizens; and second, to provoke a dialogue grounded in the particular realities of African states about the kinds of strategies that queer advocacy could consider. I drew attention to the ways in which the postcolonial state-building imperative finds itself in conflict with the claims of marginalized segments of the population, such as queer citizens, for recognition of particular identities. This means that sexual rights work needs to focus not only on the responsibilities of

the African state to respond to the needs of LGBTQI citizens, but also on its, potentially shifting, capacity to respond. This focus allows new questions to be considered in sexual rights advocacy, including who is seen as having responsibility to handle local and personal conflicts and how public priorities, such as poverty reduction, can enhance understandings of advocacy contexts and opportunities. This is, in essence, a humanizing and complex understanding of LGBTQI as citizens and members of other social groups. The craft of sexual rights advocacy requires an understanding of the paradoxical nature of African political playing fields. That is to say, in Africa the same state power that wounds is, when wielded positively, power that heals.

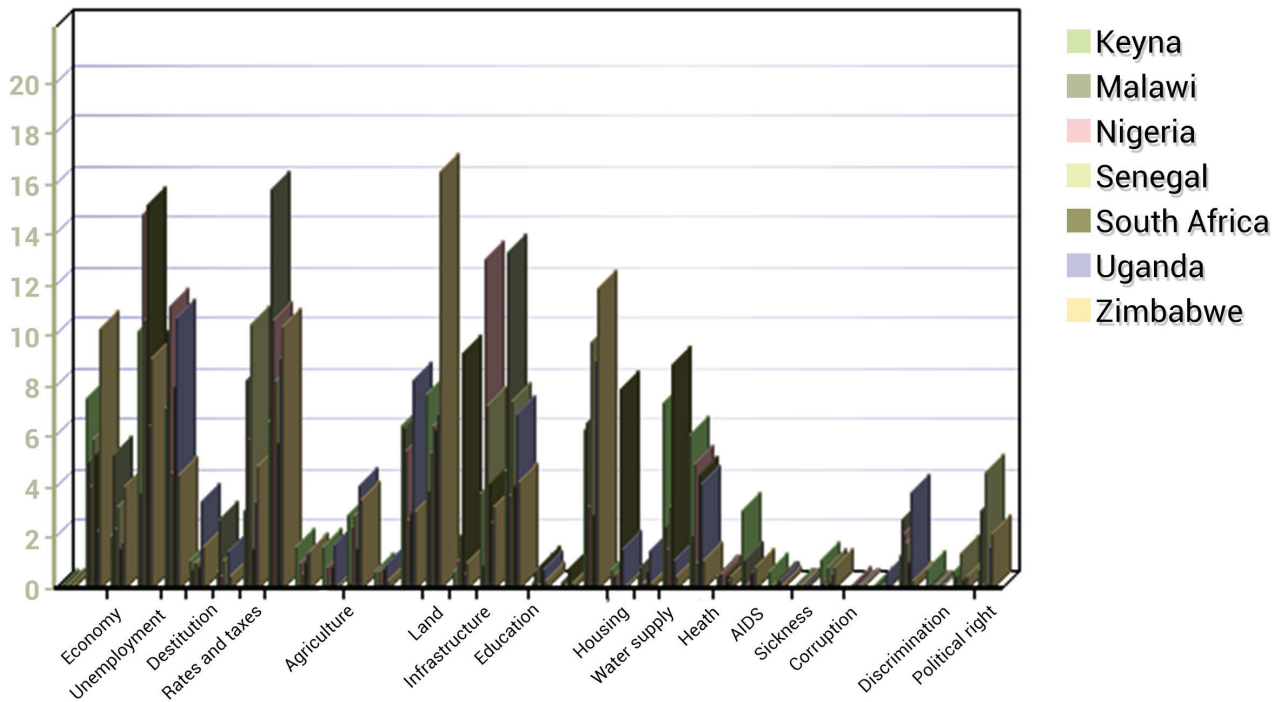
## Appendix – Afrobarometer Graphics



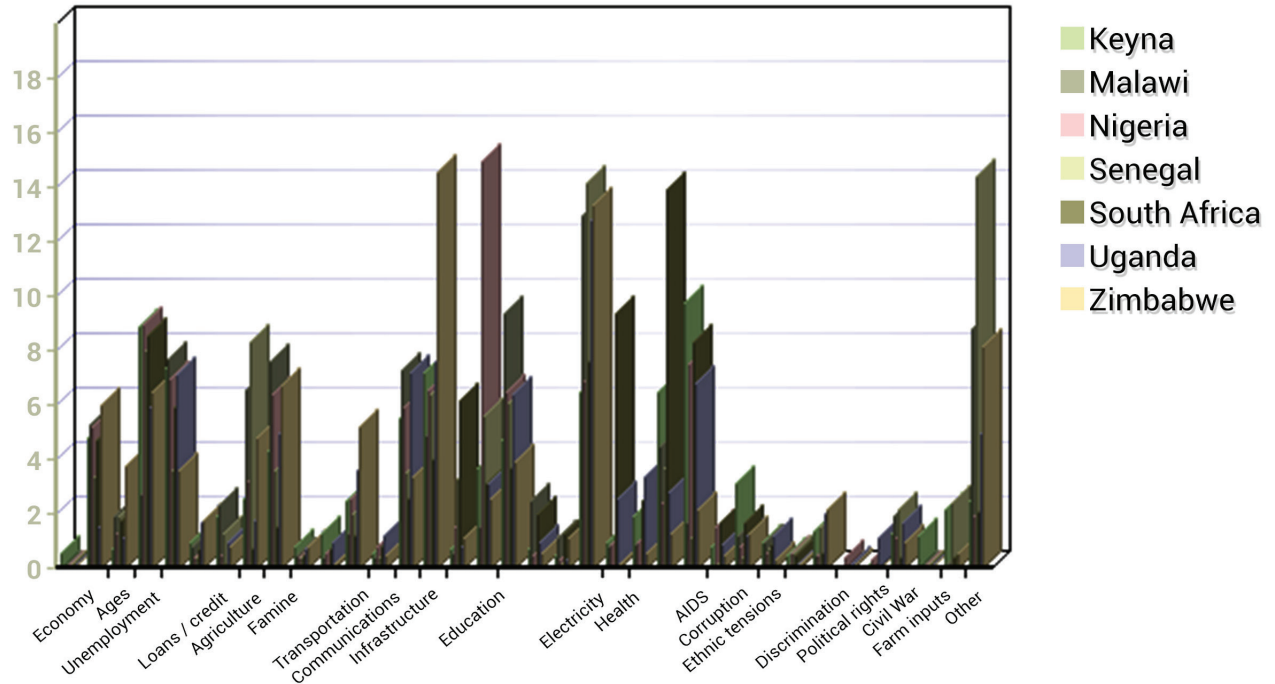
**Q56pt1. Most important problems - 1st response**



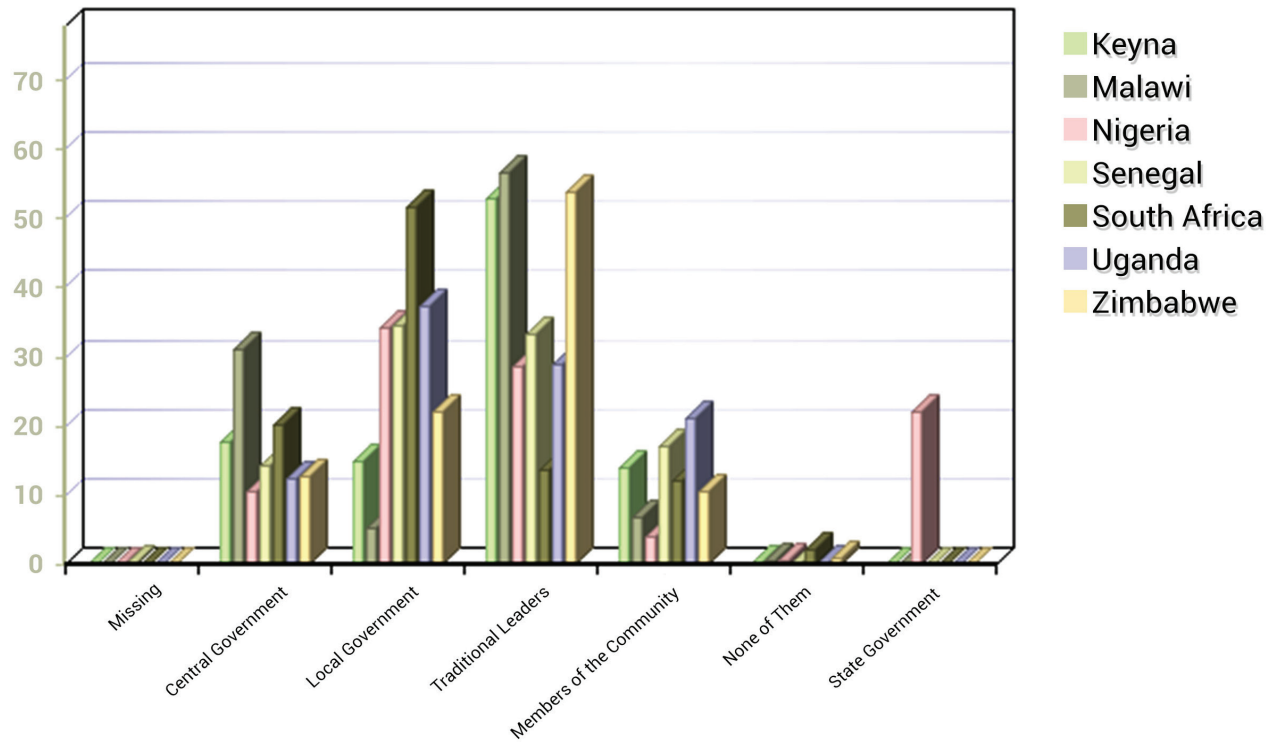
**Q56pt2. Most important problems - 2nd response**



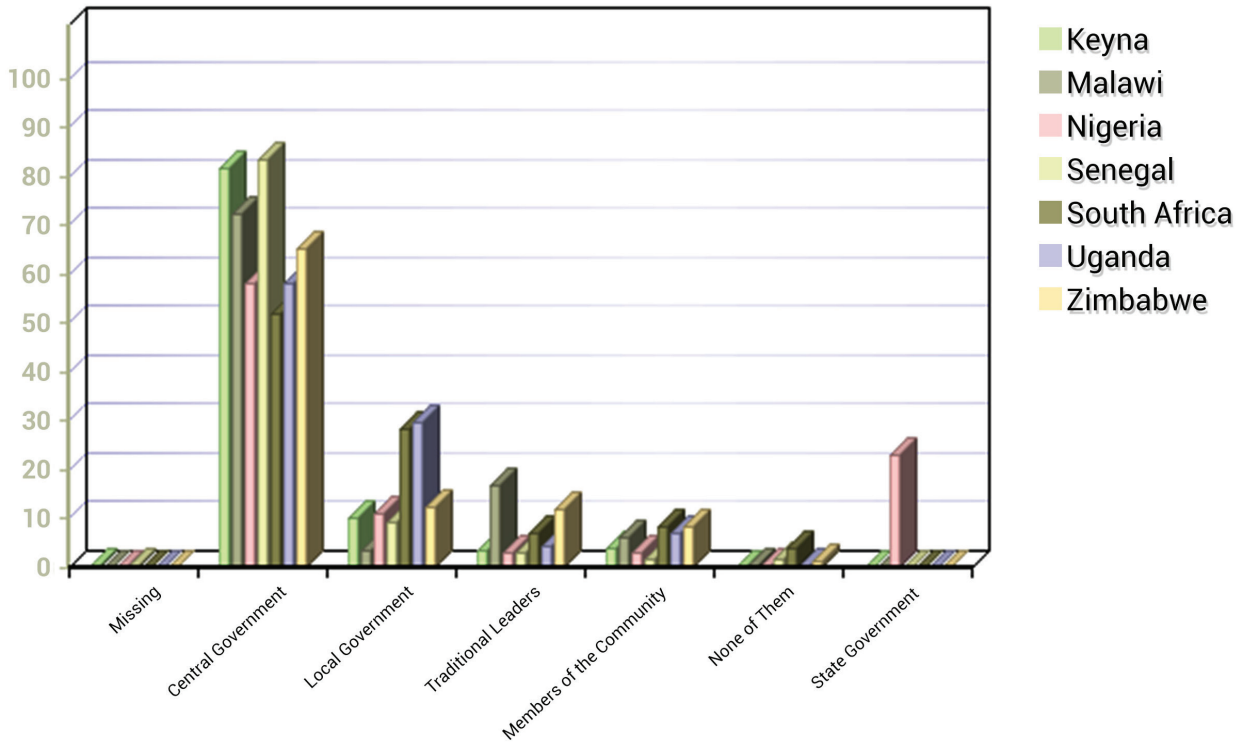
**Q56pt3. Most important problems - 3rd response**



**Q58e. Primary responsibility: solving local disputes**



**Q58h. Primary responsibility: maintaining law and order**



## References

Bataille, G. (1957). *L'Erotisme*. Paris: Minuit Edition illustrée.

Bop, C. (2008, March). Senegal: Homophobia and Islamic political manipulation. *SPW Working Papers*, 4. Retrieved from [http://www.sxpolitics.org/wp-content/uploads/2009/03/texto-codou\\_revny.pdf](http://www.sxpolitics.org/wp-content/uploads/2009/03/texto-codou_revny.pdf).

Burt, D. (1992). *Structural holes: The social structure of competition*. Cambridge: Cambridge University Press.

Engelbert, P. (2009). *Africa, unity, sovereignty and sorrow*. Boulder: Lynne Rienner.

Epprecht, M. (2008). *Heterosexual Africa? The history of an idea from the age of exploration to the age of AIDS*. Ohio: Ohio University Press.

Fester, G. (2006). Some preliminary thoughts on sexuality, citizenship and constitutions: Are rights enough? *Agenda*, 67, 100–111.

Fiske, A. & Tetlock, P. E (1997). Taboo trade-offs: Reactions to transactions that transgress the spheres of justice. *Political Psychology*, 18(2), 255–297.

Friedman, T.L. (1999). *The lexus and the olive tree: Understanding globalization*. New York: Farrar Giroux.

Greenberg, S. (2004). *Wrestling with God and men: Homosexuality in the Jewish tradition*. Madison: University of Wisconsin Press.

Herbst, J. & Mills, G. (Eds.). (2006). *Big African states*. Johannesburg: Wits University Press.

Hillman, J. & Hitt, M. (1999). Corporate political strategy formulation: A model of approach, participation, and strategy decisions. *The Academy of Management Review*, 24(4), 825–842.

Jackson, R. & Rosberg, C. (1982). Why Africa's weak states persist: The empirical and juridical in statehood. *World Politics*, 35(1), 1–24.

Marcuse, H. (1996). *Eros and Civilization*. Boston: Beacon Press.

Martinez-Alier, V. (1989). *Marriage, class and colour in nineteenth-century Cuba: A study of racial attitudes and sexual values in a slave society*. Ann Arbor: University of Michigan.

Menger, C. (2004). *Principles of economics*. (J. Dingwall & B.G. Hoselitz, Trans.). Auburn, AL: Ludwig von Mises Institute. Retrieved from <http://mises.org/books/mengerprinciples.pdf>.

Monga, C. (1996). *The anthropology of anger: Civil society and democracy in Africa*. Boulder: Lynne Rienner.

Nkunzi, Z.N. (2009). *Black bull, ancestors and me: My life as a sangoma lesbian*. Johannesburg: Jacana Media.

Nyeck, S.N. (2010) Accounting for paradoxical emptiness in contentious intersections: 'Colonial blackmail,' token causation and sexuality in Africa. Paper presented at the annual conference of the American Political Science Association in Washington D.C., 2010.

Nyeck, S.N. (2011). The autobiography of things left undone: Politics of literature, hyphenation, and queered friendship in Africa. *Transcript Journal*, 1, 172–200. Retrieved from [http://www.humanities.uci.edu/collective/hctr/trans-scripts/2011\\_01\\_12.pdf](http://www.humanities.uci.edu/collective/hctr/trans-scripts/2011_01_12.pdf).

Parker, G. & Smith, L. (Eds.). (1997). *The general crisis of the seventeenth century* (2nd ed.). New York: Routledge.

Pateman, C. (1988). *Sexual contract*. Stanford: Stanford University Press.

Polanyi, K. (1957). *The great transformation: The political and economic origins of our time*. Boston: Beacon Press.



Sindjoun, L. (2000). *La biographie du sexe: Genre, société et politique au Cameroun*. Paris & Dakar: Cordesia/Karthala.

Stinchcombe, A. (2001). *When formality works: Authority and abstraction in law and organizations*. Chicago: Chicago University Press.

UNAIDS. (2006, August). *UNAIDS policy brief: HIV and sex between men*. Retrieved from [http://data.unaids.org/pub/BriefingNote/2006/20060801\\_Policy\\_Brief\\_MSM\\_en.pdf](http://data.unaids.org/pub/BriefingNote/2006/20060801_Policy_Brief_MSM_en.pdf).

UNAIDS. (2008). *Report on the global AIDS epidemic*, 43. Retrieved from [http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/2008/2008\\_Global\\_report.asp](http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/2008/2008_Global_report.asp).

Undie, C.-C. (2010). The realities of choice in Africa: Implications for sexuality, vulnerability, and HIV/AIDS. *Outliers*, 3, 82–84.

Wieringa, S. & Morgan, R. (2005). *Tommy boys, lesbian men and ancestral wives: Female same-sex practices in Africa*. Johannesburg: Jacana.

Young, M. (2010). *Developing interest: Organization change and the politics of advocacy*. Lawrence: University Press of Kansas.