

The Invention of Homophobia in Africa

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ABSTRACT

In this paper, I assert that the criminalization of homosexuality in Africa is a result of a co-construction process which has its roots during the colonial period. I emphasize that during the pre-colonial period, although heterosexuality was the socially recognized and accepted sexual norm as elsewhere in the world, same-sex sexual practices occurred on the continent and were practiced by several communities. Subsequently, even though it is now established that laws criminalizing homosexuality in many countries have their roots in the colonial period, this assertion must be nuanced. First of all, colonizer's sexual policies were not the same throughout the continent, but also even where repressive laws were enforced, homosexuality existed and the colonizer remained silent. Finally, new legal framework are the result of both colonial encounter and contemporary African agency.

Keywords: Africa, Colonialism, State homophobia, Law, Same, sex practices.

1 INTRODUCTION

Homosexuality remains a largely doomed practice in Africa. A little reminder of the political discourses on the subject for the last twenty years attests to this. In 1996, President Nujoma, while addressing students at the University of Namibia, said, "The Republic of Namibia does not allow homosexuality here. We will fight this with vigor. We will make sure that Namibia will get rid of lesbianism and homosexuality. . . Those who are practicing homosexuality in Namibia are destroying the nation. . . It is the devil at work"¹. In July 1998, President Yoweri Museveni from Uganda told reporters, "When I was in America some time ago, I saw a rally of 300,000 homosexuals. If you have a rally of 30 homosexuals here, I would disperse it"². "Museveni was further quoted in the state-owned newspaper New Vision as saying: " I have told the CID (Criminal Investigations Department) to look for homosexuals, lock them up, and charge them". The statement follows press reports (apparently false) of a marriage between two gay men in a suburb of Kampala³.

In September 1999, Daniel arap Moi, president of Kenya, announced: "It is not right that a man should go to another man. It is against African tradition and Biblical teachings. Kenyans against the dangers of the scourge"⁴. On August 25, 2014, the Gambia National Assembly passed the Criminal Code amendment. This Bill was introduced to the constitution - barring persons on government missions abroad from absconding, extending the law on homosexuality and prohibiting pornography. Robert Mugabe described individuals who engage in same sex relations as "worse than pigs and dogs" and has continued to describe homosexuality as "a scourge planted by the white man on a pure continent" [1]. Jacob Zuma, the former South-African president, for many years did not fail to amplify this feeling (Mail and Guardian 2006). Mr. Zuma, while still deputy president of the ruling African National Congress, declared that same-sex marriage was a "disgrace to the nation and to God," and that when he was growing up, a gay man would never have stood in front of him, as he would "knock him out" (Ismail and SAPA 2006). In 2016, Macky Sall, the president from Senegal during a rally declared: "We are not ready to decriminalize homosexuality"⁵. from a double process of ap-

¹ www.sodomylaws.org/world/namibia/nanews10.htm.

² www.iglhrc.org/site/iglhrc/section.php%3Fid%3D5%26detail%3D184.

³ Grace Bibala, "Homophobia Entails a High Economic Cost," www.nationaudio.com/News/EastAfrican/111099/Business/Business_Opinion0.html.

⁴ Reported in the East Africa Standard (September 30, 1999). Cited at www.mask.org.za/sections/AfricaPerCountry/kenya/kenya1.html.

⁵ https://www.dakaractu.com/Nous-ne-sommes-pas-prets-a-depenaliser-l-homosexualite-Macky-Sall_a46911.html

appropriation of the laws resulting from the metropolis and a reinterpretation at the local level.

2 PRECOLONIAL SAME-SEX SEXUALITY

One of the main idea about sexuality in Africa is that homosexuality did not exist on the continent [2]. For the Cameroonian anthropologist Severin Cecile Abega "Negro-Africans generally assimilate it with a form of witchcraft" [3]. Achille Mbembe develops the thesis of "original repression" of the homosexual relationship and its association with the occult power in the collective imagination of African societies [4]. Marc Epprecht describe a troubled silence or a strange consensus about same-sex relations on the continent [5]. Because, many studies have shown that at all times and at all periods, sexuality in Africa has been diverse and varied as elsewhere in the world [6]. Heterosexual relationships coexisted with same-sex sexual practices.

In precolonial societies, young boys had to have sex with women at a certain age. But in their socialization process, because they slept, played together, the older boys sometimes penetrated the younger ones. This was the case among the Bafia of Cameroon. The five or six year old bafia boy plays the passive role with a senior brother (Falk 1929 cité par [7]. Because the sexuality of girls was protected so that they could be virgins at the time of marriage, the first sexual experiences was happening between boys. These sexual behaviors were practiced in the majority of cases in secret and were not known by parents.

However, in some societies, same-sex sexual relations have been instituted and have not suffered from social repulsion. This is the case among the Mossi of West Africa [8]. In Cameroon, "Mevungu" among the Beti group and "Ko'o" (snail) among Bassa'a group lead to same-sex sexual contacts. The Mevungu, for example, marked among women "the celebration of the clitoris and feminine power" [9]. This rite "included dances that sometimes mimicked coitus and in which women initiated to menopause played the masculine role" [10].

Among the Pahuins in Central Africa, despite the fact that they had wives, young adults continued to have same-sex relations with young boys, without facing a social reprobation. This situation was sometimes described as a game ("bia bo pfianga" we have fun). But, it is important to emphasize that this type of behavior could also be perceived as witchcraft (Falk 1925: 168). One of the social expectations was when a young man reaches the age of 25, he takes a wife and they have children. Among the Ashanti in Côte d'Ivoire, slaves captured during a conquest were used as concubines. Thus, they became the sexual partners of the men of the kingdom. In Senegal, due to the absence of a female partner, male slaves had sexual encounters with each other, but they stopped this practice when they came into contact with a female partner. This was also the case among the Azande in Sudan (Evans-Pritchard 1929), among women in Lesotho [11].

Among the Fangs, same-sex sexual relationships were also perceived as one essential strategy to become wealthy. The

wealth is transmitted from the receptive partner (the pedicist) to the insertive partner (the pedicon) (Murray, Roscoe 2001: 142). Same-sex practices were also used during initiatory rites. In Togo, women who didn't want husbands who were socially attributed to them were forced to undergo an initiation rite called kpankpankwondi. This was the case among Moda girls in northern Togo (Ibid: 105).

Age was also a factor that could lead to sexual relationships between men. Young people could sometimes be forced to have sexual relationships with the older ones. Amongst the Mossi of Burkina-Faso, at the royal court, young people named Sorone were chosen among the most beautiful, between the age of seven and fifteen years old. Dressed in women's clothes, women's roles were attributed to them, including sex with the chiefs. This was done (sexual intercourse) on Friday, because that day any heterosexual relationship was socially prohibited. Once the Sorone had reached the majority, the chief gave them women "(Leboguo 2008).

In Angola, in the Quibanda ethnic group, sodomy was practiced by men and those involved in these practices were called: Quimbandas. They were men who dressed like women. The most prominent figure of this group was the high priest called Ganga-Ya-Chibanda, who kept his female clothes even during religious ceremonies. In Zambia, among the Mukanda (Murray and Roscoe 1998: 143) and the Kivai, sodomy was part of the initiatory process. Latter, it was even considered to help men to be more vigorous [12].

Like young boys who took part in erotic games marked by touching, it was also the case with young girls. It is a manipulation of the genitals through the elongation of the lips of the clitoris. These erotic games provoke excitement and can lead to sexual interactions. Bagnol emphasizes that: "With the passage of time they get excited and end up seducing each other and having sexual relations. This phenomenon is known as ocelana. They do this clandestinely, without their parents knowing" (1996 : 25). According to Harsch-Haack these practices were prevalent in several groups, including Hottentot, Namaqua, Waganda and Woloff (1975: 456-457; Arnfred 2004).

There were also cases where older women, or widows, married younger girls so that they could raise children for inheritance purposes. This practice appears to have been concentrated in South Sudan, South Africa, Kenya, Nigeria and Benin [13], 1951, Murray and Roscoe 1998; Morgan and [14], before being banned by colonial and postcolonial administration for disrupting the gender norms instituted by colonialism. Although several ethnologist and anthropologist have provided names for these practices, [14]: 299) prefers the term women marriage.

One of the elements to attest the presence of same-sex sexual practices in Africa before the colonial period is also the vocabulary used to address them. The words inkotshane among the Shangaan of southern Africa, motsaalle (to describe relationships among Basotho women), and gorgjigen among the Wolof in Senegal are just three examples of this [5], [11]; [7].

In Burundi, words in Kirundi were used to identify same-sex sexual practices. Thus we have: kuswerana nk'imbwa

(make love like dogs); kwitomba (to make love); kunonoka (literally, be flexible); kuranana inyuma. In Tanzania, passive anal penetration was called Kufirwa. Female same-sex relations are expressed through the term: Kulambana who comes from kulamba which means to lick, to lick each other and designate by deduction cunnilingus; Or another expression: kujitia mboo wa mpingo to introduce an ebony penis. Female same-sex sexual practices was widespread in almost all African societies where sexual relations between women could be encountered, such as among Hausa women in northern Nigeria. When they rub the genitals in Zanzibar, we talk about kusagana.

Thus, even if heterosexuality was the dominant sexual norm in precolonial Africa, there is no doubt that same-sex sexual practices were present on the continent and in some cases were features of social organization. It doesn't mean that they were accepted everywhere, but were more or less tolerated. Despite the presence of same-sex sexual practices, the social expectation for men and women was marriage. But, what is important to emphasize is that these practices didn't imply the same meaning as Western understanding. On the other hand, there was no category of the population whose sexual orientation constituted an identity. Hence the interest of a debate on the use of concepts.

3 CONCEPTUAL CLARIFICATIONS

Before continuing to develop the arguments defended in this article, it is important to make some conceptual clarifications aimed at making contemporary descriptions and labeling of same-sex relationships in Africa more comprehensible. For some ethnographers and anthropologists who have conducted studies on same-sex relations in Africa, they have always been situational, even contextual, and were not based on a binary conception of sexuality around heterosexuality and homosexuality (Morgan and [14] : 19). [15] discusses the notion of strategic agency to describe the diversity of sexual interactions based on time and age. This criticism does not only apply to pre-colonial and colonial periods, but also to the contemporary period. In Ghana, sexual relations among women don't lead to the development of a subculture, but unfolds in the form of secrecy [16].

The problem posed by these critics is the existence of a sexual category in Africa that can be linked to homosexuality, because these sexual practices don't refer to an identity and even less to a specific category of the population (Amory 1997). Even today, sexuality and sexual orientation tend to be fluid. For example, in Senegal, recent studies have shown that the majority of people engaged in same-sex relations shared also heterosexual relationships [17]. In the past, girls could engage in sexual practices that they would give up once when they would reach adulthood. Thus, even though they may be motivated by desire, same-sex practices doesn't necessarily imply a feeling of belonging and identification with a sexual category [18].

The term "homosexuality" is used today to refer to same-sex sexual relations. But it is a relatively recent term in the

usages that refers to a specific cultural experience and the transformations which occurred in Europe. Homosexuality, just like sexuality is an invention [19]. Despite the fact that since ancient times same-sex relations existed in Western societies, as elsewhere in the world, the term did not appear until the 19th century [20]. From this period, "Homosexuality moved from being a category to a psychosocial disposition" (Week 2000: 26).

As [21], "the sodomite had been a temporary aberration; The homosexual was now a species". One consequence of the invention of homosexuality in European societies has been the construction of an identity and the institutionalization of a category. The appearance of the homosexual was part of a more global dynamic of control of the population and definitions of social roles. McIntosh argues for this purpose: "The creation of a specialized, despised, and punished role of the homosexual keeps the bulk of society in the same way that the similar treatment of some kinds of criminals helps keep the rest of society law-abiding" [22]. It was this investment on the bodies and on population for purposes of regulation and control that will give rise according to Foucault to the figure of the homosexual. We didn't just witnessed the establishment of norms or the punishment of people perceived as deviant, but the construction of individuals in species or categories, the discovery of perversions, the consolidation of norms and the creation or organization of social control agencies [23].

For Ife Amaduime female-to-female marriage among the Nnobi Igbo should not be confused with lesbianism, arguing instead that support and cooperation between women, "do not imply lesbian sexual practice" [24]. Her criticism is an integral component of a well-established paradigm that seeks to correct, reinterpret, and reconstruct the imposition of Western ideas on African cultural experience, especially in the study of women and gender (Ibid; [25]. Indeed, David Greenberg's in *The Construction of Homosexuality*, remarks : "The kinds of sexual acts it is thought possible to perform, and the social identities that come to be attached to those who perform them, vary from one society to another " [26]. He pursues:

"Homosexuality is not a conceptual category everywhere. To us, it connotes symmetry between male-male and female-female relationships.... When used to characterize individuals, it implies that erotic attraction originates in a relatively stable, more or less exclusive attribute of the individual. Usually it connotes an exclusive orientation: the homosexual is not also heterosexual; the heterosexual is not also homosexual. Most non-Western societies make few of these assumptions. Distinctions of age, gender, and social status loom larger. The sexes are not necessarily conceived symmetrically " (Ibid : 3-4).

It therefore appears that the question of naming or categorizing is central to the construction of identity. From this perspective, the lesbian label – which refers to women involved in same-sex relationships – and the meaning attributed to it don't reflect how women understand their sexuality. Allotey notes:

"Can 'Western' labels be appropriately used in African contexts? Why do participants refuse such label? Is it for

the fear of being persecuted? It also raises the question of labeling sexual identities as individuals who do not fit into what is seen as 'normal heterosexuality' are seen as deviance. What is considered to be negative in the case of homosexuality "(Allotey 2015: 19).

But the problem of labeling is also linked to the understanding of sex. With regards to sexual practices in Africa, anything related to non-heterosexuality is not only regarded as taboo but also falls outside of what is deemed to be sexual. This is why in some societies homosexuality is perceived as being part of witchcraft [27]. Sexuality is essentially viewed as a practice that involves a heterosexual exchange. Kendall (1999) shows in her works that many young women involved in relationships and practices that are now described as lesbians do not consider it to be sex. They refuse to be locked into categories that are imposed on them. Sex is only regarded as the interaction between a penis and a vagina and therefore always denotes penetration between a man and a woman. These representations of sex give some credibility to discourses on the continent that describe homosexuality as an imported sexual practice, insofar the concerned themselves do not identify with this sexual category.

Despite this critical debate, even if there were no homosexual subcultures before colonization, this does not mean that there were no same-sex sexual encounters defined as homosexuality. We can therefore think that the term homosexuals makes it possible to give a meaning, a designation, to build a diffuse category but whose common point to all the differences is the erotic link maintained by two individuals. But we use the term homosexuality here to refer only to practices not identity.

3.1 Colonialism and same-sex practices in Africa

It appears that sexual practices in Africa were as diverse as varied prior colonization. Colonialism will transform sexual representations and practices in Africa. This enterprise will be undertaken through the construction of the figure of the other represent as a different human being, primitive and deviant, exposed to the civilizing mission in order to benefit from the progress of western civilization (Gesheker 1995; McClintock 1995; [28]. Thus, in the colonial scientific discourse, Africans are represented as good savages or beings with perverse customs [29]. Many missionaries, for example, described certain sexual practices as: insolent; obscene; extremely ugly; felonious crimes without impunity; indecent; detestable vices; copulations against nature; morbid eroticism etc. (Murray 2001: 7-9). Others perceived sexual relations between same-sex people in Africa as survivals of primitive sexuality [30]. In some cases, homosexuality in Africa in the eighteenth century is considered as non-existent. Eric Gibbon wrote: "I believe, and I hope that the Negroes, in their own country, were exempt from this moral plague" (Gibbon 1925). Transforming the sexuality of the colonized was part of the civilizing mission.

The western imaginary of sexuality is primarily a heterosexual fantasy. The discourse of eroticization of the colonial enterprise and sexualization of the black man's body can't

only be analyzed under the prism of "sub-eroticism" or the expression of a racial domination [31]. It is not a simple popular orientalism whose exoticism of the black continent stir the desire for discovery [32]. As Octave Mannoni wrote: "contrary to what one can believe before the analysis, it is oneself that we going to look far away: too close to oneself, one finds the others" [33]. The colonial enterprise aimed to inculcate to others the moral and sexual values of the European society.

The invisibility of same-sex sexual relations in Africa's early sexual discourse is both exotic but based on a desire to build virginity in Africa and a desire to remove it from perversions which occurred in European societies. For example, the case of Captain Sir Richard Burton. He traveled between 1821 and 1890 in Asia, America, the Middle East and Africa. Speaking of homosexuality, he describes from his point of view what he calls the "sodatic zone". That is, the places on the planet where pederasty or homosexual relationships could be practiced. He located this area in a band from 43 degrees north of the equator to 30 degrees in the south, which includes southern France, the Iberian Peninsula, Italy and Greece, as well as the north-eastern coast. North Africa, Asia Minor, Mesopotamia and Chaldea, Afghanistan, Sindh, Punjab and Kashmir, China, Japan, the South Sea Islands and the Americas [34]. These are the places on the planet where, according to Richard Burton, same-sex sexual relations were practiced. We note here that sub-Saharan Africa is absent from this description provided by Burton.

With colonialism, a heterosexist vision of Africa was constructed. Its extension can be analyzed today with the current discourses on homosexuality that make this practice a Western import [35]. The invention of Africa as a heterosexual continent is linked to the fact that the Western sexual imaginary from the nineteenth century is a heterosexual fantasy. In some Western countries, homosexuality was criminalized. Where there was no anti-sodomy law, homosexuals suffered from social illegitimacy. Accomplish the civilizational project was also related to the transmission of the values and sexual morality applied in Europe. Marc [5] informs us that :

"The word homophobia was coined in Europe in 1969 at the time of the emergence of the modern gay rights movement and the sharp political reactions against it in the United States. The attitudes and behaviours it describes, however, clearly existed long before this. Portugal, for example, produced crudely anti-homosexual literature in the 14th and 15th centuries. The Spanish Inquisition, from the 16th to 18th centuries, resulted in hundreds of executions for what was termed the nefarious sin....Hatred and fear of homosexuality is thus a very old, well-established part of European culture that was transplanted into Africa in sometimes sincere, and sometimes opportunistic ways".

It appears that it is not same-sex sexual practices that are Western import to Africa, but Legal Homophobia (Amchat 1993). "Unnatural fornication" between men and between people and animals was illegal in German colonies [36]. But after the First World War, the Germans leave their colonies

for the benefit of the British and French. "The Netherlands and Portugal likewise" enforced harsh laws couched in religious language against sodomy or "unnatural lust" during the colonization [37]. Many authors have recently highlighted the link between anti-homosexual laws in British colonies and postcolonial homophobia [38]; [39]; [40]; Asal 2013; Han and O'Mahoney 2014; [41]; [42]; "Making Love a Crime" 2013; Sanders 2009). Between 1897 and 1902 British administrators applied the Indian Penal Code in Britain's African colonies [43]. "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment ...for a term which may extend to 10 years, and shall be liable to fine".

However, this perspective hides some important aspects useful to explain the contemporary diversity of situations concerning homosexuals in Africa.

First of all, if in the British, Portuguese and Spanish colonies there were anti-homosexual laws, the situation is different in the French and Belgium colonies where same-sex sexual relations were not punished from a legal point of view. In 1791, the crime of sodomy had been banned in the French criminal law after the French Revolution. Homosexuals were therefore more free despite the fact that the population and social control agencies were hostile towards them [44]. This situation could explain the freedom they enjoyed in the colonies. If we take the case of Senegal for example, the anthropologist Geoffrey Gorer asserts that:

"It is said that homosexuality is recent among the Wolof, at any rate in any frequency; but it now receives, and has for some years received such extremely august and almost publicly exhibited patronage, that pathics are a common sight. They are called in Wolof men women, gor-digen, and do their best to deserve the epithet by their mannerisms, their dress and their make-up; some even dress their hair like women. They do not suffer in any way socially, though the Mohammedans refuse them religious burial; on the contrary they are sought after as the best conversationalists and the best dancers" [45]: 36, cité par Hayes 2016 (2009): 89)

These sexual practices were not just a concern for the colonized but also to the colonist. They were also found among French soldiers. This was the case in Algeria. Some were homosexuals [46]. Colonel Weygand, the son of a general and former legionnaire, testified that commanders had to turn a blind eye to what was happening between the legionnaires during the resting hours in the oasis of the desert (Ibid: 67). The absence of female partners and the climate is often suggested as the origin of homosexuality among the colonist [34].

Moreover, even where laws criminalize same-sex sexual practices were found, the repression was not systematic. People could maintain these relationships in secrecy while showing good appearance [47]. The attitude of the colonizer could be summed up in the phrase "do not ask do not tell". This situation is reinforced by the fact that the compulsory heterosexuality publicly locked men and women into marriage. Thus, an individual who publicly displayed his preference for a woman could maintain a homosexual relationship in secret without facing any problem. The marriage

served to conceal and deny (M'sibi 2011: 64). Men, therefore, have nothing to fear in that case, because they are going to get married. In this context social norms and male virility remain performed [47]. In his ethnographic survey of South Africa, [48] shows that arrangements existed between families to hide a child's homosexuality through a false marriage.

Other studies have shown that during the colonial period same-sex sexual relationships occurred in mines in southern Africa [49], [47], 1998b, 1999, 2001, 2004, [50]. Other miners and employers were informed. Young people had sex with older people and received gifts or wages from some employees (Epprecht 2001, [50]). Gender roles were established between the different partners. These relationships which could continue until marriage were called: inkotsane.

These examples inform us that we can't have a uniform vision of the role of colonization in the construction of homophobic societies in Africa. Because colonial policies were not the same across the continent. The absence of anti-homosexual laws gave more visibility to homosexuals in the French colonies. This is not the case in the British, Spanish or Portuguese colonies where laws against homosexuals were applied. However, even in the context of legal repression, same-sex sexual practices occurred. Settlers sometimes turned a blind eye to these practices if they could remain invisible without blurring the social equilibrium that was based on heterosexuality. We can't therefore refer to colonialism as the main source of homophobia in Africa.

4 CO-CONSTRUCTION OF HOMOPHOBIA IN POSTCOLONIAL AFRICA

Africa is regularly perceived as a homophobic continent (Awondo 2013). Same-sex relationships continue to be repressed in 33 countries in Africa. In a survey conducted between 2014 and 2015 in Africa, an average of 78% of respondents say they would "somewhat dislike" or "strongly dislike" having a homosexual neighbor (Afrobarometer 2016). Frequently, the media reports violence, harassment, assault, lynching and sometimes murder that homosexuals face on the continent (Amnesty International 2013). This situation favored the construction of a dominant discourse around a homophobic Africa. Yet the reality is more complex.

Regarding the criminalization of homosexuality in Africa, punishments are not the same across the continent. We have a high level of repression and a low level of repression. Thus, the sanctions are ranged from restriction/labour to the death penalty or the risk of imprisonment. But the majority of states have made the choice of imprisonment. The death penalty is applied in only four countries: Nigeria, Mauritania, Somalia and Sudan. In general, countries where same sex relationships are illegal are: Algeria, Angola, Botswana, Burundi, Cameroon, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe (Amnesty International 2018).

Table 1. On criminalization of homosexuality in Africa (2018)

Fines or restrictions or penal labour	Imprisonment of less than ten years	Imprisonment of ten years or more	Death penalty
Angola	Algeria	Ethiopia	Nigeria
	Botswana	Gambia	Mauritania
Mauritius	Burundi	Ghana	Sudan
Namibia	Cameroon	Kenya	Somalia
	Comoros	Libya	
	Egypt	Malawi	
	Eritrea		
	Guinea	Sierra Leone	
	Morocco	Swaziland	
	Senegal	Tanzania	
	Togo	Uganda	
	Tunisia	Zambia	
	Zimbabwe	South Sudan	
	Liberia		

This figure shows that the former territories colonized by Britain remain numerically those where homosexuality is most repressed by the laws (O'Mahoney, Han 2014). For several reasons, this finding can't lead us to conclude that British colonization has had a more negative effect on homosexuals in Africa. First, Ethiopia and Liberia, which criminalize homosexuality, have not been colonized. Afterwards, colonialism certainly appears to have set the stage for African homophobia, but fails to fully explain modern enactment of homophobic laws as well as modern forms of homophobia outside the scope of criminalization.

We already know that there is a strong link between the anti-sodomy laws introduced by British colonization and the criminalization of homosexuality in its former colonies [38], Gupta 2008, [40], Han and O'Mahoney 2014, [41], [42], "Making Love a Crime" 2013, Sanders 2009). But the texts currently enacted in these former colonies no longer correspond exactly to the laws applied during colonization. They have either been renewed or strengthened while homosexuality was no longer a crime in United Kingdom since 1967. For instance, several former British colonies, including Gambia, Ghana, Kenya, Nigeria, and Zimbabwe, have all adopted either new or revised legislation with prison sentences for homosexual behavior within the last years.

For example the case of the criminal code of Gambia adopted in 1965 is very illustrative. Homosexuality is defined as a carnal knowledge. Article 144 (1) states: "Any person who has carnal knowledge of any person against the order of nature; or has carnal knowledge of an animal; or permit any person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term of 14 years". In 2002, the text will be amended to introduce female homosexuality into criminal law. In 2014, this criminal law will be amended again. In its new version adopted in October, the notion of "aggravated homosexuality" is introduced. A person who commits the offense of aggravated homosexuality is liable on conviction to imprisonment for life.

The case of Nigeria is even more interesting. The federal law, adopted in 1990, speaks of acts against nature and emphasizes: "Any person who has carnal knowledge of any

person against the order of nature; or has carnal knowledge of an animal; or permits a male person to have carnal knowledge of him or her against the order of nature is guilty of a felony, and is liable to imprisonment for fourteen years." But the northern states have adopted Islamic law : Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000). In these states, homosexuals are sentenced to death penalty. In Nigeria, we have a legal pluralism in which, for a single offense, two types of punishment are applied to people found guilty. In January 2014, the Nigerian president signed a law passed by parliament that prohibits same-sex marriage.

The criminalization of homosexuality by governments of former French colonies must also be compared with the evolution of French criminal law. The criminalization of same-sex sexual practices appeared in 1942 in the criminal law promulgated by the Vichy regime.

Paragraph 1 of Article 344 of the French Penal Code, adopted in August 1942, stipulated:

"Will be punished with imprisonment from six months to three years and a fine of 2,000 FF to 6,000 FF: Whoever will have either to satisfy the passions of others, excited, favored or usually facilitated debauchery or corruption of youth of either sex under 21, either to satisfy their own passions, committed one or more shameless acts or unnatural with a minor of his sex under twenty-one years old".

It is from this date that the repression of the homosexuals will again be enforced in the French society after having disappeared since 1791. This paragraph 1 of the article 334 will be modified then moved to the paragraph 3 of the article 331 of the criminal law by Order 45-190 of 8 February 1945, in this form: "Will be punished by imprisonment from six months to three years and a fine of 60 FF to 15 000 FF who has committed an act of indecency or unnatural with an individual of his own sex under the age of twenty-one".

The analysis of the criminal law that criminalize same-sex sexual practices in the former French colonies shows that it is not only a circulation of ideas around homophobia, but also borrowing. This can be observed with the laws applied in Senegal and Cameroon to repress homosexuality.

Article 319 of the Senegalese Penal Code, adopted in 1965, states that:

"Without prejudice to the more serious penalties provided for by the preceding paragraphs or by articles 320 and 321 of the present Code, whoever will have committed act of indecency or unnatural with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 CFA. If the act was committed with a minor of 21 years, the maximum penalty will always be pronounced".

We can see that the text doesn't only reflect the qualifications of same-sex sexual relations that appear in the French criminal law of February 1945, in particular "indecency act"; "Unnatural act", but also the forms of punishment are the same (fines and imprisonment). Moreover, at the time of the adoption of the Senegalese criminal law in 1965, Mr. Khar N'dofene Diouf, Chairman and Rapporteur of the Committee on Legislation, Justice and General Administration and Rules of Procedure emphasized the influence of French criminal law during the debates in commission.

According to the Cameroonian criminal law, Paragraph 1, article 347 "Whoever who has sex with a person of his sex is punishable by imprisonment for six months to five years and a fine of 20,000 to 200,000 francs". If the act is not qualified like in the case of the Senegalese criminal law, the Cameroonian text is similar to the provisions of French criminal law. The impact of French colonialism in postcolonial societies on the homosexual issue can therefore be understood under the prism of legal mimicry. Aristotle teaches us that imitation is consubstantial with human nature: "man is different from other animals because he is more apt to imitate". René Girard postulates that imitation, rather than innovation, is the meaning of every man [51]. Thus, mimicry produces speeches or representations that can be altered, reworked or exaggerated. Legal homophobia appears then as a co-construction.

Beyond the differences observable in the analysis of sexual policies enforced during colonization in Africa, the common variable that applies to different contexts is the Roman origin of the arguments used to criminalize homosexuality. Indeed, a close look within the texts that criminalize homosexuality in Africa in almost all states allows us to observe that it is defined as an act against nature. This term, used by the British, French, Portuguese or Spanish appears under the Roman Empire in the New Testament. In Romans 1.26-27, Paul writes of women and men acting against nature by lusting after those of the same sex. This term was used to designate a set of sexual practices that didn't respect the Roman conception of sexuality based on status, sex and gender roles (Haskins 2014: 410). The absence of a clear definition in postcolonial legislation gives judges the choice to determine what constitutes an unnatural act or act of indecency. This ambiguity of the law is also a source of the controversy around the issue of decriminalization of homosexuality in Africa.

But this situation should not lead to forget that there are also 21 countries in Africa where homosexuality is legal: Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Congo-Brazzaville, Ivory Coast, Democratic

Republic of Congo, Djibouti, Equatorial Guinea, Gabon, Guinea-Bissau, Lesotho, Madagascar, Mali, Mozambique, Niger, Rwanda, Sao Tome and Principe, Seychelles, South Africa (Amnesty International 2018).

However, what must be emphasized, is the fact that decriminalization doesn't necessarily lead to a decrease in anti-homosexual sentiment. Changing the law doesn't mean transforming the heart and mind of a population. Despite the disappearance of anti-homosexual laws in South Africa, gays and lesbians regularly experience violence. A Pew Research Center poll conducted in 2007 measured global opinion about contemporary social issues among forty-seven thousand people in forty-seven countries, including eleven in North and sub-Saharan Africa. In nine of those eleven African publics, less than 5 percent felt that society should accept it [41]. Only in South Africa (28 percent) and Côte d'Ivoire (11 percent) showed more tolerant attitude despite the fact that homosexuality is legal in those countries.

5 CONCLUSION

The hegemonic discourse that tends to make Africa a monolithic block doesn't account the multiple forms that surround sexual practices on the continent since the pre-colonial period. Since the pre-colonial period, same-sex sexual practices have not been foreign to African societies. In spite of the fact that the laws used to punish homosexuals were introduced by colonization, first they didn't apply in all colonial empires and same-sex practices occurred even in a context of criminalization. The current criminalization is a result of a co-construction process. Then, it becomes imperative to build a nuanced discourse around homosexuality on the continent. The stigmatizing rhetoric that confers to Africa the monopoly of repression of homosexuals introduce the homosexual issue around the West / South binary logic. A scheme that requires to no longer limit the analysis of homophobia under the prism of the colonial heritage, but also to question the political, economic and diplomatic relations between the former colonies and metropolises. It becomes therefore important to insert the homosexual issue in the complex problematic of North / South relations.

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