

Flygtningenævnets baggrundsmateriale

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the grounds for non-discrimination in the Constitution. They remain quite restricted and do not include grounds such as sexual orientation or disability. The 1992 Labour Act included both sexual orientation and disability as a ground for non-discrimination, but sexual orientation was removed from the 2007 **Labour Act**".

The [Namibian] delegation **stated** that, "LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults."

In April 2016 in its **Concluding Observations** on Namibia, the Human Rights Committee that oversees the ICCPR made substantial recommendations regarding non-discrimination policy and law in key areas, awareness-raising, police ill-treatment, and *refoulement* of refugees regarding SOGI. In its **Concluding Observations** on Namibia in April 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommends the Constitutional provision against discrimination be extended to enumerate sexual orientation (GI is not named), as well as HIV status. Comprehensive anti-discrimination legislation is also called for, as is the call for decriminalisation of sexual relations between consenting individuals of the same sex. In November 2016, the **Committee Against Torture** spoke (para. 30) of severe issues regarding detention, harassment, police brutality, sexual violence, stigmatisation, violence, access to justice, and criminalisation.

NIGERIA



Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990.

Section 214

[AGAINST ORDER OF NATURE]

"Any person who-

- (1) has carnal knowledge of any person against the order of nature; or
- (2) has carnal knowledge of an animal; or
- (3) permits a male person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for fourteen years."

Section 215

[ATTEMPTED CARNAL KNOWLEDGE]

"Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant."

Section 217

[GROSS INDECENCY]

"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant."

Note that several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment. As **scholarship** shows (see p. 60) these laws **differ** from the federal law, as most of these prohibit also sexual relations between women. The states which have **adopted** such laws are: Bauchi (the year 2001), Borno (2000), Gombe (2001), Jigawa (2000), Kaduna (2001), Kano (2000), Katsina (2000), Kebbi (2000), Niger (2000), Sokoto (2000), Yobe (2001) and Zamfara (2000).

The Same-Sex Marriage (Prohibition) Act

[LAWS LIMITING SOGI PUBLIC EXPRESSION]

Passed on 17 December 2013, by the Senate and the House of Representatives and signed by the President on 7 January 2014.

- “§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 solemnised in a church, mosque or any other place of worship of 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 recognised 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 enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.
 (2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.
 (3) A person or group of persons who administers, witnesses, abets or aides the solemnisation of 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 of imprisonment.”

In 2011, 2012 and in 2007, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted human rights violations, torture and other cruel, inhuman or degrading treatment or punishment, and the Special Representative of the Secretary-General on the situation human rights defenders, issued a Joint Statement on the [then] proposed prohibition in a 2007 Bill outlawing same-sex marriage.

Regarding Nigeria's responses to its international human rights law obligations in United Nations fora regarding SOGI, the country offered 'no response' to its 1st cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage. In its 2nd cycle in October 2013, the Government rejected all 12 LGBTI-related recommendations to do with decriminalisation, discrimination, international law obligations and the release of individuals imprisoned because of their sexual practice.

An overview of the country situation to late-2015 in Nigeria was produced in November 2015, and a discussion of the 2014 legislation is provided by Rudman. Kaleidoscope Trust's *Speaking Out* report (at 22) provides an insightful snapshot of the socio-political context in which SOGI issues are being responded to currently. In a very rare case of accountability, in March 2016, the Federal High Court accepted evidence of violence, humiliation, and attempted extortion, eliciting a monetary award and public apology by the police force of Abuja against a well-known HIV activist.

In May 2016, TIERS published a review of the previous year regarding human rights violations against LGBTI people in Nigeria, recording at least 152 violations against 232 persons. In January 2017, survey results concerning the current life situations of LGBT Nigerians were published, illustrating the great pressures that LGBT Nigerians live under whilst going about daily lives.

SENEGAL



Penal Code of 1965.

Article 319(3)

[UNNATURAL ACT]

“Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied.”