

# Ongoing Impact of Colonial Laws on LGBT Human Rights: A Global Perspective with a Focus on the African Context

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## **Introduction:**

The ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons is a critical issue that requires comprehensive analysis. This submission aims to examine the continued effects of colonial laws on sexual orientation and gender identity, with a particular focus on the African context. It will explore the impact of these laws on the human rights of LGBT individuals and the resulting social and moral ideas about sexual orientation and gender diversity.

## **Acknowledging Historical Wrongs:**

Reparatory justice requires acknowledging the historical wrongs committed during the colonial era. It is crucial to recognize that the imposition of colonial laws and the associated stigmatization of diverse sexual orientations and gender identities were unjust and deeply rooted in cultural and religious biases. By acknowledging these injustices, societies can lay the foundation for addressing ongoing discrimination and violence.

In the African context, it is essential to acknowledge how colonial-era laws criminalized and marginalized diverse sexual orientations and gender identities. For instance, laws that criminalize same-sex relationships, such as those inherited from colonial powers, perpetuate discrimination and violence against LGBT individuals in several African countries.

In Uganda, the enactment of the Anti-Homosexuality Act in 2014 intensified the persecution of LGBT individuals. The law imposed life imprisonment for same-sex relationships, and it led to a surge in human rights violations, including arrests, harassment, and violence against LGBT people. Similar examples can be found in countries like Nigeria, where the Same-Sex Marriage Prohibition Act of 2014 criminalizes same-sex relationships and imposes severe penalties.

These colonial-era laws and their contemporary counterparts have had a devastating impact on the lives of LGBT individuals in Africa. According to the 2020 report by the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), over 30 African countries still criminalize consensual same-sex sexual activity, leading to widespread discrimination, persecution, and violations of human rights.

The ongoing enforcement of these laws perpetuates a climate of fear, stigmatization, and violence against LGBT individuals. It hinders their access to essential services, including healthcare, education, and employment opportunities. Furthermore, the societal attitudes

influenced by these laws contribute to the marginalization and exclusion of LGBT individuals, denying them their basic rights and freedoms.

Reparatory justice must address these ongoing impacts of colonialism by working towards the decriminalization of same-sex relationships and ensuring the protection of the human rights of LGBT individuals across Africa.

### **Legal Reform and Protection:**

Reparatory justice necessitates comprehensive legal reform to safeguard individuals from discrimination and violence based on gender, gender identity, and sexual orientation. This entails the repeal of colonial-era laws that infringe upon the rights of LGBT individuals and the enactment of robust anti-discrimination legislation.

South Africa serves as a notable example of progress in legal reform. Following the end of apartheid, the country's constitution explicitly prohibits discrimination based on sexual orientation, and same-sex marriage is recognized. These legal advancements have had a positive impact on promoting equality and protection for LGBT individuals. However, it is crucial for other African countries to follow suit, repealing discriminatory laws and ensuring legal protections and rights for all individuals, regardless of their sexual orientation or gender identity.

Encouragingly, recent years have witnessed positive developments in legal reform in several African countries. Angola and Mozambique took significant steps by decriminalizing same-sex relationships in 2019, marking progress towards promoting equality and human rights. Moreover, in 2021, Gabon amended its penal code to eliminate provisions that criminalized consensual same-sex sexual activity.

Despite these advancements, comprehensive legal protections for LGBT individuals across the continent remain a work in progress. Numerous countries still uphold discriminatory laws, necessitating continued efforts to advocate for their repeal and replacement with legislation that safeguards the rights and dignity of all individuals, regardless of their sexual orientation or gender identity.

Statistics shed light on the persistent challenges faced by the LGBT community in Africa. According to the 2020 report by the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA), over 30 African countries continue to criminalize consensual same-sex sexual activity. This criminalization contributes to widespread discrimination, persecution, and human rights violations targeting LGBT individuals.

For instance, Nigeria's Same-Sex Marriage Prohibition Act of 2014 criminalizes same-sex relationships, imposing severe penalties. Similarly, Uganda's Anti-Homosexuality Act, also introduced in 2014, instituted life imprisonment for same-sex relationships and led to an increase in human rights violations against LGBT individuals, including arrests, harassment, and violence.

These statistics underscore the urgent need for legal reform to protect the rights of LGBT individuals and ensure their safety and well-being. Comprehensive legal protections that prohibit discrimination based on sexual orientation and gender identity are crucial for fostering an inclusive society that respects and upholds the human rights of all its members.

Efforts to promote legal reform should be coupled with awareness campaigns, education, and engagement with policymakers, civil society organizations, and community leaders. By fostering dialogue and understanding, it becomes possible to challenge existing prejudices, dismantle discriminatory laws, and promote legislation that upholds the rights and dignity of all individuals, irrespective of their sexual orientation or gender identity.

It is important to recognize that legal reform alone cannot address all the challenges faced by the LGBT community. Socio-cultural transformation, access to justice and support services, and the empowerment of marginalized communities are equally vital components of reparatory justice. By taking a multi-faceted approach, African societies can strive towards rectifying the historical wrongs of colonialism and fostering a more just and inclusive future for all.

### **Socio-Cultural Transformation:**

Reparatory justice must go beyond legal reform and encompass socio-cultural transformation by challenging deeply ingrained prejudices and fostering inclusivity and acceptance. It is crucial to develop education and awareness programs that counter stereotypes, promote empathy, and dispel misconceptions surrounding diverse sexual orientations and gender identities.

In the African context, notable initiatives like the "Being LGBTI in Africa" campaign, led by the African Commission on Human and Peoples' Rights, seek to challenge social attitudes and create a more inclusive society. These efforts are vital in dismantling the negative social and moral ideas inherited from colonialism and nurturing an environment that respects and celebrates gender and sexual diversity. By raising awareness, promoting dialogue, and sharing personal stories, these campaigns contribute to the transformation of societal attitudes towards greater acceptance.

Community-based organizations also play a critical role in promoting acceptance and combating discrimination. The Coalition of African Lesbians and the Initiative for Equal Rights are prominent examples of organizations working towards advancing the rights and well-being of LGBT individuals in Africa. Through their advocacy, capacity-building initiatives, and awareness-raising activities, they challenge societal biases, empower marginalized communities, and advocate for the rights of LGBT individuals.

In efforts to promote inclusivity and acceptance, it is essential to engage religious and traditional leaders who hold significant influence in African societies. These leaders can contribute to fostering a more accepting and inclusive society by engaging in dialogue, promoting

understanding, and challenging discriminatory beliefs within their respective communities. By emphasizing the values of compassion, respect, and dignity, they can help reshape social and moral ideas about sexual orientation and gender diversity.

Statistics shed light on the importance of socio-cultural transformation in addressing discrimination and violence against LGBT individuals. According to the ILGA's 2020 report, several African countries still criminalize same-sex relationships, contributing to widespread discrimination and human rights violations. These statistics highlight the urgent need to challenge social attitudes and foster greater acceptance to create safer and more inclusive environments for LGBT individuals across the continent.

Education, awareness, and engagement with key stakeholders are key strategies in achieving socio-cultural transformation. By promoting understanding, empathy, and acceptance, African societies can move beyond the legacies of colonialism and embrace the diversity of sexual orientations and gender identities present within their communities.

Reparatory justice, therefore, demands a comprehensive approach that combines legal reform with socio-cultural transformation. By addressing both systemic barriers and societal attitudes, African societies can work towards rectifying the historical injustices and creating a future that respects, protects, and celebrates the human rights of all individuals, regardless of their sexual orientation or gender identity.

### **Access to Justice and Support Services:**

Reparatory justice must prioritize ensuring access to justice and support services for victims of discrimination and violence based on gender, gender identity, and sexual orientation. It is imperative to establish mechanisms that address hate crimes, provide legal aid, and offer psychosocial support to survivors.

In Uganda, where the notorious "Kill the Gays" bill was proposed, local human rights organizations have emerged as crucial pillars of support for LGBT individuals facing discrimination and violence. Organizations like Sexual Minorities Uganda have been working tirelessly to provide legal support and counseling services, offering a lifeline to those in need. Not only do these organizations provide essential support, but they also advocate for policy reforms to protect the rights of LGBT individuals in the country.

Similarly, in other African countries, the establishment of support structures is essential to creating safe spaces for LGBT individuals and advocating for their rights. These structures should provide access to legal aid, counseling, and other necessary services. By offering support and resources, survivors can find the assistance they need to navigate the legal system, seek justice, and heal from the psychological and emotional impact of discrimination and violence.

Statistics underline the urgent need for access to justice and support services. According to the Human Rights Campaign, more than 30 African countries criminalize same-sex relationships, leaving LGBT individuals vulnerable to discrimination and violence. In many cases, victims face significant barriers in seeking justice and accessing support due to stigma and systemic biases. By establishing robust support services and ensuring equal access to justice, reparatory justice can address the historical injustices faced by LGBT individuals and provide avenues for redress and healing.

Efforts to provide access to justice and support services must be guided by a commitment to inclusivity, non-discrimination, and the protection of human rights. It is crucial to collaborate with local organizations, activists, and community leaders who have firsthand knowledge of the challenges faced by LGBT individuals in their respective contexts. By working together, stakeholders can develop tailored strategies that are responsive to the specific needs and realities of LGBT communities.

Reparatory justice demands comprehensive action to ensure that all individuals, regardless of their sexual orientation or gender identity, can access justice, receive support, and live free from discrimination and violence. By addressing the gaps in legal protection and establishing support structures, African societies can work towards rectifying the injustices of the past and build a more inclusive and just future for all.

### **Empowering Marginalized Communities:**

Reparatory justice must prioritize the empowerment of marginalized communities, including LGBT individuals, by providing them with equal opportunities for education, employment, and leadership roles. It is crucial to develop inclusive policies and programs that break down systemic barriers and ensure equal access to healthcare, housing, and social services for all.

Inclusive initiatives can make a significant difference in the lives of marginalized communities. For instance, in Kenya, the Ishtar MSM project works to empower men who have sex with men (MSM) by providing them with access to education, vocational training, and economic opportunities. By equipping these individuals with the necessary skills and resources, the project aims to break the cycle of marginalization and discrimination.

Similarly, in South Africa, the Triangle Project focuses on creating inclusive workplaces for LGBT individuals by engaging with businesses and organizations. Through awareness campaigns, policy advocacy, and training, they promote inclusive practices that encourage equal employment opportunities and provide a supportive environment for LGBT employees.

Efforts to empower marginalized communities should also prioritize representation and participation. For instance, the political landscape in South Africa has seen positive changes with the inclusion of openly LGBT individuals in positions of power. Notably, Zakhele Mbhele became the first openly gay black Member of Parliament in the country, advocating for the rights of LGBT individuals and challenging discriminatory practices.

Statistics underline the need for empowering marginalized communities. According to a survey by the Williams Institute, LGBT individuals in Sub-Saharan Africa face high levels of stigma, discrimination, and violence, which often limit their access to education, employment, and healthcare. By providing equal opportunities and dismantling discriminatory practices, reparatory justice can address these systemic barriers and uplift marginalized communities.

Furthermore, involving LGBT individuals in decision-making processes is vital for creating inclusive societies. Their representation in public institutions, organizations, and community leadership positions can bring diverse perspectives and ensure that policies and programs are responsive to the needs of LGBT individuals. This requires actively challenging discriminatory practices and promoting inclusive environments that value diversity and respect human rights.

Empowering marginalized communities through inclusive policies, programs, and representation is an essential aspect of reparatory justice. By providing equal opportunities and breaking down systemic barriers, African societies can rectify the historical injustices and create a more equitable and inclusive future for all individuals, regardless of their sexual orientation or gender identity.

### **Conclusion:**

The ongoing impact of colonial laws on LGBT human rights, particularly in the African context, is a pressing issue that demands comprehensive analysis and action. This submission has examined the historical wrongs committed during the colonial era and the resulting discrimination and violence faced by LGBT individuals due to the continuation of these laws.

Acknowledging the injustices of the past is a crucial step towards reparatory justice. The imposition of colonial laws rooted in cultural and religious biases has perpetuated discrimination and marginalization of diverse sexual orientations and gender identities. It is imperative to recognize the devastating impact these laws have had on the lives of LGBT individuals in Africa, leading to widespread human rights violations and hindering access to essential services and societal inclusion.