
Colonialism and Sexual Orientation and Gender Identity: South Africa 2023



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The Impact of Colonialism on LGBT Rights in South Africa

Background

As is generally well-known, since the inception of democracy in 1994, South Africa has adopted what is considered to be an exemplary approach towards the rights, protections, and freedoms granted to lesbian, gay, bisexual, trans and gender diverse (LGBT) persons. These rights are considered particularly exemplary in the context of Africa more broadly where LGBT persons are often denied rights and/or actively condemned and persecuted both socially and legally. The rights afforded to and protected by South Africa's Constitution and other legal instruments are not only noteworthy within the African context, but also within a more global context where such rights and protections are often not adopted or implemented. However, despite these seemingly liberal, progressive legal measures, LGBT persons in South Africa continue to experience pervasive discrimination, inequality, and violence. The legal recognition of LGBT persons may have progressed since the colonial and apartheid eras, but the ideological positioning of LGBT persons as 'unnatural', 'deviant', and 'unequal' that became deeply entrenched during these times remains and continues to impact upon the lived experiences of LGBT persons and their access to rights.

This report provides an overview of the ways in which colonial era laws and ideologies around LGBT persons have mapped onto contemporary views of sexual and gender diversity and impact upon the place of LGBT persons within contemporary South African society.

Pre-Colonial African Sexuality

Within many South African cultures, homosexuality is considered a colonial import and unAfrican. However, many authors have noted that forms of homosexuality were in fact present in pre-colonial Southern Africa.¹ Consequently, it is argued, that it was the colonisation of South Africa and the accompanying Christian missions' sexual morality that demonised homosexuality. Similarly, African feminist theorists² explain that within pre-colonial societies, sexual morality was much less gendered and hierarchical. For example, within the Yoruba culture social hierarchy was not determined by body-type,³ instead people were arranged into social roles that depended on their role within society (e.g. hunter, ruler, etc.) and the kind of person they were. It was the colonial imposition of a binary gender system that led to strict hierarchies in gender and the discrimination against those who did not conform

¹ Ratele, 2013; Brown, 2012 and Muholi, 2004

² Oyěwùmí, 1997; Amadiume, 1987.

³ Oyěwùmí, 1997.

to the two-gender model. It is necessary, however, not to romanticise pre-colonial attitudes and behaviour towards gender and sexual diversity, as this would erase the sex and gender hierarchies that may have been present in pre-colonial African societies. Nevertheless, one should remain cognisant of the ways in which colonial conceptions of gender and sexuality have mapped onto contemporary post-colonial conceptions of gender and sexuality and continue to impact on the experiences of LGBT persons within South Africa today.

The Colonial Influence on Gender and Sexuality

Colonialism served to introduce puritanical, heteronormative Christian beliefs into South African society. European missionaries inundated Africans with preachings from the King James Bible, which specifically condemns homosexuality.⁴ This “Christian nationalist ideology affirmed the sexual ‘purity’ of the White nation and denounced homosexuality as immoral.”⁵ Therefore, it is argued that it was through the Christian assertion that homosexuality was an abomination that homophobia first arose within African communities.⁶ These conservative colonial-Christian values carried through to the apartheid era and were further entrenched through the criminalising of homosexuality.⁷ During this time, sexual intercourse between men, in particular, was prohibited under the common law crime of “sodomy” and “unnatural sexual offence” as inherited from the Roman-Dutch law. From 1948 to 1994, under the rule of the National Party, homosexuality was a crime punishable by up to seven years in prison. A 1969 amendment to the Sexual Offences Act 23 of 1957 (originally named the Immorality Act) prohibited men from engaging in any erotic conduct when there were more than two people present. Not only did the law persecute and criminalise homosexual men, it was also used to harass and outlaw events and political LGBTIQ+ activists.

In addition to the heteronormative views of sexuality instilled by colonial forces, racist characterisations of gender and sexuality also arose. Within colonial discourse, Black sexuality was positioned as rampant and insatiable, and thus in need of regulation through the policing of Black sexuality and Black persons’ bodies. The threat that the Black population supposedly posed to White minority dominion came to be located specifically in Black female sexuality and the reproductive capacities of Black women through which the assumed threat of overpopulation would arise. African sexuality, based on these conceptualisations, was located within a discourse that positioned Black women as hypersexual, and emphasised a woman’s primary role as that of reproduction.⁸ As a result

⁴ Brown, 2012: 52.

⁵ Judge, 2018: 51.

⁶ Brown, 2012: 51; Dlamini, 2006: 131.

⁷ Isaack, 2005: 55.

⁸ Tamale, 2011: 18.

of being cast as hypersexual and insatiable, it was held that Black women could not be raped.⁹ If rape is the crime of violating another person's sexual integrity, Black women were viewed as unrapable because they were viewed as naturally lacking in sexual integrity in the first place.

Furthermore, by characterising Black sexuality as rampant, it was assumed that the only form of sexuality the Black population ascribed to was heterosexuality. The essentialist view of African sexuality has continued to influence assumptions regarding homosexuality in democratic South Africa.¹⁰ Within present day South Africa, the Western and colonial idea that Black people cannot be homosexual is reinforced by rhetoric that asserts that a 'real' African man is one who has sex with women – a heterosexual man - and a 'real' African woman is a mother.¹¹ The racist colonial logic of African sexuality as singularly heterosexual has become so deeply entrenched that it has ironically led to the current prevalent notion that homosexuality is a colonial import and, thus, unAfrican.

Consequently, it can be understood that some dominant contemporary views around homosexuality, and LGBT persons more broadly, draw strongly on colonial beliefs and ideas. Homophobia arose with colonialism, especially with Christian missions aiming to 'civilise' Africans by focusing on their sexual practices, but it has been carried through to contemporary South Africa and has now been recast as though it is an African value. These sentiments continue on in contemporary South Africa, where they are possibly even exacerbated by claims that homosexuality is unAfrican and a threat to traditional systems and values – a form of neo-colonialism and neo-liberalism that is antithetical to the re-emergence of supposedly African traditions and values. In other words, the current sentiments bring together what could be considered the remnants of colonial puritanical Christian ideologies with, so called, traditional African beliefs and values.

LGBT Rights in Contemporary South Africa

As a result of these long-held beliefs around same-sex relationships and the corresponding criminalisation of homosexuality, negative sentiments were held towards LGBT individuals going into the new democracy. These sentiments led to much contestation around the inclusion of LGBT rights in the 1996 Constitution and set the tone for LGBT experiences within the democratic nation. Most of the opposition to the inclusion of clauses relating to rights and equality for LGBT persons in the Constitution arose from the Public Participation Programme that formed part of the Constitution's drafting process. This opposition primarily came from fundamentalist Christians and derived from their notions of sexual morality.¹² In addition, much of the content of petitions and individual opposition statements

⁹ Gqola, 2015: 42.

¹⁰ Lake, 2014: 70.

¹¹ Ratele, 2014: 124; Thomas, 2010: 429

¹² Christiansen 2016: 583.

contained language that expressed vehemence and disgust towards LGBT individuals.¹³ Thus, despite the general political support for the inclusion of 'sexual orientation' in the Constitution, there was a strong sentiment of anger towards and disapproval of sexual and gender diverse persons from the public going into the new political dispensation.

Despite this, though, the inclusion of rights for these communities in the Constitution are vital for making progress towards equality. The protections afforded to LGBT persons by the Constitution are "important markers of the progressive human rights reach of the post-apartheid Constitution".¹⁴ In other words, the recognition of LGBT rights within law are imperative as without such legal recognition and protection both symbolically (in the way it assigns value to LGBT individuals) and in actual legislation, change on a societal level would be virtually impossible.¹⁵ However, at the same time "change through judicial rulings without popular affirmation may be fleeting, ineffective or merely symbolic."¹⁶ That is, without a drastic change in underlying social and political structures, the Constitution cannot live up to its initial promise or ensure that the rights of LGBT persons are fully realised.

Additionally, because of the lingering social condemnation of LGBT individuals and the corresponding fear of violence and ostracisation experienced by LGBT persons, they remain fairly invisible within many South African communities. Kopano Ratele¹⁷ explains that within South Africa, homophobia, or discrimination against LGBT communities, is horizontal in that it is reflected in everyday interpersonal and psychological interactions, rather than vertical, which emanates from "socio-political structures and institutions, including but not limited to Constitutions, penal codes, laws, and government policies." As such, within South Africa while the open expression of homosexuality is protected legally or vertically, it is still condemned socially or horizontally. One might also say that in the absence of formal legal condemnation, individuals take it upon themselves to police and criminalise diverse expressions of gender and sexuality.

One means through which the policing of LGBT persons occurs is the use of violence, and more specifically, sexual violence. A survey of more than 2 000 LGBT people by Out, a South African rights organisation, found that within a two-year period, 39 percent had been verbally insulted, 20 percent had been threatened with harm, 17 percent chased or followed, and nearly 10 percent physically

¹³ Christiansen 2016: 583.

¹⁴ Christiansen, 2016: 614.

¹⁵ Coetzee, 2013: 20.

¹⁶ Christiansen, 2016: 614.

¹⁷ Ratele, 2014: 114.

attacked. In addition, about half of all Black respondents knew people who had been murdered because of their sexual orientation.¹⁸

Currently, within South Africa, Black lesbian women are some of the most vulnerable to sexual violence, or what is more commonly referred to as corrective rape. This is as a result of the intersection of their race, gender, sexuality, and socio-economic positioning, which are linked to the colonial conceptions around Black sexuality mentioned above and the heteropatriarchal notions that form the foundation of contemporary South Africa. Under the newly liberated South African democracy, Black women are still marginalised and subject to the same ideological underpinnings that contributed to their oppression in pre-democratic South Africa. Pumla Gqola¹⁹ claims: “Black women are the most likely to be raped because of these combined histories about who matters least” such that “rapists rape the women longest burdened with the assumptions of unrapability.” It is, thus, because the sexual violation of Black women historically stayed under the radar of social sanction and legal consequences, that Black women are still positioned as the most easily available targets of sexual violence. This is a key colonial logic that has not been addressed in South Africa’s political transition to democracy and Black majority rule. Consequently, Black lesbian women who are already considered to matter least based primarily on their gender and race, and thereby already face the highest threat of rape, clearly have this further compounded by their supposed non-compliance with hegemonic patriarchal ideals. Simply put, this means that they become socially and politically positioned as particularly vulnerable to the threat of rape, with perpetrator impunity as the other side of the same coin. Of course, it is not only Black lesbian women who are exposed to such violence, members of LGBT communities from all demographics and socio-economic backgrounds are vulnerable to such violence, but the intersections of various factors make some LGBT persons more vulnerable to violence and/or discrimination than others.

When LGBT communities are afforded increasing rights and protection there is often a corresponding backlash resulting in increased violence and discrimination against these communities. The visible presence of LGBT persons is interpreted as challenging and threatening (conservative) traditional family values and the burgeoning heteropatriarchal national identity.²⁰ Thus, while rights and visibility are essential for equality, they simultaneously seemingly also create conditions in which the prevailing precarity of LGBT individuals is heightened and further cemented. Of course, that is not to say that these rights should not be provided. To the contrary, as mentioned, these rights are vital, but in conjunction with these rights there should be measures put in place that aim to affect change on social and individual levels. The levels of discrimination and violence (actual or threatened) that LGBT

¹⁸ De Greef, 2019.

¹⁹ Gqola, 2015: 53.

²⁰ Ahmed, 2005: 98.

individuals experience violates the rights that are arguably afforded to them within the democratic nation. Furthermore, because of the ways in which LGBT individuals are positioned, this violence and discrimination continue largely unchecked and without adequate response from state powers.

Conclusion

Sexual violence against members of LGBT communities is, arguably, not simply one manifestation of violence, instead, it is systematically and strategically used to reinforce and maintain hegemonic ideologies related to sexuality and gender, and to uphold patriarchal control. This is particularly pertinent in South Africa, and other colonial nations, where post-colonial national identities are still being developed. While the responses to and treatment of LGBT persons within Africa is routinely condemned by 'liberal' Western societies, it is necessary to remember that it was in fact colonial forces who entrenched gender binaries and puritanical values in African societies, and then further cemented these heteronormative patriarchal ideologies through legislation that criminalised LGBT individuals and same-sex relationships. Related to this, sexual violence is used as means through which to reinforce the aspirations of the nation-state and uphold its ideological imperatives. Thus, while the South African government outwardly purports to protect LGBT persons and their rights, in reality there is almost no justice for LGBT persons who have experienced violence or discrimination, nor are there comprehensive policies or programmes in place to assist LGBT persons to thrive. The reality is, instead, that the judicial system and government inadequately protect the interests and lives of LGBT persons, often revictimise those who have been harmed, and do little to prevent violence against LGBT communities.

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