



“Tell Me Where I Can Be Safe”

The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act

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Map of Nigeria



Glossary

Bisexual:	Sexual orientation of a person who is sexually and romantically attracted to both men and women.
Gay:	Synonym in many parts of the world for homosexual; used here to refer to the sexual orientation of a man whose primary sexual and romantic attraction is toward other men.
Gender:	Social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers “masculine” or “feminine” conduct.
Gender identity:	A person’s internal, deeply felt sense of being female or male, both, or something other than female and male. A person’s gender identity does not necessarily correspond to the biological sex assigned at birth.
Homophobia:	Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.
Homosexual:	Sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.
Human rights defender:	A term used to describe people who, individually or with others, act to promote or protect human rights.
Key Populations / Key Populations at Higher Risk of HIV Exposure:	Those most likely to be exposed to HIV or to transmit it. In most settings, those at high risk of HIV exposure include men who have sex with men, transgender people, people who inject drugs, sex workers and their clients, and serodiscordant (couples in which one partner is HIV positive and one is HIV negative).

LGBT:	Lesbian, gay, bisexual, transgender; an inclusive term for groups and identities sometimes associated together as “sexual minorities.”
Lesbian:	Sexual orientation of a female whose primary sexual and romantic attraction is toward other females.
Member of the community:	A Nigerian term used by LGBT individuals and others to articulate their belonging to the LGBT community in Nigeria.
Men Who Have Sex With Men (MSM):	Men who have sexual relations with persons of the same sex, but may or may not identify themselves as gay or bisexual. MSM may or may not also have sexual relationships with women.
Sexual orientation:	The way a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same sex, the opposite sex, both or neither.
Sex Work:	The commercial exchange of sexual services between consenting adults.
Transgender:	The gender identity of people whose birth gender (which they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express given a choice). A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their preferred gender but may or may not desire to permanently alter their bodily characteristics in order to conform to their preferred gender.

Summary

Basically, because of this law [SSMPA] the police treat people in any way that they please. They torture, force people to confess, and when they hear about a gathering of men, they just head over to make arrests.

-Executive Director of an Abuja NGO, October 2015

Vigilante groups have added homosexuality to their “terms of reference.” These groups are organized by community members, given authorization by the community to maintain some sort of order and “security.”

-Executive Director of a Minna, Niger State NGO, October 2015

On January 7, 2014, Nigeria’s former president, Goodluck Jonathan, signed the Same-Sex Marriage (Prohibition) Bill (SSMPA) into law. The notional purpose of the SSMPA is to prohibit marriage between persons of the same sex. In reality, its scope is much wider. The law forbids any cohabitation between same-sex sexual partners and bans any “public show of same sex amorous relationship.” The SSMPA imposes a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies and organization” or “supports” the activities of such organizations. Punishments are severe, ranging from 10 to 14 years in prison. Such provisions build on existing legislation in Nigeria, but go much further: while the colonial-era criminal and penal codes outlawed sexual acts between members of the same sex, the SSMPA effectively criminalizes lesbian, gay, bisexual, and transgender (LGBT) persons based on sexual orientation and gender identity.

This report documents the human rights impact of the SSMPA on LGBT individuals and its effects on the activities of non-governmental organizations that provide services to LGBT people. This followed consultations with Nigeria-based LGBT activists and groups, and mainstream human rights organizations.

While existing legislation already criminalizes consensual same-sex conduct in Nigeria, the report found that the SSMPA, in many ways, officially authorizes abuses against LGBT people, effectively making a bad situation worse. The passage of the SSMPA was immediately followed by extensive media reports of high levels of violence, including mob attacks and extortion against LGBT people. Human rights groups and United Nations

officials expressed grave concern about the scope the law, its vague provisions, and the severity of punishments. On February 5, 2014, following the passage of the SSMPA, the Special Rapporteur on Human Rights Defenders in Africa noted with concern in a press release, “the increase in cases of physical violence, aggression, arbitrary detention and harassment of human rights defenders working on sexual minority issues.”

While Human Rights Watch found no evidence that any individual has been prosecuted or sentenced under the SSMPA, the report concludes that its impact appears to be far-reaching and severe. The heated public debate and heightened media interest in the law have made homosexuality more visible and LGBT people even more vulnerable than they already were. Many LGBT individuals interviewed by Human Rights Watch said that prior to the enactment of the SSMPA in January 2014, the general public objected to homosexuality primarily on the basis of religious beliefs and perceptions of what constitutes African culture and tradition. The law has become a tool being used by some police officers and members of the public to legitimize multiple human rights violations perpetrated against LGBT people. Such violations include torture, sexual violence, arbitrary detention, violations of due process rights, and extortion. Human Rights Watch research indicates that since January 2014, there have been rising incidents of mob violence, with groups of people gathering together and acting with a common intent of committing acts of violence against persons based on their real or perceived sexual orientation or gender identity.

For instance, in February 2014 in Gishiri village, Abuja, a group of approximately 50 people armed with machetes, clubs, whips, and metal wires dragged people from their homes and severely beat at least 14 men whom they suspected of being gay. Three victims told Human Rights Watch that their attackers chanted: “We are doing [President Goodluck] Jonathan’s work: cleansing the community of gays.” Another victim said that the attackers also shouted: “Jungle justice! No more gays!”

Arbitrary arrest and extortion by police is commonplace under the SSMPA. Interviewees in Ibadan and other places told Human Rights Watch that they had been detained by the police multiple times since the passage of the SSMPA. Human Rights Watch interviewed eight of the 21 young men who were arrested, but not charged, at a birthday party in Ibadan. They told Human Rights Watch that members of the public informed the police that gay men were gathered together and when police arrived and found a bag of condoms that belonged to an HIV peer educator, they were all arrested. They were held in police custody

for four days, and released, without charge, after paying bribes ranging from 10,000-25,000 Naira (approximately US\$32-64). These individuals said they had never been subjected to questioning, arrest, or detention prior to the enactment of this law. Individuals who have been arrested and detained are released on “bail,” usually after offering bribes to the police. Faced with 14 years’ imprisonment, several interviewees said they had little choice but to pay.

Lesbians and gay men interviewed by Human Rights Watch said that the law has had an insidious effect on individual self-expression. Since January 2014, several said that they had adopted self-censoring behavior by significantly and consciously altering their gender presentation to avoid detection or suspicion by members of the public and to avoid arrest and extortion. They told Human Rights Watch that this was not necessarily a major concern prior to the passage of the SSMPA. Lesbian and bisexual women in particular reported that fear of being perceived as “guilty by association” led them to avoid associating with other LGBT community members, increasing their isolation and, in some cases, eventually compelling them to marry an opposite-sex partner, have children, and conform to socially proscribed gender norms.

The SSMPA contributes significantly to a climate of impunity for crimes committed against LGBT people, including physical and sexual violence. LGBT victims of crime said the law inhibited them from reporting to authorities due to fear of exposure and arrest. “No way would we file a complaint,” Henry, a victim of mob violence in Lagos, said. “When it’s an LGBT issue, you can’t file a complaint.” Henry told Human Rights that the mob attack in June 2014 in Lagos was the first time that he had been a victim of violence because of his sexual orientation, and that prior to the SSMPA, he had no reason to file complaints with the police.

Interviewees, including representatives of mainstream human rights organizations, said the SSMPA has created opportunities for people to act out their homophobia with brutality and without fear of legal consequences. Under the auspices of the SSMPA, police have raided the offices of NGOs that provide legal and HIV services to LGBT communities. For example, shortly after the SSMPA passed in January 2014, police raided an HIV awareness meeting in Abuja and arrested 12 participants on suspicion of “promoting homosexuality.” They were detained in police custody, without charge, for three weeks, before paying a bribe of 100,000 Naira (approximately \$318) to secure their release.

Punitive legal environments, stigma, and discrimination based on sexual orientation and gender identity, together with high levels of physical, psychological, or sexual violence against gay men and other men who have sex with men (MSM), impedes sustainable national responses to HIV. When acts of violence are committed or condoned by officials or national authorities, including law enforcement officials, this leads to a climate of fear that fuels human rights violations and deters gay men and other MSM from seeking and adhering to HIV prevention, treatment, care, and support services.

The SSMPA contravenes basic tenets of the Nigerian Constitution, including respect for dignity and prohibition of torture. It also goes against several regional and international human rights treaties which Nigeria has ratified, including the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights. Human rights treaties impose legal obligations on Nigeria to prohibit discrimination; ensure equal protection of the law; respect and protect rights to freedom of association, expression, privacy, and the highest attainable standard of health; prevent arbitrary arrests and torture or cruel, degrading, and inhuman treatment; and exercise due diligence in protecting persons, including LGBT individuals, from all forms of violence, whether perpetrated by state or non-state actors.

In November 2015, the African Commission on Human and Peoples' Rights urged the Nigerian government to review the SSMPA in order to prohibit violence and discrimination on the basis of sexual orientation and gender identity and ensure access to HIV prevention, treatment, and care services for LGBT individuals.

Nigerian authorities should act swiftly to protect LGBT people from violence, whether committed by state or non-state actors. Law enforcement officials should stop all forms of abuse and violence against LGBT people, including arbitrary arrest and detention, torture in custody, and extortion, and without delay ensure that they are able to file criminal complaints against perpetrators.

The government of Nigeria, including the Ministry of Health and the National Agency for the Control of AIDS, should:

- Advocate for the repeal of the specific provisions of the SSMPA that criminalize the formation of and support to LGBT organizations;
- Promote effective measures to prevent discrimination on the basis of sexual orientation and gender identity in health care settings; and
- Ensure that key populations, including gay men, MSM, and transgender individuals have access to HIV services, care, and treatment.

The National Human Rights Commission should ensure that the Committee of Human Rights Experts, established in November 2015, mandated to compile a list of laws to be reviewed for compliance with human rights norms and standards, prioritizes the SSMPA for review. One of the key functions vested in national human rights institutions is to receive and investigate complaints of human rights abuses. In terms of the Human Rights Commission Act of 1995, as amended in 2010, the Commission enjoys quasi-judicial powers to summon persons, evidence, and to award compensation and enforce its decisions. The Commission should utilize this protective mandate to investigate human rights abuses committed against LGBT persons.

Recommendations

To the Government of Nigeria

- Investigate all claims of extortion, arbitrary arrests and detention, torture, and inhuman treatment by police officers and prosecute those responsible for human rights abuses against LGBT people.
- Publicly condemn all acts of violence, including mob attacks, committed by state and non-state actors on the basis of real or perceived sexual orientation and gender identity.
- Act with due diligence to protect LGBT individuals against human rights abuses, including by effectively implementing all appropriate laws, including the Violence Against Persons (Prohibition) Act, 2015, in order to prohibit and punish all forms of violence, including violence and human rights abuses committed on the basis of sexual orientation and gender identity.
- Review the Same-Sex Marriage (Prohibition) Act, 2014 with a view to creating an enabling environment for LGBT individuals, human rights defenders, and organizations to exercise their constitutional rights to freedom of association and expression.
- Elaborate and ensure the effective implementation of laws and policies in accordance with regional and international human rights treaties to which Nigeria is a state party.
- Invite the Special Mechanisms of the African Commission on Human and Peoples' Rights, in particular the Special Rapporteurs on Human Rights Defenders, and on Freedom of Expression and Access to Information, to conduct unrestricted visits to Nigeria.
- Ensure the effective implementation of all the recommendations contained in the Concluding Observations adopted at the 57th Ordinary Session of the African Commission on Human and Peoples' Rights, and in particular:
 - Review the Same-Sex Marriage (Prohibition) Act (SSMPA).
 - Adopt all necessary legislative and policy measures in order to protect LGBT individuals from violence and ensure that LGBT organizations exercise their constitutional rights to freedom of association and expression.

- Conduct a human rights-based review of the SSMPA in order to ensure the successful implementation of the recently adopted HIV and AIDS (Anti-Discrimination) Act, 2014 law and allow for non-discriminatory access to health care services for LGBT persons, in line with international guidelines and human rights obligations.
- Take all necessary measures to raise awareness about the African Charter on Human and Peoples' Rights and other human rights instruments among the Nigerian populace, including through its incorporation in the curricula of formal and vocational institutions, and through other informal civic education programs.
- In accordance with obligations under international human rights treaties, take all necessary measures to ensure the respect for and protection of human rights of LGBT persons in Nigeria.
- Adopt legislative measures to protect human rights defenders in conformity with the United Nations Declaration on Human Rights Defenders 1998 and the Commission's Resolutions on Human Rights Defenders including ACHPR/Resolution 69 (XXXV) 04, ACHPR/Resolution 119 (XXXXII) 07, and ACHPR/Res.196 (L) 11, and also create a forum for dialogue with civil society. In particular:
 - Take political, administrative, and legislative measures to ensure that human rights defenders working on sexual orientation and gender identity issues, including women human rights defenders, work in an enabling environment that is free of stigma, reprisals, or criminal prosecution as a result of their human rights protection activities.

To the Nigeria Police Force and the Ministry of Police Affairs

- Issue clear directives to Commissioners of Police and other senior police officers to ensure that the police do not engage in extortion, bribe-taking, and other corrupt acts on the basis of SSMPA, against LGBT individuals and other people.
- Ensure that the Human Rights Desks at Police Stations provide a safe environment for LGBT persons to report police abuses and that the complaints are processed and investigated without undue delay.

- Investigate in a prompt and thorough manner all law enforcement officials implicated in arbitrary arrests, extortion, torture in detention, and other human rights abuses of persons on the basis of sexual orientation and gender identity.
- Establish effective systems to record and investigate all acts of violence against LGBT persons.
- In collaboration with civil society organizations, implement rigorous training programs for police officers on the Nigerian Constitution and its applicability to LGBT people in Nigeria.
- Publicly condemn the police practice of using the SSMPA to extort LGBT people.
- Develop and implement appropriate awareness-raising interventions on the human rights of LGBT persons in Nigeria.

To the Federal Ministry of Health

- Ensure that training for all medical professionals and health care workers includes a component on discrimination and HIV issues affecting LGBT people.
- Ensure the effective implementation of and compliance with the HIV/AIDS (Anti-Discrimination) Act, 2014 that makes it illegal to discriminate against people based on their HIV status.
- Publicly condemn cases in which organizations, peer educators, and outreach workers providing services to LGBT people are targeted for arrest and extortion by the police or threatened with violence by members of the public.
- Advocate for the review of the SSMPA in order to improve access to HIV prevention and treatment services for LGBT people and MSM.

To the National Agency for the Control of AIDS

- Ensure the effective implementation of all the recommendations in the 2015 Report on the Legal Environment Assessment for HIV/AIDS Response in Nigeria.
- Establish sensitization programs for the Police, National Assembly, and members of the public on the provisions and implications of the SSMPA and the HIV/AIDS (Anti-Discrimination) Act, 2014.

- Conduct an independent nationwide study to assess the impact of the SSMPA particularly on the health-seeking behavior of gay men and MSM since January 2014.
- Ensure that training programs for employees of the Agency and other appropriate persons include a component on the prohibition of discrimination in HIV services for LGBT people.

To the National Human Rights Commission

- Instruct the Commission’s Committee of Human Rights Experts to include the SSMPA on its list of laws to be reviewed for consistency with the 1999 Constitution of the Federal Republic of Nigeria and regional and international human rights norms and standards.
- Develop plans and allocate adequate resources to ensure systematic documentation and monitoring of human rights violations associated with the SSMPA.
- Collect accurate sex-disaggregated data relating to acts of violence and discrimination due to real or perceived sexual orientation and gender identity.
- Investigate all human rights violations based on sexual orientation and gender identity in accordance with the protection mandate.
- Actively engage with LGBT human rights organizations in order to encourage LGBT persons to file complaints with the Commission.
- Act in accordance with its mandates to act as a source of human rights information for the government and the public, to raise awareness about the human rights impact of the SSMPA, and to receive and investigate complaints from LGBT individuals alleging human rights abuses committed against them.

To the African Commission on Human and Peoples’ Rights

- Ensure the Nigerian government’s compliance with obligations set out in the African Charter on Human and Peoples’ Rights and with recommendations set out in ACHPR Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity by:

- Engaging Nigeria in a constructive dialogue during the bi-annual ordinary sessions of the African Commission on progress, obstacles, plans, and other measures that have been adopted to ensure implementation of recommendations.
- In accordance with article 45(1) and as necessary, article 58 of the African Charter on Human and Peoples' Rights, conduct a country visit to Nigeria to promote human rights and investigate human rights violations, including human rights abuses of LGBT individuals.
- Work with stakeholders in Nigeria to institutionalize formal processes of dialogue with human rights defenders who work on sexual orientation and gender identity issues and develop concrete protection and monitoring mechanisms for national and regional levels.
- Ensure that special mechanisms integrate sexual orientation and gender identity issues in the execution of their mandates, including when adopting thematic and country-specific resolutions and elaborating thematic studies and reports.

Methodology

This report is based primarily on interviews conducted by Human Rights Watch researchers in Nigeria from October 2015 to November 2015, telephone interviews in December 2015 and March 2016, as well as interviews with Nigerian activists in Banjul, The Gambia in April 2016, during the course of the 58th Ordinary session of the African Commission on Human and Peoples' Rights.

In October and November 2015, Human Rights Watch conducted in-depth research in Nigeria to assess the human rights impact of the Same-Sex Marriage (Prohibition) Act, 2013 (SSMPA) on LGBT people and on Nigeria-based organizations that provide services to LGBT people or advocate for their rights. The research was conducted following extensive consultations with Nigeria-based LGBT activists and organizations.

While recognizing that existing legislation in Nigeria criminalizes consensual same-sex conduct, this report is strictly limited to the impact of the SSMPA. On the basis of extensive media reports and consultations with LGBT groups, it became clear that the enactment of the SSMPA was immediately followed by high levels of violence, including mob attacks, arbitrary arrests, and detention and extortion against LGBT people by some police officers and members of the public. This report finds that the SSMPA has exacerbated human rights abuses against LGBT people in Nigeria.

Human Rights Watch interviewed 73 Nigerians who identify as lesbian, gay, bisexual, or transgender (LGBT) as well as representatives of 15 Nigeria-based non-governmental organizations. In the course of conducting the research, interviewees would initially identify as a "member of the community" and with further clarification, identify as either gay or lesbian. We interviewed two persons who identify as transgender women and since we did not conduct any interviews with intersex persons, the acronym used throughout the report is LGBT.

Human Rights Watch conducted field research in Abuja, Lagos, and Ibadan, and interviewed activists working with LGBT people and on a range of other human rights issues, in particular access to HIV services and treatment, from Kano, Kaduna, Delta, Cross River, Zamfara, and Niger States. The cities were chosen based on the presence of non-

governmental organizations and community-based activists. Human Rights Watch worked with activists in Nigeria to identify relevant NGOs and their representatives, who in turn helped Human Rights Watch identify victims of violence in various Nigerian states.

Interviews were conducted in English and without interpreters. Participants were all informed of the purpose of the interview and they provided their consent orally. All interviews conducted in person were held in secure locations identified by the interviewee. Interviewees were not compensated, but we reimbursed transport costs, and the cost of a meal where necessary, to those who travelled from their homes to meet Human Rights Watch researchers. Interviewees from Kano, Cross River, Zamfara, and Niger States were reimbursed for transport costs and provided with overnight accommodation and meals. The report uses pseudonyms, unless otherwise noted, to protect interviewees against possible reprisals.

In addition to in-depth interviews with victims of human rights violations and NGO representatives, Human Rights Watch met with representatives of the National Agency for the Control of AIDS, the diplomatic community, and United Nations officials based in Abuja in order to gain a broader understanding of the impact of the SSMPA. The report draws from relevant published sources, including court decisions, reports of the African Commission on Human and Peoples' Rights, and United Nations documents as well as reports by other human rights organizations and, as relevant, academic articles.

On January 15, 2016, Human Rights Watch wrote to the Nigeria National Human Rights Commission (NHRC), providing a brief summary of preliminary research findings (Annex 3). In this correspondence we requested that the Committee of Human Rights Experts, established by the NHRC in November 2015, include the SSMPA on its list of laws to be reviewed for consistency with the Nigerian Constitution as well as regional and international human rights norms and standards. The Commission has not responded to our letter at time of writing.

On October 3, 2016, Human Rights Watch wrote to the NHRC to present an advance and embargoed draft copy of the relevant section of the report, to request an official response and to inquire whether the SSMPA is included in the list of laws for review (see Annex 4). On October 6, the Executive Director of the NHRC responded by email, confirming that the SSMPA is one of the laws he has “personally requested the Committee to specifically

consider” (see Annex 7). On October 3, 2016, Human Rights Watch wrote to officials in the Ministry of Police (see Annex 5) and the National Agency for the Control of AIDS (see Annex 6) to present an advance and embargoed draft copy of the relevant section of our report and to request an official response. The Ministry of Police and the National Agency for the Control of AIDS have not responded to our letters at time of writing.

I. Background

In March 2015, President Muhammadu Buhari was elected to a four-year term, replacing Goodluck Jonathan. The new administration is confronted with a multitude of profound human rights challenges, ranging from the conflict in the northeast between the militant group Boko Haram and Nigeria's security forces; the humanitarian crisis faced by 2.5 million internally displaced persons, particularly women and girls; and corruption and weak governance in public sector institutions, including in law enforcement and legislative frameworks.¹ The human rights abuses suffered by LGBT people in Nigeria following the enactment of the SSMPA must be understood within this broader context, and not in isolation from or as exception to other human rights violations.

According to the Nigeria Bureau of Statistics, the unemployment rate was recorded at 12.1 percent in the first quarter of 2016, or 9.485 million unemployed people.² Nigeria is a country in which religion plays a significant role in people's lives, including LGBT individuals. Christianity predominates in southern states and Islam in northern states. The country has the second highest burden of HIV in Africa; of all people living with HIV globally, 9 percent of them live in Nigeria. An estimated 3.2 million people are currently living with HIV.³ According to the Nigeria National Agency for the Control of AIDS (NACA), key affected populations (KAPs), which include men who have sex with men (MSM) and their partners, contribute 32 percent of new infections.⁴

The 1999 Constitution of the Federal Republic of Nigeria protects a range of fundamental rights, including respect for dignity of the person and prohibition of torture, inhuman, or degrading treatment; personal liberty; privacy; due process rights; and the rights to freely assemble and associate with other persons, including forming any association for the

¹ Human Rights Watch, *World Report 2016* (New York: Human Rights Watch, 2016), Nigeria chapter, <https://www.hrw.org/world-report/2016/country-chapters/nigeria>.

² "Nigeria Unemployment Rate, 2006-2016," Trading Economics, <http://www.tradingeconomics.com/nigeria/unemployment-rate> (accessed October 18, 2016).

³ National Agency for the Control of AIDS, "Ending the AIDS Epidemic in Nigeria by 2030: A Strategic Framework," The Presidential Summit on the Millennium Development Goals and the Post-2015 Agenda.

⁴ Ibid.

protection of one's interest.⁵ According to Section 15(2) of the Constitution, a citizen of Nigeria may not be discriminated against on the grounds of "place of origin, sex, religion, status, ethnic or linguistic association or ties."⁶

Sexual orientation and gender identity is not enumerated as a prohibited ground for discrimination in Nigeria's Constitution. The Human Rights Committee, the United Nations treaty body that monitors state parties' compliance with the International Covenant on Civil and Political Rights, in determining a case before it, confirmed that, "the reference to 'sex' in articles 2, paragraph 1 and 26 is to be taken as including sexual orientation."⁷ Nigeria has ratified several regional and international treaties that obligate it to respect and protect rights to freedom of association, expression, privacy, and the highest attainable standard of health; to prevent arbitrary arrests and torture; and to exercise due diligence in protecting persons, including LGBT individuals, from all forms of violence, whether perpetrated by state or non-state actors.

Two laws passed in 2015 are noted as positive developments in the context of the protection of LGBT persons in Nigeria, in the event that they are effectively implemented and without discrimination on the basis of sexual orientation and gender identity. On May 25, 2015, the National Assembly enacted the Violence against Persons (Prohibition) Act, 2015 (the Prohibition of Violence Act).⁸ The purpose of this law is "to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders."⁹ The law addresses and criminalizes the various forms of violence to which LGBT people in Nigeria are routinely subjected, including sexual violence, with its expanded definition of rape to include male rape. In March 2016, the Nigerian president signed into law the HIV/AIDS (Anti-Discrimination) Act, 2014. The purpose of this law is to prevent

⁵ Constitution of the Federal Republic of Nigeria, 1999, Chapter IV: Fundamental Rights, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

⁶ *Ibid.*, Chapter II: Fundamental Objectives and Directive Principles of State Policy, sec. 15(2).

⁷ Nicholas Toonen v. Australia, Human Rights Committee, 50th Sess., Communication no. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

⁸ Nigeria: Violence Against Persons (Prohibition) Act, 2015 (VAPP) [Nigeria], May 25, 2015, available at <http://www.refworld.org/docid/556d5eb14.html> (accessed July 7, 2016).

⁹ *Ibid.*

discrimination based on real or perceived HIV status and to ensure access to health care and other services to everyone, presumably including LGBT people.¹⁰

The Same-Sex Marriage (Prohibition) Act, 2013 was introduced into a legal context that already criminalized consensual adult same-sex conduct. The Nigeria Criminal Code Act of 1990, with origins in the colonial era, contains provisions dealing with Offences against Morality committed by men that carry terms of imprisonment of up to 14 years.¹¹ The Sharia Penal code adopted by several northern Nigerian states prohibits and punishes sexual activities between persons of the same sex, with the maximum penalty for men being death by stoning, and for women, whipping and/or imprisonment.¹²

This report does not document arrests or prosecutions under the Criminal Code or Sharia Penal Code. In 2011, some Nigerian human rights organizations, in collaboration with their regional and international partners, submitted a Shadow Report to the African Commission on Human and Peoples' Rights documenting instances of arrests and prosecution in Sharia Courts, particularly in Bauchi and Kaduna, and other human rights abuses on the basis of sexual orientation and gender identity in other parts of the country.¹³ Representatives of LGBT organizations and other individuals told Human Rights Watch that while there were arrests and human rights abuses prior to January 2014, there was a noticeable increase, after the enactment of the SSMPA, in violence and extortion by police and members of the public.

¹⁰ HIV/AIDS (Anti-Discrimination) Act, 2014 (Nigeria).

¹¹ Criminal Code Act, Chapter 77: Laws of the Federal Republic of Nigeria, 1990; Chapter 21: Offences against Morality. See Human Rights Watch, *This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism*, December 17, 2008, <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>, p. 59-63. The report does not address the impact of criminalization of consensual adult same-sex activity or relations in Nigeria under the Criminal Code or Sharia Law. The research, documentation, and analysis is strictly confined to the negative human rights impacts of the SSMPA.

¹² Penal Code (Northern States) Federal Provisions Act 1959, sec. 130 – sodomy (Liwat), sec. 134 – lesbianism (Sihaq), available at <https://76crimes.com/anti-lgbt-laws-nigeria/>. See: Philip Ostien, *Sharia Implementation in Northern Nigeria (1999-2006) A sourcebook*, vol. III: Sanitizing Society, available at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>. Nigeria is a federation of 36 states. While there is no recognized boundary between the north and south, the northern part of Nigeria is predominantly Muslim, and the south Christian. Northern Nigeria has a separate Penal Code. Twelve states have adopted Shari'a into their criminal legislation: Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara, with Shari'a courts enjoying jurisdiction to prosecute criminal cases. For a further discussion and analysis, see Human Rights Watch, *"Political Shari'a"? Human Rights and Islamic Law in Northern Nigeria*, September 21, 2004, <https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria>.

¹³ "The Violations of Human Rights on the Basis of Sexual Orientation and Gender Identity in the Federal Republic of Nigeria under the African Charter of Human and Peoples' Rights, A Shadow Report," October 2011, available at https://www.heartlandalliance.org/gihr/wp-content/uploads/sites/12/2016/02/achpr_nigeria.pdf.

First introduced in March 2006, the Same-Sex Marriage (Prohibition) Bill was met with strong opposition from domestic, regional, and international human rights groups—including United Nations officials, the African Commission on Human and Peoples’ Rights, and domestic and international human rights organizations—which predicted it would lead to arbitrary arrests, extortion, and marginalization of the already stigmatized LGBT population.¹⁴

During the Universal Periodic Review (UPR) process at the UN Human Rights Council¹⁵ on October 22, 2013, Nigeria rejected recommendations to revise laws discriminating against LGBT persons, enact legislation to prevent violence against people based on sexual orientation, and refrain from signing into law any new legislation to further criminalize LGBT people and same-sex relations.¹⁶

President Jonathan remained undeterred and signed the bill into law on January 7, 2014. On June 6, 2016, Jonathan justified his actions in respect of the law as respect for democracy and the will of a population that opposed same-sex unions: “98 per cent of Nigerians did not think that same-sex marriage should be accepted by our society,” he said. “The bill was passed by 100 percent of my country’s National Assembly. Therefore as a democratic leader with deep respect for the law, I had to put my seal of approval on it.”¹⁷

A June 2013 poll conducted by NOIPolls, prior to the enactment of the SSMPA, found that for moral and religious reasons, approximately 92 percent of Nigerians supported the proposed law, and did not see it as infringing on the human rights of the lesbian, gay, and

¹⁴ “Nigeria: Anti-LGBT Law Threatens Basic Rights,” Human Rights Watch press release, January 14, 2014, <https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic-rights> (accessed October 18, 2016).

¹⁵ The Human Rights Council is an inter-governmental body within the United Nations system responsible for the promotion and protection of all human rights around the globe. The Universal Periodic Review (UPR) is a state-driven process under the auspices of the Human Rights Council for the review of the human rights records of all UN Member States. It provides an opportunity for states to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. See “Universal Periodic Review,” UN Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (accessed October 18, 2016).

¹⁶ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Nigeria, A/HRC/25/6, December 16, 2013, para. 69. The delegation stated that Nigeria did not accept the recommendations on same-sex marriage because it conflicted with national and cultural values. A poll conducted in 2011 had indicated that 92 percent of the people were against same-sex marriage.

¹⁷ Colin Stewart, “Nigeria: Ex-leader seeks redo of anti-LGBT law he signed,” June 6, 2016, <https://76crimes.com/2016/06/06/nigeria-ex-leader-seeks-redo-of-anti-lgbt-law-he-signed/> (accessed October 18, 2016). Full transcript of speech available at <http://www.thekillerpunch.com/goodluck-jonathan-bloomberg-london-full-speech-photos>.

bisexual community.¹⁸ In 2015, NOIPolls, in partnership with The Initiative for Equal Rights (TIERS),¹⁹ a Nigeria-based non-governmental organization working to protect and promote the human rights of sexual minorities, and Bisi Alimi Foundation,²⁰ an entity that works to encourage the acceptance of LGBT people in Nigeria, conducted a second poll following complaints that the SSMPA enables law enforcement agencies to violate the human rights of lesbian, gay, and bisexual individuals.²¹ The findings of the second poll, that 87 percent of Nigerians continued to support the SSMPA, is significant in that it demonstrates a 5 percent decrease in the number of people who support the SSMPA.²² Further, 15 percent believed homosexuals should have equal rights and 30 percent believed lesbian, gay, and bisexual people should have the same access to public services such as health care, housing, and education.²³ While the general public continues to support the prohibition and criminalization of same-sex marriage and civil unions in Nigeria, it is significant that nearly a third of Nigerians do not agree with discrimination in access to socioeconomic rights for lesbian, gay, and bisexual persons.

¹⁸ NOIPolls, founded in 2006, is an organization based in Abuja that provides country-specific polling services in the West African region. They work with various partners, including Gallup and others, focusing on issues of “governance, market trends, management of the economy, provision of services, as well as performance of government and private sector institutions.” “About 9 in 10 Nigerians Support The Proposed Anti-Same-Sex Marriage Bill,” NOIPolls, June 11, 2013, <http://www.noipolls.com/root/index.php?pid=287&ptid=1&parentid=66> (accessed October 18, 2016).

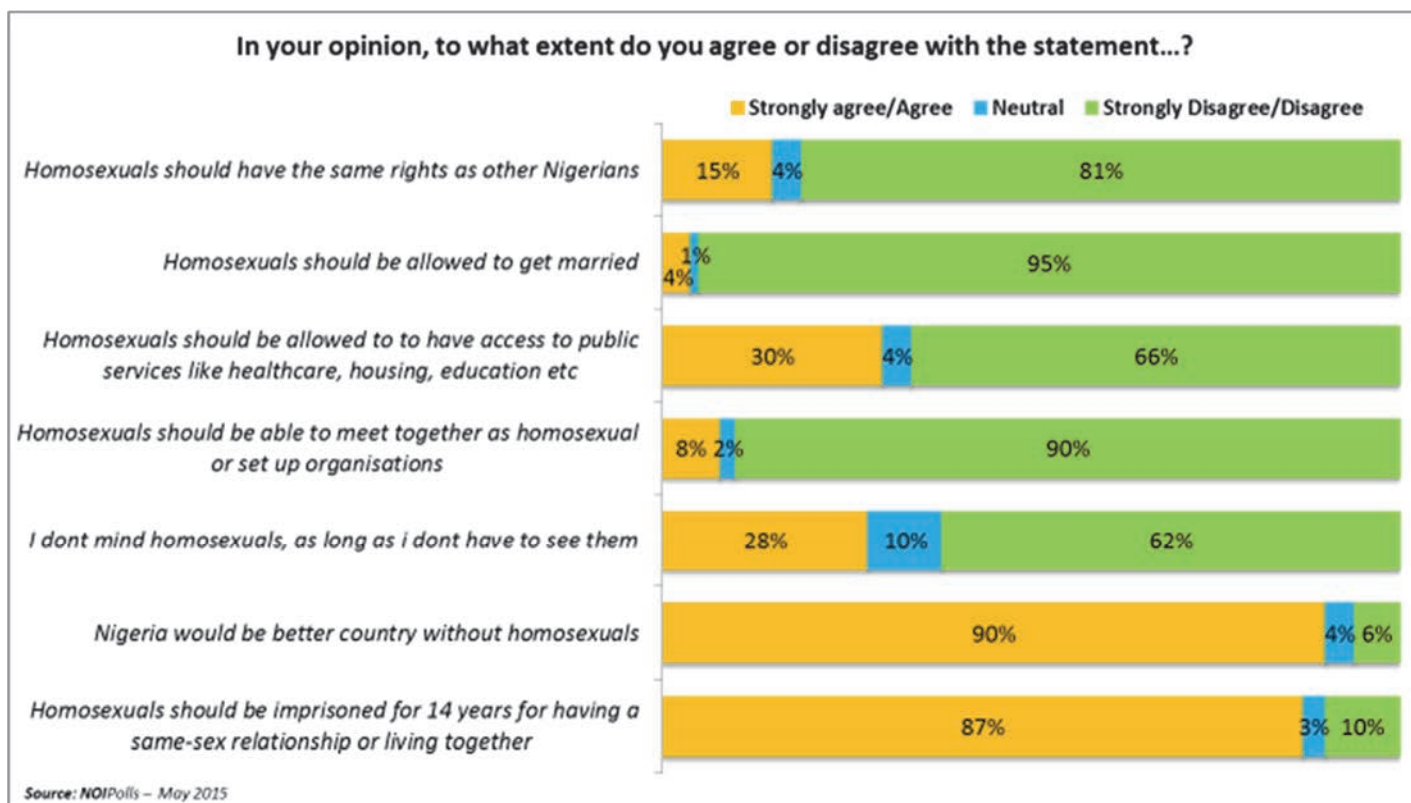
¹⁹ The Initiative for Equal Rights, <http://theinitiativeforequalrights.org/>.

²⁰ Bisi Alimi Foundation, <http://www.bisialimifoundation.org/>.

²¹ “Gay Rights: Perception of Nigerians on LGB Rights Poll Report,” May 2015, http://www.noi-polls.com/documents/Updated_final_Perception_of_Nigerians_onLGBT_Rights_-_Poll_Report_Final_May2015.pdf (accessed October 18, 2016).

²² Ibid.

²³ Ibid.



Source: NOI Polls²⁴

The purported aim of the SSMPA is to prohibit marriage or civil unions between persons of the same sex and impose criminal penalties for persons convicted of entering such a union.²⁵ In reality, its scope is much wider. The law forbids any cohabitation between same-sex sexual partners; bans any “public show of same sex amorous relationship;” and prohibits anyone from forming, operating, or supporting “gay clubs, societies and organizations.”²⁶ Punishments are severe, ranging from 10 to 14 years in prison.²⁷

When the law was passed in January 2014, it elicited concern from the international community, including the United Nations and the African Commission, about its potential impact on human rights. On January 14, 2014, former United Nations High Commissioner

²⁴ See NOI Polls partners at: “About Us: Our Partners,” NOI Polls, <http://www.noi-polls.com/root/index.php?pid=35&ptid=3&parentid=8>. NOI Polls used phone polling: a 1000 adult sample stratified to represent the six main regions and the 95 percent margin of error was +3 percent.

²⁵ Same Sex Marriage (Prohibition) Act, 2013, Explanatory Memorandum, [http://www.placng.org/new/laws/Same%20Sex%20Marriage%20\(Prohibition\)%20Act,%202013.pdf](http://www.placng.org/new/laws/Same%20Sex%20Marriage%20(Prohibition)%20Act,%202013.pdf).

²⁶ *Supra* n1, sec. 5(2).

²⁷ *Supra* n1, sec. 5(3).

for Human Rights, Navanethem Pillay, called the SSMPA a “draconian new law” that “makes an already bad situation worse”:²⁸

Rarely have I seen a piece of legislation that in so few paragraphs directly violates so many basic, universal human rights ... rights to privacy and non-discrimination, rights to freedom of expression, association and assembly, rights to freedom from arbitrary arrest and detention: this law undermines all of them.

High Commissioner Pillay predicted the law risked “reinforcing existing prejudices towards members of the LGBT community, and may provoke an upsurge in violence and discrimination.”²⁹ At the same time, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) warned that the SSMPA would impede access to HIV services for LGBT people in Nigeria.³⁰

On February 5, 2014, Commissioner Alapini-Gansou, Special Rapporteur on Human Rights Defenders in Africa, a special mechanism of the African Commission on Human and Peoples’ Rights, voiced concern about “physical violence, aggression, arbitrary detention and harassment carried out against human rights defenders dealing with sexual minority rights issues” in the wake of the law being passed.³¹ In October 2015, Martin Ejidike, a Senior Human Rights Advisor with the United Nations in Abuja, told Human Rights Watch: “The law has opened up an avenue for extortion by some unscrupulous law enforcement officials.”³²

²⁸ Former High Commissioner for Human Rights, Navi Pillay, “UN human rights chief denounces new anti-homosexuality law in Nigeria,” January 14, 2014, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14169&LangID=E#sthash.VWY5ccuC.dpuf> (accessed September 3, 2015).

²⁹ Ibid.

³⁰ “UNAIDS and the Global Fund Express Deep Concern about the Impact of a New Law Affecting the UNAIDS Response and Human Rights of LGBT People in Nigeria,” UNAIDS press release, January 14, 2014, <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/january/20140114nigeria> (accessed October 18, 2016).

³¹ “Press Release on the Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria,” African Commission on Human and Peoples’ Rights press release, February 5, 2014, <http://www.achpr.org/press/2014/02/d190/> (accessed October 18, 2016). The African Commission on Human and Peoples’ Rights is established by the African Charter on Human and Peoples’ Rights as the primary regional human rights mechanism with three major functions: “the protection of human and peoples’ rights; the promotion of human and peoples’ rights the interpretation of the African Charter on Human and Peoples’ Rights.” See <http://www.achpr.org/about/>.

³² Human Rights Watch interview, October 2015.

The report finds that while the SSMPA was introduced into a legal context that already criminalized consensual same-sex conduct and an already pervasive homophobic climate, it has had profoundly negative human rights impact on LGBT people in Nigeria. In an interview published by PEN America, Bisi Alimi, an activist and writer of Nigerian origin states:

Before [the law], I think there was a conscious effort on the part of the attacker to think, where do I stand—If I beat up a gay person and get arrested, what is the law going to say? Now, there’s awareness that if I beat up a gay person, I’m actually doing justice, protecting the law of the land. The law has given people that boldness.³³

Findings from a quantitative cohort study designed to assess the impact of the law on health-seeking behavior confirmed the above-stated observations by UNAIDS and the Global Fund. The study, conducted between March 2013 and August 2014, assessed the engagement of MSM from Abuja in HIV prevention and treatment services at a clinical site located within a community-based organization.³⁴ The SSMPA was enacted midway through the study, between enrollment and data collection. The findings below illustrate a sharp and immediate negative impact of the SSMPA on stigma, discrimination, and engagement in HIV prevention and treatment services.

³³ PEN American Center, “Silenced Voices, Threatened Lives: The Impact of Niger’s Anti-LGBTI Law on Freedom of Expression,” June 29, 2015, http://www.leitnercenter.org/files/nigeriareport_FINAL_highres.pdf, p. 11.

³⁴ S. Schwartz et al., “The immediate effect of the Same-Sex Marriage Prohibition Act on stigma, discrimination, and engagement on HIV prevention and treatment services in men who have sex with men in Nigeria: analysis of prospective data from the TRUST cohort,” *The Lancet HIV* 2015, vol. 2, no. 7, p. e299-306.

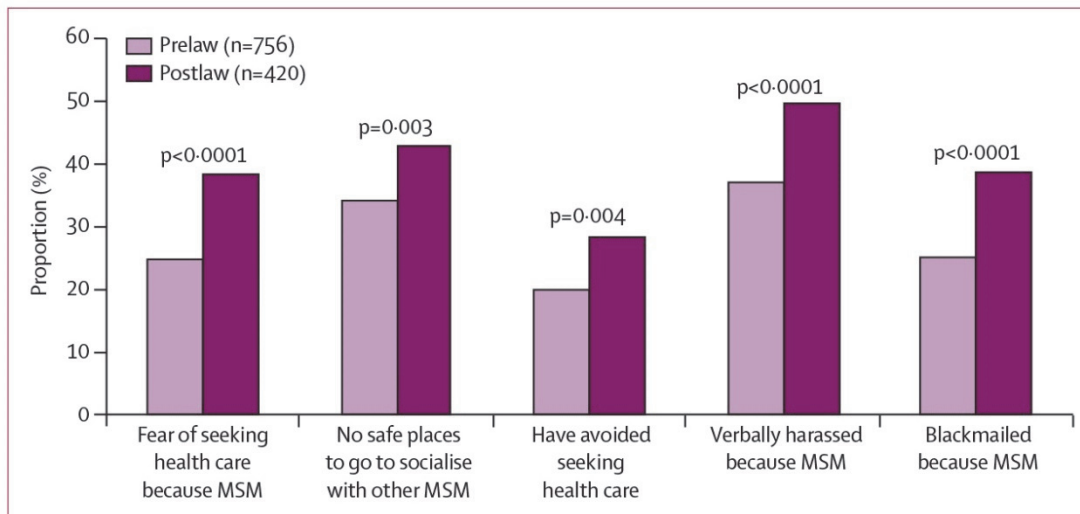


Figure 1: Reporting of discrimination and stigma during study visits in the prelaw and postlaw periods
MSM=men who have sex with men.

Source: *The Lancet*³⁵

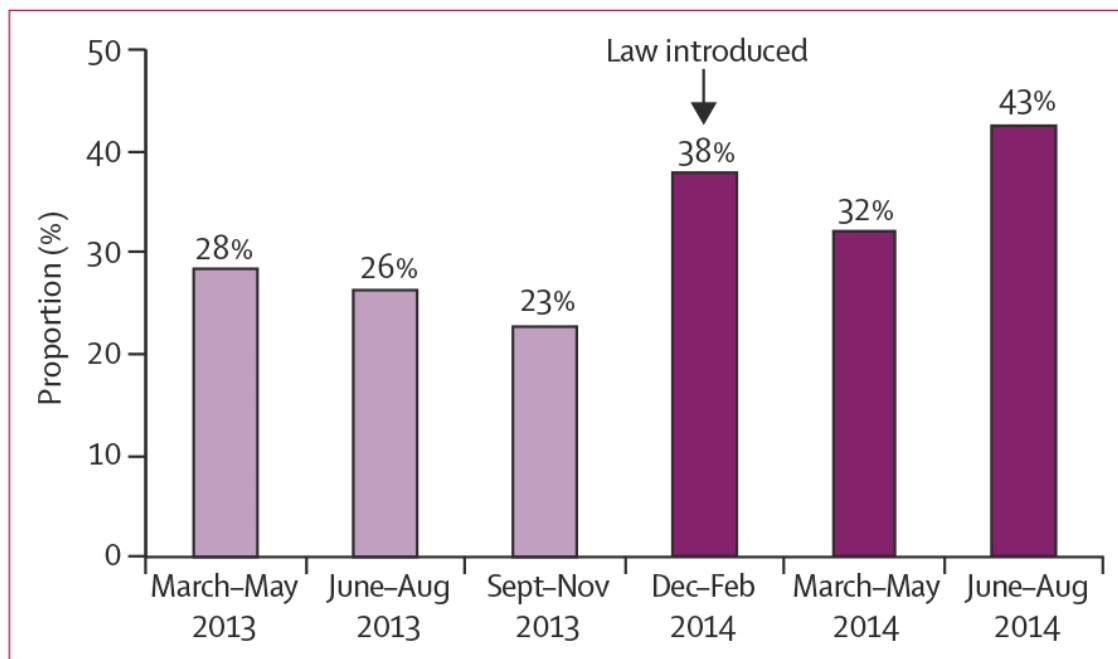


Figure 2: Cumulative lifetime experiences of reported fear of seeking health-care services across study visits (n=1175 visits)

Source: *The Lancet*³⁶

³⁵ *Ibid.*, p. e302.

³⁶ *Ibid.*

The researchers of the cohort study,³⁷ finding a higher proportion of MSM reporting discrimination and stigma after the passage of the Act, concluded that:

Gay men and MSM in Abuja, Nigeria, experienced increased stigma and discrimination after the signing of the Same Sex Marriage Prohibition Act. Reports of fear of seeking health care, avoidance of health care, absence of safe spaces to socialize with other MSM, blackmail, and verbal harassment remained steady in the months of enrolment and follow-up before the law, then immediately increased in the post-law period ... incidence of both fear of seeking health care and absence of safe spaces were significantly greater post-law than pre-law.³⁸

Despite these research findings and dozens of statements from those directly affected and organizations that provide services to LGBT people, NACA continues to make official statements oblivious to the tangible climate of fear created by the passage of the SSMPA. NACA officials have denied knowledge of, if not outright refuted, widespread views that the law has had a negative impact on health-seeking behavior.³⁹

SSMPA: Reality and Perceptions

Representatives of non-governmental organizations told Human Rights Watch that because the law is overly broad and with certain vague provisions, it is widely misunderstood by the general public.

LGBT individuals and representatives of LGBT organizations told Human Rights Watch that the one common misconception since the passage of the SSMPA is that homosexual identity is now a criminal offence, that members of the public have a duty to report any

³⁷ In general terms, a cohort study is an observational study, where a group of people are observed over a period of time. A cohort study is different from a case control study, also an observational study, but one which separates people into two groups: cases and controls, and also fundamentally different from randomized controlled trials in which people are randomly assigned to two or more groups to conduct experiments. The Nigeria TRUST cohort study “used respondent-driven sampling to assess the feasibility and engagement of MSM in HIV prevention and treatment services” comparing outcomes for the cohort before and after the SSMPA was passed.

³⁸ *Ibid.*, p. e304.

³⁹ Human Rights Watch Interview, Abuja, November 2015. See also NACA Statement on the SSMPA, available at <http://naca.gov.ng/new/content/blog/statement-same-sex-marriage-prohibition-act-2013>.

person they know or suspect to be homosexual, and that failure to do so is also a crime.⁴⁰ In reality, there are no specific provisions that expressly require members of the public to report LGBT people to authorities, nor does the law criminalize failure to report.

Christopher from Ibadan told Human Rights Watch that a friend of his father, a church minister, told him: “If you don’t send your son away, you could get 10 years in prison and your son 14 years.”⁴¹ His father evicted him from his home in March 2014 and he has not seen his family since.

A representative of a human rights organization in Nigeria told Human Rights Watch that there is also no space for robust public debate about the impact of the law.⁴² This has led to a situation in which LGBT people also misunderstand the law and now perceive themselves to be criminals. John, a lawyer based in Abuja, who regularly assists LGBT individuals who have been arbitrarily arrested by the police, said this misperception meant LGBT people may not report crimes committed against them, including crimes committed by police officers.⁴³ He told Human Rights Watch: “When clients who have been arbitrarily arrested call me, they don’t want to be named, they beg me to negotiate with the police.”⁴⁴

The law has also had an inhibiting effect on public speech, contributing to a lack of awareness and misunderstandings about the law, but also about sexual orientation and gender identity more generally. According to a representative of a Lagos-based NGO interviewed by Human Rights Watch in Banjul, the Gambia:

During a radio interview in March 2016, the producer of the show said that we should not say anything that hints at or is specifically related to sexual orientation, not to demonstrate any support for sexual orientation issues or sympathy to homosexuality, in particular male homosexuality.⁴⁵

⁴⁰ Human Rights Watch interviews in Lagos, Abuja, and Ibadan, October and November 2015.

⁴¹ Human Rights Watch interview, Ibadan, October 2015.

⁴² Human Rights Watch interview, Banjul, the Gambia, April 2016.

⁴³ Human Rights Watch interview, Abuja, November 2015.

⁴⁴ Human Rights Watch interview, Abuja, November 2015.

⁴⁵ Human Rights Watch interview, Banjul, the Gambia, April 2016.

In 2015 the National Agency for the Control of AIDS and the United Nations Development Programme (UNDP) conducted a legal assessment to identify and review HIV, health, and related laws, including the SSMPA, to establish impact of laws on the national response to HIV and AIDS.⁴⁶ The report, “Legal Environment Assessment for HIV/AIDS Response in Nigeria,” concludes that there is limited understanding of the provisions of the SSMPA, stating, “apart from the fact that they have not read the law, the Police have also given the impression that the law is aimed at arresting homosexuals.”⁴⁷

⁴⁶ UNDP/NACA, “Legal Environment Assessment for HIV/AIDS Response in Nigeria,” December 2015, available at <http://www.hivlawcommission.org/index.php/implementation-of-report/legal-environment-assessments>.

⁴⁷ *Ibid.*, p. 45.

II. Public Violence against LGBT People

The SSMPA has for sure empowered the public to take the law into their own hands. People are routinely paraded in public, naked, for supposedly being caught in the act. They use the naked parade to rob, extort, humiliate, and shame us. They say they are preserving the so-called Nigerian African culture.

-Human Rights Defender, Abuja, November 2015

The SSMPA has helped create a generalized climate of fear and self-censorship for LGBT people and contributed to a culture of impunity for police and members of the general public.

LGBT individuals and human rights defenders in Nigeria told Human Rights Watch that following the enactment of the SSMPA, they have been at particular risk of violence from members of the public because of their real or perceived sexual orientation. This violence takes many forms, including public beatings, sexual violence, psychological violence, and deprivations of their liberty.

Mob Violence

This report finds, according to LGBT individuals and representatives of organizations interviewed by Human Rights Watch, that since the passage of the SSMPA, various suburbs in some Nigerian cities appear to have witnessed an upsurge in violence directed against LGBT people. Mob attacks, in which groups of people in public settings hunt down and beat individuals, have taken place in broad daylight while the police have stood by or, in some cases, actively participated in the violent attacks. LGBT individuals and organizations told Human Rights Watch that mob attacks, strictly on the basis of a person's real or perceived sexual orientation or gender identity, did not take place prior to the passage of the SSMPA. In the first reported incident of mob violence in Abuja, police

officers accompanied the mob.⁴⁸ The mob attacks have taken place in different parts of the country, with varying levels of brutality.⁴⁹

An activist who has worked with LGBT people for over 15 years in several Nigerian cities told Human Rights Watch:

Vigilante groups have added homosexuality to their terms of reference. These groups are organized by community members, given authorization by the community to maintain some sort of order and security for the community. Neighbors are now equipped with a tool that makes them hunters, and gay people are the prey. They enter homes in the middle of the night hoping to find people in compromising positions.⁵⁰

Members of the public who participated in mob violence are believed to have been motivated by the enactment of the SSMPA. In February 2014, in Gishiri village, Abuja, a group of about 50 people stormed the homes of individuals and severely beat at least 14 men who they suspected of being gay.⁵¹

Peter, another victim of the Gishiri mob attack told Human Rights what he witnessed on the night of the attack in Gishiri village:

There were many people, carrying different types of weapons. One of them said they have been sent by the President to deal with gay people. The mob was going from house to house looking for gay people, and they had police

⁴⁸ Human Rights Watch interview, Abuja, October 2015.

⁴⁹ See a Shadow Report submitted by a collective of Nigeria-based non-governmental organizations on Human Rights Violations based on Sexual Orientation and Gender Identity in Nigeria for consideration by the African Commission in April 2015 during its review of Nigeria's 5th periodic report. Advocates for Behavioural Change (ABC); African Men for Sexual Health and Rights (AMSHer); Initiative for the Advancement of Humanity (IAH); International Centre for Advocacy on Rights to Health (ICARH); International Centre for Reproductive Health and Sexual Rights (INCREASE); Legal Defense and Assistance Project (LEDAP); The Initiative for Equal Rights (TIERS); Women's Health and Equal Rights Initiative (WHER); Center for International Human Rights of Northwestern University School of Law; and Heartland Alliance – Global Initiative for Sexuality and Human Rights (HA – GISHR), "Human Rights Violations Based on Sexual Orientation and Gender Identity in Nigeria: A Shadow Report on Nigeria's Compliance with the African Charter on Human and Peoples' Rights," April 2015, <http://www.whereloveisacrime.org/wp-content/uploads/2015/05/ACHPR-Shadow-Report-Nigeria-SOGI-2015.pdf> (accessed October 18, 2016).

⁵⁰ Human Rights Watch interview, Abuja, October 2015.

⁵¹ Human Rights Watch interview, Abuja, October 2015.

officers with them. We could not sleep in our house that night; we had to sleep under a bridge.⁵²

Human Rights Watch does not have evidence proving that the former president of Nigeria issued such instructions to members of the public.

According to Olu, 20 to 30 men came to his door wielding knives and pieces of cut glass:

They said, “We don’t want gays!” They demanded we come outside, but we were afraid. At that time, as one of my friends was coming home, they attacked him with wood with nails. They held him down and beat him. They said: “If you don’t come out we will kill him!” So the three of us went out and tried to fight. They were beating us, threatening to strip us naked.... I had a lot of injuries. I had a dislocated shoulder, bruises, and a cut on my head from the beating. I had to have stitches on my head. They used all kinds of things—wood, iron—to hit us.⁵³

On January 21, just a few days after the SSMPA was passed, Debbie, a transgender woman, was beaten by a group of six men in Ado Ekiti, the capital of Ekiti State. She told Human Rights Watch that while she was at home with her boyfriend, six hefty guys knocked on the door and said, “We will kill you! You will get 14 years in prison!”⁵⁴ Debbie says:

We were beaten black and blue. I was hurting so much. I was shouting, “Help, help!” Some neighbors rushed over and the hoodlums ran away and we were taken to the chemist [pharmacy] for medicines. When we came home the men were waiting for us. They said, “If you don’t pack out, we will burn your house overnight. You are in a country that doesn’t allow homosexuality.”

The combined threat to kill and send someone to prison for 14 years may seem incoherent. Nevertheless, it is essential to appreciate the myriad ways in which the SSMPA is

⁵² Human Rights Watch interview, Abuja, October 2015.

⁵³ Human Rights Watch interview, Abuja, October 2015.

⁵⁴ Human Rights Watch interview, Ibadan, October 2015.

used by members of the general public to instill a profound sense of fear in the lives of LGBT people. This was not the last time that Debbie was assaulted by members of the public simply because of her sexual orientation and gender identity. On December 25, 2014, at approximately 6 a.m. while she was leaving a party in Ibadan, Oyo State, four men stopped her in the street and started shouting, “He’s a fag! He’s a fag!” They proceeded to beat her up and stole all her belongings. Debbie pretended she was dead in order to save herself.

In other cases, family members have initiated mob violence. On July 20, 2014, in a town in Kano, the capital of Kano State, 24-year-old Binta, a devout Muslim, and her female partner were found in the bedroom by her partner’s uncle.⁵⁵ The uncle alerted the neighbors. Approximately 20 people gathered, beat the couple, and marched them to the home of the traditional leader of the area. Binta told Human Rights Watch that the group beat them with canes, dragged them on the ground, and insulted them. She told Human Rights Watch that this incident had a profound impact on both their lives. Her partner was disowned by her family. Binta was forced to leave her home in Kano, abandoning her accounting studies. She relocated to Abuja.

In Ibadan, on December 14, 2014, a mob invaded a home and took three suspected gay men, by force, to the local government office, where they were locked up overnight in a shipping container. Desmond, one of the three, told Human Rights Watch what happened the next morning:

The [local government] chairman brought us to the middle of the street and his men beat us mercilessly. They tied our hands and legs to a wooden pole outside.... They had made us take our clothes off that morning. We were in our underwear when they beat us ... the whole street was full of people gathered to watch. There were dozens of people watching and shouting, “Beat them! Beat them! Beat the homosexuals!” They were flogging us, beating us mercilessly. Six guys were beating us. They were ordered by the Chairman of the community.... They used rope, canes, wood to beat us. Each of them had a different weapon.... As they beat us, they said, “Say you are gays! Say it!” After the beating my friend fell sick. A week later he died.

⁵⁵ Human Rights Watch interview, Abuja, October 2015.

The men were released after Desmond’s mother paid 15,000 Naira (approximately \$48) to the community chairman.⁵⁶

Efe, a 23-year old gay man and student of Office Technology and Management in Lagos, told Human Rights Watch that on September 1, 2014, he was physically attacked by a man he had met at a party and who knew of his sexual orientation.⁵⁷ He said that the man invited him back to his home but when they arrived, he was joined by 20 of his neighbors, all men, and they proceeded to beat him up:

I thought the man was also gay, so I went to his home with him. They were punching me and using sticks to beat me. They tried to extort money from me, but I didn’t have any. They only stopped when an old man intervened. But they took me to the police station, and the man whom I had met at the party informed the police that I had tried to rape him. Even though that wasn’t true, I couldn’t defend myself. My father had to bail me out, and that was when he found out I was gay and disowned me. I was in the hospital for three days with swollen eyes and a swelling head because of the beating.⁵⁸

Sexual Violence

Several interviewees observed that perpetrators of targeted sexual violence against LGBT persons act with a sense of impunity, emboldened both by the apparent license provided by the law, and, perhaps, by the silencing effect of a climate of fear. Also, sexual violence is often at the hands of acquaintances, who are aware of the victim’s sexual orientation. The statements set out below do not suggest that LGBT people did not experience sexual violence prior to the passage of the SSMPA; as indicated above, this reports finds that the law has made a bad situation worse.

Sharon fled from her family home in Kano in early 2014 after her mother expelled her upon learning that she was a lesbian.⁵⁹ She sought refuge with a male acquaintance in Abuja, who ended up raping her a week later. “He threatened me that day, and said if I report to

⁵⁶ Human Rights Watch interview, Ibadan, October 2015; follow-up interview by telephone, January 2016.

⁵⁷ Human Rights Watch interview, Lagos, October 2015.

⁵⁸ Ibid.

⁵⁹ Human Rights Watch interview, Abuja, November 2015.

the police he would tell them that I am a lesbian,” she told Human Rights Watch. “If the police find out that I am a lesbian they will lock me up for 14 years. So I did not report.”⁶⁰

A representative of a lesbian, bisexual, and transgender (LBT) organization in Cross River State told Human Rights Watch that in 2014, she personally documented three cases (two in Cross River State and one in neighboring Akwa Ibom State) in which groups of two to five men had gang-raped lesbians in the wake of the passage of the SSMPA.⁶¹

She explained: “In Calabar [Cross River State capital], people now just take the law into their own hands because the SSMPA was widely publicized in the media. And people think it is okay to ‘fix’ anyone who is a lesbian.”⁶² She described the three cases to Human Rights Watch. In every instance, the victim did not report the rape to the police or any other legal or medical authorities due to the fear of prosecution and imprisonment under the SSMPA:

- In April 2014, a 23-year-old university student who was visiting her girlfriend was gang-raped by the girlfriend’s two brothers who found them in the bedroom together. The brothers said that the student was corrupting their sister and that “she will enjoy them today.”
- In October 2014, in Akwa Ibom State, her lesbian friend went to visit a woman she had met online. She arrived at the house to find she had been set up and she was attacked by five men. The men kept her locked up for three days, repeatedly raped her, beat her, and recorded the assault. They threatened her, saying that if she reported them to the police, they would send recordings of the sexual assault to her parents and her school, and that if she did not stop her lesbian lifestyle, they would post the videos all over social media.
- In November 2014, in Cross River State, a young woman was visiting her girlfriend when three men, neighbors, arrived at the house and raped her. She believes that this was a set-up. She went to the hospital for treatment of the injuries sustained during the rape, but did not disclose to hospital officials that she had been raped.

⁶⁰ Ibid.

⁶¹ Human Rights Watch interview, Lagos, October 2015.

⁶² Ibid.

The UN special rapporteur on violence against women has noted that in many countries, “lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths, including for instance, that lesbian women would change their sexual orientation if they are raped by a man.”⁶³ Indeed, as The Initiative for Equal Rights (TIERS) notes in its 2015 Violations Report, the perpetrators who raped the young woman Oshodi in Lagos said: “instead of looking for men to love she is loving women and if strong men have sex with her that will change her orientation.”⁶⁴

Other instances of punitive rape post-SSMPA have been reported. Human Rights Watch documented at least five cases in which both women and men were raped in apparent attempts to punish or “cure” them of their sexual orientation. Again, with perpetrators “taking the law into their own hands,” the SSMPA provided cover for this kind of targeted sexual assault.

Human Rights Watch interviewed gay men who reported that they had been sexually assaulted after the SSMPA was passed, by perpetrators who knew about the law. These victims also did not report the crimes. While LGBT people may indeed have been victims of sexual violence prior to January 2014, those interviewed by Human Rights Watch stated that the perpetrators cited the SSMPA during the attacks.

Jason, a gay man in Lagos, met a man through a mobile phone dating app in January 2015, and, after chatting with him, went to meet him at a hotel. However, once Jason entered the hotel room, six men barged in and began beating him. Jason told Human Rights Watch:

I wanted to run, but they told me that the police were outside and if I go out without my clothes on, I’d be caught and sentenced to 14 years because they had caught me in the act. I stayed. The seven of them raped me for three days in the hotel. They took photos and videos of each other having sex with me. They hid their faces, but not mine. They said they would sell

⁶³ Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, “Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Communications to and from Governments,” UN Human Rights Council, 4th sess., Agenda item 2, A/HRC/4/34/Add.1, March 19, 2007.

⁶⁴ The Initiative For Equal Rights, “2015 Report on Human Rights Violations Based on Real or Perceived Sexual Orientation and Gender Identity in Nigeria,” 2015, <http://www.theinitiativeforequalrights.org/resources1/2015-Report-on-Human-Rights-Violations-Based-on-Real-or-Perceived-Sexual-Orientation-and-Gender-Identity-in-Nigeria-.pdf> (accessed October 18, 2016), p. 34.

the photos and video to a popular blogger.... They did not use protection when they were raping me.⁶⁵

The men also forced Jason to hand over his bank card and PIN number, and then withdrew 45,000 Naira (approximately \$148) from his account. Jason did not report the gang rape to the police.

⁶⁵ Human Rights Watch interview, Lagos, October 2015.

III. Police Abuse of LGBT People

The SSMPA has contributed to an environment in which the police engage in extortion and commit crimes against LGBT people. The law prohibits the “public show of same-sex amorous relationship directly or indirectly,” but the vague wording and lack of clarity about what conduct is actually prohibited means that any person who expresses, or is perceived to express, same-sex attraction in public is at risk of arrest.

LGBT people are fearful of arrest and imprisonment on the basis of their real or perceived sexual orientation or gender identity and many interviewees reported a new and profound fear of extortion, violence, and abuse at the hands of the police.

Humiliating Tactics during Arrests

At least 17 people interviewed by Human Rights Watch reported that they had been detained by the police for the first time in their lives, some of them multiple times, since the passage of the SSMPA. It appears that the SSMPA is used as a tool by the police to humiliate and degrade LGBT individuals, with flagrant impunity, often in the presence of members of the public.

George, an openly gay man from Ibadan, who has been arrested multiple times since the law was passed, told Human Rights Watch that his friend’s mother arranged for them to be arrested in January 2014, just two days before the SSMPA was passed.⁶⁶ His friend’s mother telephoned him and asked him to come to the police station. George described how they were humiliated at the police station:

My friend had also been arrested. The police told us to take off all our clothes, and they beat us up. They had a board marked with white chalk: “Gay men arrested.” They told me to hold the board in front of my chest and

⁶⁶ Human Rights Watch interview, Ibadan, October 2015. In September 2014, George and another friend, an effeminate gay man, were arrested while having drinks at Faguyi bar in Ado Ekiti. This was George’s third arrest and after two days in detention, he paid 2,000 Naira to “bail” himself out and 10,000 Naira for his friend.

they took pictures. All this happened in the main lobby area of the police station where members of the public were also present.⁶⁷

George and his friend were detained for three days, during which time the police cursed and beat them up, calling them “idiot gays.” In May 2015, George was again arrested along with 20 other men while attending a birthday celebration in Ibadan.⁶⁸ He described what happened when the police arrived at the party:

We were about to start eating when about eight police officers arrived with big machine guns. They tied our clothes together, the ends of our shirts, and marched us to the van, all 21 of us. We were all squeezed into the van, sitting on each other’s laps. Immediately when we arrived at Apata police station [Ibadan], the police told us to take our clothes off. We had only underwear—boxer shorts—on. The police had found a bag of 200 sealed condoms that belonged to a peer educator who was also attending the party. They took the condoms out of the bag, told us to stand in front of the condoms, and gave one of the guys a board written: “21 gay men suspected.” Pictures were taken, the police had called a commercial photographer to take the pictures, but this is normal practice in Nigeria.⁶⁹

Oscar, a 22-year-old gay man from Lagos, told Human Rights Watch that on April 16, 2015, while visiting a friend in Ibadan, he and five of his friends saw police vans, with seven police officers in front of his friend’s house when they returned from church.⁷⁰ All six were arrested, beaten up at the police station, told to strip naked, and photographed. They were detained for seven days and only released after the father of one of the detainees paid 200,000 Naira each (approximately \$635) to secure their release.

According to Oscar, on their last day in detention, the police loaded them onto the back of an open police jeep and drove them around the city to show members of the public the gay men who had been arrested.

⁶⁷ Human Rights Watch interview, Ibadan, October 2015.

⁶⁸ Human Rights Watch interview, Ibadan, October 2015.

⁶⁹ Human Rights Watch interview, Ibadan, October 2015. A public photographer is a commercial photographer that is reportedly used by various police stations.

⁷⁰ Human Rights Watch interview, Ibadan, October 2015.

Arbitrary Arrests, Extortion, and Violence

Human Rights Watch found a pattern of arbitrary arrests and extortion in the wake of the SSMPA. In addition, Human Rights Watch interviewed several men who had been assaulted and tortured during arrests and detention.

LGBT individuals and members of organizations and networks that provide services and support to the LGBT community reported that they had to set aside funds in order to pay extortion demanded by the police.

A representative of a Lagos-based human rights organization told Human Rights Watch that since the SSMPA was enacted, the organization has paid about 450,000 Naira (approximately \$1,450) in bribes to prevent the arrest or secure the release of members of the LGBT community.⁷¹ In nearly all incidents reported to Human Rights Watch, victims and the organizations that support them said they felt compelled to pay extortion fees, or “bail,” due to the threat of 14 years’ imprisonment.

None of the individuals interviewed by Human Rights Watch were formally charged with any crime under the SSMPA. For instance, neither George nor his friend, arrested on the eve of the passage of the SSMPA, were formally charged with any offence. He was only released after his family paid “bail” of 20,000 Naira (approximately \$64).

Harry, a gay man and peer educator from Lagos, told Human Rights that in February 2015, his 23-year-old friend was stopped by the police in the street in Lagos.⁷² The police had gone through his phone and found gay porn videos and nude photos of men. According to Harry:

They took him to the police station. He called me to bail him out. They printed out everything that he had on his phone. I saw it when I went to the police station. The police asked for 200,000 Naira (approximately \$635) to “bail” him out. We negotiated it down to 50,000 Naira (approximately \$160).⁷³

⁷¹ Human Rights Watch interview, Lagos, October 2015.

⁷² Human Rights Watch interview, Lagos, October 2015.

⁷³ Human Rights Watch interview, Lagos, October 2015.

Violence during Arrest and in Detention

Interviewees told Human Rights Watch that they had been humiliated, physically abused, and tortured by police while in police custody solely because they were suspected of being gay men.

Jason, a 22-year-old gay man from Lagos, said police arrested him at home in August 2015 after a group of men who had previously gang-raped him reported him to the police as being gay.⁷⁴ He told Human Rights Watch that police beat him with belts and gun butts and inserted a stick into his anus. He was able to contact his parents, who paid a 78,000 Naira (approximately \$250) bribe to get him released.

Human Rights Watch interviewed eight of the 21 young men who were arrested, but not formally charged, at the birthday party in May 2015 in Ibadan. They told Human Rights Watch that at the police station, police beat several of them, including with rifle butts and wooden planks. They were held in police cells for four days wearing only their underwear and eventually released after paying bribes ranging from 10,000-25,000 Naira each (approximately \$32-64).⁷⁵

In early 2014, James, a 25-year-old gay man, visited a man whom he met online in Ado Ekiti, southwest Nigeria.⁷⁶ When he arrived at the man's house, a man he believed to be a police investigator was also present.⁷⁷ James described what happened next:

Soon after I got there this state investigator friend left. But a little while later he came back with two other guys. The three of them started screaming at us: "Why are you doing this? There are so many ladies in this country, why do you go on being gay?" They kicked us, slapped us, and collected our phones. They asked: "Where is your money?" They got our ATM cards, forced us into their car, and drove us to the bank. They seized

⁷⁴ Human Rights Watch interview, Lagos, October 2015.

⁷⁵ Ibid.

⁷⁶ Human Rights Watch interview, Lagos, October 2015.

⁷⁷ Human Right Watch interview, Ibadan, October 2015.

my phone, ATM, PIN, and withdrew 35,000 Naira (approximately \$110). They took our money and then drove us to the police station.⁷⁸

At the police station, they attempted to report the robbery to the police, but the policeman at the station responded, “Is it true you are doing this? [That you are gay].” The men who had brought them to the police station handed over their phones to the police for the police to search for incriminating “evidence.” According to James, the police slapped them and beat them up with a “koboko” (a whip made of cow skin or horse tail) all over their bodies while shouting, “Tell us the truth! Why are you doing this!?” After three days in detention, and paying another 15,000 Naira (approximately \$48) each to the Divisional Police Officer in charge of the police station, they were released.

Abioye, a cleaner at a government office, said that police in Ibadan arrested him in June 2015 on his way home from work.⁷⁹ He was taken to Ijokodo Police Station where they proceeded to slap, choke, and punch him, forcing him to unlock his phone so that they could inspect his pictures. They beat him further when they saw pictures of him with his partner. He was detained for three days, and released only after his brother paid police a 45,000 Naira bribe (approximately \$142).⁸⁰

In Abuja, in January 2014, shortly after the SSMPA was passed, police raided an HIV services and treatment meeting hosted by Ben, a peer educator. The police arrested 12 of the 24 people attending the meeting.⁸¹

Ben told Human Rights Watch what happened after they were arrested:

We were held at a police station.⁸² There were two cells, six of us in each. They did not give us food or water. At first our friends were scared to come and attend to us. For the first three days we had no food or water. After three days people from my office came to the station and brought us food. We slept on the floor of the police cell; there was no mattress or bed. We

⁷⁸ Human Rights Watch interview, Ibadan, October 2015.

⁷⁹ Human Rights Watch interview, Ibadan, October 2015.

⁸⁰ Ibid.

⁸¹ Human Rights Watch interview, Abuja, October 2015.

⁸² Name of police station withheld for security reasons.

were not allowed to make any calls; the police had taken our phones away. We did not have a lawyer. For the first three days the police beat us very badly, they beat all of us, called us names, saying “you are demonic, you’re setting the country back.” They beat us with whips. We were screaming, begging them to stop. Three police officers carrying whips would come into the cell once a day and beat us. They hit me mostly on my back and head. They hit me so much I can’t even say how many times. The beating would last for maybe 30 minutes or more. After I was released I had to go to the hospital for treatment because of the injuries and the malaria that I contracted. The guys I was detained with also had wounds and some got stomach ulcers because we were not getting meals. At the hospital, we could not tell them what happened to us, because if they knew, we would not be treated.⁸³

Ben said they all spent three weeks in police custody, without being formally charged with any offence, and finally released after they paid a 100,000 Naira bribe (approximately \$318) to the police. On a daily basis, the police would say, “since you are gay, you must pay. How much do you have in your account? Gay men are so rich.”⁸⁴ Ben told Human Rights Watch that the SSMPA has provided an opportunity to the police and others to intimidate and extort MSM because they know that LGBT people are afraid of prosecution and 14 years’ imprisonment.⁸⁵

Invasion of Privacy

LGBT individuals reported numerous incidents during which their rights to privacy were violated simply because of their sexual orientation. The SSMPA goes far beyond simply criminalizing same-sex sexual relations. It also prohibits “significant relationships” and “stable unions” between partners of the same sex, dramatically limiting the right to privacy.⁸⁶

⁸³ Human Rights Watch interview, Abuja, October 2015.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ SSMPA, Definition of civil unions.

In one clear case of violation of the right to privacy, Nathan was arrested in December 2014 in Ibadan simply for being in an apartment with two other gay men: “There were three of us young guys in the flat.... Two of us had gone to visit [the friend who lives there]. The neighbor came over and said, ‘since Goodluck passed the law, we shouldn’t be together in the place.’”⁸⁷

Nathan told Human Rights Watch that police arrested him and the other two men, forced them to strip down to their underwear while in custody, accused them of being gay (without filing any formal charge), and released them four days later after they paid a 20,000 Naira bribe (approximately \$64).⁸⁸

Many gay men interviewed by Human Rights Watch said the police cite the law when searching their mobile phones for “evidence” and upon arrest and detention at police stations.

Efe, a 23-year-old gay man from Lagos, said police regularly stop and search anyone who appears to be gay, based on dress or physical appearance. He has been stopped by police in Lagos at least four times, and on two separate occasions, he paid 10,000 Naira (approximately \$32) to avoid detention:

They stop us because under the law if you are “suspicious” you must be searched. They suspect you might be gay just by how you look.... They go through your phone and if they see any photos, anything that might point out that you’re gay, they threaten to detain you and you could get 14 years in prison.⁸⁹

⁸⁷ Human Rights Watch interview, Ibadan, October 2015.

⁸⁸ Ibid.

⁸⁹ Human Rights Watch interview, Lagos, October 2015.

IV. A Climate of Fear

The SSMPA has created a climate of fear: it effectively criminalizes public expressions of LGBT identity and the ability of LGBT people to form community organizations, resulting in self-censorship. LGBT interviewees told Human Rights Watch that they feel compelled to conceal their sexual orientation or gender identity because the SSMPA gives members of the public tacit permission to commit acts of violence against them with impunity. In cases where LGBT individuals are victims of crime, they are often afraid to report to the police for fear of being arrested and imprisoned for 14 years.

Self-censorship

We are not free to express ourselves, not free to show who we are. If we express ourselves, we would go to prison for 14 years.

-Darren, 21 years old, Ibadan, October 2015

Hazel, a representative of an LBT organization in Cross Rivers State, told Human Rights Watch that most of the community members are butch⁹⁰ lesbians. According to Hazel, one day in June 2014, a lesbian, dressed in masculine clothing, was walking home from school when she was arrested, beaten, and detained by the police for two days. After that she stopped dressing in masculine clothing, and has stopped associating with community members.⁹¹

Hazel said that a majority of lesbians in Calabar, Cross River State capital, have changed their dress code from masculine to very feminine in order to protect themselves from violence at the hands of the public and police. Other women, who identify as lesbian or bisexual, talked at length about the general pressure on all women to conform to society's expectations in respect of their sex and gender roles—to get married—and have children—stating that this pressure has increased since the SSMPA was passed.

Sharon, from Enugu State and who identifies as bisexual, told Human Rights Watch that she decided to marry a male friend from high school in July 2015 because of this pressure:

⁹⁰ The terms butch is used to describe a lesbian individual whose traits, behaviors, and presentation is masculine.

⁹¹ Human Rights Watch interview, Lagos, October 2015.

“For as long as I am in Nigeria, I will stay married.... If the law was not passed in 2014, I would never have decided to get married.... The law [SSMPA] forced me to make a decision to marry my friend.”⁹²

Alice, a 28-year-old lesbian who has lived in Abuja for the past 15 years, told Human Rights Watch that the SSMPA has given her no choice but to marry a man, even though this is not what she wanted:

I heard about the law [SSMPA] the same day it was passed. The law has created a huge sense of fear in our hearts ... of the consequences of being found out to be gay. Before the law there was hostility but not so much violence.... I do not want to get married to a man, I am a lesbian, but I will eventually marry a man if the law is not taken away.... I do not have a choice because of this law, it makes me feel like a prisoner.⁹³

Mary, a representative of an LBT organization in Abuja told Human Rights Watch that the passage of the SSMPA has led to many women, who were out prior to the enactment, “retreating into the closet out of fear for their safety and security.”⁹⁴

Hazel, the representative of the organization in Calabar, told Human Rights Watch that lesbians are ashamed to talk about the abuse they experience and are afraid of being exposed as lesbians:

Lesbian women do not like to talk about these things that happen to them. It’s too difficult and they feel ashamed. Also, many of the LBT women are afraid of coming to our offices because we share a space with MSM ... police are always coming around to ask what is going on in the building.... They feel they would be exposed. So where can they get help? Nowhere.⁹⁵

⁹² Human Rights Watch interview, Abuja, November 2015.

⁹³ Human Rights Watch interview, Abuja, November 2015.

⁹⁴ Human Rights Watch interview, Abuja, November 2015. While the process of “coming out” varies from one person to the next and in different contexts, it general refers to revealing or disclosing one’s sexual orientation or gender identity.

⁹⁵ Human Rights Watch interview, Lagos, October 2015.

The SSMPA has also instilled fear in gay men. A 21-year-old gay man in Lagos told Human Rights Watch: “I act very normal and pretend to be straight wherever I go. I have to act normal so that I don’t bring attention to myself. If you don’t act normal, all eyes will be on you and you don’t want that to happen.”⁹⁶

Oscar, one of the 21 men arrested at a birthday party in Ibadan, told Human Rights Watch that after that incident, he decided to start “looking manly” to avoid police attention. He said that he could not bear another arrest and detention for “looking like a gay man.”⁹⁷ Another young, gay man who was a victim of the Gishiri village mob attack in Abuja, said that he has had to exercise extreme caution in his home, neighborhood, and in public places:

Within the community there are very effeminate gay men, we tell them to be very careful. My landlord is a policeman and he asked me if I was gay. I denied it. I have asked my effeminate friends not to come to my house anymore. If they come, they are not allowed to leave [until] it is dark because I don’t want the neighbors to suspect that I am also gay. You have to be very careful in the streets: how you walk, what you wear, and how you talk.⁹⁸

Ishmael, also a victim of the Gishiri village attack, lost all his belongings on the night of the attack, fled his home, and now lives in a small village in Abuja.⁹⁹ He told Human Rights Watch: “I had to change the way I walk and dress to avoid unwanted comments and harassment. Since that time, I do not feel free to express myself.”¹⁰⁰ Ismael said that since the attack, he has heard people in his neighborhood say, “kill them [members of the gay community].” Ishmael and his friends said that there is no one to help them, no one to protect them, and now they are in hiding.

During the interview with Human Rights Watch, Ismael recalled how, prior to the enactment of the SSMPA, LGBT people would hold regular parties and even pageants. Since the passage of the law, however, the climate of fear has put an end to that. He said that now

⁹⁶ Human Rights Watch interview, Lagos, October 2015.

⁹⁷ Human Rights Watch interview, Ibadan, October 2015.

⁹⁸ Human Rights Watch interview, Abuja, October 2015.

⁹⁹ Human Rights Watch interview, Abuja, October 2015.

¹⁰⁰ Ibid.

they cannot even talk about being gay for fear of mob violence, arrest, and the possibility of spending 14 years in prison.

Tom, a gay man from Lagos, told Human Rights Watch that it has been very difficult for men who are effeminate. They have to “tone down,” be less flamboyant, and pretend to be straight. Tom described the situation before and after the SSMPA was passed:

It used to be that people would look at you and say, “He’s gay!” in order to harass you. That’s always been there. But now, people take advantage of the law. It pushes LGBT people to be discrete. I have tried to man up, and be cautious and observant about where I go.

Fear of Reporting Crimes

The SSMPA is an obstacle to accessing justice. For people who are open about their sexual orientation or gender identity, the law represents a direct threat. However, under the law, anyone is a potential suspect based on who they live with or how they express themselves, including what they wear or how they behave.

LGBT victims of crimes, including public beatings, theft, rape, and extortion, told Human Rights Watch that they did not file or report complaints with the police because they feared that they would be treated as criminals under the SSMPA. Several interviewees also cited fear of being outed as a reason not to report offences. Many of those Human Rights Watch interviewed said that this law has created a climate of fear for LGBT people that was not necessarily present or pervasive prior to January 2014, because of the over-broad provisions of the SSMPA. Human Rights Watch does not have information or records of complaints filed by LGBT people with the police prior to the passage of the SSMPA.

Hazel, the representative of an LBT organization in Cross River State told Human Rights Watch that she was aware of cases where lesbians in particular did not report sexual assault to the police.¹⁰¹ Reluctance to report sexual abuse is especially true for lesbian and

¹⁰¹ Human Rights Watch interview, Lagos, October 2015. The organization was established in 2013 to provide psychological and legal support, conduct community dialogues, and provide peer education for LBT women.

bisexual women, who are not only more vulnerable to physical and sexual violence, but also less likely to report abuses than other members of the LGBT community.

Henry, the victim of mob violence in Lagos in June 2014, captured the feelings of many victims: “No way would we file a complaint. When it’s an LGBT issue, you can’t file a complaint.... The police could lie. Then it’s your word against theirs. For the judge, as long as they are hearing ‘gay’.... Forget it.”¹⁰²

Clive, a gay man who lives in Abuja, told Human Rights Watch that since the law was passed, a lot of community members have gone back into hiding because of fear. They had heard about people being beaten up in Abuja and got scared. According to Clive, “people get attacked for being gay but the fear will not let them report this to the police, they are afraid of going to prison. So no one is reporting crimes.”¹⁰³

Many of the young gay men and lesbians interviewed by Human Rights Watch reported that since the SSMPA was passed, they have been set up by people they meet on social media. In January 2015, Daniel, a 21-year-old gay man from Lagos, met Peter on Facebook, and they talked for approximately three months on social media. He told Human Rights Watch that when he arrived in Port Harcourt to visit Peter, he was attacked and sexually abused by Peter and two of his friends. Daniel, emphasizing that he believed he was tricked by Peter, described the incident, which he did not report to the police:

They told me to strip naked, take off all my clothes, and proceeded to beat me up. They tried to insert bottles into my anus, they tied me down. They just kept saying I have to stop being gay and have to give my life to [Jesus] Christ. When they were done, they put me in a car and drove me to an eatery, naked, and left me outside completely naked. The people who work there helped me.... It is impossible to report such cases to the police, they will use the law against me and I will go to jail for 14 years. There is no point in reporting.¹⁰⁴

¹⁰² Human Rights Watch interview, Lagos, October 2015.

¹⁰³ Human Rights Watch interview, Abuja, October 2015.

¹⁰⁴ Human Rights Watch interview, Abuja, October 2015.

Michael, who lives in Ibadan, also met a man through Facebook and arranged to meet. He was photographed, beaten, and robbed by his Facebook friend and his accomplice.¹⁰⁵ Michael and many other interviewees said people who intend to perpetrate homophobic violence seem to have been lying low, but now that the widely publicized SSMPA was passed, they believe they can unleash terror, and the victims will be terrified of reporting to the police due to the “threat of 14 years in prison.”¹⁰⁶ Many interviewees told Human Rights Watch that prior to the passage of the SSMPA, the general public may have generally objected to homosexuality primarily on the basis of religious beliefs and particular understanding of African culture and tradition.

David, a gay man from Ibadan, was beaten and robbed by two different men that he met through social media. He told Human Rights Watch that he was afraid of informing his family about the robberies in case they rejected him for being gay. He also did not report the crimes to the police in case he was arrested and imprisoned for 14 years.

Human Rights Watch documented only a handful of cases in which victims reported crimes to the police. None of them resulted in the arrest of perpetrators. One victim, Rodney, was violently attacked in July 2015 by a group of eight men, who were “shouting that because I’m gay, I should leave the neighborhood.” After the attack, Rodney went to the police:

On that same day I went to the police. But the police said that they would not document the case and told me to leave the neighborhood. The police officer said that because I’m gay, they won’t do anything.... They said they didn’t want to have anything to do with me.¹⁰⁷

In June 2015, Isaac was beaten by five or six men in his Abuja neighborhood. They accused him of being gay. He reported the attack to the police but later became aware that many people in the community were speculating that the attack took place due to his sexual orientation. Isaac told Human Rights Watch: “Everyone was talking about the incident and saying I am the gay boy who got beaten up, so I was afraid to go back to the

¹⁰⁵ Human Rights Watch interview, Ibadan, October 2015.

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch interview, Abuja, October 2015.

police station.”¹⁰⁸ Isaac has not followed up with the police about how the investigation has progressed.

¹⁰⁸ Human Rights Watch interview, Abuja, October 2015.

V. Impact on the Right to Health: Stigma, Discrimination, and Restriction on Access to HIV services

When one of my past boyfriends learned that he had the HIV virus, he referred me to a health facility. When I got to the hospital I asked to see Dr. A. There were three women in the front room and one said, “Oh come inside. We know who you are.” They were talking about my sexuality. It felt bad, it was stigmatizing. Instead of sending me to the doctor right away, they brought out the bible and started preaching, telling me that I am bad because I am gay.

-Matthew, Program Officer, responsible for HIV programming and counseling

Challenges to Seeking and Providing Care

The SSMPA constitutes a significant barrier to guaranteeing access to prevention and treatment services for gay men and MSM. The law increases stigma and discrimination which in turn hinders access to HIV treatment, services, and care. The SSMPA has led to increased harassment, stigma, and violence based on sexual orientation and created a context of fear in which gay men and MSM are deterred from accessing HIV prevention, testing, and treatment services. It compromises the right to the highest attainable standard of health, both through prohibiting the existence of health and HIV prevention groups composed of LGBT people, and through imposing risks for individual LGBT people who seek health services that may require revealing their sexual orientation. The SSMPA has also increased the risk of sexual violence for gay men and lesbians, and of HIV infection, in addition to causing mental and emotional trauma.

Mathew told Human Rights Watch that in June 2014, while attending an HIV training program in Abuja organized by the Population Council, he was harassed and ostracized by fellow trainees:

I did a presentation on MSM. When I went to my hotel room, some women came to my door and were shouting: “This is where the homosexual sleeps!” Then I could hear them spit at the door of the room. The next day at the training no one would sit near me. People would not shake hands with

me. There is triple stigma in my case: having the virus, providing services to MSM, and being gay.¹⁰⁹

An activist from a Lagos-based organization that provides capacity-building and support for LGBT people focusing specifically on HIV services told Human Rights Watch:

When the law was passed in January 2014, the rate of human rights violations increased, access to health care services reduced; people could not go to hospitals for treatment for STIs [sexually transmitted infections] or HIV because they feared doctors would ask how they got infected—that doctors would ask directly if they were having gay sex.¹¹⁰

Forced by the SSMPA to remain invisible, it is difficult for the LGBT community in Nigeria to organize around prevention and care or advocate for their rights. The legal environment prevents LGBT groups from registering as such. This is due to the criminalization of gay associations and clubs under the SSMPA as well as the criminalization of adult consensual same-sex conduct under the Criminal Code and Sharia law in northern Nigeria.

Interviewees informed Human Rights Watch that HIV and AIDS programming and support is the primary entry point for groups that work on the human rights of LGBT people. Many LGBT organizations, otherwise unable to operate openly or register as LGBT groups, conduct their work under cover of a broadly-defined HIV and AIDS mandate or as general human rights organizations. Effective outreach is extremely complicated when operating in this clandestine manner.

Moreover, in an environment where consensual adult same-sex conduct is criminalized and LGBT identity is highly stigmatized, locating and enabling access to appropriate and respectful educational and care services is a challenge. As a Lagos-based activist told Human Rights Watch, the “national HIV response has been structured around normative sex.” Even with a clear policy commitment to target this “key population,” large sections of

¹⁰⁹ Human Rights Watch interview, Abuja, October 2015.

¹¹⁰ Human Rights Watch interview, Lagos, October 2015.

the Nigerian health sector appear ill-equipped, at best, to reach and respectfully care for the LGBT community, in particular gay men and MSM.¹¹¹

The lack of access to accurate information about HIV prevention and services endangers lives. An activist from Enugu State elaborated on the burden these limitations place on both those seeking services and those involved in providing care to this community:

For many years, many people believed that they could not get HIV from anal sex. It was only in 2010 that I learned that HIV could be transmitted between men. We thought gay sex was the safest form of sex, then we realized how many people had died but we hadn't understood why. The major challenge in Enugu State is the rate of HIV and STIs among members of the community. There are no clinics for MSM to access services and treatment without fear of being harassed. Many people end up travelling to Lagos and other states to access treatment, but most people do not have the resources for that. As an organization, we rely on donations from family members to secure treatment for our members.¹¹²

David, a gay man from Ibadan, who is HIV positive but not receiving treatment, spoke about his strong discomfort being asked about his sex life, in light of the law:

I have depression now. Access to medication is not easy. At UCH [University College Hospital, Ibadan] they ask you how you got HIV. Who do you have sex with: men or women? I am not on medication, no ARVs. Other places are even worse than UCH because medical professionals will ask you if you are gay or not. People are scared to go out and get treatment because of what they will face. Even peer educators find it difficult to refer people.¹¹³

In several instances, testimonies starkly present a clear link between the passage of the SSMPA and collapsing health care services for gay men and MSM. Police have arrested

¹¹¹ Human Rights Watch interview, Lagos, October 2015.

¹¹² Human Rights Watch interview, Lagos, October 2015.

¹¹³ Human Rights Watch interview, Ibadan, October 2015.

health workers under the SSMPA in Kaduna and Abuja and at least one organization suspended its HIV-related work in Kano in the wake of the passage of the law.

An activist from the organization whose members were arrested in Kaduna noted: “In Kaduna there are at least two other organizations who can provide [health services to gay men], but people are afraid to come out looking for services because of the law.”¹¹⁴ Similarly, an activist from an organization in Kano that provides health services to MSM said his organization was forced to suspend its activities after the passage of the SSMPA due to repeated threats from private individuals, who threatened to report the organization to the HISBAH.¹¹⁵ The HISBAH is a religious police responsible for the enforcement of Sharia law.¹¹⁶

Human Rights Watch interviewed numerous peer educators and outreach coordinators who work for an established organization in Abuja that provides legal and HIV services as well as peer education for gay men and MSM. The police raided this organization’s offices in September 2014. Ada, the organization’s research officer, told Human Rights Watch:

Police environment is not conducive for people to come here. There is a real fear of stigmatization. We have tried to make the office as neutral as possible, so it does not look like all the people who come in have HIV. Our major concern is how to get back the people who have stopped coming [because of the SSMPA].¹¹⁷

Ada’s evidence underscores the negative impact of the SSMPA on HIV programs and specifically, the restrictions on service providers to reach clients who require treatment.¹¹⁸ She told Human Rights Watch:

After the law was passed, the members started dropping. We have lost people. They are not picking up their ARVs [anti-retroviral treatment].... Our major concern is how to get back the people who have stopped coming.

¹¹⁴ Human Rights Watch interview, Abuja, October 2016.

¹¹⁵ Human Rights Watch interview, Abuja, October 2015.

¹¹⁶ See Human Rights Watch, “*Political Shari’a*”? *Human Rights and Islamic Law in Northern Nigeria*, sec. VIII.

¹¹⁷ Human Rights Watch interview, Abuja, October 2015.

¹¹⁸ Human Rights Watch interview, Abuja, October 2015.

They will get so ill that by the time someone brings them in, they are very, very sick.¹¹⁹

Health-seeking behavior diminishes when individuals fear that accessing health services may lead to exposure and arrest. Indeed, numerous peer educators who provide services to gay men and other MSM in Abuja, Lagos, and Delta State told Human Rights Watch that the police routinely use possession of condoms and lubricant as evidence of homosexual identity and therefore a criminal offence.¹²⁰ Peer educators and individuals are targeted for stops and searches based on their real or perceived sexual orientation or gender identity rather than on the basis of any observed illegal activity.

As noted above, police in Ibadan arrested and detained 21 gay men after they found a bag of 200 condoms that belonged to one of the guests. One of the gay men told Human Rights Watch:

The police took the condoms out. Told us to stand in front of the condoms and wrote on the board “21 gay men suspected.”¹²¹

In Kaduna, police arrested 12 peer educators when they found lubricant and condoms that were being used for an HIV education session.¹²²

Human Rights Watch and other organizations have documented the police practice of using possession of condoms as evidence of criminality and how this practice endangers the health of those whose use of condoms is “criminalized” by the police, as victims are less

¹¹⁹ Human Rights Watch interview, Abuja, October 2015.

¹²⁰ Human Rights Watch interviews in Abuja and Lagos.

¹²¹ Human Rights Watch interview, Abuja (noted above).

¹²² Human Rights Watch interview, Abuja (see testimony in sec. VI).

likely to carry condoms as a result.¹²³ The World Health Organization has recommended that this police practice be eliminated due to its harmful impact on HIV prevention.¹²⁴

Samuel, an activist who was arrested while doing community outreach in Kaduna, told Human Rights Watch that the organization is operating under severe conditions due to fear of arrest and prosecution: “Many people are afraid to seek services because of the SSMPA and some of our gay community members present in a feminine way and we cannot meet them in public to do this work.”¹²⁵

By fostering a climate of fear that causes both health workers and those seeking services to limit or abandon their actions, the SSMPA restricts access to information, care, and much-needed support to members of the LGBT community. When groups that provide health services, including HIV services, to marginalized populations shift their priorities, or even close down for fear of public shaming or worse, violent attack, the right to the highest attainable standard of health is grossly compromised.

¹²³ See Human Rights Watch, *In Harm's Way: State Response to Sex Workers, Drug Users and HIV in New Orleans*, December 11, 2013, <https://www.hrw.org/report/2013/12/11/harms-way/state-response-sex-workers-drug-users-and-hiv-new-orleans> and Open Society Foundations, “Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe,” July 2012, <https://www.opensocietyfoundations.org/sites/default/files/criminalizing-condoms-20120717.pdf> (accessed October 18, 2016).

¹²⁴ World Health Organization, “Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations,” July 2014, http://apps.who.int/iris/bitstream/10665/128048/1/9789241507431_eng.pdf (accessed October 18, 2016).

¹²⁵ Human Rights Watch interview, Abuja, October 2015.

VI. Government Response

Nigeria has the second largest HIV epidemic globally.¹²⁶ The HIV prevalence rate in Nigeria is 3.4 percent, translating to an estimated 2.98-3.3 million people living with HIV or AIDS, according to Nigeria's National Agency for the Control of AIDS (NACA). Nigeria's HIV-positive population represents the second-highest HIV disease burden in sub-Saharan Africa, second only to South Africa. Nigeria accounts for 2.5 percent of the total global population, but 9 percent of all people living with HIV, and 10 percent of all new infections globally are found in Nigeria.¹²⁷ Nigeria's epidemic is generalized, with wide variation in prevalence within the country, and with women and girls being the most vulnerable and affected—young women between the ages of 15 and 24 are more than twice as likely to be living with HIV as young men in the same age range.¹²⁸ The impact of the SSMPA on access to services and treatment for gay men and MSM needs to be understood in context.

Notwithstanding the generalized nature of the epidemic in Nigeria, the recommended response from international health authorities is for countries to focus interventions on those populations with the highest rates of new infections, including gay men and MSM. In its 2015 Country Progress Report, NACA indicates a substantially higher HIV prevalence rate among key target populations, with a 17.2 percent infection rate among the MSM population.¹²⁹ NACA's Strategic Framework document, "Ending the AIDS Epidemic in Nigeria by 2030," also states that while MSM groups and injecting drug users have a "higher probability of infection, existing and projected demographic data indicates that they account for a combined 8 percent of all new infections" in the country.¹³⁰ The Country Progress Report acknowledges the high prevalence of HIV among MSM. NACA emphasizes that targeting these groups will be beneficial to reversing the spread of the epidemic in Nigeria.

¹²⁶ See UNAIDS and the Global Fund press statement issued after the SSMPA was passed. "UNAIDS and the Global Fund Express Deep Concern about the Impact of a new law affecting the AIDS response and human rights of LGBT people in Nigeria," UNAIDS and the Global Fund press release, January 14, 2014, <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/january/20140114nigeria> (accessed October 18, 2016).

¹²⁷ UNAIDS, "The Gap Report," 2014, http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Gap_report_en.pdf (accessed October 18 2016).

¹²⁸ *Ibid.*

¹²⁹ National Agency for the Control of AIDS, "Federal Republic of Nigeria, Global AIDS Response Country Progress Report," 2015, http://www.unaids.org/sites/default/files/country/documents/NGA_narrative_report_2015.pdf (accessed October 18, 2016).

¹³⁰ National Agency for the Control of AIDS, "Ending the AIDS Epidemic in Nigeria by 2030: A Strategic Framework," p. 45.

At the same time, NACA recognizes major obstacles in this regard, including “the presence of policy and regulatory barriers that prevent engagement and recognition of these groups, increasing stigma and discrimination and threatening all efforts made at providing effective prevention, treatment, care and support for them.”¹³¹

When the SSMPA was passed in January 2014, UNAIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria warned that it would impede access to HIV services for LGBT people in Nigeria, stating:

The provisions of the law could lead to increased homophobia, discrimination, denial of HIV services and violence based on real or perceived sexual orientation and gender identity ... [and] be used against organizations working to provide HIV prevention and treatment services to LGBT people.¹³²

NACA’s Director-General issued a statement in response to debates about the implications of the SSMPA on HIV programming for the LGBT community, saying:

Nothing in the Same Sex Marriage (Prohibition) Act 2013 refers to or prohibits programs targeted at Prevention, Treatment, Care and Support for people living with HIV or affected by AIDS in Nigeria. No provision of this law will deny anybody in Nigeria access to HIV treatment and other services.¹³³

During a November 2015 meeting with Human Rights Watch, an official from NACA reiterated the above statement, and in response to a question about whether or not the SSMPA has created a climate of fear that makes it challenging for LGBT people to seek services and treatment, the official stated, “the SSMPA does not in any way affect the

¹³¹ Supra n107, Country Progress Report, p. 44.

¹³² “UNAIDS and the Global Fund Express Deep Concern about the Impact of a new law affecting the AIDS response and human rights of LGBT people in Nigeria,” UNAIDS and the Global Fund press release, January 14, 2014, <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2014/january/20140114nigeria> (accessed October 18, 2016).

¹³³ “Statement on Same Sex Marriage (Prohibition) ACT 2013,” NACA, November 3, 2015, <http://naca.gov.ng/article/statement-same-sex-marriage-prohibition-act-2013-0> (accessed October 18, 2016).

national HIV response. There is no discrimination on the grounds of sexual orientation in the AIDS response and services are available to everyone, including MSM.”¹³⁴

By contrast, NACA officials acknowledged the abovementioned findings of the quantitative cohort study and emphasized the need to conduct follow-up research to determine if the decline in health-seeking behavior has continued and if it is indeed associated with the law [SSMPA].¹³⁵

Mianko Ramarosan, Human Rights and Gender Equality Adviser, UNAIDS Nigeria, similarly stressed that the SSMPA does not expressly prohibit LGBT people from seeking HIV prevention, treatment, care, and support services, although internalized stigma, fear of public outing, or prosecution may discourage LGBT people from seeking such services.¹³⁶ Nevertheless, she emphasized that demonstrating direct causality between the SSMPA and low access to HIV services among LGBT people is difficult and to address this potential issue, Nigeria has moved towards integrated provision of HIV services, while ensuring confidentiality over services-users’ personal and medical information.¹³⁷

An implicit awareness of the challenges that may have been wrought by the SSMPA can be found in a December 2015 report produced by NACA and UNDP, Legal Environment Assessment for HIV/AIDS Response in Nigeria.¹³⁸ The report concluded that for concrete progress to be made in ensuring that people living with and affected by HIV/AIDS enjoy their fundamental human rights, greater awareness of the provisions and implications of the SSMPA as a public health issue must be achieved among the police, the National

¹³⁴ Human Rights Watch interview with NACA official, Abuja, November 2015.

¹³⁵ Ibid. At the time of the interview, Human Rights Watch was informed that a research project on *Challenges MSM face in accessing minimum prevention package intervention* had been approved and NACA was waiting for the funding from the Global Fund, which was delayed due to new foreign funding regulations introduced by the new administration.

¹³⁶ Human Rights Watch interview, Abuja, November 2015. UNAIDS is the joint United Nations program on HIV/AIDS. It works closely with government ministries and agencies and civil society to end the HIV epidemic.

¹³⁷ Ibid. In the interview, Mianko Ramarosan discussed at length: The Constitution of Nigeria guarantees the protection of human rights. Other pieces of legislation, such as the HIV and AIDS (Anti-discrimination) Act, 2014; the Violence Against Persons (Prohibition) Act, 2015; and the Administration of Criminal Justice Act, 2015 provide legal remedies for claims of discrimination on the ground of real or perceived HIV positive status, as well as claims for lack of due process of law. Legal literacy, awareness of human rights, and access to justice are part of efforts to improve access to HIV prevention, treatment, care, and support services. In particular, the Coalition of Lawyers for Human Rights (COLAHR), which is a network of volunteer lawyers, was established by UNAIDS, in collaboration with Lawyers Alert, the National AIDS Coordinating Agency, the National Human Rights Commission, and the Nigerian Bar Association to provide *pro bono* legal services, including to LGBT people who are arbitrarily arrested and detained or are denied HIV services.

¹³⁸ UNDP/NACA, “Legal Environment Assessment for HIV/AIDS Response in Nigeria,” December 2015, available at <http://www.hivlawcommission.org/index.php/implementation-of-report/legal-environment-assessments>.

Assembly, and members of the public.¹³⁹ In the course of conducting this study, Nigerian State coordinating bodies for HIV had been asked to identify laws and policies that have an impact on the HIV response, and in respect of the SSMPA, “respondents noted that rather than pass the Anti-Stigma Bill into law, government rushed into passing a law on Same Sex Marriage.”¹⁴⁰ It is reported that one respondent remarked that:

The law criminalizing homosexual activities in Nigeria seems to back the negative attitude of health care workers towards this marginalized group and this will increase the spread of the virus. The law reduces support for positive people who are members of the MSM community.¹⁴¹

Reflections shared in the official report and the report’s own findings reveal a troubling contradiction in government policy. Despite rhetoric recounted earlier in this section, in which NACA officials report “no discrimination based on sexual orientation in the national AIDS response,” other government actors cited in the Legal Environment Assessment for HIV/AIDS Response in Nigeria report recognize the very real negative impact of the SSMPA, an impact that furthers stigma and discrimination which, in turn, serve as barriers to MSM seeking HIV prevention and care services, one of NACA’s own state objectives.

The continued denial by some of NACA’s officials of the SSMPA’s negative impact on key populations’ access to HIV services and treatment is of major concern. Individual lives hang in the balance. Debbie, a 26-year-old transgender woman living with HIV, was beaten up by members of the public in Ado Ekiti at least twice since the SSMPA was passed, and continues to face major obstacles in accessing treatment at time of writing.¹⁴² She told Human Rights Watch that since she has not been able to access services in Ekiti State, she has to travel long distances—three hours each way—to Ibadan for HIV services and treatment. She dares not reveal her sexual orientation or gender identity to medical personnel in Ibadan for fear of being refused treatment. Adding to her burden is the additional cost of travel expenses. Debbie, a physiotherapist with a diploma in

¹³⁹ Ibid., p. 89.

¹⁴⁰ Ibid., p. 45.

¹⁴¹ Ibid.

¹⁴² Human Rights Watch interview, Ibadan, October 2015.

management and events planning, has been unemployed since February 2015 when she was dismissed from her job because she is transgender.¹⁴³

¹⁴³ Ibid.

VII. Restrictions on NGOs and Human Rights Defenders

The 1999 Nigerian Constitution guarantees the fundamental right of every person to assemble freely, associate with others, and to form or belong to any association.¹⁴⁴ The SSMPA, however, imposes a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies organization” or “supports” the activities of such organizations. These provisions effectively prohibit, in a discriminatory manner, LGBT people and their allies from socializing with one another, or coming together for advocacy purposes, on the sole grounds of their sexual orientation or gender identity.

Soon after the SSMPA was adopted, a constitutional challenge was filed in the Federal High Court at Abuja, “Mr. Teriah Joseph Ebah v Federal Republic of Nigeria,” in which the applicant argued that all the provisions of the SSMPA are inconsistent with the Constitution of the Federal Republic of Nigeria and with the provisions of the African Charter on Human and Peoples’ Rights, which has been domesticated as a part of Nigerian law.¹⁴⁵ The Nigerian government submitted that the applicant lacked locus standi to institute proceedings. On October 22, 2014, the Abuja Federal High Court accepted this argument, ruling that the applicant lacked locus standi to institute the action on behalf of the gay community in Nigeria, and further stated: “there is nobody or organization in Nigeria called lesbian, gay, bisexual and transgender (LGBT) community. Even the applicant did not describe him [self] as a gay.”¹⁴⁶

The SSMPA has negatively impacted the work of civil society organizations, human rights defenders, and health care workers, including peer educators and others who provide essential HIV services. The provisions forbidding association and support to gay associations have an impact on civil society organizations more generally. As representatives of mainstream human rights organizations have noted:

¹⁴⁴ Constitution of the Federal Republic of Nigeria, sec. 40(1): Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

¹⁴⁵ Suit No. FHC/ABJ/CS/197/2014, Applicant’s submission: secs. 1(1) and 1(2), 2(1) and 2(2) and 3 are inconsistent with secs. 42(1)(A) and (B) and 42(2) of the Nigeria Constitution and arts. 2, 3(1) and (2) and 10 and 28 of the African Charter; that secs. 4(1) and (2); 5(1); (2) and (3) of the SSMPA are impediments to secs. 40 and 35 of the Nigeria Constitution and arts. 6 and 10(1) of the African Charter and finally that secs. 1(1) and (2); sec. 2 and sec. 5(1) are inconsistent with secs. 37 and 34 of the Constitution and art. 28 of the African Charter.

¹⁴⁶ The judgment was certified on November 3, 2014.

Mainstream human rights groups are primarily against the SSMPA, because they understand that it threatens their freedom of association as well. But it's difficult because of the criminalization, so people have been very quiet, afraid of providing support to LGBT groups.... It is now a criminal offence and no one wants to go to prison for 10 years. The law is very clear on this point and no one wants to take any risks.¹⁴⁷

Representatives of at least three organizations, including one that works on health and HIV and two that cover more general human rights issues, told Human Rights Watch their offices were raided by the police because of their work with LGBT people or MSM. Human Rights Watch interviewed three lesbian activists who have established or work for LBT organizations in Abuja and Calabar. The organizations work with lesbian and bisexual women, providing training on human rights, security, sexuality, and health for their members. The organizations are registered as mainstream human rights groups with a mandate to work with the general population, since they are prohibited from registering as LGBT groups in Nigeria.

According to Jane, it took 12 months to finalize the organization's registration and when it was done, they had to share office space with an MSM group. For this reason, police would routinely come to their offices to inquire about their activities.¹⁴⁸ A representative of the Abuja-based organization told Human Rights Watch:

Before the SSMPA was passed, LBT women would come out for various educational and social activities, but now it is very difficult to get people to come to any event or social gathering. We have to do all the organizing work underground and hold meetings in secret locations. People will not talk, they are terrified, they feel at risk, they are just trying to figure out where they belong, and feel and believe they have nowhere safe to go.¹⁴⁹

¹⁴⁷ Human Rights Watch Skype interview, New York, December 2015.

¹⁴⁸ Human Rights Watch interview, Lagos, October 2015.

¹⁴⁹ Human Rights Watch interview, the Gambia, April 2016.

In Kaduna, in June 2014, police arrested members of an Abuja-based HIV prevention organization, which had organized an HIV education session for gay men and MSM.¹⁵⁰ According to Samuel, the Executive Director of the organization, the education session was scheduled to be held at a hotel in Kaduna. However, since many of their members looked visibly gay, they decided to move the training session to a different location in the neighborhood.¹⁵¹

Samuel told Human Rights Watch that people in the neighborhood informed the police that there were “members of the community” in the area. When the police arrived, The Kaduna State Security outfit, code-named Operation Yaki, confiscated the condoms and lubricants used for the training and detained 14 peer educators. Samuel said:

At the police station, we were charged with “same-sex practices; gay men gathered to have sex.” The police made threats, saying, “we will take you to court, we will televise you and everything that you do and the whole world will see you and know about you.” I was detained in a separate cell for 24 hours but I was not treated badly. However, other people suffered. Six of the members were taken into an interrogation room; they were flogged and tortured and forced to write statements admitting that they were gay. One of our members was a 15-year-old boy. The police tortured him, he had injuries all over his arm. They said his case was special to them. After the incident, he completely withdrew from the LGBT community and I have not heard from him or seen him since.¹⁵²

Samuel said they were all released only after paying bribes. He directly attributed the police action to the SSMPA, stating that, “the police treat people in any way that they please, they force people to confess and when they hear about a gathering of men, they just head over to make arrests.”¹⁵³ Following the incident, the organization suspended its activities in Kaduna State, and in Abuja they have had to adopt a new strategy, which he

¹⁵⁰ Human Rights Watch interview, Abuja, November 2015 (name of organization withheld for security reasons).

¹⁵¹ Human Rights Watch interview, Abuja, October 2015. He informed Human Rights Watch that he travelled to Kaduna from Abuja to supervise the ongoing project and conduct the training session.

¹⁵² Human Rights Watch interview, Abuja, October 2015.

¹⁵³ Ibid.

says “is ineffective, expensive, and makes it difficult to monitor the HIV program and follow-up with members of the community.”¹⁵⁴

In Abuja in January 2014, shortly after the SSMPA was passed, police raided a meeting on HIV services and treatment hosted by a peer educator and arrested 12 of the 24 participants.¹⁵⁵ Ben, a peer educator, told Human Rights Watch that prior to the enactment of the SSMPA, he had hosted 12 such meetings at his home without any difficulties. Ben described the incident on that particular day:

We were having a meeting with peer educators in the garden [behind my house]. People in my neighborhood know that I am MSM. Some neighbors came to the garden and demanded drinks from us. When we refused, they got angry, took our phones, and started attacking us. 12 of the peer educators managed to run away. The attackers called the police and when they arrived, 12 of us were arrested. The police asked us why there were no women at the meeting and if we were promoting homosexuality.¹⁵⁶

They all spent three weeks in police custody without being formally charged and were finally released after paying 100,000 Naira.

Lawrence, a worker at a health organization in Abuja, expressed similar concerns. Prior to the passage of the SSMPA, he said, his organization used the media to announce HIV prevention initiatives for MSM, and its peer educators reached out to MSM in bars and other public places. After the law was passed, he said, they had to organize HIV education initiatives secretly. Lawrence told Human Rights Watch, “People are scared. We don’t want to get caught and sent to prison.”¹⁵⁷

In Zamfara State, Mohammed, a representative of a human rights organization, told Human Rights Watch that since the passage of the SSPMA, they have had to take steps to protect themselves and the organization. For instance, a decision was made to remove

¹⁵⁴ Ibid.

¹⁵⁵ Human Rights Watch interview, Abuja, October 2015.

¹⁵⁶ Ibid.

¹⁵⁷ Human Rights Watch interview, Abuja, October 2015.

signage displaying the organization's name, and for all staff members to participate in digital security training. According to Mohammed:

Wherever we are, we always make sure to have access to an exit door in case we have to run from the HISBAH. We have also stopped travelling in convoys; avoid group mobility; stopped dropping participants off as a group and make sure that everyone arrives and departs individually so as not to draw attention to ourselves. We avoid the media. In the past we used to have annual news conferences, now we have suspended all media engagement and reduced publicity ... at the annual news conferences, we would talk about women's rights, reproductive rights, and sexuality education.¹⁵⁸

In Kano, a representative of a human rights organization, Abdul, described the challenges of working on sexual orientation and gender identity issues in the north of Nigeria, emphasizing that there are always serious concerns for personal safety and security. He said that, "LGBT individuals in northern Nigeria face triple discrimination: on the basis of the SSPMPA, the Penal Code, as well as Sharia Law."¹⁵⁹ Abdul told Human Rights Watch that he had provided support to a group of men arrested in Kano in June 2014. This brought him into the spotlight of the HISBAH and shortly thereafter, he started receiving threatening phone calls late at night. On September 19, 2014, he was attacked in his home:

Around 2:00 a.m. in the morning, I heard a knock on my door. I had a guest in my house. When I tried to open the door, it was pushed down, broken and it slammed me to the floor. It hit me so hard that I was lying flat on my back when the four men came in. They just started beating me; they were breaking things; smashed the television and kept asking me where the computers were. They tied my hands behind my back with a wire and also tied my legs together. The attackers beat me up and left me unconscious on the floor. I was hospitalized for three days and had to leave the state after being released.¹⁶⁰

¹⁵⁸ Human Rights Watch interview, Abuja, October 2015.

¹⁵⁹ Human Rights Watch interview, Abuja, November 2015.

¹⁶⁰ Human Rights Watch interview, Abuja, November 2015.

Abdul further told Human Rights Watch that the attackers asked for names of other gay people in the state. They also asked for the names of people who give him money to do human rights work on LGBT issues. He did not report the attack to the police or any other authority.

Warren, a human rights defender, has worked with the LGBT community for many years. He established an informal network of peer educators who provide support to gay men and MSM in the Delta State. Warren told Human Rights Watch that the day after the law passed, as a human rights defender, he spoke out publicly against the law and thereafter received two death threats via email: “We are watching you and we are coming for you!” and “If you come to the Niger Delta, we will kill you!”

The SSMPA has had a severe impact on the operations of both registered and non-registered organizations that provide essential services and support to LGBT individuals in Nigeria. Warren told Human Rights Watch that LGBT people have withdrawn from the community and many peer educators in the Delta State left the network after the law was passed.

VIII. Nigeria's Legal Obligations

Nigeria, a Federal Republic composed of 36 states and the Federal Capital Territory (FCT), is the most populous country in Africa, with an estimated 185 million people.¹⁶¹

The 1999 Constitution of the Federal Republic of Nigeria (Constitution) protects a range of fundamental rights, including respect for dignity of the person and prohibition of torture, inhuman, or degrading treatment; personal liberty; privacy; due process rights; and the rights to freely assemble and associate with other persons, including forming any association for the protection of one's interest. In addition to the specific fundamental rights and freedoms, Chapter 2 of the Constitution sets out the Fundamental Objectives and Directive Principles of State Policy with which "all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers" are obliged to conform.¹⁶²

The most relevant principles for the protection of human rights of LGBT people in Nigeria include:

- Section 15(3)(d) imposes a duty on the State to "promote or encourage the formation of associations that cut across ethnic, linguistic, religious and or other sectional barriers" in order to promote national integration.
- Section 15(5): The State shall abolish all corrupt practices and abuse of power.
- Section 17(1): The State social order is founded on ideals of Freedom, Equality and Justice.
- Section 17(2): In furtherance of the social order – a) every citizen shall have the equality of rights, obligations and opportunities before the law; b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.
- Section 17(3): The State shall direct its policy toward ensuring that there are adequate medical and health facilities for every person.

¹⁶¹ "Nigeria Population," Countrymeters, <http://countrymeters.info/en/Nigeria> (accessed October 18, 2016).

¹⁶² Constitution of the Federal Republic of Nigeria, sec. 13.

The National Human Rights Commission, established by the National Human Rights Commission Act (NHRC), 1995, as amended by the NHRC (Amendment) Act, 2010, and in accordance with UN General Assembly resolution 48/134,¹⁶³ has a significant role to play in the protection of the human rights of LGBT people.¹⁶⁴ In terms of its Standing Orders and Rules of Procedure, the Human Rights Commission has a mandate to conduct promotional activities on human rights issues in Nigeria.¹⁶⁵ Significantly, in accordance with Rules 58-64, the Human Rights Commission has a protection mandate, in terms of which it is empowered to receive complaints alleging violations or threats of violations of human rights.¹⁶⁶

In November 2015, during the launch of the Committee of Human Rights Experts, tasked by the Human Rights Commission with identifying all federal laws that are in conflict with Nigeria's constitution and with regional and international human rights norms and standards, the Secretary of the Committee strongly recommended that the work be guided by Chapter 2 of the Constitution, stating, "We have problems with our laws because we are not complying with Chapter 2 of the Constitution."¹⁶⁷ The purpose of these clearly articulated principles is to guide government legislative and policy actions in essentially all areas of life that impact the Nigerian population, including regarding issues of sexual orientation and gender identity.

In terms of Section 35 of the Constitution, "every person is entitled to his personal liberty," deprivation of liberty is permitted only under specific conditions and in accordance with the law. The Constitution further provides that persons arrested or detained must be informed within 24 hours of the reasons for arrest and detention, and brought before a court within a reasonable time.

¹⁶³ UN General Assembly, "National institutions for the promotion and protection of human rights," A/RES/48/134, December 20, 1993, available at <http://www.un.org/documents/ga/res/48/a48r134.htm> (accessed October 18, 2016).

¹⁶⁴ "The Commission," National Human Rights Commission, <http://www.nigeriarights.gov.ng/Commission.php> (accessed October 18, 2016).

¹⁶⁵ National Human Rights Commission of Nigeria, "Standing Orders and Rules of Procedure of the National Human Rights Commission of Nigeria," 2013, <https://www.premiumtimesng.com/wp-content/files/2013/12/NIGERIA-NHRC-STORPNHRC-UPDATED-EDITION-very-final.pdf> (accessed October 18, 2016).

¹⁶⁶ *Ibid.*, ch. XVI: Commencement of Cases and Complaints.

¹⁶⁷ Oral Statement by Abdul Wahab Oyedokim, Esq. The Committee of Human Rights Experts was launched on November 18, 2015 at the Nigeria Human Rights Commission Office, Abuja. Human Rights Watch researcher attended the event.

On May 25, 2015, the National Assembly of the Federal Republic of Nigeria enacted the Violence against Persons (Prohibition) Act, 2015 (the VAP law).¹⁶⁸ The law is designed “to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders.”¹⁶⁹ The law addresses the various forms of violence to which LGBT people in Nigeria are routinely subject, including sexual violence, with its expanded definition of rape to include male rape; inflicting physical injury on a person; willfully placing a person in fear of physical injury; depriving a person of his or her liberty in the absence of a court order; damage to property with intent to cause distress; and emotional, verbal, and psychological abuse.¹⁷⁰

Further, it introduces procedures for protection order applications for victims and persons under threat of violence, including compensation for victims, and provides for the creation of a register for convicted sexual offenders, to be “maintained and accessible to the public.”¹⁷¹ The protection and remedies set out in the VAP law should be accessible to all persons, including LGBT individuals in Nigeria who are victims of the prohibited forms of violence. In terms of section 27, the High Court of the Federal Capital Territory, Abuja, has jurisdiction to hear and grant applications brought under this law.

In March 2014, the Nigerian government signed into law the HIV/AIDS (Anti-Discrimination) Act, 2014. The purpose of this law is to prevent discrimination based on real or perceived HIV status and to ensure access to health care and other services to everyone, including LGBT people.¹⁷² In terms of section 4(1) of the Act, “every individual, community, institution and employer shall take steps to protect the human rights of people living with or affected by HIV or AIDS by eliminating HIV-related discrimination in all settings, including employment, health and educational institutions, policies and practices.”¹⁷³

¹⁶⁸ Nigeria: Violence Against Persons (Prohibition) Act, 2015 (VAPP).

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, secs. 1(1) – life imprisonment for a rape conviction but if the offender is below the age of 14 years, then liable to 14 years imprisonment; 2(1) physical violence – term of imprisonment not exceeding 5 years or a fine not exceeding N100,000 or both upon conviction; 4(1) willfully placing a person in fear of physical injury carries a prison term not exceeding 2 years or a fine not exceeding N200,000 or both; 10(1); 11(1); 14(1) – If convicted of Emotional, verbal and psychological abuse, liable to 1 year in prison or a fine not exceeding N200,000 or both;

¹⁷¹ *Ibid.*, sec. 4 – sex offender register; secs. 28-31 provide for the issuance of interim and final protection orders.

¹⁷² HIV/AIDS (Anti-Discrimination) Act, 2014.

¹⁷³ *Ibid.*

During the course of the 58th Ordinary Session of the African Commission, held in Banjul, the Gambia in April 2016, and following an oral statement made by a representative of TIERS on the human rights violations as a result of the passage of the SSMPA, the Nigerian State representative exercised the state's right to reply:

The Same Sex Marriage (Prohibition) Act simply defines a valid marriage in Nigeria to be a legal union between persons of the opposite sex in accordance with the Marriage act, Islamic law, or customary law. With specific reference to the allegations raised by the NGO the Legal Defense and Assistance Project two days ago, we wish to state that the organization has failed to provide details of human rights violations suffered by any person in Nigeria where the violations took place based on real or perceived sexual orientation in Nigeria. Not even a single instance was cited that is capable of being verified.... It is rather interesting to note that the National Human Rights Commission has not received a single complaint on the so-called 172 cases violation alleged in 2015 nor any of the 52 cases in 2016. The National Human Rights Commission's standing orders and rules of procedure allow anonymity in complaints handling in circumstances such as these. It is rather strange that the NGO is not well acquainted with the legal and institutional framework of the Commission. Which is to say that the NGO has not exhausted all available channels for resolving such issues before coming to this conference.¹⁷⁴

TIERS told Human Rights Watch that its officers submit monthly reports on violations to the National Human Rights Commission.¹⁷⁵ Many LGBT individual victims of violence and abuse, both by state and non-state actors, are too afraid to report to the police or seek legal redress for fear of being arrested under the SSMPA.

¹⁷⁴ 58th Ordinary Session of the African Commission on Human & Peoples' Rights, Banjul, Public Session, Agenda Item: Human Rights Situation in Africa.

¹⁷⁵ Human Rights Watch interview, Lagos, October 2015. Human Rights Watch researchers have not seen these reports.

Obligations under International Law

State Duty to Protect

The Federal Republic of Nigeria has ratified several regional and international human rights treaties that oblige it to respect the rights of LGBT people to freedom of association, expression, and privacy, without discrimination. The state has legal obligations to exercise due diligence in protecting persons, including LGBT individuals, from all forms of violence, whether perpetrated by state or non-state actors, and to prevent arbitrary arrests and torture or cruel, degrading, and inhuman treatment. These include the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR).

As state party to the African Charter, which now forms part of its domestic laws, the Federal Republic of Nigeria is obligated to comply with all the provisions of the African Charter, to ensure the protection, without discrimination, of all individuals in its territory and subject to its jurisdiction. The African Charter imposes obligations on states parties, including ending all acts of violence and abuse, whether committed by state or non-state actors, and punishing all forms of violence targeting persons on the basis their real or perceived sexual orientation and gender identity.

The right to liberty and security of the person is protected under regional and international treaties that Nigeria has ratified, specifically article 6 of the African Charter and article 9 of the ICCPR. Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman, and degrading treatment.

In its Decision in respect of “Communication 236/00: Curtis Francis Doebbler/Sudan,” the African Commission stated that, “the prohibition of torture, cruel, inhuman, or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.”¹⁷⁶ In finding that the state in this matter had violated specific provisions of the African Charter, the African Commission stated:

¹⁷⁶ African Commission on Human and Peoples' Rights, “236/00: Curtis Francis Doebbler/Sudan,” May 2003, http://www.achpr.org/files/sessions/33rd/comunications/236.00/achpr33_236_00_eng.pdf (accessed October 18, 2016).

There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the [African] Charter and contrary to the very nature of this human rights treaty.¹⁷⁷

In May 2014, the African Commission adopted Resolution 275 on “Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation and Gender Identity” (ACHPR Resolution 275), re-affirming the right to freedom from discrimination; equality before the law and equal protection of the law; the right to life; and the right to dignity and prohibition of torture and cruel, inhuman, and degrading treatment.¹⁷⁸ Through this resolution, the African Commission expressly condemns “violence and other human rights abuses including, rape, assault, arbitrary imprisonment and other forms of persecution and the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity” and urges all states parties to:¹⁷⁹

... end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.¹⁸⁰

Adopting the “Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa,” in May 2014, the African Commission noted that:

Individuals in police custody in many African countries experience arbitrary limitations on their rights and are subject to torture, inhuman and

¹⁷⁷ Ibid., para. 42.

¹⁷⁸ African Commission on Human and Peoples’ Rights, “275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity,” 55th Ordinary Session of the African Commission on Human and Peoples’ Rights, Luanda, April 28-May 12, 2014, <http://www.achpr.org/sessions/55th/resolutions/275/> (accessed October 18, 2016).

¹⁷⁹ Ibid.

¹⁸⁰ Ibid. OP, paras. 1-4.

degrading treatment or punishment; and arrest, detention and conditions of police custody in many African countries are characterized by lack of accountability ... [and] systemic corruption and lack of resources, all of which contribute to the absence of the rule of law.¹⁸¹

Regarding arrests, defined as “the act of apprehending a person for the alleged commission of an offence, or to the action of a competent authority to arrest and detain a person as otherwise authorized by law,” the Guidelines expressly state:

2(a): Persons shall only be deprived of their liberty on ground and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect for the rights of the individual;

2(b): Arrests must not be carried out on the basis of discrimination of any kind;

3(d): Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy.

The UN Working Group on Arbitrary Detention has determined that arrests of persons on the grounds of sexual orientation and for “having peacefully exercised their right to freedom of opinion and expression” can amount to arbitrary deprivation of liberty. Article 9 of the ICCPR guarantees everyone the right to liberty and security of the person; it prohibits arbitrary arrest and detention. Clarifying article 9, the UN Human Rights Committee stated that article 9 guarantees these rights to everyone, including lesbian, gay, bisexual and transgender persons.¹⁸²

According to the UN Human Rights Committee:

¹⁸¹ African Commission on Human and Peoples’ Rights, “Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa,” n.d., http://www.achpr.org/files/instruments/guidelines_arrest_detention/guidelines_on_arrest_police_custody_detention.pdf (accessed October 18, 2016).

¹⁸² UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), para. 3.

The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury.... States must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders ... [and] violence against persons on the basis of their sexual orientation and gender identity.¹⁸³

Article 9(5) obliges states parties to establish legal frameworks to enable victims of arbitrary arrest to exercise the enforceable right to compensation. The UN Human Rights Committee further states that, “When the unlawfulness of the arrest arises from the violation of other human rights, such as freedom of expression, the State party may have further obligations to provide compensation or other reparation in relation to those other violations,” this being the case in Nigeria in respect of arbitrary arrests as a result of the SSMPA.

The right to privacy is guaranteed by article 37 of the Nigeria’s Constitution, which provides “[t]he right to privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.”¹⁸⁴ As state party to the ICCPR, the Nigerian government is obliged to protect the rights to privacy as set out in article 17: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation” and 17(2): “everyone has the right to the protection of the law against such interference or attacks.”¹⁸⁵ The Human Rights Committee has observed that the “obligations imposed by article 17 require the State to adopt legislative and other measures to give effect to the prohibition against [arbitrary or unlawful] interferences and attacks, as well as to the protection of this right.”¹⁸⁶

¹⁸³ *Ibid.*, para. 9.

¹⁸⁴ Nigeria Constitution, Fundamental Rights, art. 37.

¹⁸⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 17.

¹⁸⁶ UN Human Rights Committee, General Comment No. 16: Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation), para. 1.

The Committee has further noted in this regard: “provisions must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible.”¹⁸⁷ These obligations require states to “address the activities of private persons or entities, [including] the privacy related guarantees of article 17, [which] must be protected by law.”¹⁸⁸

The UN Human Rights Committee has found that the criminalization of “adult consensual sex in private,” including “private homosexual conduct,” constitutes an arbitrary interference with the right to privacy.¹⁸⁹ The SSMPA goes far beyond criminalizing marriages and civil unions between persons of the same sex. It also prohibits “significant relationships” and “stable unions” between partners of the same sex, dramatically limiting the right to privacy.

The Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169, states that officials must “respect and protect the human dignity and uphold the human rights of all persons” and emphasizes that “the law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.”¹⁹⁰

In respect of allegations of torture in detention, the UN Committee against Torture has recognized that discrimination on the grounds of sexual orientation and transgender identity may render this group particularly vulnerable to torture.¹⁹¹ In its General Comment No. 2, the UN Committee against Torture emphasizes that states bear international responsibility for the acts and omissions of their officials, and observes:

States parties are obliged to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly

¹⁸⁷ Ibid., para. 11.

¹⁸⁸ UN Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligations Imposed on States Parties, para. 8.

¹⁸⁹ *Toonen v. Australia*, sec. 8.2.

¹⁹⁰ United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).

¹⁹¹ UN Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, para. 21.

committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in act of torture defined in the Convention.¹⁹²

Right to Freedom of Expression and Association

Nigeria has obligations under international and regional human rights treaties that it has ratified to guarantee the rights to freedom of expression, association, and peaceful assembly to everyone, regardless of sexual orientation or gender identity, and to ensure that any restrictions imposed on these freedoms are not discriminatory. In addition to treaty obligations, these rights are guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.¹⁹³

As state party to the African Charter, Nigeria bears legal obligations to ensure that every individual has the right to free association, provided that he abides by the law and the right to freely assemble with others.¹⁹⁴ Clarifying the normative content of this right, the African Commission, in its March 2014 Decision in “Communication 379/09 – Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan,” stated:

The right to freedom of association is both an individual and collective right which allows individuals to join together to pursue and further collective interests in groups, such as NGOs, political parties and trade unions. This right comprises the right to form and join associations freely; any interference with this right must be prescribed by law and meet the conditions prescribed under Article 27 of the Charter, namely the protection of the rights and freedoms of others, collective security, morality and collective interests.¹⁹⁵

¹⁹² Ibid., para. 17.

¹⁹³ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), arts. 19-20. Article 19: Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas. Article 20: Everyone has the right to freedom of peaceful assembly and association.

¹⁹⁴ African [Banjul] Charter on Human and Peoples' Rights (African Charter), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, arts. 10-11. Article 11: Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

¹⁹⁵ Communication No: 379/09, Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v. Sudan, African Commission on Human and Peoples' Rights, March 14, 2014, <http://caselaw.ihrrda.org/doc/379.09/view/en/#2504859>, para. 118.

The African Commission further held that any interference with this right that is not proportionate or justifiable under article 27 of the African Charter will be considered to be arbitrary. The Commission applied the proportionality test in a 1998 Communication against Nigeria, concluding that in accordance with article 27, “limitations must be founded in legitimate State interest and must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained” and “even more important, a limitation may never have as a consequence that the right itself becomes illusory.”¹⁹⁶

In Resolution 275, adopted in April 2014, the African Commission expressed alarm at the “incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organizations working on issues of sexual orientation and gender identity in Africa” and expressly “call[ed] on States Parties, to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecutions as a result of their human rights protection activities, including the rights of sexual minorities.”¹⁹⁷

Having ratified the ICCPR, Nigeria bears legal obligations to ensure that all Nigerians, including LGBT people, have access to and enjoy the rights protected thereunder. By prohibiting and criminalizing persons who register, operate, participate in, and support the activities of gay clubs, the SSMPA directly violates the right to freedom of association which is protected under article 22(1) of the ICCPR.¹⁹⁸ By prohibiting LGBT people from coming together for advocacy purposes simply on the grounds of their sexual orientation further violates article 2 of the ICCPR.¹⁹⁹ Recognizing that the right to freedom of association is not an absolute right, the UN special rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that “only ‘certain’ restrictions may be applied, which clearly means that freedom is to be considered the rule and its

¹⁹⁶ Communication No: 105/93-128/94-130/94-152/96, Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project/Nigeria, African Commission on Human and Peoples’ Rights, October 31, 1998, http://www.achpr.org/files/sessions/24th/communications/105.93-128.94-130.94-152.96/achpr24_105.93_128.94_130.94_152.96_eng.pdf, paras. 69-70.

¹⁹⁷ African Commission on Human and Peoples’ Rights, res. 275.

¹⁹⁸ ICCPR, art. 22(1): Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

¹⁹⁹ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, May 21, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf (accessed October 18, 2016), para. 13.

restriction the exception” and that “States should always be guided by the principle that the restrictions must not impair the essence of the right.”²⁰⁰

In a March 2015 report to the Human Rights Council, the UN special rapporteur on the situation of human rights defenders expressed regret that the SSMPA was approved by the President in January 2014 and stated, “Serious concerns are expressed that this law unduly limits the free exercise of the rights to freedom of association, assembly and opinion and expression, as well as restrict the work of human rights defenders in relation to the human rights of LGBTI persons.”²⁰¹

On October 23, 2002, the African Commission adopted the “Declaration of Principles on Freedom of Expression in Africa,” in which it reaffirmed three fundamental principles in respect of Article 9: freedom of expression is an individual right; it is a cornerstone of democracy and a means of ensuring respect for all human rights and freedoms guaranteed by the African Charter.²⁰² The Declaration states that “everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.”²⁰³

In terms of article 1: Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental human right and an indispensable component of democracy. The Declaration recognizes that the right to freedom of expression may be restricted, but such restrictions “shall be provided by law, serve a legitimate interest and be necessary in a democratic society.”²⁰⁴

The SSMPA also violates article 19(2) of the ICCPR, which provides:

²⁰⁰ Ibid., para. 16.

²⁰¹ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, Addendum, Observations on communications transmitted to Governments and replies received, A/HRC/28/63/Add.1, March 4, 2015, <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-28-63-Add-1.pdf> (accessed October 18, 2016), para. 53.

²⁰² Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples’ Rights, 32nd Session, October 17-23, 2002, Banjul, The Gambia, <http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html> (accessed October 18, 2016).

²⁰³ Ibid., art. I(2): The guarantee of freedom of expression.

²⁰⁴ Ibid., art. II(2).

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.²⁰⁵

In its General Comment No. 34, the Human Rights Committee, interpreting article 19, stated that freedom of expression is “integral to the enjoyment of the rights to freedom of assembly and association,” noting further that all forms of expression, including discussions on human rights, and the means of their dissemination, are protected.²⁰⁶ This is particularly significant for analyzing and understanding the far-reaching negative impact of the SSMPA on LGBT individuals and organizations in Nigeria: the simultaneous violations of rights to freedom of expression and association on the basis of sexual orientation and gender identity.

Regarding permissible restrictions to the right to freedom of opinion and expression, namely, that restrictions must be “provided by law, based on respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals” and must conform to the strict tests of necessity and proportionality, the Human Rights Committee states in General Comment No. 34:

- Laws restricting the rights enumerated in article 19, paragraph 2 ... must also themselves be compatible with the provisions, aims and objectives of the Covenant. Laws must not violate the non-discrimination provisions of the Covenant.²⁰⁷
- On the “concept of public morals”.... Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.²⁰⁸
- Restrictive measures must conform to the principle of proportionality: they must be appropriate to achieve their protective function; they must be the least

²⁰⁵ ICCPR, art. 19(2).

²⁰⁶ UN Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, paras. 4, 11, and 12.

²⁰⁷ *Ibid.*, para. 26.

²⁰⁸ *Ibid.*, para. 32.

intrusive instrument among those which might achieve their protective function; they must be proportionate to the interest to be protected.²⁰⁹

The Human Rights Committee expressly states that restrictions by states of freedom of expression can only be justified in accordance with the provisions of the ICCPR and in strict conformity with article 19.²¹⁰ The provisions of the SSMPA, which limit freedom of association and expression, cannot be justified in terms of article 19 of the ICCPR. The stated purpose of the SSMPA is to prohibit marriage and civil unions between persons of the same sex. To include in such an item of legislation provisions that severely curtail expression and association rights is in clear violation of international and regional human rights treaties that Nigeria has ratified.

Right to Health

The right to health is protected by article 16 of the African Charter, which provides, “Every individual shall have the right to enjoy the best attainable state of physical and mental health.”²¹¹ State parties to the African Charter have a legal obligation to “take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”²¹²

A collective of Nigeria-based non-governmental organizations submitted a Shadow Report on Human Rights Violations based on Sexual Orientation and Gender Identity in Nigeria for consideration by the African Commission in April 2015 during its review of Nigeria’s 5th periodic report.²¹³ In respect of impediments to the exercise and enjoyment of the right to health, the Shadow Report states:

With the promulgation of the Same Sex Marriage Prohibition Act, 2013, organizations providing lifesaving health care services to key affected population, including Men who have Sex with Men, fear reprisal and

²⁰⁹ Ibid., para. 34.

²¹⁰ Ibid., para. 52.

²¹¹ African Charter, art. 16(1).

²¹² Ibid., art. 16(2).

²¹³ “Human Rights Violations Based on Sexual Orientation and Gender Identity in Nigeria: A Shadow Report on Nigeria’s Compliance with the African Charter on Human and Peoples’ Rights,” April 2015, <http://www.whereloveisacrime.org/wp-content/uploads/2015/05/ACHPR-Shadow-Report-Nigeria-SOGI-2015.pdf> (accessed October 18, 2016).

prosecution by authorities. This law has a direct impact of LGBT persons' access to health care. Persons with different sexual orientation and living with HIV now fear to hold support group meetings for Men who have Sex with Men living with HIV as a result of fear of risking imprisonment subject to section 5 of the Same-Sex Marriage Prohibition Act.... Between December 2013 and May 2014, the demand for provision of health care by Men who have sex with Men decreased on the average by 36 percent across five states due to fear of stigma and discrimination by health care providers, which most times is fueled by societal prejudice and the compounding forces of morality and ethical issues.²¹⁴

In November 2015, the African Commission adopted Concluding Observations to Nigeria's 5th periodic report, stating as follows regarding the Protection of Persons living with HIV/AIDS:²¹⁵

The enactment of a law criminalizing homosexuality has the potential to engender violence against persons on grounds of their actual or imputed sexual orientation, and also to drive this group of persons vulnerable to HIV/AIDS underground, thereby creating an environment which makes it impossible to effectively address the HIV pandemic in the State.

Issuing its recommendations, the African Commission urged the government of Nigeria to:

Review the Same-Sex Marriage Prohibition Act in order to prohibit violence and discrimination in access to HIV prevention, treatment and care services, as well as to ensure the protection of other human rights of sexual minorities guaranteed under the African Charter and other international instruments to which Nigeria is a party.²¹⁶

²¹⁴ Ibid., p. 22.

²¹⁵ African Commission on Human and Peoples' Rights, "Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)," November 4-18, 2015, http://www.achpr.org/files/sessions/57th/conc-obs/5th-2011-2014/concluding_observations_nigeria_5th_sr_eng.pdf (accessed October 18, 2016), para. 81.

²¹⁶ Ibid., para. 126.

Under international law, the right to health is protected under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²¹⁷ In its General Comment on article 12, the Committee on Economic, Social and Cultural Rights stated that “the right to health is closely related to and dependent upon the realization of other human rights,” including the rights to human dignity, access to information, and the freedoms of association and assembly.²¹⁸ Emphasizing that the right to health contains both freedoms and entitlements, the Committee stated the Covenant “proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for the procurement, on the grounds of ... sexual orientation.”

“Accessibility” is particularly relevant in Nigeria where access to essential HIV services for LGBT people and MSM is now compromised by the SSMPA. In General Comment No. 14, the Committee stated:

Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has overlapping dimensions, including inter alia, non-discrimination in law and in fact – especially of vulnerable or marginalized sections of the population and information accessibility - the right to seek, receive and impart information and ideas concerning health issues.²¹⁹

The SSMPA compromises the right to the highest attainable standard of health, both through prohibiting the existence of health and HIV prevention groups composed of LGBT people, and through imposing risks for individual LGBT people who seek health services that may require revealing their sexual orientation.

²¹⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 12. Article 12 provides: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

²¹⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12).

²¹⁹ *Ibid.*, paras. 12(b)(i) and (iv).

Acknowledgments

This report was researched and written by Wendy Isaack, researcher in the LGBT Program at Human Rights Watch. It is based on research conducted jointly with Jane Buchanan, Associate Director of the Europe and Central Asia Division, in October 2015.

At Human Rights Watch, the report was reviewed by Graeme Reid, director of the LGBT Rights Program; Danielle Haas, senior editor in the Program Office; Liesl Gertholtz, director of the Africa Division; Mausi Segun, senior Africa researcher; Megan McLemore, senior researcher in the Health and Human Rights Division; Brian Root, quantitative analyst; Clive Baldwin, senior legal advisor; and Babatunde Olugboji, deputy program director. Kate Segal, senior associate of the Americas Division at Human Rights Watch and Grey Brooks, former associate in the LGBT Rights Program, provided editorial and production support and formatted the report. Additional production assistance was provided by Fitzroy Hepkins and Jose Martinez.

Human Rights Watch is grateful to the LGBT people and human rights organizations in Nigeria who took time to share their experiences with us and helped to introduce us to others with information relevant to the issues addressed in this report.

Annex 1: Same Sex Marriage (Prohibition) Act, 2013

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

EXPLANATORY MEMORANDUM

This Act prohibits a marriage contract or civil union entered into between persons of same sex, and provides penalties for the solemnisation and witnessing of same thereof.

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

ARRANGEMENT OF SECTIONS

Section:

1. Prohibition of marriage or civil union by persons of same sex.
2. Solemnization of same sex marriage in places of worship.
3. Recognized marriage in Nigeria.
4. Registration of homosexual clubs and societies.
5. Offences and penalties.
6. Jurisdiction.
7. Interpretation.
8. Citation.

SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

A BILL

FOR

An Act to prohibit a marriage contract or civil union entered into between persons of same sex, solemnization of same; and for related matters.

[] Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria:

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 recognised as entitled to the benefits 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 solemnized 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 relationship 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. Offences and Penalties.
- (2) A person who registers, operates or participates in gay clubs, societies and organisation, 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.
6. The High Court of a State or of the Federal Capital Territory shall have jurisdiction to entertain matters arising from the breach of the provisions of this Act. Jurisdiction.
7. In this Act: Interpretation.
- “marriage” means a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law or Customary Law;
- “Court” means High Court of a State or of the Federal Capital Territory;
- “same sex marriage” means 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;
- “witness” means a person who signs or witnesses the solemnisation of the marriage; and
- “civil union” means any arrangement between persons of the

same sex to live together as sex partners, and includes such descriptions as:

- (a) adult independent relationships;
- (b) caring partnerships;
- (c) civil partnerships;
- (d) civil solidarity pacts;
- (e) domestic partnerships;
- (f) reciprocal beneficiary relationships;
- (g) registered partnerships;
- (h) significant relationships; and
- (i) stable unions.

8. This Act may be cited as the Same Sex Marriage (Prohibition) Act, 2013. Citation.



SALISU ABUBAKAR MAIKASUWA, OON, mni
CLERK TO THE NATIONAL ASSEMBLY



30 DAY OF DECEMBER, 2013

SCHEDULE TO THE SAME SEX MARRIAGE (PROHIBITION) BILL, 2013


SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
SAME SEX MARRIAGE (PROHIBITION) BILL, 2013	An Act to prohibit a marriage contract or civil union entered into between persons of same sex, solemnization of same; and for related matters.	This Act prohibits marriage contract or civil union between persons of same sex and provides penalties for the solemnization and witnessing of same.	17 th December, 2013	17 th December, 2013

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.



SALISU ABUBAKAR MAIKASUIWA, OON, mni
 Clerk of the National Assembly
 31st Day of December, 2013

I ASSENT.



DR. GOODLUCK EBELLE JONATHAN, GCFR
 President of the Federal Republic of Nigeria
 7th Day of December, 2013

Annex 2: African Commission on Human and Peoples' Rights Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity



African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014:

Recalling that Article 2 of the African Charter on Human and Peoples' Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status;

Further recalling that Article 3 of the African Charter entitles every individual to equal protection of the law;

Noting that Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman and degrading treatment or punishment;

Alarmed that acts of violence, discrimination and other human rights violations continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

Noting that such violence includes 'corrective' rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail;

Further alarmed at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa;

Deeply disturbed by the failure of law enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity;

1. **Condemns** the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;
2. **Specifically condemns** the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;
3. **Calls on** State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and
4. **Strongly urges** States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014

Annex 3: Letter to National Human Rights Commission, January 2016

The Executive Secretary,
National Human Rights Commission,
No. 19, Aguiyi Ironsi Str. Maitama,
P.M.B 444, Garki, Abuja

CONFIDENTIAL

January 15, 2016

Dear Sir,

Please allow us to take this opportunity to commend the Nigeria Human Rights Commission (Commission) for establishing the Committee of Human Rights Experts to identify all federal and state laws that are in conflict with Nigeria's constitution and with international human rights norms and standards. This innovative initiative is an excellent step to ensure Nigeria is fully compliant with human rights, and we wish you every success in your work.

We are writing in regards to the Same-Sex Marriage (Prohibition) Act, 2013 (SSMPA), a law which Human Rights Watch believes should be on the list of legislation to be examined by the committee.

In October and November 2015, Human Rights Watch conducted in-depth research in Nigeria on how the Same- Sex Marriage (Prohibition) Act impacts the human rights of lesbian, gay, bisexual and transgender (LGBT) people, and how it impacts freedom of association rights for Nigeria-based organizations that provide services to LGBT people or advocate for their rights.

Our findings show that many provisions of the SSMPA are not in compliance with relevant human rights norms and standards. We hope the commission will take appropriate action

to amend the law to ensure full compliance or, if necessary, to propose its repeal if it cannot be made complaint

Attached you will find a brief summary of our preliminary research findings which we hope will be of assistance in your deliberations. All names of individuals have been changed to pseudonyms in order to protect their privacy.

Thank you in advance for your consideration and response.

Sincerely,

Daniel Bekele
Executive Director, Africa Division

Graeme Reid
Director, LGBT Rights Program

Human Rights Watch Memorandum:

Analysis of how the Same-Sex Marriage (Prohibition) Act (SSMPA) is in conflict with Nigeria's constitution and with international human rights norms and standards

In October and November 2015, Human Rights Watch conducted interviews with 70 Nigerians who identify as lesbian, gay, bisexual or transgender (LGBT), and with representatives of 14 Nigeria-based non-governmental organizations, to assess the human rights impact of the Same Sex Marriage (Prohibition) Act. We conducted research in Abuja, Lagos and Ibadan and interviewed activists from Kano, Kaduna, Delta, Cross River, Zamfara and Niger States, including those working with LGBT people as well as those working on a range of other human rights issues.

While the purported aim of the Same-Sex Marriage (Prohibition) Act is the prohibition of a marriage contract or civil union between persons of the same sex, the scope of application is much broader. Initial findings demonstrate that the legislation is being used by law enforcement officials and non-state actors to perpetrate multiple human rights violations against LGBT persons.

The law directly violates **freedom of association**, by prohibiting organizations or groupings based on the identity of the individuals. It curtails **freedom of expression**, by effectively preventing organizations from expressing support for LGBT rights and from publicly imparting information on LGBT health and human rights concerns. It compromises the **right to the highest attainable standard of health**, both through prohibiting the existence of health and HIV prevention groups composed of LGBT people, and through imposing risks for individual LGBT people who seek health services that may require revealing their sexual orientation. It violates **privacy** and contributes to **arbitrary arrests**, some of which take place with police violence and extortion.

The SSMPA also appears to contribute to increased **physical and sexual violence** and other crimes against LGBT people, and it imposes obstacles for LGBT victims of crime who wish to seek access to justice but who find that doing so might require revealing their sexual orientation. Interviewees reported to Human Rights Watch that the SSMPA has provided a license for people to commit violent crimes against them on the grounds of their real or perceived sexual orientation or gender identity, often with complete impunity. In their experience, the SSMPA has served to legitimize torture, sexual violence, mob violence, extortion by law enforcement officials, arbitrary detention, and violations of due process rights.

While the SSMPA is not being formally implemented by government law enforcement authorities in terms of prosecutions, its effects are nevertheless far reaching and severe in terms of human rights.

The SSMPA Violates the Right to Freedom of Association.

The SSMPA imposes a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies and organization” or “supports” the activities of such organizations. These prohibitions directly violate the right to freedom of association, which is protected under Nigeria's constitution as well as Articles 10 and 11 of the African Charter on Human and Peoples' Rights and Article 22 of the International Covenant on Civil and

Political Rights. The provisions effectively prohibit people from socializing with one another, or coming together for advocacy purposes, in a discriminatory manner: on the sole grounds of their sexual orientation. **Discrimination in access to freedom of association violates Article 2 of the International Covenant on Civil and Political Rights.**

The law has negatively impacted the work of civil society organizations, including those that provide essential HIV services. Representatives of at least three organizations, including one that works on health and HIV and two that cover more general human rights issues, told Human Rights Watch their offices were raided by police because of their work with LGBT people or men who have sex with men (MSM). In Kaduna, in June 2014, police arrested members of an Abuja-based HIV prevention organization (name withheld), which had organized an HIV education session. Police confiscated condoms and lubricants and detained peer educators. According to one activist, “Six of the members were taken into an interrogation room; they were flogged and tortured and made to write statements admitting that they were gay.” They were released only after paying bribes. Following the incident, the organization suspended its activities in Kaduna state.¹

The activist directly attributed the police action to the SSMPA: “Basically, because of this law the police treat people in any way they please. They torture, force people to confess and when they hear about a gathering of men, they just head over to make arrests.”²

In Abuja, shortly after the law passed, police raided a meeting of peer educators working with a health organization and arrested 12 people. One of the peer educators, who was hosting the meeting at his home, told Human Rights Watch that police accused them of “promoting homosexuality.” He said they spent three weeks in police custody without charge, where police beat them with whips and accused them of being “demonic,” before they paid a 100,000 Naira bribe in exchange for their release. The peer educator said he had held about 12 such education meetings at his home in the past, but that before the passage of the SSMPA, police had never intervened.³

The SSMPA Severely Curtails Freedom of Expression.

By banning “support” for gay organizations, the SSMPA limits freedom of expression. As it does so in a discriminatory and disproportionate way, this violates Article 9 of the African Charter on Human and Peoples’ Rights and Article 19 of the International Covenant on Civil and Political Rights. It also limits the freedom to receive and impart information, which is protected by Nigeria’s constitution.

Several organizations told Human Rights Watch they have limited their outreach and begun to self-censor in order to avoid arrest. A representative of a human rights organization in Zamfara state told Human Rights Watch that her organization has ceased to conduct media outreach since the passage of the SSMPA, fearing that some of the subjects their work touched upon would be considered in violation of the law:

¹ Human Rights Watch interview, Abuja, October 2015.

² Ibid.

³ Human Rights Watch interview, Abuja, October 2015.

We avoid the media. In the past we used to have annual news conferences, now we have suspended all media engagement and reduced publicity.... At the annual news conferences, we would talk about women's rights, reproductive rights and sexuality education.⁴

"Lawrence," a worker at a health organization in Abuja, expressed similar concerns. Prior to the passage of the SSMPA, he said, his organization used the media to announce HIV prevention initiatives for men who have sex with men (MSM), and its peer educators reached out to MSM in bars and other public places. After the law passed, he said, they had to organize HIV education initiatives secretly: "People are scared. We don't want to get caught and sent to prison."⁵

The SSMPA Has Negatively Impacted on the Right to the Highest Attainable Standard of Health.

The right to health is protected by the Article 16 of the African Charter on Human and Peoples' Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights. When groups that provide HIV services and other health services to marginalized populations are criminalized and feel they are unable to do their work safely, as is the case under the SSMPA, the right to the highest attainable standard of health is compromised.

As in the cases in Kaduna and Abuja described above, the law has resulted in the arrest of health workers, and has caused at least one organization to suspend its work.

Health-seeking behaviors also suffer, when individuals fear that seeking health services may lead to exposure and arrest. The activist from the organization whose members were subjected to arrests in Kaduna noted: "In Kaduna there are at least two other organizations who can provide [health services to gay men], but people are afraid to come out looking for services because of the law."⁶

"Ada," who works at an HIV clinic in Abuja, told Human Rights Watch:

After the law, the numbers started dropping. We have lost people. They are not picking up their ARVs [anti-retroviral treatment].... Our major concern is how to get back the people who have stopped coming. They will get so ill that by the time someone brings them in, they are very very sick.⁷

An activist from an organization in Kano that provided health services to men who have sex with men (MSM) said his organization was forced to suspend its activities after the passage of the SSMPA due to repeated threats from private individuals, who threatened to report the organization to the Islamic police.⁸

The SSMPA Violates the Right to Privacy

The right to privacy is guaranteed by Article 17 of the International Covenant on Civil and Political Rights and Article 37 of Nigeria's constitution. The UN Human Rights Committee has found that the criminalization of "adult consensual sex in private," including "private homosexual conduct," constitutes an arbitrary interference with the

⁴ Human Rights Watch interview, Abuja, October 2015.

⁵ Human Rights Watch interview, Abuja, October 2015.

⁶ Human Rights Watch interview, Abuja, October 2015.

⁷ Human Rights Watch interview, Abuja, October 2015.

⁸ Human Rights Watch interview, Abuja, October 2015.

right to privacy.⁹ But the SSMPA goes far beyond simply criminalizing same-sex sexual relations. It also prohibits “significant relationships” and “stable unions” between partners of the same-sex, dramatically limiting the right to privacy.

In one clear case of violation of the right to privacy, “Nathan” was arrested in December 2014 simply for being in an apartment with two other gay men.

There were three of us young guys in the flat.... Two of us had gone to visit [the friend who lives there]. The neighbor came over and said, since Goodluck passed the law, we shouldn't be together in the place and called the police.

Nathan told Human Rights Watch that police arrested him and the other two men, forced them to strip down to their underwear while in custody, accused them of being gay (without filing any formal charge), and released them four days later after they paid a 20,000 Naira bribe.¹⁰

The SSMPA Leads to Arbitrary Arrests, Often Accompanied by Police Violence and Extortion.

At least 17 LGBT people interviewed by Human Rights Watch had been detained by police since the passage of the bill, some of them multiple times. None were formally charged with any crimes. These arbitrary arrests violate Article 6 of the African Charter, which protects the right to liberty and security of the person and prohibits arbitrary arrest or detention. The UN Working Group on Arbitrary Detention has determined that arrests on the grounds of sexual orientation are, by definition, arbitrary.¹¹ Some of the persons interviewed told Human Rights Watch they had suffered torture, physical abuse or other humiliations during detention, such treatment would violate Articles 4 and 5 of the African Charter, which entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman and degrading treatment.

Many victims reported to Human Rights Watch that law enforcement officials conduct routine searches, arrests and detention by citing the law. In nearly all cases, victims said the police released them after demanding bribes ranging from 5,000 – 100 000 Naira.¹² The victims said they felt compelled to pay the bribes due to the threat of 14 years' imprisonment.

Because of the vagueness of the law – which criminalizes not just sexual conduct, but also “the public show of same-sex amorous relationship directly or indirectly” – anyone who demonstrates any expression of same-sex identity in public is at risk. “Efe,” a 23-year-old gay man in Lagos, said police regularly stop and search anyone who appears to be gay, because of the way they are dressed or how they look:

They stop us because under the law if you are “suspicious” you must be searched. They suspect you might be gay just by how you look... They go through your phones. If they see any photos, anything that might point out that you're gay, they threaten to detain you, and you could get 14 years.

⁹ *Toonen v. Australia*, 50th Sess., Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, April, 14, 1994, sec. 8.2.

¹⁰ Human Rights Watch interview, Ibadan, October 19, 2015.

¹¹ citation

¹² According to those we interviewed, police use the legal terminology of “bail” to put a veneer of legality on the detention and release.

“Efe” said he has been stopped and searched four times since the passage of the SSMPA, and paid bribes on two occasions to avoid being taken to the police station.¹³

Human Rights Watch interviewed eight of 21 young men who were arrested in Ibadan in May 2015 while attending a birthday party. They told Human Rights Watch that at the police station, police forced them to strip and beat several of them, including with rifle butts and wooden planks. They were held in police cells for four days wearing only their underwear.¹⁴ They were eventually released after paying bribes ranging from 10,000 – 25 000 Naira.¹⁵

A gay activist from Enugu state told Human Rights Watch that the SSMPA has led to police raids and extortion. Police raided his home, known as a social gathering spot for gay men, in February 2014 and arbitrarily arrested eight men; they were released the same day without charge. “The raids started after the SSMPA,” he said.¹⁶

“Jason,” a 22-year-old gay man in Lagos, said police arrested him at home in August 2015 after a group of men who had previously gang-raped him (see below) reported him to the police as being gay. Jason said police beat him with belts and gun butts and inserted a stick into his anus – a form of torture and rape. Jason was able to contact his parents, who paid a 78,000 Naira bribe to release him.¹⁷

“Abioye,” a cleaner at a government office, said that police in Lagos arrested him in June 2015 when he was on the way home from work. They slapped, choked and punched him in order to force him to unlock his phone so that they could inspect his pictures, and beat him further when they saw pictures of him with his partner. He was detained for three days, and told Human Rights Watch he was released only after his brother paid police a 45,000 Naira bribe.

The SSMPA Contributes to Impunity for Violence, Rape, and Extortion of LGBT People.

As the following cases indicate, since the passage of the SSMPA, dozens of Nigerians have been targeted and subjected to violence on the grounds of their sexual orientation or gender identity. By criminalizing same-sex identities—making anyone suspect based on whom they live with, or because they express that they are in a same-sex relationship—the SSMPA acts as an obstacle to access to justice. LGBT victims of crimes such as public beatings, theft, rape and extortion told Human Rights Watch they feared filing criminal complaints with the police because they believed they would be treated as criminals under the SSMPA. Nigeria has an **obligation to take all reasonable steps protect its citizens and others within its territory from violence**, under **Articles 2 and 6 of the African Charter**. Further, **Resolution 275 of the African Commission on Human and Peoples’ Rights** calls on member states to take steps to prevent all forms of violence committed against individuals because of their actual or imputed sexual orientation or gender identity.

Mob Violence

¹³ Human Rights Watch interview, Lagos, October 2015.

¹⁴ Human Rights Watch interviews, Ibadan, October 2015.

¹⁵ Human Rights Watch interviews, Ibadan, October 2015.

¹⁶ Human Rights Watch interview, Lagos, October 2015.

¹⁷ Human Rights Watch interview, Lagos, October 2015.

Since the SSMPA was passed in January 2014, Human Rights Watch has documented at least 10 incidents of mob violence against LGBT people. Some of the attacks have taken place in broad daylight with no intervention by the police.

An activist who has working with LGBT people for over fifteen years told Human Rights Watch,

Vigilante groups have added homosexuality to their “terms of reference.” These groups are organized by community members, given authorization by the community to maintain some sort of order and “security” for the community. When the law was passed, the gay issue was placed on their list.... Neighbors are now equipped with a tool that makes them hunters and gay people are the prey. They enter homes in the middle of the night hoping to find people in compromising positions.¹⁸

“Debbie,” a transgender woman, was beaten by a group of six men in Ado Ekiti on January 21, 2014, just days after the law passed. She told Human Rights Watch that after being beating, her attackers said, “If you don’t pack out, we will burn your house overnight. You are in a country that doesn’t allow homosexuality.”¹⁹

In February 2014, in Gishiri village, Abuja, a group of approximately 50 people carrying various types of weapons including machetes, clubs, whips and wires, stormed the homes of individuals and severely beat at least 14 men who they suspected of being gay.²⁰ Three of the victims interviewed by Human Rights Watch recalled their attackers chanting: “We are doing Jonathan’s work [referring to President Goodluck Jonathan, under whose administration the law was passed]—cleansing the community of gays.”²¹ Another victim reported that the attackers also shouted, “Jungle justice! No more gays!”²²

According to “Olu,” 20 to 30 men came to his door wielding knives and pieces of cut glass:

They said, “We don’t want gays!” They demanded we come outside, but we were afraid. At that time as one of my friends was coming home and they attacked him with wood with nails. They held him down and beat him. They said, “If you don’t come out we will kill him!”

So the three of us went out and tried to fight. They were beating us, threatening to strip us naked...

I had a lot of injuries. I had a dislocated shoulder, beating, bruises and a cut on my head. I had to have stitches on my head. They used all kinds of things, wood, iron, to hit us.²³

In another case, in Ibadan in December 2014, a mob invaded a home and took three suspected gay men, by force, to the local government office, where they were locked up overnight in a shipping container. “David,” in an interview with Human Rights Watch described what happened the next morning,

¹⁸ Human Rights Watch interview, Abuja, October 2015.

¹⁹ Human Rights Watch interview, Ibadan, October 2015.

²⁰ Human Rights Watch interviews with victims and witnesses, Abuja, October 2014.

²¹ Human Rights Watch interviews with victims, Abuja, October 2014 and November 2015.

²² Human Rights Watch interview, Abuja, October 2015.

²³ Human Rights Watch interview, Abuja, October 2015.

The [local government] chairman brought us to the middle of the street and his men beat us mercilessly. They tied our hands and legs to a wooden pole outside... They had made us take our clothes off that morning. We were in our underwear when they beat us....

The whole street was full of people gathered to watch. There were dozens of people.

They were flogging us, beating us mercilessly. Six guys were beating us. They were ordered by the Chairman of the community.... They used a rope, canes, wood to beat us. Each of them had a different weapon.... As they beat us they said, "Say you are gays! Say it!"

The men were released after David's mother paid 15,000 Naira to the community chairman. David said that after the attack, "I didn't go to the police. I wanted to but my partner wouldn't go that far. He was scared."²⁴

Rape

Human Rights Watch documented at least five cases in which both women and men were raped in apparent attempts to "punish" them for their sexual orientation. Perpetrators also took advantage of the impunity that is a direct result of LGBT people's vulnerability under the SSMPA, well aware that victims of "corrective" or punitive rape would be unlikely to file complaints with the police.

"Rose," a lesbian, sought refuge with a male acquaintance in Abuja in early 2014 after her mother discovered her sexual orientation and expelled her. But after a week, her acquaintance raped her. "He threatened me that day, and said if I report the rape to the police he would tell them that I am a lesbian," she told Human Rights Watch. "If the police find out that I am a lesbian they will lock me up for 14 years. So I did not report."²⁵

"Paul," in January 2015, went to meet a man in a Port Harcourt hotel with whom he had been chatting on Facebook for three months. When he reached the hotel room, two other men were there. They beat him, stripped him, and raped him. According to "Paul," "It is impossible to report such cases to the police, they will use the law against me and I will go to jail for 14 years. There is no point in reporting."²⁶

"Jason," a gay man in Lagos, met a man through a mobile phone dating application in January 2015, and after chatting with him, went to meet him in a hotel. But once Jason entered the man's hotel room, six men barged in and began beating him:

I wanted to run, but they told me that the police were outside and if I go out without my clothes on, I'd be caught and sentenced to 14 years because they had caught me in the act.

I stayed. The seven of them raped me for three days, in the hotel.

²⁴ Human Rights Watch interview, Ibadan, October 2015; follow-up interview by telephone, January 2016.

²⁵ Human Rights Watch interview, Abuja, November 2015.

²⁶ Human Rights Watch interview, Lagos, October 2015.

They took photos and videos of each other having sex with me. They hid their faces, but not mine. They said they would sell the photos and video to a popular blogger.... They did not use protection when they were raping me.

The men also forced Jason to hand over his bank card and PIN number, and then withdrew 45,000 Naira from his account.

After the attack, Jason sought medical treatment for injuries, including anal bleeding. He told Human Rights Watch, In October 2015, "For several months I couldn't sit down well. I still have bleeding."²⁷

A lesbian activist from Cross River state said she had personally documented three cases, two in Cross River and one in neighboring Akwo Ibom state, in which groups of two to five men had gang-raped lesbian women, all following the passage of the SSMPA. She explained, "In Calabar, people now just take the law into their own hands because the SSMPA was widely publicized in the media. And people think it's okay to 'fix' anyone who is a lesbian."²⁸

Robbery, Blackmail and Extortion

At least eight LGBT people interviewed by Human Rights Watch said they were subjected to robbery or extortion by private citizens, who count on the fact that the SSMPA leaves LGBT people with little legal recourse.

"Job," a gay man from Ibadan, said that in April 2015, he accepted an invitation to visit a man who had befriended him on Facebook, pretending to be gay. When he reached the man's home, three men beat him, took pictures of him, stole his phone and money, and threatened to turn him in to the police. "Job" told Human Rights Watch, "Since the law was passed, things have really turned in Nigeria – there are so many setups. Since the law was passed, [perpetrators of crimes against LGBT people] now feel like they can do whatever they want."²⁹

Access to Justice

As the above cases indicate, most LGBT people who are victims of crime are afraid to report it to the police. "Henry," who was subjected to mob violence in Lagos in June 2014, captured the feelings of many victims:

No way would we file a complaint. When it's an LGBT issue, you can't file a complaint.... The police could lie. Then it's your word against theirs. For the judge, as long as they are hearing "gay"... Forget it.³⁰

Human Rights Watch documented only a few cases in which victims reported crimes to the police. None of them resulted in arrests of the perpetrators. One victim, "Rodney," was violently attacked in around July 2015 by a group of eight men, who he said were "shouting that because I'm gay I should leave the neighborhood." After the attack, "Rodney" went to the police:

²⁷ Human Rights Watch interview Lagos, October 2015.

²⁸ Human Rights Watch interview, Lagos, October 2015.

²⁹ Human Rights Watch interview, Ibadan (?), date.

³⁰ Human Rights Watch interview, Lagos, October 17, 2015.

On that same day I went to the police. But the police said that they would not document the case and told me to leave the neighborhood. The police officer said that because I'm gay, they won't do anything... They said they didn't want to have anything to do with me.³¹

In June 2015, "Isaac" was beaten by five or six men in his Abuja neighborhood who accused him of being gay. He initially reported the attack to the police. But when he realized there was broad awareness in the community that the attack took place due to his sexual orientation, he was afraid to follow up: "Everyone was talking about the incident and saying I am the gay boy who got beaten up – so I was afraid to go back to the police station."³²

Nigeria's Human Rights Obligations

As cited above, Nigeria has ratified several regional and international treaties that obligate it to respect and protect rights to freedom of association, expression, privacy, and the highest attainable standard of health; to prevent arbitrary arrests and torture or cruel, degrading and inhuman treatment; and to exercise due diligence in protecting persons, including LGBT individuals, from all forms of violence, whether perpetrated by state or non-state actors. These include the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).

The Constitution of the Federal Republic of Nigeria protects a range of fundamental rights, including: respect for the dignity the person and prohibition of torture, inhuman or degrading treatment; personal liberty; privacy; protection of due process rights; and rights to assemble freely and associate with other persons, including forming any association for the protection of one's interests.

We also draw your attention to the African Commission on Human and Peoples' Rights (African Commission) Resolution 275: *Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, adopted in 2014. Resolution 275 calls on States Parties to:

"ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities"; and

"to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims."

When the SSMPA was signed into law in January 2014, the African Commission's Special Rapporteur on Human Rights Defenders in Africa, Ms. Rene Alapini Gansou, issued a press release expressing concern about the impact of the law, stating: "The Special Rapporteur is concerned by some provisions of the Act, in particular, Sections 4(1)

³¹ Human Rights Watch interview, Abuja, October 20, 2015.

³² Human Rights Watch interview, Abuja [date]

and 5(2) which prohibit and provide for penalties against defenders of the rights of lesbian, gay, bisexual and transgender people.”

Given the multiple provisions of the SSMPA that violate or several curtail human rights that Nigeria is obligated to respect—and the additional human rights abuses that have been perpetrated at least partially as a result of the law—Human Rights Watch urges the Committee of Human Rights Experts to include the SSMPA on its list of laws to be reviewed for consistency with the Constitution of Nigeria and human rights norms and standards.

Annex 4: Letter to National Human Rights Commission, September 2016

September 28, 2016

Professor Bem Angwe
The Executive Secretary
National Human Rights Commission
No. 19, Aguiyi Ironsi Str. Maitama
P.M.B 444, Garki, Abuja

Dear Prof. Bem Angwe,

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of the relevant section our report on the impact of the Same Sex Marriage (Prohibition) Act, 2013 (SSMPA), to be released at the end of October 2016, in order to provide the National Human Rights Commission (NHRC) an opportunity to respond to our findings and recommendations. Our established practice is to submit our findings to authorities and institutions whose record is the subject of the report in order for their information and point of view to be reflected in the reports we publish.

Human Rights Watch conducted in-depth research in Nigeria on the impact of the SSMPA on the human rights of lesbian, gay, bisexual and transgender (LGBT) people. On January 15, 2016, we shared our preliminary findings with the NHRC in a confidential letter (attached), urging the Committee of Experts to include the SSMPA on its list of laws to be reviewed for consistency with the Constitution of the Federal Republic of Nigeria and human rights norms and standards.

Our report documents the impact of the SSMPA on the lives of LGBT people and organizations that support them. Our research shows that the SSMPA has created an avenue for some police officers and members of the public to legitimize abuses against

LGBT people, who reported extortion, mob violence, arbitrary arrest, and torture in detention as well as physical and sexual violence.

We submit the questions below, as well as the embargoed section, in the hope that you will respond. We will endeavor to reflect any relevant information you send to us into our report.

1. As follow-up to our letter dated January 15, 2016, has the Committee of Experts concluded its work?
2. Is the SSMPA included in the list of laws for review?
3. In light of the law and social stigma, does the NHRC have a mechanism for LGBT people to make safe, confidential complaints?
4. Has the NHRC received, investigated and processed complaints, including confidential complaints, of human rights violations suffered by LGBT people in Nigeria?

In order to incorporate your response into our report, we would need to receive your written response by.....2016. Please note that this is a draft copy which is under embargo until a release date (to be announced) in October 2016.

We very much look forward to receiving your response and maintaining a constructive dialogue with the NHRC on the recommendations set out in the report.

Sincerely,

Graeme Reid
Director
Lesbian, Gay, Bisexual, and Transgender Rights Program
Human Rights Watch

CC: Mr. Harry Obe
Deputy Director Legal Office of the Executive Secretary
Special Assistant to Executive Secretary

Annex 5: Letter to the Ministry of Police Affairs

September 28, 2016

Alhaji Abdul Jelili Oyewale Adesiyan
Minister of Police Affairs
10th & 11 Floor, Federal Secretariat Complex
Phase 3, Shehu Shagari Way
Maitama
Abuja
Nigeria

Dear Minister,

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of the relevant section of our report on the impact of the Same Sex Marriage (Prohibition) Act, 2013 (SSMPA), to be released at the end of October 2016, in order to provide the Ministry of Police Affairs an opportunity to respond to our findings. Our established practice is to submit our findings to authorities and institutions whose record is the subject of the report in order for their response and point of view to be reflected in the reports we publish.

Human Rights Watch conducted in-depth research in Nigeria on the impact of the SSMPA on the human rights of lesbian, gay, bisexual and transgender (LGBT) people. Our research shows that the SSMPA has created an avenue for some police officers and members of the public to legitimize abuses against LGBT people, who reported extortion, mob violence, arbitrary arrest, and torture in detention, as well as physical and sexual violence.

In order to incorporate your response into our report, we would need to receive your written response by October 13, 2016. Please note that the sections presented are under embargo until a release date (to be announced) in October 2016.

We look forward to receiving your response and maintaining a constructive dialogue with the Ministry of Police Affairs on the recommendations set out in the report.

Sincerely,

Graeme Reid

Director

Lesbian, Gay, Bisexual, and Transgender Rights Program

Human Rights Watch

CC: Mr. Idris Kpotun Ibrahim

Inspector-General of Police

Nigeria Police Force

Tel: +2349059202456

Annex 6: Letter to the National Agency for the Control of AIDS

September 28, 2016

Dr. Sani Aliyu
Director-General
National Agency for the Control of AIDS
Plot 823, Ralph Shodeinde Street
Central Business District
Abuja, FCT,
Nigeria

Dear Dr. Sani Aliyu,

I hope this letter finds you well.

I am writing to present an advance and embargoed draft copy of the relevant section of our report on the impact of the Same Sex Marriage (Prohibition) Act, 2013 (SSMPA), to be released at the end of October 2016, in order to provide the National Agency for the Control of AIDS (NACA) an opportunity to respond to our findings.

Our established practice is to submit our findings to authorities and institutions whose record is the subject of the report in order for their response and point of view to be reflected in the reports we publish.

Human Rights Watch conducted in-depth research in Nigeria on the impact of the SSMPA on the human rights of lesbian, gay, bisexual and transgender (LGBT) people. While the purported aim of the SSMPA is the prohibition of a marriage contract civil union between persons of the same sex, the scope of application is much broader.

The SSMPA compromises the right to the highest attainable standard of health, both through prohibiting the existence of health and HIV prevention groups composed of LGBT people, and through imposing risks for individual LGBT people who seek health services

that may require revealing their sexual orientation. Our research shows that the SSMPA has led to increased harassment, stigma, and sexual violence on the basis of sexual orientation, and constitutes a significant barrier to access to HIV treatment services for LGBT people, particularly gay men and men who have sex with men.

In order to incorporate your response into our report, we would need to receive your written response by October 13, 2016. Please note that the section presented is under embargo until a release date (to be announced) in October 2016.

We look forward to receiving your response and maintaining a constructive dialogue with NACA on the recommendations set out in the report.

Sincerely,

Graeme Reid
Director
Lesbian, Gay, Bisexual, and Transgender Rights Program
Human Rights Watch

CC: Uduak B. Daniel
Chief Programme Officer
NACA

Annex 7: Response of National Human Rights Commission to January 2016 letter and draft Human Rights Watch report

From: bemangwe [mailto:XXXXXXXXXXXXX]

Sent: Thursday, October 06, 2016 8:25 AM

To: Wendy Isaack; XXXXXXXXXXXXXXX

Cc: Graeme Reid

Subject: Re: Requesting Your Response: Draft Report on the Impact of the Same-Sex Marriage (Prohibition) Act, 2013

Dear Wendy

Thanks for your mail which i just read because iam in Morocco out of the office .

Let me respond to the questions quickly.

1. The committee of experts reviewing existing laws has not concluded its assignment.
2. Yes the SSMPA is one of the Legislation i have personally requested the Committee to specifically consider.
3. Any aggrieved party or even a 3rd on behalf of a victim, publicly or confidentially submit a complaint before the Commission over allegations or likely of violations of rights in relation to his or her sexual orientation.
- 4 There has never been a direct complaint submitted to the commission to the best of my knowledge and memory in relation to the subject matter.

Please kindly receive my best compliments and warm regards.

Prof Bem Angwe

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Wendy Isaack

Date: 03/10/2016 11:44 (GMT+00:00)

To: XXXXXXXXXXXXX, XXXXXXXXXXXXX

Cc: Graeme Reid

Subject: Requesting Your Response: Draft Report on the Impact of the Same-Sex Marriage (Prohibition) Act, 2013

Dear Prof.

I trust this email finds you well.

I am writing to present an advance and embargoed draft copy of the relevant section our report on the impact of the Same Sex Marriage (Prohibition) Act, 2013 (SSMPA), to be released at the end of October 2016, in order to provide the National Human Rights Commission (NHRC) an opportunity to respond to our findings and recommendations. Kindly find attached:

1. Summary and Recommendations of the report
2. Public and Police Violence Section
3. Human Rights Watch letter to the National Human Rights Commission dated January 15, 2016.

Please do not hesitate to contact our office should you have any questions or require further information.

We look forward to receiving your response.

Regards p

Wendy Isaack

Researcher

LGBT Program

Human Rights Watch