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▶ Mr. Victor Madrigal-Borloz

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**Greetings Mr. Madrigal-Borloz,**

In response to the United Nations Human Rights Office of the High Commissioner's call for input regarding colonialism and its historic and ongoing impacts, I would like to respectfully submit the following comments for your consideration. I welcome the opportunity to further assist the Independent Expert on sexual orientation and gender identity in their efforts in any way I can. Please feel free to contact me with any questions for additional information.

Respectfully submitted,

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## **Call for Input: Report on Colonialism and Sexual Orientation and Gender Identity**

Colonization has had far-reaching negative effects on LGBTI+ populations worldwide. In addition to slavery, genocide, and forced displacement, LGBTI+ individuals often find themselves caught in systems, be they social or legal, that have ties to colonial era penal codes. These laws were imposed once the colonization process began and forced European prejudicial views towards LGBTI+ individuals through criminalizing same-sex relationships and acts thus erasing and oppressing more tolerant pre-colonial attitudes on sexual orientation and gender identity. This Western cultural imperialism pointed to same-sex relations and transgender identities as proof that these nations must be “civilized” through colonial force and Christian beliefs (Epprecht, 2008).

In sub-Saharan Africa, same-sex attraction is viewed as abnormal and originating from the Western world, however this has not always been the case. There is evidence that homosexuality held immense importance in longstanding African belief systems, including the Yorùbá people of southwestern Nigeria prior to colonialism (Ajibade, 2013). After colonialism, these beliefs changed due to the socialization process and the interaction between peers, parents, and religious institutions such as Islam and Christianity that were introduced and imposed through colonialism and its contemporary form, neocolonialism (Ajibade, 2013). It is a widely held belief today among former colonized peoples that homosexuality is another facet of colonialism, an attack on traditional values through degrading Indigenous cultures and not procreating. Before colonialism introduced finite, binary categories of male and female, heterosexual and homosexual, thus institutionalizing heterosexuality, the Yorùbá viewed these identities as fluid and expansive, encompassing all these characteristics as part of the whole divine being in their culture, Olodumare (Ajibade, 2013).

Before European colonization, there were more accepting attitudes towards gender identity and sexual orientation all over the African continent. This is reflected in Egyptian tombs as ancient as 2400 BCE, with the depiction of two men’s bodies, Niankhkhnun and Khnumhotep, embracing each other in a pose typically seen in depictions of heterosexual lovers (Reeder, 2000). Third genders were also

recognized and revered-in the ancient Egyptian pantheon, certain gods were depicted as androgynous. The goddesses Sekhmet (the goddess of medicine and war) and Mut (the goddess of motherhood) were shown as women with male genitalia (Luiselli, 2015). In the 16th century, the Imbangala people of Angola had males dressed in women's clothing and were often married to males (Gershon, 2019). King Mwanga II of Buganda (present day Uganda) was openly gay and resisted Christianity and the colonization of his people (Rao, 2014). Among the Yoruba and Igbo ethnic groups in what is now Nigeria, gender was not viewed as binary and assigned gender to children when they were older. The Dagaaba tribe assigned gender by an individual's energy, not their biological sex (University of Vermont, 2013).

Before European colonization, many African societies were governed by customary laws, a system of rules based on the will of the people, their way of life, and common cultural knowledge. Orality in African tradition was incredibly important and the main way of transmitting cultural norms, traditions, and history. In sub-Saharan Africa prior to colonization, the written transmission of these laws and values was not common, so oral knowledge was contained in the memories of chiefs, their aides, and their children until it was forgotten or enshrined in immemorial rules (McNamarah, 2019). In areas where these oral laws were silent on sexual minorities, LGBT individuals were not viewed negatively and thus flourished in places like Zimbabwe and South Africa.

Among the Siwa of Egypt, homosexuality was common before colonialism and considered a rite of passage (Steindorff, 1904). Marriages between women existed in over 40 African civilizations before colonialism from South Africa to Nigeria. In these unions, there were multiple forms of marriage between females, for love, for economic reasons to control their own property and wealth, and to strengthen kinship ties (Greene, 1998). Heterosexism is common in colonialist beliefs and gender binaries were introduced as concepts, supplanting Indigenous views of gender and sexuality as being more fluid and less finite (Lugones, 2007). The concept of equality between genders and sexes directly threatened the views and hierarchy of power of colonizers constructed regarding race, class, and gender to maintain systems of control. Reproduction is a theme in many colonialist beliefs, thus any physical union between

members of the same sex was deemed “unnatural” since it did not lead to offspring. Biological reproduction among Indigenous people was lucrative for colonizers, their children a perpetual resource to exploit and use for resource extraction and building wealth (Delatolla, 2020). These attitudes were passed down among those who lived in colonized territories and permeated into present-day culture.

In the Caribbean, homophobia is linked to British colonialism and slavery with the belief that homosexuality is a Western white man’s disease forced upon Afro-Jamaicans during the British slave trade through sexual exploitation and meant to emasculate African males (Lovell, 2015). After slavery was abolished, Victorian sexual mores began to take hold which had their own unfavorable view of homosexuality stemming from anti-buggery laws (buggery is defined as anal intercourse among the same or opposite genders) meant to criminalize sex for non-procreational purposes. The goal of this was to increase the population of colonial-occupied territories (Lovell, 2015). Strict fundamental Christian values were imposed upon the Afro-Caribbean population through conversion that was often coerced. These religious mores were passed down throughout the generations and gained widespread acceptance as indicated by Jamaica having the most churches per capita in the world (Lovell, 2015). This pattern can be seen in countries that were occupied through colonialism.

Curiously, while many formally colonized societies view homosexuality as being forced upon their people by colonizers, they do not think the same about imported religions such as Christianity. People who live in formerly colonized areas who oppose homosexuality cite Christian religious tenets to rationalize their views and Bible passages that seem to condemn homosexuality although Christianity itself was a Western ideology. If decolonization means ridding cultures of colonial doctrines, it stands to reason that these Western religions would also be included (Msibi, 2011). This postcolonial amnesia has led to those residing in formally colonized lands perpetrating the same harm that was done to their ancestors, an oppressive echo through time.

Uganda has the 2023 Anti-Homosexuality Bill which criminalizes homosexuality and the gender identity of individuals that is different from the sex they were assigned at birth. Same-sex activity can mean life imprisonment or the death penalty for “aggravated homosexuality” in certain cases. This anti-

LGBTI+ sentiment is driven by cultural, political, and religious fundamentalism that is a remnant of colonialism (Msibi, 2011). In this state of neocolonialism, evangelical organizations have been long-established and are flourishing in Uganda. They have been effective in advancing homophobic attitudes through the power and influence they hold, and Pentecostal influence has inserted itself into nearly every part of Ugandan society. This can be evidenced by the omnipresence of members of the government being “born again” and requesting that “international religious organizations to carry out development work alongside evangelism" (Jones, 2005).

Decriminalizing homosexuality and enacting legal protections is needed for LGBTQI+ individuals for pay equity, employment discrimination, housing, healthcare, but hate crime legislation is not binary between criminalization and legal protections nor is it a straight path from one end of the spectrum to the other. Many countries have decriminalized same-sex relationships but have no hate crime legislation and others have hate crime legal protections but still criminalize same-sex relationships. Countries like Barbados, Samoa, and Tuvalu have legal protections for employment discrimination, but same-sex consensual sexual relationships are illegal (Mendos et al., 2020). Context is important to understand existing legal protections and not approach legislation as universal. Legal protection is one aspect of ensuring safety but may not give complete protection. There may be gaps in legislation that do not guard against all facets of discrimination or violence or adequate to make successful approaches for violations or public policies (Mendos et al., 2020).

Argentina can be looked at as an example for examining legal developments with a multi-faceted approach to provide comprehensive protections. A former colony of the Spanish Empire that forced negative views of homosexuality and gender expansiveness, Argentina has made strides to decolonize attitudes and enact legal protections for LGBTI+ individuals. In 1996, Argentina added sexual orientation anti-discrimination protections to the Constitution of the City of Buenos Aires where progress then slowed. As of 2020, national anti-discrimination laws did not include sexual orientation or gender identity as protected, only sex. However, some progress has since been made with this inclusion (U.S. Department of State, 2022). The progress for same-sex marriage has been great-in 2002 and 2010, Argentina legalized

same-sex marriage, the first Latin American country to do so (Mendos et al., 2020). Argentina's executive branch has created public policies that have reduced negative social attitudes for LGBTQI+ individuals. Despite the fact there were no anti-discrimination laws that included sexual orientation, international human rights treaties have been inserted into the Argentine constitution which made it unlikely that local courts would publicly condone discriminatory acts based on LGBTQI+ identities even though these protections were not explicitly named in relevant laws (Mendos et al., 2020). This illustrates the cruciality of understanding the nuances and distinctive circumstances of each jurisdiction and cannot be simplified- this runs the risk of overlooking the uniqueness of every country's local circumstance resulting in inconsistent national protections and policies.

Through a systematic and holistic approach towards decolonization, current anti-LGBTI+ legislation must be examined through pre and postcolonial lenses to pinpoint the roots of these laws and excise them from the present day. Many countries have current legislation that has been overlaid on penal codes from the past and results in the oppression of LGBTI+ people (Mendos et al., 2020). These remnants of colonialism and its effects will remain until full legal protections are established and, most importantly, enforced for the entire spectrum of human rights. Protections needed include but are not limited to marriage equality, anti-hate crime legislation, pay equity, employment protections, sexual and reproductive health protections, adoption rights, and bans on conversion therapy are some of the areas that need to be addressed to ensure the rights of LGBTI+ people. Although there are a multitude of challenges, we must rise to meet them. LGBTI+ rights are human rights, and we must advocate with this community to guarantee their ability to thrive, live where they wish, and love who they wish.

## Resources

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