

Nigeria: Same-Sex Marriage (Prohibition) Act, 2013

On 7 January 2014, Nigerian President Jonathan Goodluck signed his assent to the Same-Sex Marriage (Prohibition) Act, 2013 (**SSMPA**). Several elements of this legislation contravene Nigeria's Constitution as well as its binding international obligations, which guarantee fundamental rights to dignity, equality, non-discrimination, privacy, freedom from arbitrary arrest and detention and freedom of expression and association.

Under pre-existing law, Nigeria already criminalises consensual same-sex sexual activity in private which attracts a maximum penalty of 14 years imprisonment.¹

In addition to violating a number of fundamental human rights, the criminalisation of homosexuality has been recognised by experts as seriously impeding public health outcomes, in particular the prevention and treatment of HIV and AIDS.² Such laws hinder the effectiveness of strategies and measures designed to contain the HIV epidemic.

Same-Sex Marriage and Civil Unions

The SSMPA provides that:

- Only marriages³ contracted between a man and a woman shall be recognised as valid in Nigeria.⁴
- Any marriage contract or civil union⁵ entered into between persons of the same sex is prohibited.⁶

¹ *Criminal Code Act* (Chapter 77 Laws of the Federation of Nigeria 1990), s. 214 for 'carnal knowledge ... against the order of nature'. Acts of 'gross indecency' between males carry a maximum sentence of three years: *Criminal Code Act*, s. 352.

² Global Commission on HIV and the Law, *Final Report of the Global Commission on HIV and the Law*, 9 July 2012, pp 45, 48; Commonwealth Secretariat, *A Commonwealth of the People: Time for Urgent Reform*, Report of the Eminent Persons Group to Commonwealth Heads of Government, London, 2011, p. 100 and p. 102, Recommendation 60.

³ 'Marriage' is defined as 'a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law or Customary Law' (section 7).

⁴ Section 3.

⁵ 'Civil union' is defined as 'any arrangement between persons of the same sex to live together as sex partners, and shall include such descriptions as adult independent relationships, caring partnerships, civil partnerships, civil solidarity pacts, domestic partnerships, reciprocal beneficiary relationships, registered partnerships, significant relationships and stable unions' (section 7).

⁶ Section 1(1).

- A marriage contract or civil union entered into between persons of the same sex is invalid and illegal and shall not be recognised as entitled to benefits of a valid marriage.⁷
- Marriage contracts or civil unions entered into between persons of the same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefits accruing there from by virtue of the certificate shall not be enforced by any court of law in Nigeria.⁸
- Marriage or civil union entered into between persons of the same sex shall not be solemnised in any place of worship either Church or Mosque or any other place whatsoever called in Nigeria.⁹ No such certificate shall be valid in Nigeria.¹⁰

Other Prohibited Conduct

The SSMPA also criminalises a number of activities associated with homosexual identity, including free association through ‘gay’ organisations. This includes prohibitions on:

- Registering gay clubs, societies and organisations, and their sustenance, processions and meetings.¹¹
- Public showing of same sex amorous relationships directly or indirectly.¹²

Penalties

The penalties for engaging in the prohibited activities proscribed in the SSMPA are as follows:

Sec.	Offence	Maximum Penalty
5(1)	Entering into a same sex marriage contract or civil union.	14 years imprisonment
5(2)	Registering, operating, or participating in gay clubs, societies and organisations, or directly or indirectly making public show of a same sex amorous relationship in Nigeria.	10 years imprisonment
5(3)	Administering, witnessing, ¹³ abetting or aiding the solemnization of a same sex marriage or civil union, or	10 years

⁷ Section 1(2).

⁸ Section 1(3).

⁹ Section 2(1).

¹⁰ Section 2(2).

¹¹ Section 4(1).

¹² Section 4(2).

	supporting the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria.	imprisonment
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Implications

Problematically, the definition of the types of relationships regulated by the SSMPA is broader than mere marriage and could capture any type of committed, caring and emotional partnership of same sex people who happen to be living together. Thus, ‘same sex marriage’ is defined to mean ‘the coming together of persons of the same sex with the purpose of living together as husband and wife or *for other purposes of same sexual relationship*'; while ‘civil union’ is defined even more broadly to mean, in general, ‘any arrangement between persons of the same sex to live together as sex partners’. Any such unmarried couples may still fall foul of the prohibition and face up to 14 years imprisonment.

Anything amounting to mere indirect public demonstration of a ‘same sex amorous relationship’ is now criminalised. It is unclear how this would be enforced but it could conceivably encompass any form of touching between persons of the same sex including holding hands or hugging. The subjectivity of such a standard is likely to lead to further arbitrary arrests and detention. In going beyond sexual activity, this provision extends the criminalisation of sexual identity to a greater extent than ever before.

Most noticeably, the SSMPA will have a chilling effect on civil society by starving organisations of funding and other forms of support. Even providing services such as leasing premises to gay clubs, societies, organisations or for the purposes of processions or meetings could constitute a form of support that will run the risk of 10 years imprisonment. This is likely to have a seriously adverse impact on bodies dedicated to addressing the HIV/AIDS and other public health needs of sexual minorities.

Reactions

Office of the High Commissioner for Human Rights

The UN High Commissioner for Human Rights, Navi Pillay has denounced the SSMPA as ‘draconian’ for ‘making an already-bad situation much worse’ adding, ‘rarely have I seen a piece of legislation that in so few paragraphs directly violates so many basic, universal human rights’. As Pillay observes, the legislation:

purports to ban same-sex marriage ceremonies but in reality does much more. It turns anyone who takes part in, witnesses or helps organize a same sex marriage into a criminal. It punishes people for displaying any affection in public towards someone of the same sex. And in banning gay organizations it puts at risk the vital work of human rights defenders who speak up for the rights of lesbian, gay, bisexual, transgender (LGBT) and intersex people.

¹³ ‘Witness’ is defined as ‘a person who signs or witnesses the solemnisation of the marriage’ (section 7).

Pillay warns that the law ‘risks reinforcing existing prejudices towards members of the LGBT community, and may provoke an upsurge in violence and discrimination’.

The full statement by the High Commissioner may be viewed at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14169&LangID=E>

UNAIDS

According to the Joint UN Programme on HIV and AIDS (UNAIDS), Nigeria currently has the second largest HIV epidemic globally. In 2012, an estimated 3.4 million people were living with HIV in Nigeria. In 2010, national HIV prevalence in the country was estimated at 4 per cent among the general population and 17 per cent among men who have sex with men.

UNAIDS and the UN-backed Global Fund to Fight AIDS, Tuberculosis and Malaria have warned that the further criminalisation of LGBT people in other spheres of their lives under the SSMPA could lead to a further deterioration of the HIV epidemic in Nigeria.

UNAIDS Executive Director, Michel Sidibé, noted:

The provisions of the new law in Nigeria could lead to increased homophobia, discrimination, denial of HIV services and violence based on real or perceived sexual orientation and gender identity ... It could also be used against organizations working to provide HIV prevention and treatment services to LGBT people.

More on the response of UNAIDS to the SSMPA can be viewed at:

http://www.un.org/apps/news/story.asp?NewsID=46923&Cr=lesbian&Cr1=#.UyCpK1F_uy9