## **Call for Inputs!**

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“The Pan African Contribution on Colonialism and Sexual Orientation and gender identity”. **By: Dzoe Ahmad**

## **ENGLISH**

## **Call for inputs: Report on colonialism and sexual orientation and gender identity**

## **By: Independent Expert on sexual orientation and gender identity**

The Independent Expert invites all interested States, civil society organizations, academics, international organizations, national human rights institutions, activists, corporations, and others, to provide written inputs to the following questions for his thematic report. Inputs are welcome in relation to particular practices in States or territories, as well as more general inputs concerning regions or the international community as a whole.

The following questions are meant to guide the formulation of inputs. It is only necessary to address those in relation to which evidence is available.

1. Did the imposition and/or enforcement of colonial laws or policies on sex, gender, and sexuality change the pre-colonial treatment of sexual orientation and gender identity? What historical or anecdotal evidence is there available about the treatment of gender and sexual diversity before past or present experiences of colonization?

We live in a world where human equality has become the order of the day. Various governments, international organs, and non-governmental organizations have been closely observing equilibrium in determining access to privileges and chances regardless of race, tribe, and gender bars among many others. Voluminous writings argue that in Africa gender relations are worse as there are inequalities in access to the economy, politics, and social changes between males and females (Anunobi, 2002; Atanga, 2013). This has been greatly associated with the presence and dominance of the patriarchal system attached to pre-colonial African cultural traditions, which oppressed and sidelined women from accessing privileges (Davison, 1988).

Thus, the contemporary prevailing gender inequalities in Africa have evolved from such traditions, which still have deep roots in African day-to-day lives. Africans’ past life traditions are a mere recent creation, which has no historical reality and existence in the continent. It is the view of this study that activists and researchers have misconceived pre-colonial African gender relations, which were structured in terms of specialization and division of labor, that gender identities were important determining criteria in such a system. The placement of one gender into a certain specialization and labor was fair as nobody complained over the system during their lifetime. Therefore, applying the language of gender inequalities by tracing its genesis to pre-colonial African lives is to use present connotations as understood in the modern world ’which has no exact meaning in addressing the past lives, later alone speaking about LGBTI trace and historical background.

Looking back at the historical background, reflecting on gender relations and sexual practices, like in West Africa, determinants of acceptable societal values are based on community, kinship, economic status, and divinity in contrast to the contemporary African Social system influenced by Imperialism and its social biases that enforces violence and inequality as a tool of social control*.*

1. What laws, policies, and practices regulated or influenced the shaping of or the socio-normative perception of sexual orientation and gender identity in colonial times? How were they introduced, promoted, administered, or enforced? Examples could include the prohibition of certain sexual acts, but also regulation of sexual or gender identities and expressions (such as bans on cross-dressing)

In June 2020, Botswana overturned colonial-era laws which criminalized homosexuality, with the judge, Michael Leburu, declaring that “the anti-sodomy laws are a British import” and were developed “without the consultation of local peoples”.

It was viewed as a massive success and a historic moment across the continent. Despite this more than half of the countries in Africa outlaw homosexuality, with four enforcing the death penalty. At a time when we see more and more countries worldwide becoming progressive regarding LGBT rights, why does Africa still maintain their anti-LGBT stance? Is homosexuality, rather than homophobia a “Western import” as claimed by Ugandan President Yoweri Museveni?

Of course not. There is a direct correlation between countries that belong to the Commonwealth, and therefore have previously been under British rule, and countries that still have homophobic biphobic, and/or transphobic legislature in their constitutions. 25 percent of the world’s population (2.4 billion people) currently live in a country belonging to the Commonwealth; however, they make up a disproportionately large 50 percent of countries that still criminalize homosexuality.

But this phenomenon is specific to those under British rule. By the 13th century in France, punishments for male homosexuality included castration for the first offense. But the French repealed their anti-sodomy laws after the first French Revolution in 1750, two centuries prior to the British in 1967. This is then echoed in La Francophonie nations; out of 54 member states, only 33 percent of these criminalize homosexuality, in comparison to 66 percent of Commonwealth nations.

Prior to European colonization, throughout the African continent, we see far different, more relaxed attitudes towards sexual orientation and gender identity. As far back as 2400 BC tombs have been excavated in ancient Egypt with two men’s bodies Niankhkhnum and Khnumhotep embracing each other as lovers. In addition to their acceptance of same-sex relationships, Ancient Egyptians, like other civilizations at the time, not only acknowledge a third gender but venerate it. Many deities were portrayed androgynously, and goddesses such as Mut (the goddess of Motherhood; lit. translation Mother) and Sekmeht (goddess of war) are often depicted as women with erect penises.

This was not unique to Egypt or this time. In the 16th century, the Imbangala people of Angola had “men in women’s apparel, with whom they kept amongst their wives”. In contrast, King Henry VIII had just signed the Buggery Act in 1533 in England, which criminalized sex between two males. The last man to be sentenced to death by hanging in England was in 1835 for engaging in homosexual sex; whilst at the same time there was an openly gay monarch, King Mwanga II of Buganda (present-day Uganda), who actively opposed Christianity and colonialism. The Igbo and Yoruba tribes, found mostly in present-day Nigeria, did not have a binary of genders and typically did not assign gender to babies at birth, instead, *their social values based on the principle of respect and divinity* waited until later life. Similarly, the Dagaaba people (present-day Ghana) assigned gender not based on one’s anatomy, but rather the energy one presents. In the royal palaces of Northern Sudan, daughters were sometimes given slave girls for sex.

For centuries, across the African continent, there was a completely different attitude towards sexual and gender identities. Many African countries did not see gender as a binary in the way that their European colonizers did, nor did they correlate anatomy to gender identity. In no African country prior to colonization do we see any persecution of LGBT individuals because of their sexuality, nor any anti-LGBT laws.

So how, despite a very relaxed attitude towards homosexuality and gender fluidity for almost all its recorded history, has Africa become one of the most difficult continents to be LGBT?

Colonization and the spread of fundamentalist Christian attitudes by the British meant that much of Africa lost its previous cultural attitude towards sexual orientation and gender identity and was forced to adopt “new” values from British colonizers in the 19th and 20th centuries. Homophobia was legally enforced by colonial administrators and Christian missionaries. In 1910, Christians made up about 9 percent of the population of sub-Saharan Africa; by 2010, the figure had leaped to 63 percent. Anti-LGBT laws were not only written into constitutions, but also into the minds of many African people, and after the passing of several generations, this has become dogma.

While many of the countries under British rule are now independent, the majority who still criminalize homosexuality, including Jamaica and Uganda, have carried over these laws from the colonial era. Generations later, many Africans now believe that an anti-gay attitude is one that is a part of their culture. So much so, that former and late Zimbabwean President Mugabe labeled homosexuality as a “white disease”.

The association of homosexuality as something “Western” is echoed throughout the ex-Commonwealth and particularly in African and Caribbean nations. For many who had their lives and cultures stripped from them by the British, western’s is to be treated with suspicion and it’s essential to hold on to any part of themselves and their culture they can. This combined with the fact that Western countries have threatened to deny aid to these countries unless they conform to their ideals has hindered the fight for LGBT rights in African countries. For instance, when ex-Prime Minister David Cameron threatened to withdraw aid from Uganda as they “were not adhering to proper human rights”, the presidential adviser responded with ‘But this kind of ex-colonial mentality of saying: 'You do this, or I withdraw my aid' will definitely make people extremely uncomfortable with being treated like children."

Top-down reform, with the Western world leading the way, is not going to be the road that Africans take to change their anti-LGBT laws; skepticism towards the West and homophobia are far too closely intertwined. Rejecting pro-LGBT legislation is rejecting neo-colonialism and is in favor of African nationalism, self-determination, and self-worth. Unfortunately, African homophobia is a tricky mix of anti-neo-colonialism, politics, and religion, made worse by the HIV/AIDS crisis. This crisis has led Africans to associate HIV/AIDS and death because of being gay, like American attitudes towards HIV/AIDS during the United States AIDS crisis of the 1980s.

So, what is the future of LGBT rights in Africa? In many countries, despite the legacy of colonization, citizens are taking a more autonomous stance on LGBTQ+ legislature, with the queer communities taking the lead, instead of external pressures from the West. Across the world, countries that have improved their LGBT rights records have done so because of the hard work, organizing and leadership of local LGBT groups and communities, and the case of Africa is no different. Enforcing top-down change from the West would do little to change the attitudes of Africans towards homosexuality; this is a struggle that must be led by local LGBT communities who know best what they need and how to fight for it.

1. What colonial laws regulating sexual orientation and gender identity are still in place today? How are they enforced? How are they being interpreted by national jurisprudence and customary law? What legal, moral, or socio-cultural explanations have been provided, if any, for their continued existence?

350 years of colonialism and apartheid dominated the South African legal system that reflected the values of the colonial and apartheid rules. As a result, a distinction was drawn between South African common law, the "law of the white people" and traditional African law which was referred to as "native law". This "native law" was supposed to represent the customary law(unwritten) of the indigenous people. Colonial and apartheid rule not only marginalized indigenous or customary law but in the process of interpretation, legislation was given a slant that facilitated colonial and apartheid rule. In this regard, the role of traditional leaders and traditional courts is a case in point.

The Union of South Africa formed in 1910 represented an alliance between English and Afrikaans-speaking whites and the triumph of white domination over blacks. The legal system reflected that domination. In the past, the court system, the administration of estates, and all other parts of the system of justice were molded around the needs of white people who made up 20% of the national population. The black majority, including coloreds and Indians, who made up 80% of the population, had marginal services that were segregated and of a low standard. Instead of being helped by the justice system, black people were most often the victims of it. The South African Constitution, 1996 ([Act 108 of 1996](http://www.polity.org.za/govdocs/constitution/saconst.html)) brought about a positive change to the South African legal system.

Uganda’s new anti-homosexuality law bans identification as LGBTQ. The law could be the first to criminalize identifying as lesbian, gay, bisexual, transgender, and queer (LGBTQ). Uganda’s parliament has passed sweeping [antigay legislation](https://www.aljazeera.com/opinions/2014/8/15/why-was-ugandas-anti-homosexuality-law-struck-down/) that proposes tough new penalties for same-sex relationships and criminalizes anyone identifying as LGBTQ. While more than 30 African countries, [including Uganda, already ban same-sex relationships](https://www.aljazeera.com/opinions/2021/6/6/no-uganda-is-not-making-it-illegal-to-be-gay-again), the new law passed on Tuesday appears to be the first to outlaw merely identifying as lesbian, gay, bisexual, transgender, and queer (LGBTQ).

Specific colonial laws vary between countries, but they generally fall into two categories: laws that directly criminalize same-sex sexual activities and laws that criminalize unnatural offenses or gross indecency which can be interpreted to include same-sex sexual activity.

Enforcement of the colonial laws for instance in Nigeria is through police arrest and extortion, imprisonment, social humiliation, Religious conversion harmful Practices, sexual molestation, Kidnap, and death.

In 2022, the Nigerian Legislative Proposed a Bill that seeks to Jail and fine Crossdressing in Nigeria to up to 6-month imprisonment and $1,000 respectively. [Criminalizing LGBTQ+ identity and expression up to 14 years imprisonment wasn’t enough for the Nigerian government. The New Bill. – QueerCity Media (queercitypodcast.com)](https://queercitypodcast.com/2022/04/06/criminalizing-lgbtq-identity-and-expression-up-to-14-years-imprisonment-wasnt-enough-for-the-nigerian-government-the-new-bill/)

1. How, if at all, has the protection against violence and discrimination based on sexual orientation and gender identity been transformed and positively or negatively impacted by processes of decolonization?

Debates over the origins of queerphobia in post-colonial African nations are legion. The conversation is dominated by opinions that paint Africans as inherently more violent towards, and less tolerant of sexual minorities than their Western counterparts. Less present in the conversation is the view that colonially imposed laws have played a significant role in the creation of queerphobic, post-colonial African states. However, as this Note contends, neither perspective fully accounts for regional variations in levels of queerphobia throughout the African continent. In response, this Note presents a model that tracks the role of law in the production of queerphobic sentiment prior to, during, and after colonialism. In doing so, the model accounts for regional variations and elucidates the role of colonial-era laws in creating legacies of intolerance.

The effects of unenforced codified sodomy laws on four post-colonial African societies, Uganda, South Africa, Nigeria, and Zimbabwe. It demonstrates that prior to colonial contact, several African societies did not condemn sexual minorities. With the establishment of colonially imposed laws, indigenous attitudes shifted from tolerance of queer sexualities to intolerance. This Note concludes that in societies where colonially imposed anti-queer laws were routinely enforced, modern post-colonial societies experience high levels of queerphobia.

But underneath the international narratives and oft-repeated views that Africans are innately more intolerant, more violent, and more “savage” in their resistance to accepting sexual minorities than their Western counterparts, is there something more? Perhaps these accounts mischaracterize the complex reasons that explain queerphobia in post-colonial African nations. Specifically, many conversations on the topic of queerphobia in Africa fail to account for the possibility that modern-day intolerance might be the result of colonially introduced laws. Indeed, many African nations retain colonial-era anti-queer laws,12 and several have reinforced colonially instituted laws by enacting new legislation in the decades since their independence. Of the thirty-three African countries that currently criminalize homosexuality, eighteen were former British colonies that inherited versions of the colonial “sodomy law.”

For Positive impact: Decolonization has provided an opportunity to recognize and restoration of African diverse cultural practices, Arts, and beliefs. The recognition includes acknowledging the existence of diverse gender identities and sexual orientations that were marginalized and set for erasure by the imperialist power. By recognition, decolonization has created a focus on promoting African cultural values and contributed to an inclusive understanding of gender diversity and sexualities. For instance, Open positive conversations are being held on the intersectionality of African identities, culture, Homosexuality Trans awareness, and human rights.

However, due to the deep-rooted structure of colonial rule on African cultural practices, Decolonization might have its limitation based on the colonial conservative value that most definitely does not cater to or include protection for QUEERNESS and African diverse values which hinders the progress in addressing violence and discrimination against LGBTQ individuals.

5. If no longer in place, when were colonial laws regulating sexual orientation and gender identity repealed? In what pretext were they abolished and what was the rationale/explanation for their abolishment?

There is a long history of states criminalizing sexuality and reproductive decisions relating to health. Unfortunately, despite increasing attention paid to the protection of human rights in the last few decades, the criminalization fever shows no signs of cooling. In some areas, this trend appears to have gained renewed strength. Throughout much of the Americas, for example, women and health professionals can be punished for seeking, obtaining, or providing abortion services. In certain states in Africa, opportunistic politicians have pumped life into antiquated statutes or passed new laws punishing same-sex activity with dire penalties. Notably, this rush to criminalization is not limited to developing or least developed states. The last few years have also seen a rise in women in the USA being jailed for otherwise legal acts conducted during pregnancy, and in many rich and poor states alike, individuals can still be prosecuted for transmission of HIV.

Criminalization of sexual and reproductive health-related activity stands as a significant impediment to the realization of human rights, particularly the right to health. Although such criminalization is justified by some as a “public health” measure, in most cases it exacerbates the underlying public health concern by driving risk behavior underground and preventing the provision of effective health services, contributing to preventable illness and death. The criminalization of consensual reproductive and sexual behaviors also violates autonomy, which is the foundation on which an individual’s ability to realize their right to health is built.

Discussing at the societal level, literature has sensed the channels of gender inequalities. Most families belong to the patriarchal structure, which considers man as a symbol of unity, the head of the family, and the supreme judge in all family quarrels (Therborn, 2006, p.13; Henry, 2018, p.8). In Tanzania for example Linda (2014, p.30) submits that women are sidelined from families’ decision making thus bringing dominance of men’s ideas in family decisions. Addressing in a similar context (Nonjoge, 2018, p.2) shows that education on gender equality has at least risen in Tanzania as when the majority interviewed on gender relations to accessing land, education, and leadership they responded by calling for equilibrium between the gender. (Noyoo, 2010) adds to this discussion with a new lens by asserting that in contemporary African families, the question of male dominance is unsound as these families have embraced a bilateral system from which inheritance of wealth, decisions, and even family names are determined by both women’s and men’s sides.

In addition to implicating human rights adversely, criminalization of sexuality and reproductive decisions engenders stigmatization, discrimination, and even violence against people engaged in (or suspected of engaging in) the prohibited behavior, which can further place the health of vulnerable people at risk. Indeed, the individuals facing punishment tend to be members of poor, marginalized, and vulnerable groups, as opposed to wealthy individuals engaging in the same behavior. Moreover, such criminalization affects not just those against whom the law is directed, but negatively impacts the rights of entire populations by giving states power to interfere with individuals’ private decision-making and forcing people to conform to strict sexual and gender norms. Using the force of state machinery and political play to achieve illegitimate aims relating to public morality can further lead to an environment generally permissive of arbitrary arrests and detention, harassment, stigmatization, discrimination, and violence. Such use of power also weakens respect for the rule of law.

Unfortunately, all too often criminalization of sexual and reproductive decisions and behaviors can be a means to gain political support from voters, especially when the targets of such punitive regulation are politically disenfranchised or socially marginalized. It is, therefore, crucial to highlight the depth and extent of this problem and to empower activists worldwide to challenge laws directly or indirectly criminalizing sexual and reproductive decisions and behaviors. Amnesty International’s Primer and Toolkit - Body Politics: Criminalization of sexuality and reproduction - is a timely, meaningful, and welcome contribution that can enable activists to both comprehend and challenge illegitimate criminalization of sexuality and reproductive decisions. It is vital to understand the extent to which criminalization has permeated states today and the damage which is done by such measures masquerading as legitimate public health or public morality initiatives. This Primer details the major areas of concern and the harm which both direct and indirect criminalization inflict on an individual’s human rights and the health of society. It is not enough, however, to simply understand the problem of criminalization of sexuality and reproductive decisions; steps must also be taken to challenge it. The Toolkit provides concrete campaigning techniques such as mapping stakeholder participation and power, identifying advocacy targets, and building capacity. The Training Manual can be used to build understanding and capacity around these issues for a range of audiences and activists.

1. How has the legal and social regulation of gender, sexual orientation, and gender identity been relevant for imposing and maintaining colonial power?

A critical account of the history of colonialism and gender on the African continent, paying attention to the diversities and complexities which these two social and political processes produced in their interaction with one another across space and time. While historians and feminist writers have elucidated the complementary roles of men and women in pre-colonial African periods, the process of pacification and establishment of colonial administration had profound implications on existing intergroup structures. Colonial institutions gave more recognition to men than was given to women. Colonialism thus affected different aspects of African females’ lives in relation to their male counterparts in society. It has been the view of feminist and human rights agitators in Africa that the cultures of African communities are central bottlenecks toward demolishing gender inequalities in the continent (African Feminist Charter, 2006). Scholars have depicted male cultural dominance over females (Patricia, 2011).

This has been possible by tracing its root to the historical trend of cultural practices in diverse African communities. According to (Stephen, 2010) females have been oppressed and marginalized ever since before the colonization of the continent. Women are traditionally the potent tools in household production but are less considered in possession of products from their labor (Akyempong, 2012, p.2). This has been attributed to the fact that in many African societies’ women have been property that men can possess (Tamale, 2006). It is from these historical practices that the present manifestations of gender inequalities trace their evolutions. Thus, feminist scholars opine that in the battle against gender inequalities, there is a need also to devastate cultural holds that are eyesores toward the struggle (Tamale, 2006).

During the colonial period, colonialists elevated men over women in their projects. Various projects such as agriculture cultivation, mining, and construction activities used the male labor force to perform. Even armies recruited males and excluded females. Consequently, the system appeared more patriarchal by nature (Fetter, 1979). The fact colonialism was a womb child of capitalism which feminist scholars have greatly shouted against in Europe, is equally associated to infuse and celebrate gender inequalities in African colonies (Akyempong, 2012, s.10). These colonial hangovers on gender relations manifest themselves in the modern era of globalization, further in today`s era gender inequalities affect people of sexual orientation and gender diverse, which highlights how the system is destruction to control human race and its enjoyment towards rights to body autonomy, social and economic empowerment, and contribution, only the rich enjoy access and RESPECT.

1. What is the ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons? How did the imposition of colonial laws on sex and gender shape social and moral ideas about sexual orientation and gender diversity?

Uganda’s current panic over sex education reignited longstanding anxieties over foreign interventions into the sexual health and rights of Ugandans. We argue that in the wake of a 35-year battle with HIV/AIDS and more recent controversies over LGBT rights, both of which brought international donor resources and governance, the issue of where and how to teach young people about sex became a new battleground over the state’s authority to govern the health and economic prosperity of its citizens. Ethno- and religion-nationalist rhetoric used to oppose the state’s new sexuality education policy was also used to justify sex education as a tool for economic development. Analyzing rhetoric mobilized by both supporters and detractors of sex education reveals the contested political terrain policy advocates must navigate in Uganda and other postcolonial contexts. “Moral panics,” a term coined in 1972 by the British criminologist Stanley Cohen, signal periods during which a condition, person, or group of persons become identified as a threat to a society’s morals or values. Borrowing Cohen’s formulation, sexuality theorists have argued that panics over sexuality, or sex panics, scapegoat sexual groups, practices, and policies—from abortion to gender-neutral bathrooms to sex education—for a host of unrelated political and economic issues ([Herdt, 2009](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9119604/%22%20%5Cl%20%22R32); [Weeks, 1981](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9119604/#R79)). As Gayle Rubin has described, sex panics flare up at moments of great social and political stress, displacing anxieties of “no intrinsic connection” into erotic communities (1984, p. 163). Fueled by the media and stoked by enterprising public figures with something to gain from the controversy, sex panics demonize their “phony targets” in the public imagination, thereby justifying the expansion of state power into new arenas of intimate behavior ([Rubin, 1984](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9119604/#R63), p. 163).

On January 7, 2014, Nigeria’s former president, Goodluck Jonathan, signed the Same-Sex Marriage (Prohibition) Bill (SSMPA) into law. The notional purpose of the SSMPA is to prohibit marriage between persons of the same sex. Its scope is much wider. The law forbids any cohabitation between same-sex sexual partners and bans any “public show of same-sex amorous relationship.” The SSMPA imposes a *14*-year prison sentence on anyone who “registers, operates, or participates in gay clubs, societies, and organizations” or “supports” the activities of such organizations. Punishments are severe, ranging from 10 to 14 years in prison. Such provisions build on existing legislation in Nigeria but go much further: while the colonial-era criminal and penal codes outlawed sexual acts between members of the same sex, the SSMPA effectively criminalizes lesbian, gay, bisexual, and transgender (LGBT) persons based on sexual orientation and gender identity. While existing legislation already criminalizes consensual same-sex conduct in Nigeria, the reports found that the SSMPA, in many ways, officially authorizes abuses against LGBT people, effectively making a bad situation worse. The passage of the SSMPA was immediately followed by extensive media reports of high levels of violence, including mob attacks and extortion against LGBT people.

1. Was there a relationship between colonial laws and policies that created unequal treatment and power relations affecting LGBT persons, paving the way to intersecting forms of discrimination, exclusion, racism, xenophobia and related intolerance, patriarchy, and other forms of discrimination and oppression? How did these laws and policies impact persons with multiple and intersecting identities such as LGBT persons with disabilities, older LGBT persons, LGBT children, and LGBT persons of African descent, among others?

The youth generations fail to define its origins in their localities but just treat it as an imposed foreign concept. Perplexing, African traditions have been considered a central focus that if destroyed there would be a chance to attain gender equalities. Perhaps the imperative point to interrogate is the gender relations in African cultural practices before colonial onset. According to feminists and human rights activists, African cultural practices are the impetuses in the prevailing gender inequalities in Africa. The central argument for such a claim lies in the patronage that African culture offers to the dominance of patriarchal structures (African Feminist Forum, 2006). African women have been considered mundane in the economic production and prosperity of African communities since pre-colonial times (Kay, 1972). Thus far, the patriarchal system consistently smothered and unnoticed women’s roles in social existence. It is this conception, which created a continuous anathema against African cultural practices in thoughts of current African women in the continent associating the current woman’s social, political, economic, and cultural suffocates with the existence of African tradition. For this reason, the obliteration of African lifeways will pave the way for women’s success over the dominance of the patriarchal system in Africa. On the contrary, however, such conception becomes hardly hard to verify concerning African cultural traditions.

“We all share sexuality, with its capacity for erotic pleasure, fantasy, exploration, creation, and procreation, as well as for danger and abuse. We all share a body, with its capacity for health and well-being as well as disease, deterioration, violence, and death. The idea of dignity and rights in the body is powerful and can unify coalitions across groups that for too long have worked in fragmented ghettos”.

1. Have any laws, policies, psycho-social support, or legal remedies been put in place to recognize and provide reparations and redress for the legacy of colonialism in relation to the enjoyment of human rights? Do these take into account violence and discrimination based on sexual orientation and gender identity?

A Free and Inclusive Namibia: Celebrations and Challenges for the LGBTQI+ Community. Over the past few years, the fight for equality has been an arduous journey, but Namibia celebrated International Day Against Homophobia Biphobia and Transphobia (IDAHOBIT) with a massive shift in the legal landscape. In a [landmark judgment](https://www.namibian.com.na/supreme-court-gives-legal-status-to-same-sex-marriages/) handed down on Tuesday 16 May, the Supreme Court ruled that the marriages of two same-sex couples who married in South Africa and Germany, respectively, must be recognized in Namibia and that the non-Namibian partners in each marriage are considered the spouses of their Namibian partners under the country’s immigration law. This win symbolizes the direction the country is heading, towards equal human rights for the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community. The court ruling also reflects this year’s IDAHOBIT theme of “United in Diversity” for Namibian society.

Against this backdrop, Namibian LGBTQI+ activists taking part in UNDP’s [#WeBelongAfrica: Inclusive Governance Initiative](https://www.undp.org/africa/projects/webelongafrica) reflect on successes and continued challenges to create a free society with inclusive laws and policies for all citizens. While homosexuality itself is not illegal in Namibia, the common law criminalizes sodomy, which leads to harassment and marginalization of the LGBTQI+ community, in particular gay men and transgender women.

Similarly, the Combating of Immoral Practices Act 21 of 1980 prohibits “immoral acts” and public “indecent dress or manner”. This allows for the punishment of public displays of affection between men and harassment of transgender people. Namibian society is one step closer to being free and inclusive, and to fulfilling the promises of the Constitution. As Chief Justice Shivute writes in the Supreme Court judgment:

“Whilst public opinion expressed by the elected representatives in Parliament through legislation can be relevant in manifesting the views and aspirations of the Namibian people, the doctrine of the separation of powers upon which our Constitution is based means that it is ultimately for the court to determine the content and impact of constitutional values in fulfilling its constitutional mandate to protect fundamental rights entrenched in the Constitution”.

1. How, if at all, should reparatory justice for the lasting consequences of colonialism include measures to address discrimination and violence based on gender, gender identity, and sexual orientation?

Sexuality is an intrinsic part of being human and we should all be able to decide how we express our sexuality, sexual orientation, and gender identity. We should be free to decide whether and when we become pregnant and if, when, or who we marry. The ability to make decisions about our bodies, our sexuality, and reproduction is essential to human dignity, to the enjoyment of physical, emotional, mental, and social well-being, and to the realization of the full range of human rights. The criminalization of sexuality and reproduction around the world is a major barrier to the realization of our rights and denies millions of us our human dignity. Sometimes direct regulation through laws and policies is used to target our sexual and reproductive actions and decisions, such as criminal bans on abortion, sex outside marriage, or same-sex sexual conduct. At other times, indirect regulations use a range of criminal, civil, and religious laws and policies relating to public order or “morality” to police and punish sexual and reproductive choices or gender expression.