



Shadow Report

By

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In Collaboration with

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Nigeria

**Human Rights Violations, Discriminatory Laws and Practices against Lesbian, Bisexual and
other Sexual Minority Women (LBSMW) in Nigeria**

Committee on the Elimination of all Forms of Discrimination against Women (CEDAW)

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1 EXECUTIVE SUMMARY

The Nigerian society is biased towards Lesbian, Bisexual, Transgender and other Sexual Minority Women based on their diverse sexual orientations. The Constitution of the Federal Republic of Nigeria (CFRN) states that no one should be discriminated based on their sex, gender, amongst other things. However, there have been diverse cases of discrimination and violations of human rights as result of sexual orientation and gender identity. The Same-sex Marriage Prohibition Act (SSMPA), 2014 and penal code criminalizes same sex relationships have aided infringement on various human rights of persons perceived to be lesbian, bisexual or trans women. This report is to show the discrepancies between the report submitted by the Nigerian Government and the reality of issues on ground.

LBTSMW face discrimination, violence and stigma by state and non-state actors. This has forced many LBTSMW to conceal their sexuality by entering bearded relationships which often lead to depression, suicide and other psychological issues. Also cases of extortion and blackmail have been reported. Other problems highlighted include infringement on freedom of association and expression and right to life.

All humans are entitled to freedom in the aspect of association and expression, live a life free of violence and discrimination. The laws of Nigeria should not only be in conformity with the supremacy of the CFRN but also with International treaties and should protect from discrimination based on sexual orientation and gender identity.

1.1 Recommendations

Nigeria must adopt legislative, judicial and administrative measures to ensure the respect, protection and the promotion of the rights of LBTSMW and to minimize all violations based on SOGIE. To this end, we recommend that the Nigerian Government:

1. Amend the federal Code and repeal sections that criminalize private, consensual, same-sex relationship and enforce the non-discrimination and equal protection enshrined in the 1999 CFRN as amended.
2. Reform or rescind provisions within the Same Sex Marriage (Prohibition) Act 2014
3. Enact laws that protect the human rights of all citizens irrespective of their SOGIE

4. Take action to end all violations against individuals based on their SOGIE and end impunity for individuals who violate the rights of LGBT people. These violations should be thoroughly investigated and perpetrators prosecuted.
5. Investigate and prosecute cases of sexual and gender based violence, especially which are directed at LBTSMW.
6. The proposed gender equality bill should reflect the rights of LBTSMW
7. Ensure that people involved in organizations that protect the human rights of LBTSMW are free from discrimination and violence.

2 ABBREVIATIONS

SSMPA: Same Sex Marriage Prohibition Act

LBTSMW: Lesbian, Bisexual, Transgender and other Sexual Minority Women.

LGBT: Lesbians, Gays, Bisexuals and Transgender

SOGIE: Sexual Orientation, Gender Identity and Expression

CEDAW: Convention on the Elimination of all Forms of Discrimination against Women

NHRC: The National Human Rights Commission

CFRN: Constitution of the Federal Republic of Nigeria

UDHR: Universal Declaration of Human Rights

ICCPR: Convention on the Elimination on all Forms of Discrimination against Women

3 ORGANISATIONS AND CONTACT DETAILS

3.1 Women's Health and Equal Rights (WHER) Initiative

Women's Health and Equal Rights (WHER) Initiative is a non-governmental, non-profit LBSMW led/focused organisation established in 2011 out of a strong desire to improve the situation faced by LBSMW women which are effects of homophobia patriarchy and sexism. WHER is focused on advancing and promoting the well-being and the rights of LBSMW women in Nigeria by addressing the health and psychosocial effect of dual stigma and marginalization of being women and also possessing sexual orientation that is contrary to Nigerian societal norms

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3.2 Queer Alliance

Queer Alliance Nigeria works to advocate for the human rights of sexual and gender minorities by supporting, promoting and enhancing knowledge on sexual diversity and gender justice aiming to the improve the lived realities of LGBT persons through policy advocacy, leadership development and research.

4 BACKGROUND

In Nigeria, there is a high level of social injustice and violations of the fundamental human rights of vulnerable groups, especially women. Women in general are disproportionately affected by poverty, HIV and AIDS, gender based violence, sexual and reproductive rights abuses and limited access to information and basic health and legal services.

Same sexual conduct and relationship is criminalized under the penal code under section 214¹ and 217², which is applicable in Northern Nigeria. Additionally, In January 2014, a reactionary new legislation was passed into law under the guise of the Same Sex Marriage Prohibition (SSMPA)³ which does not only criminalize same sex marriage but prohibit all forms of same sex relationship and provides penalty for organizations that support or sustain LGBT rights. Also all kinds of support and programming from associations and organisations that support them.

In the current political and social climate, politicians, religious leaders routinely use hate speech and scapegoat LGBT people. Lesbian, bisexual and other sexual minority women (LBTSMW) face the double stigma of being women and possessing a sexual orientation contrary to Nigerian societal norms and are even being newly singled out and targeted, for instance in the Kano state Penal Code as Amended (2015) section 284⁴, subsection (1) & (2) that explicitly criminalises lesbianism.

The situation of LBTSMW women is worsened by the social, traditional, religious and cultural restraints, which have a tremendous impact on these women's self-esteem, affects their physical and mental wellbeing, abilities to develop clear voices to advocate for their basic human rights and live to their full potential. Social stigma, discrimination, violence, extortion/blackmail and other human rights violations are routine and LBTSMW rarely report these violations and seek redress due to fear of state penalties, family rejection, and community recrimination. These abuses and stigma are perpetrated by state and non-state actors including family members, health care facilitators, educational institutions, religious institutions and in social settings etc.

¹ Nigerian Federal Criminal Code, Section 214

² Nigerian Federal Criminal Code, Section 217

³ Same Sex Marriage Prohibition Act (SSMPA), 2014

⁴ Kano State Penal Code as Amended (2015) Section 284

Additionally, open discussion of sexuality remains taboo in Nigeria hence there remains limited access to comprehensive sexuality education due to religious, cultural, and political opposition to this essential intervention leaving many Nigerians, especially young women, potentially vulnerable to coercion, abuse and exploitation, and sexually transmitted infections including HIV. Sexual minority women are at an additional disadvantage of obtaining sexuality information pertinent to them due to the societal stigma associated with same-sex sexual practice as well as the negative legal ramifications.

4.1 DISCRIMINATION

Article 1 of the convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) describes the term “discrimination against women” as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵ From the precedence of *Toonen vs. Australia* (1994)⁶, the Humans Rights committee referenced to sex as referred to in Article 2(1) and 26 to include sexual orientation and also stresses that laws that criminalize consensual homosexual acts clearly violates Article 17 of the International Covenant on Civil and Political Rights⁷ in relation to privacy protection. CEDAW expressed its concerns on criminalization of same-sex relations or LGBTI-related human rights activities, and recommended State parties to repeal relevant laws, on numerous occasions⁸. Nigeria ratified CEDAW in 1985, signed and ratified the optional protocol in 2000 and 2004 respectively. In addition to the CEDAW, the 1999 Constitution of Federal Republic of Nigeria as amended CFRN guarantees the fundamental rights to life⁹, the respect for the dignity of the person¹⁰, liberty¹¹, privacy¹², freedom of assembly and association¹³, and non-

⁵ Convention on the elimination of all forms of Discrimination against women, Adopted and opened for signature, ratification and accession by general assembly resolution 34/180 of 18 December 1979

⁶ *Australia, T.V., Toonen v. Australia.*

⁷ *V Australia, T., 1992. Communication No. 488/1992, UN Doc CCPR. C/50/D/488/1992 at [8.3].* Whilst this case concerned a breach of article 17 (1) in relation to privacy, these comments would apply equally to an arbitrary interference with family.

⁸ See, e.g.: CEDAW, Concluding Observations on Cameroon (2014, CEDAW/C/CMR/CO/4-5), India (2014, CEDAW/C/IND/CO/4-5), Gambia (2015, CEDAW/C/GMB/CO/4-5) and Malawi (2015, CEDAW/C/MWI/CO/7) on criminalisation of same-sex relations; Kyrgyzstan (2015, CEDAW/C/KGZ/CO/4) and Russia (2015, CEDAW/C/RUS/CO/8) on “anti-propaganda” laws.

⁹ *V Australia, T., 1992. Communication No. 488/1992, UN Doc CCPR. C/50/D/488/1992 at [8.3].* Whilst this case concerned a breach of article 17 (1) in relation to privacy, these comments would apply equally to an arbitrary interference with family.

¹⁰ The 1999 Constitution of Federal Republic of Nigeria as amended CFRN, Article 34

¹¹ The 1999 Constitution of Federal Republic of Nigeria as amended CFRN, Article 35

¹² The 1999 Constitution of Federal Republic of Nigeria as amended CFRN, Article 37

¹³ The 1999 Constitution of Federal Republic of Nigeria as amended CFRN, Article 40

discrimination¹⁴. Irrespective of all these enabling provisions, Nigeria has a number of laws and policies that discriminate against lesbian, bisexual, transgender and other sexual minority women (LBTSMW) on the basis of sexual orientation. Such laws include sections 214, 215 and 217 of the criminal code application in all southern states in Nigeria, and Section 284, 405, 407 and 408 of the penal code applicable in all northern states. In January 2014, a reactionary new legislation was passed into law under the guise of the Same Sex Marriage (Prohibition) Act, 2014 (SSMPA), which does not only criminalize same sex marriage but all forms of same sex relationship and also all kinds of support and programming from associations and organisations that support them. In 2015 the Kano state Penal Code amended, emphasising Section 284, Subsection (1) & (2), explicitly criminalising lesbianism. These laws not only violate fundamental protections guaranteed by the Constitution of Nigeria, which ensures independence for non-governmental organizations working for human rights, but contravenes the African Charter on Human and People's Rights, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international human rights treaties to which Nigeria is a party. The government of Nigeria has disregarded their obligations to these instruments by passing of these laws. They disregarded the recommendations made by the CEDAW special rapporteur expressing their concerns about the discrimination and inhuman treatment of LBT persons and also condemning these other international human rights treaties denouncing discrimination based on sexual orientation and gender identity¹⁵.

The lack of protection of the right to equality and non-discrimination for LBTSMW and enactment of repressive legislations such as the SSMPA and the amended penal code of Kano State has led to an increase in the level of violence against LBTSMW. The SSMPA has brought an increased discussion of sexual orientation and gender identity issues in the public, which have increased the number of threats and cruelty against LBTSMW communities in Nigeria from both state and non-state actors. These has led to arrests, rape, forced marriages, witch-hunts, blackmail and extortion and other forms of violations from state and non-state actors with impunity including their family which is usually the first source of support for women.

¹⁴ The 1999 Constitution of Federal Republic of Nigeria as amended CFRN, Article 32

¹⁵ As 2010 opens the African Women's Decade, marks the 30th anniversary of CEDAW, the 15th year since the Fourth World Conference on Women in Beijing, and the 5th anniversary since the entry into force of the Protocol to the African Charter on the Rights of Women in Africa, the Special Rapporteur on the Rights of Women is calling on all governments and stakeholders at all levels to take this opportunity to bridge the gap between policy and reality and ensure that they implement all the legal instruments relating to the promotion and protection of the rights of women, including the Solemn Declaration on Gender Equality in Africa, adopted in July 2004 by the Assembly of Heads of State and Government. <http://www.achpr.org/press/2010/03/d13/>

LBTSMW are often excluded within conventional interpretive and legal structure generated by the women's human rights society, where there is a basic notion of heterosexuality. This can be seen in the Gender Equality Bill still at the Nigeria National Assembly still awaiting passage into law which was canvassed for by women's human rights movement. LBTSMW in Nigeria face multiple discrimination, first as women and secondly on the basis of their sexual orientation or gender identity.

In April 2014, after the Same-sex marriage prohibition act was passed, in Oyo State, a young woman was threatened and forced by her family to get married or they will hand her over to the police. Her mother also threatened to kill herself if she does not get married. She conceded to their threats and blackmails and married this man who further extorted her of all her savings threatening to talk to the media about her sexual orientation. In one occasion, he beat her up and she ran back to her family who also sent her away to go back to her husband. She was blackmailed, extorted and rejected by her husband and her family. She refused to seek redress due to fear of being stigmatised, arrested and recriminated (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2014).

A 28-year-old lesbian who has served in the Nigerian Army for 12 years was dishonourably discharged as a result of her sexual orientation (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2017).

24-year-old transwoman had to quit her job based on the discrimination she was encountering as a result of her gender non-conforming appearance and behaviour. Her supervisor where she worked since 2012 began to complain about her effeminate looks and accused her of being "gay". He would grab her buttocks and tell her the only way to prove she was not gay was by bringing her girlfriend to work. He would fault everything she did even if she did her work well. When the abuse became unbearable, she stood up for herself and told her supervisor that her personal life was not her employer's business after which she was demoted from being a waiter to a steward which required her to do a lot of heavy lifting and washing. This caused her severe depression to the point of having suicidal thoughts and had to quit her job (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2017).

4.2 FREEDOM OF ASSOCIATION AND EXPRESSION

Article 7(c) of CEDAW state that “states parties shall take all appropriate measure to eliminates discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with the men, the right ... to participate in non-governmental organizations and associations concerned with the public and political life of the country”.

Section 40 of CFRN 1999 states that, ‘every person shall be entitled to assemble freely and associate with other persons...’ section 38 states that ‘every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas without interference

Section 4(1) and Section 5(2)(3) of SSMPA expressly violates freedom of association and expression of LBTSMW non-governmental organization and the members of the public that associates with LBTSMW, irrespective of the provisions of international instrument that Nigeria is a party to Article 7(c) of CEDAW and Article 19 of the Universal Declaration of Human Rights(UDHR) and article 19 of the International Covenant on Civil and Political rights (ICCPR) which guarantee everyone’s right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds regardless of frontiers and through any media including in the form of art. These instruments made by international bodies uphold human rights regardless of one’s sexual orientation, gender identity and/or expression. Organizations that serve the LGBTI community are targets to discrimination, harassment and violence.

At different occasions in 2014 and 2015, an LGBT organization was repeatedly harassed by the Nigerian police, performing unauthorized searches and in most cases disrupting programs (a case documented by International Center for Advocacy on Right to Health, 2015).

A situation analysis was conducted with minority organizations by a mainstream women's organization in 2016, although the findings stated how important it is to have interventions and programs designed for the LGBT community to help create a society that is more accommodating yet the participant and leadership of the study argued that Nigeria is not ready to include LGBT organizations in such projects (WHER staff that were present at the study experienced this firsthand).

4.3 RIGHT TO LIFE, LIBERTY, SECURITY AND FREEDOM FROM VIOLENCE¹⁶

Lesbians are often faced with a myriad of difficulties in a country like Nigeria where it is perceived that heterosexuality is the right way to go whereas homosexuality is seen as a sexual pervasion and not a way of life for consenting adults.

As a result of the high rates of homophobia in Nigeria and intolerance aimed at the LGBT people officially backed by the state through the Same Sex Marriage Prohibition Act (SSMPA), lesbians bisexuals, transgender and other sexual minority women are highly vulnerable to violence and are often endangered and in the path of risks.

Lesbian, bisexual, transgender and other sexual minority women are usually attacked and face mental and psychological instability from discrimination, pressure and threats from family and friends which in some cases make them suicidal. These women are sometimes beaten up, forced into marrying men, victims of corrective 'gang raping', humiliation and extortion from the police and these crimes go unchecked. Verbal abuse, taunts and name-calling gets thrown around on the streets.

Principle 4 of Yogyakarta principles¹⁷ states that: "Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity."

In the states of Kano and Katsina, under the Penal Code of Northern Nigeria, the punishment for committing the offence of lesbianism is stoning to death.

Principle 5 of Yogyakarta principles states that "Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group".

"A lesbian woman who is out to her family about her sexual orientation was physically assaulted by her elder brother at his house because he said "she wants to be a disgrace to the family." His beating caused her several injuries including a broken arm and significant

¹⁶ Articles 1, 2, 3, 8, 10 of CEDAW

¹⁷ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, available at: <http://www.yogyakartaprinciples.org>.

psychological trauma. Her brother had also threatened to kill her.” (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2017).

Article 12(1) (D) [3] states that “While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being, women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”

Aside general societal pressure on LBTSMW, community members keep silent about sexual abuse and rape and do not feel comfortable going for medical examination and reporting the case to state actors for fear of recrimination.

Due to the lack of efficient medical assistance for LBTSMW in Nigeria, a transwoman resulted to taking un-prescribed oral hormones which led to her experiencing some side effects that included muscle loss, pains in her right lower abdomen and lower chest which was as a result of fat and inflammation in her liver from the hormone therapy (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2017).

In 2015, a lesbian woman in Lagos was lured, robbed and raped by 3 men who also took pictures of her. She refused to bring charges because the perpetrators threatened to release these pictures online and report her sexuality to the police. The Nigerian police have never been on the side of LGBTI people that the idea of being arrested by the police after reporting a violation prevents LBTSMW from reporting violations. (a case documented by Women's Health and Equal Rights (WHER) Initiative, 2015).

4.4 Suggested Questions to the Government of Nigeria

1. Are you aware of cases of violence and threats against women based on their sexual orientation and gender identity or expression in your country? What measures have you taken to prosecute perpetrators of such violence?
2. Are you aware of cases of forced marriages of LBTSMW women or cases where LBTSMW women endure disapproval by the community, marginalized and face degrading treatments for not getting married?
3. What measures have you taken to ensure equal representation of women in policy advocacy?

4. What measure have you taken to repeal and/or promote laws and policies to promote the freedom, equality and justice for all Nigerian women including LBTSMW like SSMPA
5. What measures have you put up to eliminate practices and policies that perpetuate violence against women based on their perceived or actual sexual orientation and gender identity?

5 RECOMMENDATIONS

Nigeria must adopt legislative, judicial and administrative measures to ensure the respect, protection and the promotion of the rights of LBTSMW and to minimize all violations based on SOGIE. To this end, we recommend that the Nigerian Government:

1. Amend the federal Code and repeal sections that criminalize private, consensual, same-sex relationship and enforce the non-discrimination and equal protection enshrined in the 1999 CFRN as amended.
2. Reform or rescind provisions within the Same Sex Marriage (Prohibition) Act 2014
3. Enact laws that protect the human rights of all citizens irrespective of their SOGIE
4. Take action to end all violations against individuals based on their SOGIE and end impunity for individuals who violate the rights of LGBT people. These violations should be thoroughly investigated and perpetrators prosecuted.
5. Investigate and prosecute cases of sexual and gender based violence, especially which are directed at LBTSMW.
6. The proposed gender equality bill should reflect the rights of LBTSMW
7. Ensure that people involved in organizations that protect the human rights of LBTSMW are free from discrimination and violence.