



## **PROTECTION AGAINST VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, IN RELATION TO THE HUMAN RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY**

### **(CONTEXT FOR NIGERIA AND SENEGAL)**

This report seeks to provide context and data-backed evidence on the state of violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly in Senegal and Nigeria, two West African countries CHEVS works in, as a regional LGBTIQ+ organisation.

### **BACKGROUND**

The principle of *interrelatedness* and *interdependence* of human rights underscores the interconnected nature of various rights. It highlights how violating one right can have cascading effects on others. Like for others, this is evident in the context of freedom of expression and association. The right to freely express one's thoughts and opinions and to associate with others is foundational to the functioning of a democratic society. When these rights are infringed upon, they reverberate across other human rights. For instance, restrictions on freedom of expression can limit the ability of individuals to participate in civic and political processes, hindering their right to engage in informed decision-making. Similarly, curbing the freedom of association can impede the formation of civil society organisations that play a crucial role in advocating, particularly for the rights of vulnerable groups. Infringements on these rights create a domino effect, compromising the broader tapestry of human rights and hampering the fulfilment of a just and equitable society. Recognising and safeguarding the interrelatedness of rights is essential for promoting a robust and inclusive human rights framework.

The succeeding sections of this submission demonstrate how restrictions imposed on freedom of expression and association have impacted the livelihood of sexual and gender minorities in West Africa by zeroing in on Nigeria and Senegal.

### **NIGERIA**

As amended, the 1999 Constitution of the Federal Republic of Nigeria guarantees and protects the fundamental rights of all persons in the country. These rights include rights to life,<sup>1</sup> respect for dignity,<sup>2</sup> liberty,<sup>3</sup> a fair hearing,<sup>4</sup> privacy,<sup>5</sup> freedom of assembly and association,<sup>6</sup> and non-discrimination.<sup>7</sup> The Nigerian Constitution also affirms honouring international law and fulfilling treaty obligations. This commitment aims to incorporate into

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<sup>1</sup> The Constitution of the Federal Republic of Nigeria 1999, (as amended) Section 33.

<sup>2</sup> Id., Section 34.

<sup>3</sup> Id., Section 35

<sup>4</sup> Id., Section 36

<sup>5</sup> Id., Section 37

<sup>6</sup> Id., Section 40

<sup>7</sup> Id., Section 42

the constitution the rights safeguarded by international conventions to which Nigeria is a party, aligning with its foreign policy objectives.

Nigeria is a signatory to the International Covenant on Civil and Political Rights (ICCPR). It has ratified several other international human rights treaties that directly impact its responsibilities in preventing human rights violations against the LGBT community. These include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its optional protocol, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC). These ratifications underscore Nigeria's commitment to upholding a comprehensive framework of international human rights standards, ensuring the protection of, and promotion of rights for all individuals, regardless of sexual orientation and gender identity.

Nigeria, as a signatory to the African Charter on Human and Peoples' Rights, is therefore bound by its obligations to the African Commission on Human and Peoples' Rights (ACmHPR). In 2014, the ACmHPR adopted Resolution 275, a groundbreaking measure that mandates the protection of all individuals, with a specific emphasis on safeguarding people from discrimination based on their sexual orientation and gender identity. Notably, the Commission expressed concerns about Nigeria's Same-Sex Marriage Prohibition Act (SSMPA) in its 2015 report, issued just a year after the enactment of the SSMPA 2014. The report highlighted the discriminatory nature of the SSMPA, emphasising its infringement on the rights of LGBTQI+ individuals in Nigeria.<sup>8</sup>

The SSMPA discriminates against LGBT+ persons by proscribing same-sex persons living together as civil partners, seeking to sanction unconstitutional invasion of privacy, religious and matrimonial discrimination, and so on.<sup>9</sup> Other such draconian legislation that violates the human rights of LGBTQI+ persons in Nigeria include the Criminal Law of Lagos State, 2011,<sup>10</sup> the Same Sex Marriage (Prohibition) Law 2007 of Lagos State, the Armed Forces Act,<sup>11</sup> Sharia Penal Code Laws applicable in Zamfara, Borno, Bauchi Gombe, Jigawa, Kebbi, Kaduna, Kano, Katsina, Niger, Sokoto, and Yobe states;<sup>12</sup> the Prostitution and Immoral Acts (Prohibition) Law of Kano State 2000;<sup>13</sup> and the Prostitution, Lesbianism, Homosexuality, Operation of Brothels and Other Sexual Immoralities (Prohibition) Law 2000 of Borno

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<sup>8</sup> African Commission on Human & People's Rights, Concluding Observations on the 5th Periodic Report of the Federal Republic of Nigeria, 23 November 2015, para. 81.

<sup>9</sup> In particular, see sections 2, 3, 4 and 5 of the SSMPA.

<sup>10</sup> Sections 134 and 136 criminalise 'indecent acts' and 'indecent practices' respectively.

<sup>11</sup> CAP A20 of the Laws of the Federation of Nigeria, 2004. The offences in this Act as in section 81 are similar to those criminalized in the Criminal and Penal Codes.

<sup>12</sup> These provisions/laws are enforced by the states morality police (Hisbah).

<sup>13</sup> This law targets sex workers, transgender persons and cross-dressers.

State.<sup>14</sup> Details of some of these provisions will be provided succinctly in the succeeding paragraphs.

In the Criminal Code, the pertinent provisions, particularly Section 214, proscribe acts of "carnal knowledge" against the order of nature, warranting a fourteen-year prison sentence, with a focus on sexual intercourse between men. Section 215 complements this by criminalising attempts to commit the offences delineated in Section 214. Together, these provisions establish a legal framework addressing specific aspects of consensual sexual activities, particularly within the context of same-sex relationships, and outline penalties for both the actual acts and attempted commission.

Section 217 of the Criminal Code Act expressly prohibits acts of "gross indecency" between men, as well as the procurement or attempted procurement of such acts. The stipulated penalty for violating this provision is three years of imprisonment. This section addresses specific instances of conduct deemed as grossly indecent within the context of male-to-male relationships, establishing a legal framework with associated consequences for those engaged in or attempting such acts.

Sharia law, as implemented in 12 northern states, criminalises same-sex intimacy between both men and women. This legal framework imposes prohibitions and penalties for engaging in same-sex relationships within the jurisdictions where Sharia law is in effect.

For instance, under the Zamfara Sharia Penal Code:

*Art. 130. Sodomy (**Liwat**) defined*

*Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy:*

*Provided that whoever is compelled by the use of force or threats or without his consent to commit the act of sodomy upon the person of another or be the subject of the act of sodomy, shall not be deemed to have committed the offence.*

*Art. 131. Punishment for Sodomy*

*Whoever commits the offence of sodomy shall be punished:-*

*(a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for the term*

*of one year; or*

*(b) if married with stoning to death (rajm).*

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<sup>14</sup> The Initiative for Equal Rights, 'Discriminating against persons based on their sexual orientation and gender identity in Nigeria – Bad Laws: A compendium on discriminatory laws'  
<https://theinitiativeforequalrights.org/wp-content/uploads/2017/12/Compendium-of-Law-.pdf>

*Art. 134. Lesbianism (Sihag) defined*

*Whoever being a woman engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of Lesbianism.*

*Art. 135. Punishment for Lesbianism*

*Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.*

According to the Prostitution and Immoral Acts (Prohibition) Law of Kano State, Section 9 specifies that any male person who conducts, behaves, or dresses in a manner that imitates the behavioural attitude of women commits an offence. Upon conviction, the individual may face a sentence of one year imprisonment, a fine of N10,000, or a combination of both penalties. Furthermore, in accordance with the Prostitution, Lesbianism, Homosexuality, Operation of Brothels, and Other Sexual Immoralities (Prohibition) Law of Borno State, Section 3 declares that any person engaging in prostitution, lesbianism, homosexual acts, or pimping within the State is committing an offence. Additionally, Section 7 of the law mandates the death penalty for individuals found guilty of engaging in sexual intercourse with another person of the same gender. Furthermore, Section 10 stipulates that anyone who screens, conceals, harbours, or accommodates a prostitute, lesbian, or homosexual person commits an offence and, upon conviction, is subject to imprisonment for one year or a fine of twenty-five thousand naira (N25,000.00), or both such fine and imprisonment. These provisions underscore the stringent legal stance in Borno State against activities perceived as sexually immoral, including same-sex relationships.

All the above-listed laws pale in comparison to the SSMPA 2014. The Same Sex Marriage (Prohibition) Act of 2013 was passed by Nigeria's National Assembly in December 2013 and officially signed into law by the Goodluck Jonathan led administration on the 7th of January, 2014. While the law's title specifically mentions '*Same-Sex Marriage*,' its scope extends beyond this focus. In addition to prohibiting same-sex marriage, the law encompasses provisions that state that;

(1)

1. A marriage contract or civil union entered into between persons of same sex:
  - a. Is prohibited in Nigeria; and
  - b. Shall not be recognized as entitled to the benefit of a valid marriage
2. A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.

(2)

1. A marriage contract or civil union entered into between persons of same sex shall not be solemnised in a church, mosque or any other place of worship in Nigeria.
2. No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.

(3)

Only a marriage contracted between a man and a woman shall be recognized as valid in Nigeria.

(4)

1. The Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.
2. The public show of same sex amorous relationships directly or indirectly is prohibited.

(5)

1. A person who enters into a same sex marriage contract or civil union commits an offence and is liable on conviction to a term of 14 years imprisonment.
2. A person who registers, operates or participates in gay clubs, societies and organisations, or directly or indirectly makes public show of same sex amorous relationship in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.
3. A person or group of persons who administers, witnesses, abets or aids the solemnization of a same sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.

In contrast to the preceding legislation identified above, the Same-Sex Marriage Prohibition Act (SSMPA) of 2014 takes a distinct approach by criminalizing not only same-sex marriage but also the registration and operation of organizations advocating for the rights of the LGBTIQI+ community. This legislation, in a manner unparalleled by others, egregiously infringes upon the fundamental right to freedom of association. The prohibition extends to the extent that even providing services, such as leasing premises to gay clubs, societies, organisations, or facilitating processions or meetings, is deemed a form of support that carries the severe consequence of up to 10 years of imprisonment.

This restrictive legal framework not only stifles the ability of LGBTIQI+ groups to openly organise and express their identities but also has far-reaching consequences for entities dedicated to addressing critical public health issues among sexual minorities and key populations, particularly concerning HIV/AIDS. The sweeping nature of these restrictions exacerbates the challenges faced by organisations striving to provide essential health services



and support to marginalised communities, perpetuating an environment of discrimination and hindering efforts to address pressing public health concerns.

The inability to register directly poses a significant impediment to the capacity of these organisations to secure funding, as registration often serves as a prerequisite for financial support from donor organisations. In response to this challenge, some of these organisations have adopted a strategic approach, concealing their target beneficiaries and opting to register simply as human rights organisations. By doing so, they convey a more generalised focus on human rights. This tactical registration method enables them to function within the legal confines imposed by the legislation while discreetly advancing their advocacy initiatives for the LGBTQI+ community.

Within a month of the signing of the Same-Sex Marriage Prohibition Act (SSMPA), an alarming incident unfolded in the Gishiri area of Abuja, marking a profound impact on LGBTQI+ individuals in Nigeria. A violent anti-gay attack occurred, orchestrated by a mob of assailants who asserted that their actions were aligned with the agenda set by President Goodluck Jonathan, purportedly aiming to eliminate homosexuality in the country.

LGBTQI+ individuals have routinely faced the threat of arrest and arrests. An illustrative incident occurred in August 2023, where a mass arrest of approximately 67 people took place in Ekpan town in southern Delta State, purportedly during an event labelled as a 'gay wedding' by authorities. Similarly, in 2018, 57 individuals were apprehended at a gathering, and 47 of them were subsequently charged and tried under the Same-Sex Marriage Prohibition Act (SSMPA). However, the case was eventually dismissed in 2020. These occurrences highlight the ongoing challenges and risks faced by the LGBTQI+ community in Nigeria, with instances of arrests and legal proceedings exacerbating the vulnerability of individuals under the repressive legal framework.

Since the passage of the Same-Sex Marriage Prohibition Act (SSMPA) in 2014, there has been a disturbing upward trend in human rights violations against LGBTQI+ individuals in Nigeria. The documented cases of such violations have surged significantly, escalating from 124 incidents in 2014 to 624 in 2021 and 568 in 2022. These distressing figures encompass a range of egregious offenses, including arbitrary arrests, instances of blackmail, extortion, coercive eviction, sexual assault, mob violence, and persistent harassment.

Freedom of expression faced a heightened threat in Nigeria with the House of Representatives' action on April 5, 2022, to ban cross-dressing in the country. This decision followed the presentation of a bill during the plenary session, sponsored by House member Umar Muda. The bill, read for the first time on the same day, aims to criminalise cross-dressing, whether conducted privately or publicly. According to the proposed legislation, individuals found guilty of cross-dressing could face a six-month prison sentence

or a fine of N500,000<sup>15</sup>. The bill further specifies that the offence is deemed to have occurred publicly if it is published or displayed, even if initially done privately or in a location considered private. However, the legislation includes an exception for cross-dressing during a stage play or any legitimate public entertainment.<sup>16</sup>

This bill did not progress to the enactment stage; nevertheless, the mere consideration of its passage sparked increased negative rhetoric and reinforced stereotypes about LGBTQI+ individuals, especially transgender persons, within the country. The mere discussion of such legislation likely intensified the already challenging environment for LGBTQI+ individuals. In a country where acts of violence against transgender persons often occur without thorough investigation or legal recourse, the heightened fear and vulnerability experienced by the LGBTQI+ community during this period are truly concerning.

## SENEGAL

Unlike Nigeria, Senegal does not have a law similar to the Same-Sex Marriage Prohibition Act (SSMPA) that explicitly makes it illegal to register LGBTQI+ organisations, however, the Civil and Commercial Obligations Code (1968), subject to amendments by Decrees No. 96-03 (1996) and No. 2015-145 (2015), governs the registration and functioning of NGOs. According to Article 812 of the Code, registration is denied when the purpose of the association is deemed "illegal" or if there are "serious and consistent presumptions" indicating that its formation is intended to violate public order<sup>17</sup>. It should be noted that in December 2021, a legislative proposal was put forth by a group of lawmakers aiming to amend Article 319 Paragraph of the Penal Code, seeking to criminalise individuals identifying as lesbian, gay, bisexual, transgender, and other related categories (LGBT+). The proposed amendment intended to increase the maximum sentence from 5 to 10 years. Additionally, it outlined penalties, including imprisonment for 3 to 5 years and/or a fine, for the "dissemination or financing of any activity related to the LGBT+ agenda." However, this bill was withdrawn a month later by a Parliamentary Committee before it reached the stage of being put to a vote.

While the registration of LGBTQI+ organisations in Senegal is not explicitly criminalised, same-sex sexual intercourse is criminalised in the country under the 1965 Penal Code.

*Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years*

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<sup>15</sup> Lawmaker seeks six months jail term, N500,000 fine for crossdressers in Nigeria. (2022, April 5). Channels Television.

<https://www.channelstv.com/2022/04/05/lawmaker-seeks-prohibition-of-crossdressing-in-nigeria/>

<sup>16</sup> Ibid.

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*and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied.”*

Recent years have seen significant instances of the enforcement of anti-LGBT laws, leading to frequent arrests and arbitrary detentions of individuals within the LGBT community, exposing them to the risk of torture. There are consistent reports of discrimination and violence targeting LGBT individuals, encompassing acts such as murder, assault, mob attacks, harassment, and threats.<sup>18</sup> From 2015 to 2023, more than 120 suspected members of the LGBT+ community have been arrested, experienced unwarranted home raids conducted by both state and non-state actors, and faced detention, public humiliation, and even lynching. In 2022, two individuals were convicted and sentenced to two years in prison.<sup>19</sup>

## **CONCLUSION**

In conclusion, as long as the criminalisation of LGBTIQ+ individuals exists in both countries, the human rights to freedom of expression, association and assembly will be violated. There is a need to hold both state governments responsible for human rights treaties they are signatories to, ensuring accountability by the decriminalization of existing anti-LGBTIQ+ laws which have far-reaching consequences and the protection of the rights and lives of LGBTIQ+ persons in their countries.

## **ABOUT CHEVS**

CHEVS is a hub for queer youth activism in West Africa. We mobilise, support, and amplify the voices and agency of young LGBTIQ+ persons, sex workers and organisations in the region, working collaboratively and intersectionally to build solidarity across the movement, closing the gap in youth leadership towards the realization of the rights and liberation of the communities we serve in West Africa.

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<sup>18</sup> *Senegal | Human Dignity Trust*. (2023, October 19). Human Dignity Trust. <https://www.humandignitytrust.org/country-profile/senegal/>

<sup>19</sup> *Senegal | Human Dignity Trust*. (2023, October 19). Human Dignity Trust. <https://www.humandignitytrust.org/country-profile/senegal/>