

**A Shadow Report on Human Rights Violations Based on Sexual Orientation and Gender Identity in  
Nigeria**

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## 1. Introduction

This stakeholder report is a collaborative effort, led by Queer Alliance Nigeria (QA) in collaboration with the International Centre for Sexual Reproductive Health Rights (INCREASE), Development AID International, Women Health and Equal Rights, (WHER), Total Health and Empowerment Development Initiative (THEDI), Hope Alive Awareness Initiative (HAI), Interfaith Diversity Network, West Africa (IDNOWA) Bisi Alimi Foundation (BAF), Centre for the Right to Health (CRH), Access to Health and Rights Development Initiative (ARHDI), Access to Good Health Initiative (AGHI), Initiative for Improved Sexual Health and Rights (ISHRAI), Initiative for the Advancement of Improved Health and Development, (I-AIHD), International Centre for Advocacy on the Right to Health (ICARH), Interfaith Diversity Network, West Africa (IDNOWA), Initiative for Sexual Reproductive Health and Rights Awareness (ISRHRAI), Total Health and Empowerment Development Initiative (THEDI), with technical support from CHOICE for Youth and Sexuality in Amsterdam and the Sexual Rights Initiative, in Geneva. The report covers the period from 2014-2018; detailing progress as well as retrogressive measures adopted by the Federal Government of Nigeria, impacting the human rights of persons because of their perceived or actual sexual orientation and/or gender identity.

Since the last Universal Periodic Review of Nigeria in 2014, retrogressive laws such as the Same Sex Marriage Prohibition Act, 2014 (SSMPA)<sup>1</sup> as well as progressive legislations such as the Violence against Persons' Prohibition Act, 2015 (VAPP)<sup>2</sup>, the Anti-HIV Discrimination Act and the Anti-Torture Act, 2017<sup>3</sup> have been passed into law. In addition, the Gender and Equal Opportunities Bill passed through second reading in the Nigerian Senate but was rejected on grounds of sexual orientation and sex work<sup>4</sup>. Therefore, whilst there have been some considerable and commendable initiatives by the Nigerian government, violence, stigma and discrimination continue to affect the lived realities of persons who identify as lesbian, gay, bisexual and trans (LGBT). This report provides information on violations of human rights in four specific areas stemming from these retrogressive laws:

1. Violence based on perceived or real sexual orientation,
2. Violations of the Right to Privacy
3. Arbitrary Detention
4. Denial of Rights to freedom of Association and Peaceful Assembly

Whilst the report is not exhaustive, it illustrates the failure of the Nigerian government in protecting, fulfilling and respecting the human rights of its citizens, including LGBT citizens thereby contravening its obligations under international human rights law.

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<sup>1</sup> Same Sex Marriage Prohibition Act, 2014, [www.lawnigeria.com/LawsoftheFederation/Same-Sex-Marriage-Prohibition-Act,-2014.html](http://www.lawnigeria.com/LawsoftheFederation/Same-Sex-Marriage-Prohibition-Act,-2014.html)

<sup>2</sup> Violence against Persons Prohibition Act, 2015, [www.lawnigeria.com/LawsoftheFederation/Violation-Against-Persons-\(Prohibition\)-Act,2015.html](http://www.lawnigeria.com/LawsoftheFederation/Violation-Against-Persons-(Prohibition)-Act,2015.html)

<sup>3</sup> Anti-Torture Act, 2017, <http://lawnigeria.com/2018/01/2018-2016-laws-of-nigeria-enacted-by-the-8th-national-assembly/>

<sup>4</sup> Gender and Equal Opportunities Bill, <http://placng.org/wp/2016/09/gender-and-equal-opportunities-bill-scales-second-reading-in-senate/>

## 2. Legal and Social Context Analysis on LGBT Rights in Nigeria

Between 2015 and 2017, Nigeria has recorded some progress in addressing human rights protections for its citizens. This progress includes the signing into law of the Violence against Persons Prohibition (VAPP) Act, 2015, the Anti- HIV Discrimination Act and the Anti-Torture Act, 2017. Thus, it is commendable that the Nigerian government is working to ensure that its obligations to international human rights standards are upheld. However, within this terrain of laws that aim to ensure that human rights enable socio-political and economic development, there has been passage of retrogressive and draconian laws that makes it possible for some Nigerian citizens who identify as LGBT to experience violence and human rights violations with impunity. These new laws are reinforced by existing colonial era laws which regulate consensual same sex activities and religious based laws which provide capital punishment for the crime of homosexuality.

On January 7, 2014, the Nigerian government passed into law the Same Sex Marriage Prohibition Act, 2014 (SSMPA). The Same Sex Marriage Prohibition Act, 2014 defines marriage as a relationship between a man and a woman—Section 4 and 5 of the Same Sex Marriage Prohibition Act, 2014 criminalizes and penalizes public amorous relations directly and indirectly, as well as the support; sustenance or organizing on issues pertaining to LGBT rights, and witnessing, aiding or abetting on this issue. In practice, the Same Sex Marriage Prohibition Act, 2014 curtails fundamental rights to peaceful assembly and association, security of the person, freedom of expression and opinion and impact on the right to health of LGBT persons. It needs to be noted that there was never a time in the history of the country where same sex marriage has been publicly or privately advocated for by civil society or any other group

The Same Sex Marriage Prohibition Act, 2014 and Section 214-217 of the Criminal Code have a substantive negative impact on the lived socio-political and economic realities of persons who identify as LGBT in the country. Data collected by LGBT led organizations show that violence, illegal arrest, arbitrary detention, family rejections, infringement of privacy rights, inadequate access to sexual and reproductive health rights information and services, workplace discrimination, verbal assault, blackmail and extortion, police harassment, stigma and discrimination from healthcare providers and other violations of fundamental freedoms are daily occurrences in the lives of LGBT persons. In 2017, LGBT organizations recorded more than 250 cases of human rights abuses, perpetrated by both state and non-state actors<sup>5</sup>. In addition, a report published by Queer Alliance Nigeria details the impact of denial of the right to freedom of association and peaceful assembly and the right to security of the person on grounds of sexual orientation and gender identity<sup>6</sup>.

Public morality, traditions and culture have been used as a pretense to pass into law the Same Sex Marriage Prohibition Act and to violate the fundamental human rights of LGBT persons in Nigeria. The criminalization and penalization of consensual same sex relations between adults and the widespread violations related to this, demonstrate the deep-rooted aspects of homophobia, transphobia, patriarchy and legislative impunity that exists in Nigeria.

Whilst no international, regional or national courts have made rulings in regards to the constitutionality of the Same Sex Marriage Prohibition Act, 2014, a motion brought before a Federal High Court in Abuja in 2015 by

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<sup>5</sup> TIERS 2017, The Initiative for Equal Rights , 2017 Report on human rights violations based on sexual orientation and gender identity in Nigeria, [www.initiative4equality.org](http://www.initiative4equality.org)

<sup>6</sup> Queer Alliance Nigeria, 2017 Report on Freedom of Assembly and Peaceful Association and the Right to Security of the Person, [www.queeralliancenergia.wordpress.com](http://www.queeralliancenergia.wordpress.com)

Barrister Teriah Joseph Ebah on the Same Sex Marriage Prohibition Act was thrown out on grounds of locus standi<sup>7</sup>, in that the bearer of the suit was not affected by the said law and had no legal standing to challenge the Same Sex Marriage Prohibition Act before the Federal High Court. Thus, the first legal challenge to the constitutionality of the Same Sex Marriage Prohibition Act suffered set back on grounds that a non-gay man had filed the suit and was not affected by the provisions of the law. This dismissal of the suit by the court is in itself against the fundamentals of justice and the right of all Nigerians as equal before the law. The rejection of the case by the Federal High Court also defies the intersectionality and the indivisibility of human rights and derogates the right of individuals who are not members of a particular group to legally challenge the constitutionality of discriminatory provisions. This rejection can also be cited as future reference in other cases of litigation for constitutional rights brought before a court by an individual who is not a member of a particular group.

In protecting, fulfilling and respecting human rights for all its citizens without distinction of any kind, Nigeria's national laws must be in conformity with international human rights laws, which protect from all forms of discrimination, especially human rights treaties signed and ratified by Nigeria and especially in line with the provisions of the Chapter IV of 1999 Constitution as amended. Chapter IV of the Constitution of the Federal Republic of Nigeria provides for the right to life, privacy, health, association and peaceful assembly, dignity of the persons, equality before the law and other such fundamental freedoms as contained in the Universal Declaration of Human Rights.

The Violence against persons Prohibition Act, 2015, which cites sexuality as a protected ground from violence has not had substantive positive effects on the lived realities of LGBT persons who continue to experience mob justice and the perpetrators of violence against LGBT persons are not prosecuted in accordance with the provisions of the law. In addition, Section 37 of the Violence against Persons Prohibition Act, 2015, limits the applicability of the law to persons residing within the Federal Capital Territory only. Consequentially, punitive laws such as the Same sex Marriage Prohibition Act, 2014 and the 'offences against the order of nature', found in Section 214-217 of the Criminal Code of Nigeria has led to migration of LGBT youths to safer territories where discrimination and violence on grounds of sexual orientation and gender identity is prohibited by law.

Furthermore, the Nigerian Parliament refused to pass into law the Gender and Equal Opportunities Bill on grounds that it will promote lesbianism and prostitution<sup>8</sup>, a direct affront to women's human rights. The Gender and Equal Opportunities is a bill that aims to bridge the gap in gender inequalities whilst also addressing issues of discrimination based on gender in the workplace and other sectors of the Nigerian society. Therefore, the decision of the Nigerian parliament not to pass this bill into law on grounds of the promotion of lesbianism is discriminatory in itself towards women regardless of their sexual orientation. The citing of lesbianism and prostitution as a ground for the rejection of the Gender and Equal Opportunities Bill shows deep-rooted patriarchy and unhealthy masculinities are pervasive within the Nigeria context. Given that Nigeria is a signatory to the Convention on the Elimination of all forms of Discrimination against

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<sup>7</sup> Same Sex Marriage Prohibition Law suit thrown out on grounds of locus standi, <https://www.vanguardngr.com/2014/03/uk-based-nigerian-asks--to-court-declare-saex-marriage-law-unconstitutional-null-void/>

<sup>8</sup> Nigerian Parliament refuses Gender and Equal Opportunities Bill on grounds of promotion of lesbianism and prostitution. <https://www.premiumtimesng.com/regional/ssouth-east/201751-senators-fear-gender-equality-bill-will-turn-women-prostitute-lesbians-senator-abaribe.html>.

Women, the Gender and Equal Opportunities Bill is an essential means of ensuring that women's human rights are respected, protected and fulfilled at the national level.

The pervasive nature of violence based on perceived or real sexual orientation and gender identity prompted the African Commission on Human and Peoples' Rights to adopt Resolution 275<sup>9</sup> at its 55<sup>th</sup> Ordinary Session in Luanda, Angola, calling on state parties to the African Charter on Human and Peoples' Rights to put in place mechanisms that protect citizens from violence experienced as a result of sexual orientation and gender identity. The African Charter on Human and Peoples Rights is part of national laws<sup>10</sup>, domesticated through an Act of the Nigerian National Assembly as the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, and as such the resolution of the African Commission on Human and Peoples Rights admonish the Government of Federal Republic of Nigeria, to ensure that its citizens are protected from violence regardless of their sexual orientation and gender identity. This resolution of the African Commission was a milestone in the commitment of the Commission towards the fulfillment of its mandate without distinction of any kind. The Nigerian government has since taken a bold step in addressing violence against its citizens through the passage into law of the Violence against Persons' Prohibition Act, 2015, explicitly stating sexuality as a protected category. However, the continued existence of laws such as the Same Sex Marriage Prohibition Act and the Section 214-217 of the Criminal Penal Code are incompatible with the provisions of the Violence against Persons Act, 2015.

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<sup>9</sup> African Commission on Human and Peoples Rights, Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. <http://www.achpr.org/sessions/55th/resolutions/275>

<sup>10</sup> Laws of the Federation of Nigeria 1990, African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, <http://www.nigerialaw.org/African%20Charter%20on%20Human%20and%20Peoples'%20Rights.htm>

### 3. Problem Identification for Specific Issues

Chapter IV of the 1999 Constitution (as amended) of the Federal Republic of Nigeria<sup>11</sup> provides for the protection of fundamental rights for all citizens of Nigeria, without distinction of any kind. However, the Same Sex Marriage Prohibition Act, 2014 in addition to Section 214-217 of the Criminal Penal Code<sup>12</sup> and the Shari'a Penal Code<sup>13</sup> as practiced in 12 states of Northern Nigeria violate these fundamental rights. The coexistence of such provisions criminalizing consensual sexual relationships between adults and with progressive laws such as the Violence against Persons' Prohibition Act, 2015 – whose provisions protects from all forms of violence creates conflicts as to who is protected by these laws and the ability of LGBT citizens to seek redress for violence committed on the basis of sexual orientation and gender identity.

#### **Arbitrary Detention on grounds of perceived or real sexual orientation**

In April 2017, 53 men were arrested and detained illegally by men of the His'bah Police Force in the northern city of Kaduna on grounds of perceived homosexual behaviour<sup>14</sup>. The arrest took place during a social event which also doubled as an HIV prevention education forum. In July, 2017 more than 40 men were arrested and detained for more than two weeks by men of the Nigerian Police having been arrested at an HIV prevention outreach organized for key populations in Lagos<sup>15</sup>. According to court documents, the detained men were charged with the offence of “engaging in gay activities and permitting male persons to have carnal knowledge of them against the order of nature” punishable under Section 214(3) of the Criminal Code Cap C 38 of Laws of the Federal Republic of Nigeria. The detention of the men for more than two weeks contributed to a series of psychological trauma and backlash in which families rejected their sons and some of these men lost their means of livelihood due to insensitive media reports on the arrest.

Discriminatory laws such as section 214-217 of the Criminal Penal Code and the Same Sex Marriage Prohibition Act, 2014 have empowered the Nigerian Police and citizens alike to abuse the rights of persons based on their perceived or real sexual orientation and gender identity thereby having grave consequences on both their physical and mental health, especially in the areas of sexual reproductive health. Section 4(1) and 5(2) of the Same Sex Marriage Prohibition Act specifically outlaw the gathering, support, sustenance and proceedings of LGBT groups, which is critical to service provision in the areas of sexual reproductive health rights, most importantly HIV prevention for key affected populations. It also breeds an atmosphere of stigma and discrimination in that those mandated by the State to protect the security of citizens become perpetrators of violence and abuses and prevent reporting of violence experienced by LGBT persons to the police due to fear of further reprisals. More than 250 cases of human rights violations based on sexual orientation and gender identity, have been reported, spanning areas such as blackmail and extortion, mob justice, attacks, police brutality amongst others; 32 violations were committed by state actors, 168 by non-state actors and 10 by both state and non-state actors. Similarly, a human rights report released by Queer Alliance Nigeria details the impact of the denial and infringement on the right to association and peaceful assembly of LGBT persons in addition to right to security of the person. The passage into law of the Same Sex Marriage Prohibition Act,

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<sup>11</sup> 1999 Constitution of the Federal Republic of Nigeria as amended, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

<sup>12</sup> Section 214-217 of the Nigerian Criminal Code

<sup>13</sup> Sharia Penal Code of Northern Nigeria

<sup>14</sup> Police arrest 53 men for attending gay marriage in Zaria, <http://punchng.com/police-arrest-53-for-attending-gay-wedding-in-zaria/amp/>

<sup>15</sup> Police arrest 42 homosexuals in Lagos Hotel, <http://punchng.com/police-arrest-42-homosexuals-lagos-hotel>

2014, further exacerbate the plight of persons who identify as or are perceived to be LGBTI in a society where homophobia, violence and patriarchy are deeply rooted.

### **Violence based on perceived or real sexual orientation and gender identity**

Violence thus is a lived reality for persons whose sexual expression and gender identity does not conform to social norms. Discriminatory and retrogressive laws, such as the Same Sex Marriage Prohibition Act and provisions of Section 214-217 of the Criminal Code, which punish consensual same sex activities and relationships in private, empowers non-state actors, especially members of the community, to take up violence against persons perceived to be LGBTI. This is recorded in the case of mob justice against 14 men in the slum neighbourhood of Gishiri in Abuja, the Federal Capital Territory of Nigeria, two weeks after the passage into law of the Same Sex Marriage Prohibition Act, 2014 in January 2014<sup>16</sup>. These men were chased out of their homes in the middle of the night by armed community members who claimed they have been mandated by the President (ex-President Goodluck Jonathan) to fish out LGBTI persons from their communities. It should be noted that the claims attributed to the ex-President are based on the fact that he signed the Same Sex Marriage Prohibition Act into law.

As a grassroots community organization, Queer Alliance has also recorded brutal attacks on LGBT persons in the town of Ibusa, in Delta State where people pretend to be LGBT and lure unsuspecting persons to the town, attack these persons and cart away their valuables, further threatening their victims not to report the crimes to the Police<sup>17</sup>. The fear of further reprisals by officers of the Nigerian Police discourages reports of violence by LGBT persons to relevant authorities. These discriminatory legal provisions also empower officers of the Nigerian Police Force to clamp down, extort and blackmail persons who identify as or are perceived to be LGBT persons. Queer Alliance has also recorded one case in Warri, Delta State in which police officers conspired with members of the public to clamp down on LGBT persons, especially gay men. Additionally, Queer Alliance has documented cases in which gay men persons have been forced out of their neighbourhood due to violence perpetrated by members of the community.

Sexual violence, specifically against lesbian and bisexual women have been recorded and reported by LGBT persons since the passage of the Same Sex Marriage Prohibition Act, 2014. Interviews conducted by Human Rights Watch with persons who identify as lesbians and bisexual note the pervasive nature of sexual violence, licensed by these discriminatory laws in the city of Calabar, Cross-River and Kano in Northern Nigeria since the passage of the law. Gay men are also often targets of rape in addition to blackmail<sup>18</sup>. Verbal violence is also pervasive and has been used by traditional and religious leaders to create an atmosphere that breed violence against LGBT persons. In 2018, traditional rulers in Egor in Edo State, South-South Nigeria, rendered curses on LGBT persons within their enclave and gave orders for the police to fish out these persons, moving from house to house between the hours of 12midnight and 1am<sup>19</sup>. This sort of verbal assault

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<sup>16</sup>Mobs declare war and attack on gays in Abuja, <https://www.naijacenter.com/news/mobs-declare-war-attacks-gays-abuja/>

<sup>17</sup> Queer Alliance documented cases of attack on LGBT persons by hoodlums in the town of Ibusa, Delta State

<sup>18</sup> Human Rights Watch Report "Tell me where I can be Safe". The Impact of Nigeria's Same Sex Marriage Prohibition Act.

<sup>19</sup> Traditional ruler issues curses on LGBT persons in Edo State, <https://leadership.ng/2018/01/27/traditional-rulers-flay-homosexuality-gay-marriages>

breeds violence and creates an enabling environment for violence towards persons based on perceived sexual orientation.

The Violence against Persons Prohibition Act, 2015, which should be a tool for addressing violence without distinction of any kind, does not hold much water for LGBT persons; first on the grounds that the law which is only enforceable in the Federal Capital Territory and secondly the narrow definition of what sexuality is in a Nigerian context. Sexuality in the Nigerian context is seen as romantic physical attraction and relationship between opposite sexes. Any other form of expression outside this norm is seen as abnormal, hence sanctioned by law. This restricted definition of what sexuality is precludes the Violence against Persons law for serving as a tool to seek redress for violence committed towards LGBT persons by members of the general society.

Whilst it is commendable to note that the government has signed into law the Anti-Torture Bill, prohibiting and criminalizing torture as part of its obligations to the Convention against Torture and creating an Anti-Torture Commission, torture should not be narrowly defined but its scope broadened to include any practices; be it social, traditional or religious that inflict psychological pain and inhumane treatment on anyone based on perceived or real sexual orientation, gender identity and other characteristics. This is in line with that fact that persons who identify as or are perceived to be LGBT continue to be psychologically abused and their human rights violated by security officers, healthcare providers, family members, religious and traditional institutions conducting reparative therapy.

### **Invasion of Privacy**

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria as amended guarantees and protects the privacy of citizens, their homes, correspondence, telephone and telegraphic conversations. This is in line with Article 12 of the Universal Declaration of Human Rights and Article 17 (1,2) of the International Covenant on Civil and Political Rights, to which Nigeria is a signatory and has ratified. However, the Nigerian government through its state agency, the Nigerian Police, continuously violates the rights of its citizens, both LGBT and non-LGBT, through unlawful searching of their homes, phones and other personal belongings. This invasion of privacy has resulted in unlawful arrest and arbitrary detention of which extortion becomes the end result. Whilst the Inspector General of Police has given a notice to officers of the Nigerian Police Force to stop unwarranted searching of mobile phones of citizens<sup>20</sup>, low ranking officers of the Nigeria Police continue this practice unabated and where communication between two men or women insinuate sexual connotations, these persons are arbitrarily detained and extorted of their valuables before they are released.

A typical example of the invasion of privacy occurred on the 10<sup>th</sup> of May 2015, when more than 20 young men in their early twenties were arrested in Ibadan, Oyo State, Southwest Nigeria, at a birthday party which was held at the home of one of their friends. They were accused of organizing a gay party and initiating other young men into homosexuality. The suspects were unlawfully detained for more than 72 hours and eventually released after the police extorted a total sum of Two Hundred and Twenty-one Thousand Naira from these men as bail conditions. The arrested men were never tried in any court.

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<sup>20</sup> Inspector General of Police, Solomon Arase prohibits police officers from illegally accessing mobile phones, <https://www.vanguardngr.com/2016/01/igp-arase-prohibits-officers-from-illegally-accessing-mobile-phones/>



Intersex persons are also not spared the invasion of their privacy and their right to bodily integrity. In 2017, a street hawker who happens to be an intersex child was sexually abused by fellow street hawkers in Delta State. On hearing the case, some men of the Nigeria Police Force inhumanly exposed the genitalia of the intersex child and made a video of the child which went viral on social media. The child was tagged a witch and abnormal, leading to another set of human rights violations and public shaming. The impact of such inhumane treatment by members of the public, aided by the officers of the Nigeria Police is psychological trauma which has consequences on the physical, sexual and mental health of intersex persons. As a signatory to international and regional covenants, human dignity must be upheld for all Nigerians irrespective of their sexual orientation, gender identity and other biological characteristics.

## Health

Scientific research has evidenced the link between discrimination, retrogressive laws and the mental health of persons who identify as LGBT. These include suicidal ideations, post-traumatic stress disorder following violent experiences, and depression<sup>21</sup>. A research conducted by the Bisi Alimi Foundation in 2017 highlighted the consequences of homophobia, biphobia and transphobia on LGBT persons in Nigeria, especially on their mental and physical health<sup>22</sup>. Results from the research, which was conducted online amongst LGBT persons residing in Nigeria aged 18 years and above, indicates that LGBT people living in Nigeria scored low on life satisfaction. The results of the research also indicated that LGBT people experienced verbal assault from doctors or nurses and were told that their health problems were of their own making. This implicates on the overall health of LGBT persons. There is also a nexus between mental health and sexual health, especially in a climate where LGBT persons lack the necessary support and resources to ensure that their sexual health needs are met. A climate of repression, illegal arrest, arbitrary detention and stigmatizing attitudes have direct consequences on the increasing rates of new HIV infections, between LGBT persons. Consequently, this also has implications on the health of the general population, where due to pressure, stigma and discrimination, LGBT persons, specifically gay men, maintain heterosexual relationships.

The discriminatory legal and social landscapes in which LGBT persons live have consequences on access to sexual reproductive health services and information and its availability. Gay and bisexual men continue to bear a high burden of the HIV and other sexual transmitted infections<sup>23</sup>, in part because of the existence of these discriminatory laws and the government reluctance to ensure that comprehensive sexuality education is available to all young persons, including those who identify as LGBT persons. Although not active, Nigeria operates a Family Life Health Education in place of comprehensive sexuality education which does not address issues on sexual diversity, sexual orientation and gender identity. In 2010, the Federal Government of Nigeria approved the National Reproductive Health Policy<sup>24</sup> with the sole objective of ensuring availability and access to full sexual and reproductive health information and quality services, by seeking to address key issues including: low funding, inadequate human resources and lack of linkages between adolescent reproductive health (ARH) services and the regular health service delivery system, poor coordination of ARH at state levels together with quality issues in STI/HIV/AIDS services.

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<sup>21</sup> Burgess D, et al. 2007 Effects of perceived discrimination on the mental health and mental health services utilization among lesbian, bisexual and transgendered persons. *Journal of LGBT Health Res* 3 (4):1-14

<sup>22</sup> Not dancing to their music: The effects of homophobia, biophobia and transphobia on the lives of LGBTQ people in Nigeria *Mental Health of LGBT Persons' in Nigeria*, [www.bisialimifoundation.org/wp-content/uploads/2016/02/Not-dancing-to-their-music-main-copy.pdf](http://www.bisialimifoundation.org/wp-content/uploads/2016/02/Not-dancing-to-their-music-main-copy.pdf)

<sup>23</sup> Integrated Biological Behavioural Surveillance Survey. 2013. Federal Ministry of Health, Nigeria.

<sup>24</sup> Nigerian National Reproductive Health Policy, [www.riseuptogether.org/wp-content/uploads/2016/09/C4C\\_Nigeria\\_-National\\_Reproductive\\_Health\\_Policy.pdf](http://www.riseuptogether.org/wp-content/uploads/2016/09/C4C_Nigeria_-National_Reproductive_Health_Policy.pdf)

Within this ambit of key issues defined, access to comprehensive sexual reproductive health information and services lacks a rights-based approach to ensure that issues of sexual diversity are captured and that young persons who identify as LGBT have access to sexual reproductive health information that truly pertains to them. Moreover, the media landscape which could propel the dissemination of sexual health information is regulated by the Broadcasting Organization of Nigeria and does not include information that pertains to LGBT persons. This has contributed to a high burden of sexually transmitted infections and HIV amongst young persons who identify as gay or bisexual, especially out-of-school LGBT youths.

Budgetary allocation to health falls short of the internationally recommended standard of 15% of which allocation to young people sexual reproductive health services is inadequate<sup>25</sup>. In 2017, the national budget for health was 3.9% of the total budget<sup>26</sup>. With such budgetary allocations, the right to health and healthcare for all Nigerians is greatly affected. And in a climate of repression, retrogressive laws, violence, stigma and discrimination, provision for sexual reproductive health, especially for young persons' becomes harder.

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<sup>25</sup> Abuja Declaration, Recommended budgetary allocation to health, [http://www.who.int/healthsystems/publications/abuja\\_declaration/en/](http://www.who.int/healthsystems/publications/abuja_declaration/en/)

<sup>26</sup> National Budgetary allocation to Health, <http://www.healthnews.ng/heres-breakdown-nigerias-2018-budgetary-allocation-health/>

#### 4. Recommendations for Action

At the 4<sup>th</sup> and 17<sup>th</sup> sessions of the Human Rights Council, Nigeria rejected all recommendations related to sexual orientation and gender identity on the grounds of religion and public morality, stating that same-sex marriage is against its national values. To support the rejections, the PEW polling data was cited as it shows 92% of Nigerians support the Same-Sex Marriage Prohibition Bill passed by the Senate and House of Representatives and signed into law on 7th January 2014. The Nigerian government also claimed that sexual and gender minorities are not visible in Nigeria and that there are no officially registered association of gays and lesbians in the country. This is not true, especially on the grounds that LGBTI persons and organizations serving their interests have submitted and participated in public hearings on the Same Sex Marriage Prohibition Bill before it was assented to.

The recommendations provided to Nigeria were to modify and review all legislations and policies that institutionalized discrimination, stigma and fostered violence towards people based on their sexual orientation and gender identity; and to bring its national laws in line with the Optional Protocol 2 of the ICCPR<sup>27</sup>. Austria and Sweden gave recommendations to renounce the Same-Sex Marriage Bill, with a view to decriminalizing homosexuality and guaranteeing the universality of human rights, safeguard and protect the human rights of all its citizens irrespective of gender, age, sexual orientation, gender identity or religious affiliation. Austria further recommended addressing illegal detention and arbitrary arrest of persons on grounds of sexual orientation and gender identity and to release those held in prison on grounds of sexual orientation. Canada recommended that Nigeria should take active measures in ensuring that no legislations which discriminate between men and women and the enactment of legislation which prohibited violence against people based on sexual orientation.

Since the last review of Nigeria, the Same Sex Marriage Prohibition Bill has since become a law in addition to states such as Lagos State, passing the Lagos Same Sex Marriage Prohibition Law<sup>28</sup>. These laws have become a tool for various rights violations with impunity against LGBT Nigerians. The recommendations provided to Nigeria at the 4<sup>th</sup> and 17<sup>th</sup> Sessions of the Human Rights Council, if accepted, could have positively affected the sociopolitical and economic realities of LGBT persons and as such remain valid in ensuring that human rights are protected for all Nigerians irrespective of sexual orientation and gender identity. However, the distinction between the Lagos Same Sex Marriage Prohibition Law and the Federal Same Sex Marriage Prohibition Act is that whilst the Federal law curtails fundamental rights such as right to peaceful assembly and association and prohibits the support, sustenance and proceedings of LGBT persons and organizations serving their interest, the Lagos law is restricted to the prohibition of marriages between persons of the same and came into effect in 2007.

The willingness of Nigeria to reform its criminal laws and rescind discriminatory provisions on grounds of sexual orientation and gender identity is also a key question of the independence of the judiciary and the preparedness of the Executive and Legislative arms of government to bring its human rights laws in accordance with international standards. The implementation of these recommendations would serve as a catalyst towards the sociopolitical and economic development of the country. Human rights protection and human development are not mutually exclusive. No society will develop when discriminatory provisions which allow for human rights abuses with impunity continue to co-exist with a constitution that protects fundamental human rights without distinction of any kind. If these recommendations are accepted and

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<sup>27</sup> Recommendations to Nigeria at the 17<sup>th</sup> Session of the Human Rights Council

<sup>28</sup> Lagos Same Sex Marriage (Prohibition) Law, 2007

implemented by Nigeria, LGBT persons can report human rights violations and violence experienced on grounds of sexual orientation and gender identity to the police and other security agencies without fear of further reprisals.

Nigeria being a secular state without an official religion also needs to also ensure that religious based laws such as the provisions of the Sharia Penal Code of Northern Nigeria be brought in conformity with international human rights laws which protects from discrimination and prohibits the penalty of capital punishment for consensual sexual relationships and also the 1999 Constitution as amended. Nigeria's endorsement and ratification of the ICCPR, ICESCR, CEDAW, CRC and other international human rights treaties which protect from discrimination based on any grounds, including sexual orientation and gender identity, signifies that it is possible for these recommendations provided by member states of the United Nations to be fully implemented. These recommendations are not extraneous and are in line with the provisions of the Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria which guarantees fundamental freedoms for all Nigerians

Following on the recommendations provided at the 4<sup>th</sup> and 17<sup>th</sup> Session of the Human Rights Council, LGBT organizations whose names appear in this report recommend to the Government of the Federal Republic of Nigeria, as part of ensuring that human rights are protected, fulfilled and respected for all its citizens without recourse to sexual orientation and gender identity;

1. Review with the aim of repealing Section 214-217 of the Criminal Code, which criminalizes and penalizes consensual private same sex relationships between adults in addition to provision of the Sharia Penal Code of Northern Nigeria which enforces capital punishment for those convicted of the crime of homosexuality.
2. Ensure that the fundamental right to freedom of association and peaceful assembly is respected and protected for all Nigerians regardless of distinction of any kind in accordance with the Chapter IV of the 1999 Constitution and other international human rights treaties which Nigeria has signed and ratified, including the African Charter on Human and Peoples Rights which is domesticated as part of national laws.
3. Rescind Section 4, 5 and 6 of the Same Sex Marriage Prohibition Act, 2014 which denies the fundamental rights to freedom of association and peaceful assembly for LGBT persons and organizations working to serve their interests, in addition to the freedom of expression and opinion which interferes with the full enjoyment of all other fundamental freedoms contained with the 1999 Constitution as amended.
4. Expand the territorial scope of the Violence against Persons' Prohibition Act, 2015, especially Article 37, as part of ensuring that everyone in Nigeria and no matter their sexual orientation or gender identity can seek redress for violence with this instrument.
5. The Ministry of Health, National Agency for the Control of AIDS and other such agencies responsible for the health of Nigerians should take measures to ensure that young persons no matter their sexual orientation or gender identity have access to comprehensive sexuality education to enable

them take informed decisions on their sexual health in addition to providing resources that allow for the attainment of this.

6. In line with the Abuja Declaration, allocate 15% of the national budget to health in order to ensure adequate resources for the health and healthcare for all Nigerians without distinction of any kind, especially taking concerted efforts to ensure budgetary allocation for the sexual reproductive health rights of young people no matter their sexual orientation or gender identity.
7. Adopt measures to ensure that the recently signed Anti-Torture Act, 2016 prohibits psychological, physical and inhumane treatment of persons based on their sexual orientation and gender identity.
8. Ensure quick passage of the Gender and Equal Opportunities Bill, whose provisions are in line with the provisions of the Convention on the Elimination of all forms of Discrimination against Women.