This Alien Legacy
The Origins of African “Sodomy” Laws
in British Colonialism

In a 2009 case before the India’s Delhi High Court, the home ministry argued that “objectively speaking there is no such tolerance to [the] practice of homosexuality/lesbianism in Indian society.” Arguments like this one suggest a curious brand of colonial amnesia. The section of the Indian Penal Code used to defend this ruling - Section 377 - at its origin, did not at all attempt to respond to Indian society’s moral architecture. Instead, British colonial governors imposed it on India undemocratically, reflecting the British Judeo-Christian values of the time.

While this law has since been declared unconstitutional in India, more than eighty other countries around the world still criminalize consensual homosexual conduct between consenting adults. More than half of these countries have these laws because they once were British colonies. In Africa, this list includes 17 countries: Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Nigeria, Seychelles, Sierra Leone, Somalia, Swaziland, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. The British brought in the legislation because they thought ‘native’ cultures did not punish ‘perverse’ sex harshly enough. In other words, the colonized needed compulsory re-education in sexual practices. Curiously after 40 years of liberation struggle, African judges, public figures, and political leaders have begun defending these imperial legacy laws as citadels of nationhood and cultural authenticity. Flipping history, they now claim that homosexuality was imported from the colonizing West, forgetting that the West brought in the first laws enabling governments to forbid and repress it.

Professor Makgoba (vice-chancellor of the University of KwaZulu-Natal and former head of the Medical Research Council) points out how African culture accepted male homosexual relationships long before Europeans colonised the continent. He points to ancient sePedi lexicons such as ‘matanyola’, signifying male/male sex. (See Cameron, E. (2005). Witness to AIDS. South Africa: Tafelberg. Page 83).
The history of colonial imposition of legal clauses against sodomy is connected to other laws and practices that strengthened the colonial state’s authority. In this spirit, laws did not just punish specific sexual acts, but helped control certain types of ‘dangerous people’.⁶

Between 1897 and 1902 administrators applied the Indian Penal Code in Britain’s African colonies. Evidence of the intentions of the law-makers is seen in the complaints from British residents about the undemocratic character of the codes that placed “white men under laws intended for a coloured population despotically governed.”⁷ This reaction from ex-patriot stems from the notion that these treatises saw sodomy as more than an offense against God. They classed it an offenses against ritual and social purity, involving defilement by the racial Other.⁸

African culture accepted male homosexual relationships long before Europeans colonised the continent. SePedi words such as ‘matanyola’, signify male-male sex. These provisions were part of a package, one that extended the ‘civilizing’ – and the targeting - of various ‘enemies’ within—Jews, lepers, heretics, witches, prostitutes, and “sodomites”—who threatened purity and carried contamination, and had to be cast out and controlled.⁹ In the colonies everything was racial and these laws were dreamed up to regulate the movements, and control the conduct of the non-white population. “Nomadic tribes are invariably addicted to crime,” one administrator wrote showing the obviously racist views held by these law-makers.¹⁰

African leaders have defended these colonial laws in both extreme and extraordinary ways. Various African leaders and officials have had the following to say:

- The practice [homosexuality] [is] “un-African” and “we as chiefs should fight against such western practices and respect our culture.”¹¹
- Homosexuality [is] “against African tradition and biblical teachings”.¹²
- “A decadent culture [...] being passed by Western nations,”¹³
- “Homosexual practice” is “clearly un-Biblical, unnatural, and definitely un-African.”
Furthermore, the colonial sodomy laws have begun to mutate into a muddle of theology and autonomy. In a 1999 Zambian verdict, the conclusive factor for a judge ruling on a charge that a man had oral sex with other men, was: the “Accused’s behaviour is alien to the African custom,” since “for behaving in the way he did, he implied God made a mistake [in] his distribution of functions.”

It remains a curious paradox why large numbers of countries that have emerged from colonialism have assumed and assimilated their sodomy laws as part of the nationalist rhetoric of the modern state.

An activist from Singapore writes: “It’s amazing” that millions of people “have so absorbed Victorian prudishness that even now, when their countries are independent— and they are all happy and proud they’re free from the yoke of the British—they stoutly defend these laws.” He concludes, “The sun may have set on the British Empire, but the Empire lives on.”

While removing the sodomy laws would affirm human rights and dignity, it would also repair historical wrongs, emancipating post-colonial legal systems from imported, autocratically imposed, and artificial inequalities.

For the full report please visit: http://www.hrw.org/node/77015

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AIDS Accountability Executive Summary by Gemma Oberth

Holding leaders accountable
AIDS Accountability International (AAI) is an independent non-profit organization established to increase accountability and inspire bolder leadership in the response to the AIDS epidemic. AAI does this by rating and comparing the degree to which public and private actors are fulfilling the commitments they have made to respond to the epidemic. Its assessments are presented in the form of Scorecards that identify gaps between stated commitments by governments and key actors, and their actual performance.

The Scorecard on LGBT is a project which analyses health data from UNAIDS as well as from AAI's own surveys in order to highlight problems with regards to HIV and AIDS that are being faced by people who are lesbian, gay, transgender, intersex and/or queer (LGBTIQ). Due to the lack of available data on sexually diverse people AAI has decided to conduct an International Survey on Transgender Issues and another Survey on Violence against LGBTIQs. More data and advocacy tools will be released in 2011 as part of the Scorecard on Sexual Diversity. The survey will continue into 2011 and civil society organisations working on HIV should contact Phillipa Tucker at: phillipa@aidsaccountability.org to participate.

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2 Human Rights Watch, 1.
3 Human Rights Watch, 4.
4 Human Rights Watch, 5.
5 Human Rights Watch, 6.
6 Human Rights Watch, 11.
7 Human Rights Watch, 21.
8 Human Rights Watch, 13.
9 Human Rights Watch, 14.
10 Human Rights Watch, 28.
11 Human Rights Watch, 9
12 Ibid.
13 Human Rights Watch, 4.
14 Human Rights Watch, 45
15 Ibid.
16 Human Rights Watch, 63.