

**Homophobia is Un-African: Critical Discussions on the Legacy of Imported Homophobia
in Nigeria**

by

Joseph Esin

LL. B, Bowen University, 2018

**A Thesis Submitted in Partial Fulfillment
of the Requirements for the Degree of**

MASTER OF LAW

in the Faculty of Law

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**We acknowledge and respect the lək'wəḡən peoples on whose traditional territory the
university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical
relationships with the land continue to this day.**

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Abstract

The criminalization of homosexuality in Nigeria has led to a hostile climate for queer Nigerians exposing them to all sorts of discrimination and human right abuses. Nigeria, through its country leaders, state actors and scholars has expressed its homophobic stances from a cultural and moral standpoint, arguing that homosexuality is culturally foreign to its communal moral and religious beliefs. These persons have argued the call for the acceptance of homosexuality is a Western propaganda which will result in the erosion of their beliefs and the ultimate destruction of society.

In this regard, I assess the exclusive heterosexual culture claims made by Nigerian homophobes to determine whether the claims arise from a precolonial understanding of culture as Africans or a postcolonial construction of culture as a result of influences. I conclude by arguing that based on the existence of non-heterosexual practices and institutions, the claim of Africans being exclusively heterosexual is a post colonial conception derived from the independent and collaborative colonial influences on African culture.

Based on my findings, I make recommendations, if implemented would contribute to a climate of tolerance for sexual differences and diversity in Nigeria.

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Acknowledgment

I am very much grateful to my supervisory committee, Professors. Patricia Cochran and Audrey Yap, whose insight, guidance and support was instrumental to the success of this thesis. The development of this work is largely credited to their commitment, research expertise and willingness to teach and impact and for this I express my gratitude.

I am also grateful to Professor Rebecca Johnson, my LL.M seminar course instructor, for her very insightful classes, which greatly influenced my capacity to think and express my thoughts. I am grateful to have had the opportunity to take classes on feminism with Professor Yap as those classes were thought provoking and mind blowing. I am also grateful to Tiffany Gordon, who was always available to answer my many questions, and to the other staff and faculty members of the UVIC Faculty of Law who supported me in various ways and helped to make my LL.M programme memorable. I am grateful for Professor Iyioha, who always checked up on me and assisted in responding to my questions. Her words of encouragement are truly appreciated.

I am grateful to my parents, siblings and extended family members whose love and sacrifices have brought me this far. I am also grateful for friends, experiences, opportunities and all factors that have shaped me and made me who I am today. Finally, I want to express my gratitude to God, through whose strength I have been able to do all things.

Dedication

Dedicated to all victims of sexual and gender-based violence in Nigeria.

CHAPTER 1: INTRODUCTION - HOMOPHOBIA IS UN-AFRICAN: CRITICAL DISCUSSIONS ON THE LEGACY OF IMPORTED HOMOPHOBIA IN NIGERIA

1.0 Research Overview

Human sexuality has been a controversial issue worldwide over the last few decades. While some societies over the second half of the twentieth century and the twenty-first century have grown to tolerate and accept human sexuality as diverse, broad, and spanning across different identities and feelings¹, other societies have taken the stance that heterosexuality is the only acceptable sexual relationship. Consequently, these societies have taken steps to either criminalize or aggravate existing criminal laws against homosexuality. Notable among these societies have been sub-Saharan African countries such as Nigeria, Zimbabwe, Uganda, and Malawi² These countries have expressed their homophobic stances from a cultural and moral standpoint,³ arguing that, prior to Westernization, Africans only identified as heterosexuals and that other acclaimed sexualities were nonexistent in African societies.⁴ This thesis will lead to discussions on homophobia in Nigeria by unravelling and digging up pre-colonial histories, which are contrary to heterosexuality claims. The thesis takes a stance on this issue by arguing that the current homophobia in Nigeria is a result of the independent and collaborative influences of sodomy laws, exclusive heterosexuality in Africa propaganda, and the Abrahamic religions (Christianity and Islam), which were tools for colonial exploitation. These influences, stacked together, destroyed social institutions that

¹ Tara McKay & Nicole Angotti, *Ready Rhetorics: Political Homophobia and Activist Discourses in Malawi, Nigeria, and Uganda* (2016) Springer Science+ Business Pg 1-24

² *Ibid.* Pg 2

³ *Ibid.* Pg 2

⁴ *Ibid.* Pg 2

recognized and tolerated non-heterosexual relationships in Nigerian societies and gave rise to present-day homophobia.

Nigeria, like most homophobic post-colonial countries, has labelled homosexual rights as a western neo-colonialist movement, which is contrary to the cultural ethos of an African society. It has termed these rights strange residues of its interaction with Western societies that are contrary to Afro-Nigerian ontologies and the normalities that exist within its territory.⁵ According to Senator Obende,⁶ the legislator who sponsored the *Same-Sex Marriage (Prohibition) Act (SSMPA)* 2013⁷ assented to by President Jonathan, the country needed to curb homosexuality as "it would lead to a breakdown of society"⁸ Therefore, although the Criminal and Penal Codes have provisions that criminalize and punish same-sex intercourse offences (i.e., provisions relating to sodomy),⁹ additional measures need to be put in place to suppress homosexuality and provide additional protection for society. Consequently, the enactment of the *SSMPA* goes beyond criminalizing and punishing same-sex intercourse. It extends such punishment to homosexual unions, the establishment of gay clubs and associations, and persons aiding or abetting homosexuals or homosexual activities in the country.¹⁰ To further fortify the protection of society against breakdown, the Nigerian House of Representatives in April 2022 introduced a new bill seeking to amend the *SSMPA* by criminalizing and punishing cross-dressing in Nigeria.¹¹ The

⁵ Ibid. Pg2

⁶ as quoted in J. Onuche Same-sex marriage in Nigeria: A philosophical analysis (2013) 3:12 International journal of humanities and social science. 91-98.

⁷ Same Sex Marriage (Prohibition) Act 2014.

⁸ "We as a country need to act very fast for this trend not to find its way into our country...Same sex marriage cannot be allowed on moral and religious grounds. The Muslim religion forbids it Christianity forbids it and the Nigerian traditional religion forbids it. It should not be allowed because it will lead to a breakdown of the society" onuche, supra note 6

⁹ Ibid Pg 6

¹⁰ Ibid. Pg

¹¹ Abdul Seye "Reps move to ban cross-dressing, offenders to face 6 months imprisonment" Daily Post (April 2022)

<https://dailypost.ng/2022/04/05/reps-move-to-ban-cross-dressing-offenders-to-face-6-months-imprisonment/> accessed on 20th August 2022

purported bill, if passed into law, will order a six-month imprisonment term or a fine as punishment for the offence.¹²

The aim of this thesis is to contribute to ongoing discussions on homophobia in Nigeria. In light of colonial laws and institutions that have worked independently and collaboratively to produce intolerance and discrimination that has resulted in the current wave of human rights abuses and violations in the country. The thesis anticipates that a proper, in-depth discussion of homosexuality in pre-colonial Africa is requisite for debunking the claims of conservatives who posit homosexuality as rather new and foreign to Africans. Therefore, this thesis will address two questions:

1. Is Nigeria's present cultural and religious justification for anti-homosexuality legislation grounded in a precolonial cultural belief or a postcolonial cultural construction?
2. If grounded in postcolonial cultural construction, what influences led to the development of this construction?

A variety of research methodologies will be used to address the above research questions. In discussing the existing legislation criminalizing homosexuality, the implications of these legislations on the fundamental human rights of LGBTQ+ persons living in Nigeria, and the aftermath of these legislations in stirring up homophobia and aiding human rights abuses in Nigeria, the legal doctrinal research methodology will be utilized. This methodology is foundational, as it will be used to establish an intolerant climate for homosexuality in Nigeria. It will be utilized in discussing the present legal framework, judicial pronouncements, interpretations

¹² "A person engaging in cross-dressing is guilty of an offence and liable to imprisonment [for a term] of 6 months or to a fine of five hundred thousand naira."

of this framework, and the extra-judicial implications of this framework. The doctrinal methodology will aid in questioning the rationale behind the further criminalization of homosexuality by the enactment of the Same-Sex Marriage (Prohibition) Act and its current proposed amendment to include cross-dressing. The thesis will proceed to analyze the Nigerian cultural difference stance vis-à-vis precolonial cultural practice by adopting two research methodologies. The first methodology to be adopted was a historical investigation of the activities of precolonial Africans. This investigation is a prerequisite to properly establishing the existence of homosexuality in Africa and debunking the notion of Western imperialism or foreign invasion. The historical methodology will be paired with social-legal research methodology to establish the evolution of African societies, the effect of colonization on pre-colonial activities in Africa, and the power of religion in creating new practices and, in turn, establishing new African cultures. Modern African cultures are rigged with traces of colonialism and Eurocentric religious practices and thus cannot be used to justify homophobia on the grounds of cultural difference, as they do not reflect a pre-colonial understanding of African culture.

Upon debunking Nigeria's cultural difference argument, the thesis will seek to ground Nigeria's homophobia as the outcome of the independent and collaborative efforts of colonialism and colonial institutions. To achieve this goal, an empirical methodology will be utilized. These methodologies will be used to establish that the introduction of Eurocentric laws and institutions has instigated homophobia in Africa. In this study, primary and secondary sources of data were utilized. The primary sources will include various statutes in Nigeria, human rights conventions and treaties, and local and foreign reported cases. The secondary sources of data will include domestic and foreign textbooks, journals, journal articles, and Internet materials.

1.1 Problem Context

It is without doubt that the leadership of the country has no tolerance for condoning activities that are contrary to heterosexuality because of the belief (as opined by Senator Obende) that the acceptance of homosexuality in Nigeria may ultimately result in a breakdown of society. This is primarily because, it would be an 'erosion of Nigerian culture and the moral system'. The justification of these laws, based on culture and communal morals, is rather false, as would be established in this thesis. Contrary to Nigeria's stance on homosexuality as "foreign" or "new" in relation to its ability to breakdown society, many scholars have argued that homosexuality did in fact successfully coexist with heterosexuality in most African societies prior to colonization and industrialization. One of the many scholars on whom this thesis will rely extensively is Marc Epprecht.¹³ Epprecht argued that Africans are liberal people who accept and tolerate other sexualities. In fact, it has been argued and established that the notion of homosexuality as un-African originally emanated from the West in a bid to secure colonial and exploitative rule over Africa.¹⁴ He asserts that:

"Even the claim that same-sex sexual behaviour is un-African appears to have originated in the West rather than Africa itself... European men of a certain class expressed a desire to "believe and hope" that Africans were "exempt from this moral pestilence" of sodomy. This hope was then put to polemical use in

¹³ Marc Epprecht, Hungochani: The History of a Dissident Sexuality in Southern Africa (Montreal: 2013) Second Edition McGill-Queen's University Press Pg 7

¹⁴ Ibid. Pg7

making the case for the "natural" right to rule of heterosexually virile, bourgeois white men, both within Europe and beyond¹⁵"

Condemning the discrimination shown by some scholars and country leaders, Epprecht states that by asserting uniform heterosexuality across the African continent, Africans are, rather than establishing any unique indigeneity, reinforcing the stereotype of Africa as a single entity incapable of complex and diverse relationships as other regions of the world.¹⁶ In other words, to believe that a continent home to millions of people can only house one type of sexuality reinforces the Eurocentric, racist notion that Africans are homogenous from all perspectives and incapable of complex things. And this belittles African intellectualism and reinforces Africa as a dark continent.¹⁷ The discrimination against homosexuality by Africans can be likened to racism, which was predicated on a false stereotype that Africans were essentially different from and inferior to the 'civilized' branches of humanity and that they possessed no history and were rather uniformly childlike and incapable of sophisticated thoughts and emotions.¹⁸ Similarly, homophobia is based on the notion that attraction to same-sex people makes a person an inferior being compared to their heterosexual counterpart. Thus, Epprecht argues that it is rather disappointing for Africans who have been on the receiving end of discrimination to lack empathy for the differences and diversities that exist in modern society.¹⁹

Another author, who has opined on homophobia in Africa, has linked it to politics and opportunism. Anjesh Prasad in her piece, argued that rather than a case of cultural distinctiveness,

¹⁵ Ibid. Pg 7

¹⁶ Ibid. Pg 7

¹⁷ Ibid. Pg 7

¹⁸ Ibid. Pg 7

¹⁹ Ibid. Pg 7

homophobia in sub-Saharan Africa is opportunistic and political.²⁰ She asserts that the notion of cultural distinctiveness currently being exploited by African leaders differs from the initial understanding of the concept. Rather, the African cultural distinctiveness stance is fueled by opportunism and utilized by post-colonial leaders to undermine the pre-colonial rights of citizens in a bid to make themselves visible and seen²¹. Prasad argues that "in their [African leaders] desperate attempts to be seen, postcolonial states seek to discursively construct identities that are antithetical to those embodied by the West... because their European imperialists defined their previous identity²² ." She further asserts that "what manifests [often] is a superficial polarization of indigenous normative traditions toward those values associated with the modern West"²³ The identity captured here is articulated by the notion that "*we are Us because we are not Them.*"²⁴ Thus, both Epprecht and Prasad have argued that the lack of tolerance for homosexuality in Africa is not founded on precolonial indigenous cultures or practices but rather on some external moral code indoctrinated into Africans and the power struggle of African leaders.

If homophobia is not backed up by indigenous African cultural beliefs and moral codes how then is it being sustained in 21st-century African society? This research aims unravel homophobia in Nigeria by discussing several underpinnings of present-day Nigerian society. This thesis argues that homophobia is un-African but rather a result of the independent and collaborative efforts of colonial influences. However, in undertaking this thesis, it is worth noting that research on sexuality in Africa is more often than not problematic, given the lack of ethnographic data and

²⁰ Ajnesh Prasad, Cultural Relativism in Human Rights Discourse, (2007) 19:4 Peace Review, 589-596

²¹ Ibid. Pg 592

²² Ibid. Pg 592

²³ Ibid. Pg 592

²⁴ Ibid. Pg 592

limited unadulterated resources on pre-colonial African lives and society. These research problems prompted Epprecht to pose the following questions:

"How can one sort out truths from claims (often never made explicit) that are imbued with androcentric, phallogentric, Eurocentric, and heterosexist assumptions or silences? How can one produce an account of contests over sexuality that is more than simple counter-assertion or wishful thinking against an oppressive status quo, that adheres to standards of professional integrity, and that can stand the test of the critical, indeed sometimes viscerally hostile opinion that discussions of dissident sexualities can evoke?"²⁵

To achieve ethnographic studies, such as the issues being explored in this thesis, as a researcher, I, must attempt to piece together as much information and details as possible, explore all nuances to find a strong voice amidst the regular narratives. This thesis is dissident voice, in solidarity with the struggles of lesbian, gay, bisexual, transgender, queer, or questioning people and additional sexual orientations and gender identities (LGBTQ+) in Nigeria. This thesis argues in favour of decriminalization by positioning non-heterosexual relationships in precolonial Africa. By reflecting on practices like the '*Yan daudu*' and woman marriage institutions, this thesis argues that the cultural and moral argument offered against homosexuality is a postcolonial construction of African culture and morality. This post-colonial construction was a product of the colonial influences that shaped African culture. The influences identified by this thesis are: sodomy laws, religion, and Africans as exclusively heterosexual propaganda. The thesis also reflects on the

²⁵ Epprecht, supra note 13 Pg 12

present legal framework and its enablement of extra-judicial prosecution of queer persons in Nigeria, including assault, sexual assault, extortion, mob violence, and even death in some cases. The thesis proceeds to offer recommendations for the decriminalization of homosexuality in solidarity with the LGBTQ+ community in Nigeria.

This thesis identifies with the struggle of the LGBTQ+ community in Nigeria and the several human rights infringements and abuses faced by members of this community in Nigeria. The decision to engage in this scholarly activity is motivated by my commitment to justice for the LGBTQ+ community in Nigeria and as such, this thesis is among the many scholarly protests against the criminalization of homosexuality in Nigeria. While this thesis is focused on exploring homophobia in relation to colonial laws and institutions that reinforced homophobia, it is also an express call for the decriminalization of homosexuality, as contained in the recommendations it will offer. Now, the context of homophobia in Nigeria can be classified into two tiers: the primary problem (statutory human rights infringement) and the aftermath (human rights abuses by state actors and private citizens). Both tiers are equally detrimental to members of the LGBTQ+ community in Nigeria. The primary problem is the outright denial of the fundamental human rights of members of the LGBTQ+ community in Nigeria. The provisions of the *Penal Code*, *Criminal Code*, and *Same-Sex Marriage (Prohibition) Act* collaboratively prohibit homosexuality, homosexual unions, associations, clubs, and gatherings. These laws stipulate harsh penalties, ranging from imprisonment to fines, for any person caught practising homosexuality. The existence of these laws infringes on a host of internationally recognized fundamental human rights, including the right to freedom from any form of discrimination and the right to freedom of expression, association, and religion, as provided by the Universal Declaration of Human Rights

(UDHR),²⁶ other international conventions, and the 1999 Constitution of the Federal Republic of Nigeria.²⁷ Furthermore, the proposed legislation on cross-dressing, if passed into law, will aggravate this infringement by policing dressings, expressions, and ultimately identities.

The presence of this legislation creates an unfavourable climate for the day-to-day lives of LGBTQ+ persons living in Nigeria. This criminalization of homosexuality has played a major role in enabling sexual-based human rights abuses and violations perpetrated by citizens and state actors. The non-acceptance of homosexuality has exposed many homosexuals living in Nigeria to various forms of human rights violations (including death) perpetrated by both private citizens and state actors, such as the Nigerian Police Force²⁸. In its 2020 annual human rights report, the United States government stated that 482 human rights abuses based on sexual orientation and expression were documented by the Initiative for Equal Rights Organization (TIERS) between December 2019 and November 2020.²⁹ The report also outlined that more than 20 percent of cases involved state actors.³⁰ Another report issued by the Women's Health and Equal Rights Initiative (WHER) to the Immigration and Refugee Board of Canada³¹ indicated that LGBTQ+ persons in Nigeria have suffered several forms of attacks, including organized attacks and mob justice.³² The report stated that these organized groups are known to catfish queer people on social media and lure them into their impending doom, which could result in death. The report stated thus:

²⁶ Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

²⁷ Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999

²⁸ United States Bureau of Democracy, Human Rights and Labor, 2020 Country Reports on Human Rights Practices: Nigeria (March 2021) <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nigeria/> accessed on 20th August 2022.

²⁹ Ibid.

³⁰ Ibid.

³¹ Immigration and Refugee Board of Canada, Nigeria: Anti-LGBTQ vigilante groups, including their objectives, structure, activities, and areas of influence; response of the authorities and state protection (2020) <https://www.justice.gov/eoir/page/file/1342151/download> accessed on 20th August 2022

³² Ibid.

"These groups... lure gay men on the pretext of a fake date from dating apps [to] humiliate and expose them by videotaping them naked [and] putting dildos in their private parts, and, in some cases, exposing their anus or telling a lesbian victim to penetrate herself or her partner. They also use women to lure lesbian and bisexual women and then rape and brutalize them in the name of curing them of lesbianism³³

These organized mob attacks are locally known as "Kito"³⁴ These human rights abuses suffered by members of the LGBTQ+ community include blackmail, invasion of privacy, extortion, assault, battery, and even arbitrary arrest and unlawful detention by law enforcement and other state actors.³⁵ Human Rights Watch, in its 2016 report titled Tell Me Where I Can Be Safe³⁶, relayed the testimony of some of the victims. Olu, one of the victims had this to say:

“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

³³ Ibid.

³⁴ The word Kito has been known to have two meanings in the LGBTQ+ community in Nigeria. It is used to refer to experience of being catfished online or to an assailant committing these acts.

³⁵ Wendy Isaack “Tell Me Where I Can Be Safe” The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act (October 2016) Human Rights Watch Pg 34-39

³⁶ Ibid. Pg 34-39

from the beating. I had to have stitches on my head. They used all kinds of things—wood, iron—to hit us.”³⁷

Another victim, Desmond, of sex-based violence narrated:

“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.”³⁸

These abuses meted on members of the LGBTQ+ community are often cheered upon by witnessing crowds who believe that the victims deserve their fate.³⁹ The assailants are thus considered heroes, performing the Lord’s work of eradicating homosexuality in the nation. This endorsement by other members of society and the lack of available recourse leave the victims at the mercies of the assailants. Scholars and country leaders have criticized these abuses both locally and internationally. Chimamanda Adichie, a Nigerian feminist and writer, opined thus:

³⁷ Ibid Pg 34-39

³⁸ Ibid.

³⁹ Ibid.

“The new law that criminalizes homosexuality is popular among Nigerians. But it shows a failure of our democracy, because the mark of a true democracy is not in the rule of its majority but in the protection of its minority – otherwise mob justice would be considered democratic. The law is also unconstitutional, ambiguous, and a strange priority in a country with so many real problems. Above all else, however, it is unjust. Even if this was not a country of abysmal electricity supply where university graduates are barely literate and people die of easily treatable causes and Boko Haram commits casual mass murders, this law would still be unjust. We cannot be a just society unless we are able to accommodate benign difference, accept benign difference, live, and let live. We may not understand homosexuality; we may find it personally abhorrent, but our response cannot be to criminalize it.”

1.2 Scholarly Debate

The topic of homosexuality has been a controversial issue among Nigerian scholars. Some scholars have identified as conservative, supporting the current climate in the country, while others have advocated for decriminalization and tolerance of sexual differences in society. Conservative groups of scholars usually rely on culture, morals, and religious beliefs as the reasons for their position, while humanist scholars often assert the duty of the state to protect and preserve fundamental human rights as the reason for decriminalization.

Kehinde Obasola, a Nigerian scholar, asserts that homosexuality is a cankerworm aimed at destroying the fabric of African ⁴⁰society. He argued that homosexuality is unAfrican, unnatural, and against the doctrine of Christendom.⁴¹ Obasola bases his rejection of homosexuality on the Holy Bible's teachings on Sodom and Gomorrah and how the Christian God destroyed society for the sins of homosexuality.⁴² He defends African leaders like Robert Mugabe of Zimbabwe, who ordered raids and arrested gays in Zimbabwe.⁴³ He expressed that the lewd debauchery called homosexuality is cancerous to society.⁴⁴ Obasola's stance on homosexuality as un-African is flawed in many regards; however, this thesis highlights two of the most prominent flaws. In making an argument against homosexuality, Obasola based his argument on Christianity, a Eurocentric religion forced on Africans as a result of colonization. It is false that the basis for arguing against homosexuality in Africa as un-African has no roots in Africa rather its based on foreign religious institutions. In making this assertion, Obasola failed to cite any indigenous African religion or practice to support his claim against homosexuality. Thus, the premise that he draws the conclusion that homosexuality is non-African cannot be said to infer the asserted conclusion. Another prominent flaw is his failure to recognize Nigeria as a secular society with a host of religious practices and the rights to freedom of religion, expression, and association.⁴⁵ Given this background, relying on the precepts of Christian religion as the premise for condemning homosexuality is insufficient and fails to consider other religious practices and faiths. To further

⁴⁰ Kehinde Obasola, An Ethical Perspective of Homosexuality Among the African People, (2013) 1.12 European Journal of Business and Social Sciences 77- 85

⁴¹ Ibid. Pg 77- 85

⁴² Ibid. Pg 77-85

⁴³ Ibid. Pg 77-85

⁴⁴ Ibid. Pg 77-85

⁴⁵ As contained in the 1999 Constitution of the Federal Republic of Nigeria, supra note 31.

buttress this point, Chimamanda Adichie advocated against religion as a basis for criminalizing homosexuality:

The Bible can be a basis for how we choose to live our personal lives, but it cannot be a basis for the laws we pass, not only because the holy books of different religions do not have equal significance for all Nigerians but also because the holy books are read differently by different people.”⁴⁶

Another conservative scholar, Joseph Onuche, argues in defending Nigeria’s anti-homosexual stance that homosexuality is unnatural and contrary to the communal morals of the country.⁴⁷ He argues that the indigenous understanding of marriage in Nigeria lies between a man and a woman, and thus any other constitutions within a marriage is an aversion to indigenous marriage institutions.⁴⁸ Onuche’s position has been cited by several authors as a legitimate reason for criminalization, thus giving it prominence among Nigerian scholars. However prominent this argument might be, Onuche’s argument is based on false premises, as it ignores the existence of indigenous same-sex marriages amongst the Igbos and undermines the social engineering abilities of the law to effect changes in societies. While Onuche argues that the present morality in Nigeria recognizes marriage as a union between a man and a woman, he fails to track the history of pre-colonial marriage institutions where polygamy, multiple partnerships, woman marriage systems, and other non-heterosexual or non-monogamous marital institutions were recognized. His assertion fails to consider the gradual disintegration of these institutions as a result of colonial laws that condemned them and the Abrahamic religions that taught new morals. Like society, morality

⁴⁶ Adichie, *Supra* note 46

⁴⁷ Onuche, *supra* note 6, pg 91-98

⁴⁸ *Ibid.* Pg 91-98

itself is not static but rather dynamic, dancing to the tunes of influence. Furthermore, Onuche fails to acknowledge that not all morals need to be enacted as laws. And the need for the independent and collaborative coexistence of moral and legal realms. In buttressing this point, I will refer my audience to the 1957 Wolfenden Committee Report⁴⁹ in England. In its report on decriminalizing homosexuality, the Committee asserted the need to distinguish between morality and law. The 155-page report recommended that homosexual behaviour between consenting adults in private should no longer be considered a criminal offence because the role of the law is to protect the public, not to interfere in private lives.⁵⁰ The report held "*that there must remain a realm of private morality or immorality, which is, in brief and crude terms, not the law's business*"⁵¹ Therefore, since sexual relations between two consenting adults do not threaten the safety of the public, they need not be regulated by law.

On the other hand, Augustine Arimoro⁵² advocated for the decriminalization of homosexuality. He argues that the notion of homosexuality being un-African is an uncorroborated claim that is rebutted by several pieces of evidence of the practice of homosexuality in pre-colonial Africa.⁵³ He asserts that homophobia is un-African, as this notion was introduced by colonial masters⁵⁴ who wanted to foster a false narrative about Africa. He buttressed his point by asserting that the enactment of anti-gay laws proved the existence of homosexuality in pre-colonial Africa.⁵⁵ He took a stance on religion rather than culture as the reason for homophobia in Africa.⁵⁶ His

⁴⁹ Report of the Committee on Homosexuality and Prostitution Offences (1957) Parliamentary Archives, HL/PO/JO/10/11/579/1527

⁵⁰ Ibid.

⁵¹ Matthew Blackman, Does Law Exist to Provide Moral Order, (2021) <https://daily.jstor.org/does-law-exist-to-provide-moral-order/> accessed on 20th August 2022

⁵² Augustine Arimoro, When Love is a Crime: Is the Criminalization of Same Sex Relations in Nigeria a Protection of Nigerian Culture? (2018) 39 Liverpool Law Review 221-238

⁵³ Ibid. Pg 221-238

⁵⁴ Ibid. Pg 221-238

⁵⁵ Ibid. Pg 221-238

⁵⁶ Ibid. Pg 221-238

arguments suggest that the Abrahamic religions practised in Nigeria (Christianity and Islam) have influenced African culture over the years, leading to intolerance and discrimination against sexual minorities.⁵⁷ Agreeing with Arimoro, it is rather unfortunate that Africans have been so influenced by the Abrahamic religions that arguments relating to cultural practice are only being viewed from these perspectives. Homophobic African scholars have not been able to successfully back up their homophobia with any traditional African religious practices and activities instead they only cite Abrahamic religions. The extent to which religion influenced African society can be seen in European priests' refusal to baptize polygamous members during the Christianization of Africa as explained by Patrick Nmah.⁵⁸ Many Africans married to more than one spouse were asked to divorce their multiple spouses before they could be baptized into Christendom.⁵⁹ This has led to the breakdown of many families.⁶⁰ Similar to Nmah's polygamy argument, this can be said of woman marriages among Igbos and other non-heterosexual relationships.

Furthermore, Prasad's discussion on cultural distinctiveness argues that the present notion of cultural distinctiveness, as offered by African homophobes, defeats the initial conception of the concept.⁶¹ She argues that the concept was originally utilized to resist and defeat Eurocentric hegemonic initiatives against indigenous people.⁶² However, the concept is currently used by leaders to oppress minorities within their territories.⁶³ According to Prasad, the concept of distinctiveness is used by post-colonial countries to undermine the pre-colonial rights of citizens

⁵⁷ Ibid. Pg 221-238

⁵⁸ P.E. Nmah, Christianity, Polygyny and Homosexuality in Nigeria: A Theopoeitics Culture of Acceptance and Rejection (2012) 1:2 An International Journal of Arts and Humanities Bahir Dar, Ethiopia 41-56

⁵⁹ Ibid, pg 41-44

⁶⁰ Ibid, pg 41-44

⁶¹ Prasad, supra note 24, pg. 589-596

⁶² Ibid. Pg 592

⁶³ Ibid. Pg 592

in a bid to make themselves visible and seen.⁶⁴ She asserted that the present usage is a political ploy employed to gain global visibility and popularity.⁶⁵ To gain this popularity, post-colonial countries deliberately construct identities that are contrary to the ideals of the West and neither based indigenous nor cultural values.⁶⁶ Prasad's arguments reflect the situation in Nigeria and other sub-Saharan countries. Despite several pieces of evidence of the existence of homosexuality in precolonial Africa (even by virtue of the existence of colonial laws regulating homosexuality), African leaders have thought to establish themselves as different from the West by taking a step against homosexuality. Their basis, which is often Abrahamic religion, has no claims in Africa. Therefore, homophobic African leaders are exploiting these Abrahamic religious practices to construct new African identities that are contradictory to precolonial sexual rights.

Regarding the claim of law as a tool for social change, that this thesis intends to rely on in making claims about homophobia. Roscoe Pound asserts that law is a highly specialized form of social control in politically organized societies, enforced through the systematic and orderly use of violence in such societies.⁶⁷ Pound argues that law is a social engineering task aimed at eliminating friction and waste to meet the infinite interests and demands of humans.⁶⁸ Contrary to the Natural Law School, he denies that laws reflect God's reason or God-given order in ruling the universe but are rather a process of social adaptation.⁶⁹ He describes laws as a system that realistically compromises conflicting and overlapping interests and resolves these disputes by giving legal effect to certain interests over others.⁷⁰ In line with the assertions that this thesis will make as we

⁶⁴ Ibid. Pg 592

⁶⁵ Ibid. Pg 592

⁶⁶ Ibid. Pg 592

⁶⁷ Roscoe Pound, *Social Control Through Law*. (1997) London: Routledge

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

advance, many conservative scholars who argue against homosexuality are dissonant with Pound's theory. They fail to evaluate the social impact of colonial laws and institutions on fostering the present understanding of morality, marriage, or sexuality.

1.3 Scope and Limitation of Study

The purpose of this thesis is to define homophobia in Nigeria as an acquired moral value, as opposed to the inherent cultural difference arguments put forward. This thesis aims to advocate for the decriminalization of homosexuality, as it is a false representation of Nigerian culture. In establishing this case of homophobia as an acquired moral value, the thesis will include discussions on the current legal frameworks criminalizing homosexuality and its impact on members of the LGBTQ+ community, which will examine Nigeria's cultural stance vis-à-vis the precolonial cultural practice of Africans who lived in the territory known as Nigeria. This thesis will explore in detail the laws and institutions that have positioned Nigeria in the present-day mindset, that is, the effects of colonialism and Afro-European cultural infusion. This thesis will proceed to debunk the purported impending threat of societal destruction, which is usually attributed to homosexuality. Although the storyline is the same across sub-Saharan Africa, the scope of this thesis is limited to Nigeria. However, references may be made to other sub-Saharan jurisdictions for minor comparisons, a better explanation, or to invoke a better understanding of the issues discussed.

1.4 Research Structure

This thesis is divided into four chapters. The second chapter will focus on both conservative and humanist arguments against homosexuality. The chapter will agree with humanist view that homosexuality is consistent with African culture by establishing several non-heterosexual

practices in Africa. It will reference the '*Yan daudu*' gay culture amongst men in Northern Nigeria and offer discussions on the woman-marriage institutions that allowed women to play the role of husbands, acquire wives, and bear children in their names. It will reference the Yoruba belief in lesbianism amongst some of the deities, which resulted in the birth of another deity. This chapter focuses on disclaiming the foreignness of homosexuality by establishing pre-colonial homosexual friendly cultures, traditions, and beliefs that engaged with non-heterosexual practices.

The third chapter focuses on the cultural shaping influences of colonialism in birthing homophobia. This chapter highlights the impact of 'homosexuality as un-African' propaganda in erasing narratives of precolonial non-heterosexual relationships among Africans. The chapter also highlights the role of sodomy laws in prohibiting and criminalizing homosexual practices, which has led to the decline of these institutions and practices. This chapter argues that sodomy laws served as a tool of social engineering, causing Africans to change from an attitude of tolerance to intolerance towards sexual diversities. Furthermore, the chapter highlights Abrahamic religions as another source of influence that shapes Nigeria's homophobia. The chapter argues that all these influences worked independently and collaboratively to shape Nigeria's intolerance of homosexuality.

The fourth chapter focuses on the present framework, enabling homophobia, and its impact on the lives of queer people in Nigeria. This chapter provides an overview of the framework criminalizing homosexuality in Nigeria, including statutes, judicial pronouncements, rationales, and mechanisms put in place to restrict homosexuality. This chapter focuses on the fundamental human rights infringements suffered by members of the LGBTQ+ community in Nigeria. Furthermore, this chapter will explore the human rights violations enabled by the existence of anti-gay legislation in Nigeria and their impact on the lives of queer people. It discusses the physical and

psychological impacts of this framework and argue that its enforcement is mostly extrajudicial, leaving the victims without recourse.

The fifth chapter serves as the concluding chapter of this thesis. This chapter will identify the key findings of this thesis as well as the recommendations, if adopted, will decriminalize homosexuality and curb the alarming human rights infringements, abuses, and injustices meted out against LGBTQ+ persons in Nigeria.

CHAPTER 2: HOMOSEXUALITY IS UN-AFRICAN, MYTH OR FACT?

2.0 Introduction

This chapter discusses homosexuality in Nigeria by examining the different views held by Nigerian scholars on homosexuality and the rationale behind their stance. This thesis takes a humanist stance on the decriminalization of homosexuality by establishing the existence of non-heterosexual institutions in precolonial Nigeria, which proves that Africans have historically been culturally tolerant of diverse sexual orientations. Further, it establishes that the current wave of intolerance is a result of the culturally shaped indoctrinations discussed in Chapter 3.

2.1 Scholarly Debate on Homosexuality in Nigeria

The enactment of the *Same-Sex Marriage (Prohibition) Act*⁷¹ in Nigeria has been met with various reactions from various groups. While some people have condemned this legislation as negating Nigeria's obligation to protect the human rights of its citizens, others have welcomed it as a step in the right direction to maintain Nigeria's moral and customary sanctity. The legislation introduced into the legislative assembly and sponsored by Domingo Obende⁷² was primarily premised on the fact that it was contrary to the teachings of the Abrahamic religion. Although Nigeria prides itself on being a secular country, this was not the case with homosexuality, as Obende opined in introducing the bill.

“We as a country need to act very fast for this trend not to find its way into our country...Same sex marriage cannot be allowed on moral and religious

⁷¹ SSMPPA, supra note 7

⁷² as quoted in Onuche, supra note 6, pg. 91-98.

grounds. The Muslim religion forbids it Christianity forbids it and the Nigerian traditional religion forbids it. It should not be allowed because it will lead to a breakdown of the society”⁷³

In the same vein, another legislator, Senator Oluremi Tinubu, opined, "It is morally and spiritually wrong and unacceptable," showing her support for the legislation.⁷⁴ Following the enactment of the Act, the then Senate President, David Mark, defended the Act thus:

“My faith as a Christian abhors it. It is incomprehensible to contemplate same sex marriage. I cannot understand it. I cannot be a party to it...There are enough men and women to marry each other. The whole idea is the importation of foreign culture but this one would be a freedom too many. We cannot allow our tradition and value system to be eroded. "It is offensive. It is repugnant. I will preach against it, and we must stand up to reject same sex marriages in Nigeria. I do not think any religion supports this. I don't know where this whole idea of same sex marriage comes from.”⁷⁵

That said, Nigeria’s response to the criminalization of homosexuality can be grouped into two camps. The "conservative camp" and the "humanist camp". The conservatists often hold out homosexuality as an ‘aberration" and a ‘behavioural disorder’.⁷⁶ This view of homosexuality is popular among Nigerians and Africans, as they believe that homosexuality as a sexual orientation is perverse and contrary to the indigenous religious understanding of sexual relations. Many

⁷³ Ibid.

⁷⁴ as quoted in Onuche, supra note 6, pg. 91-98.

⁷⁵ as quoted in Onuche, supra note 6, pg. 91-98.

⁷⁶ Ibid.

scholars, in their various scholarly pieces, have supported this view through the lenses of religion, marriage, tradition, nature, etc.

Some of these scholars include Dr. Joseph Onuche,⁷⁷ a Nigerian philosopher whose piece centres on a philosophical analysis of homosexuality in comparison with Nigerian marriage structures and belief systems. In this piece, Onuche argues that marriage within the African context is a complex affair involving overlapping economic, social, and religious aspects of life.⁷⁸ Thus, marriage is a rendezvous for the present, past, and future generations of a community. Therefore, failure to enter marriage is similar to rebellion and deviancy.⁷⁹ Citing the popular African scholar John Mbiti, Onuche argues that the essentiality of marriage is procreation and that without procreation, marriage is incomplete.⁸⁰ Where individuals in a marriage fail to procreate, they are known to quench the fire of life, end the line of succession, and endanger the existence or survival of a particular community or human race in its entirety. This ability to procreate is what gives the dead immortality, as most ancestors are kept alive in the minds of relatives and family members.⁸¹ Therefore, the thrust of Onuche's argument is that, given that, marriage is based on unity and openness towards procreation, same-sex relations and marriages should not be allowed as they violate these laws.⁸² Thus, Onuche's conservative view of homosexuality can be summarized as follows:

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ According to Onuche, "Marriage is regarded as an obligation by means of which the individual contributes the seeds of life towards man's struggle against the loss of original immortality. A person who, therefore, has no descendants in effect quenches the fire of life, and becomes forever dead since his line of physical continuation is blocked if he does not get married and bear children.... this is a sacred understanding and obligation which must neither be abused nor despised. Similarly, marriage and procreation as a unity attempt to recapture immortality in the matter of 'remembering' the living dead. So long as there are persons in the family who remember someone who has physical died this person is not really dead: he is still alive in the minds of his relatives and neighbors who knew him while he was in human form. His name still means something personal, and he can 'appear' to members of his family who knew him and who would recognize him by name. This, as we have seen, is extremely important in Nigerian societies."

⁸² Ibid.

“[Homosexuality] is a violation against natural law, objective truth, and the law of complementarity. Marriage is based on the fact that we are male and female—two halves of a complete life-giving whole and that life-giving power is inherent in heterosexual union. Nigerian moral context as it stands now is a context that identify with the rhythm of nature rather that with efforts to manipulate it. Consequently, Nigerians consider same sex marriage morally as an affront to the concept of marriage in content, context and practice and therefore a habit that cannot and should not be legally recognized.”⁸³

Other scholars supporting the conservative views are Olanisebe and Adedokun.⁸⁴ The duo took on the subject using Christian religious lenses; they likened the acceptance of homosexuality to the rebirth of the infamous cities of Sodom and Gomorrah in the Christian Holy Bible.⁸⁵ Olanisebe and Adedokun argue that the Christian God did punish Sodom and Gomorrah not for their inhospitality but because they were involved in sexual perversion and wickedness.⁸⁶ Citing verses in both the Old Testament and the New Testament of the Holy Bible, scholars attempt to corroborate the argument of the sinful nature of homosexuality and its ability to bring the wrath of the Christian God to the people of Nigeria.⁸⁷ In the same vein, the authors attempt to trace the origin of homosexual controversies in Nigeria. The authors claim that the controversies in Nigeria emanated from two issues. First, the issue surrounding the Rainbow Church of Lagos, established by Rev. Rowland Jide Macaulay, which served as a haven for Nigerian homosexuals, and the

⁸³ Ibid.

⁸⁴Samson Olanisebe &Adewale Adedokun Re-Interpreting “Sodom and Gomorrah” Passages in the Context of Homosexuality Controversy: A Nigerian Perspective 92013

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

subsequent attacks on the church by angry mobs who felt the existence of such a church was taboo⁸⁸ The second issue raising controversies, according to these scholars, was the airing of the interview with a self-acclaimed gay known as Bisi Alimi.⁸⁹ Thus, it can be deduced that, prior to these events, the authors believed that Nigerians had no contrary views on homosexuality.⁹⁰ The views of these authors can be best captured in their concluding paragraph:

It is, therefore, the submission of this paper that even though the attitude of the majority of Nigerians toward homosexuality is that of repulsion, condemnation, and rejection, this attitude stems from the fact that such a sexual orientation is foreign to the culture and religious practices of the people. This paper has revealed that both the church and society uphold a common position of disapproval of homosexuality in all its forms and operations. They regarded homosexuality as taboo and a curse in Nigeria. The effect of the law banning any form of homosexuality in Nigeria is that those who are engaged in the act would not practice it publicly and would do everything possible not to be identified to avoid stigmatization and discrimination from the people and society.⁹¹

Another interesting proponent of the conservative view is Nmah. I particularly find Nmah's piece interesting, as he contrasts homosexuality with polygyny.⁹² In this piece, Nmah argues that Christian missionaries rejected polygyny because it was contrary to the Eurocentric values of

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Nmah, supra note 60, pg. 41-56

marriages.⁹³ Nmah argues that polygyny, which was an essential part of African culture and was beneficial to society both economically and morally as it reduced adultery and concubinary, was forced into extinction by Christian missionaries who refused to recognize or baptize African polygamists.⁹⁴ Contrasting polygamy with homosexuality, Nmah argues that if polygamy, which is culturally African, was rejected by Christian missionaries and colonial leaders based on European moral conception, how then can Africans be expected to accept homosexuality, which, in his opinion, is contrary to African culture and belief systems.⁹⁵ Thus, he calls for the decriminalization of polygamy as an institution terming its criminalization, discrimination against African values and in the same vein, expresses his disdain for homosexual or same-sex relationships.⁹⁶

Another proponent of the conservative view, Kehinde Obasola,⁹⁷ a Nigerian professor, argues against homosexuality in Nigeria as it is contrary to the teachings of Christian doctrine. In his renunciation of same-sex practices, he posited the following:

“It is proper to respect homosexuals as human beings created in God’s image, their moral shortcomings notwithstanding. But such respect and sympathy should not translate to condoning the pseudo dichotomy of homosexual orientation and homosexual desires which are unarguably opposed to the creator’s original will.”⁹⁸

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Kehinde Obasola, An Ethical Perspective of Homosexuality Among the African People, (2013) 1:12 European Journal of Business and Social Sciences

⁹⁸ Ibid.

Contrary to the conservative view, some Nigerian scholars identify with the humanist view and call for the decriminalization of homosexuality. This sect, which usually identifies as humanist, believes that homosexuality is a normal variation in human conditions. They are of the opinion that every human being deserves the right to freedom of choice, and it is not the state's business to determine the gender of that choice. This group of people believe that the criminalization of homosexuality is not only an infringement on the human rights of individuals but also leads to ripple effects on society at large. Some of the scholars favouring the humanist view on the legalization of homosexuality in Nigeria are Jonathan Chimakonam and Ada Agada⁹⁹. The duo in their paper place Nigeria's cultural distinctiveness argument alongside Mill's harm principle.¹⁰⁰ While acknowledging the fact that the majoritarian morality currently in Nigeria is anti-gay, they argue in favour of homosexuality on the grounds of the absence of harm to individuals or society at large.¹⁰¹ The scholars believe that if it can be demonstrated that consensual homosexual practice poses a measurable threat to the welfare of members of society, then its criminalization can be justified.¹⁰² However, if the reverse is the case, then criminalizing homosexuality is unjust and infringes on human rights.¹⁰³ Thus, a majoritarian sentiment against homosexuality is an insufficient basis for denying gay rights. Their opinions on the issue are as follows:

“The criminalization of homosexual practice in Nigeria poses a moral question. The case against homosexuality presented on the basis of tradition, built on elements of majoritarian morality and religious and cultural

⁹⁹ Chimakonam JO, Agada A. The sexual orientation question in Nigeria: Cultural relativism versus universal human rights concerns (2020) 24:6 *Sexuality & Culture* 1705-19.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

sentiments, fails to defeat the harm principle. Fairness will seem to demand that laws criminalizing homosexuality in Nigeria be expunged from the legal framework since they clash with objective moral considerations vis-à-vis the homosexuality question. For, we are confronted with a situation of individuals having their basic rights of association denied for doing things that do not threaten the welfare of the society.”¹⁰⁴

Another scholar calling for the decriminalization of homosexuality in Nigeria is Kehinde Okanlawon.¹⁰⁵ Kehinde’s approach to the issue calls for sensitization against homophobic bullying in Nigerian secondary and tertiary institutions of learning.¹⁰⁶ The paper discusses the impact of heterosexism and heteronormativity in learning institutions on gay and gender non-conforming students.¹⁰⁷ From being ostracized to being labelled possessed or bewitched to being stigmatized, extorted, beaten up, or even killed in some cases¹⁰⁸ Okanlawon, whose first piece on the subject matter is a literature review, cites several examples of bullying by students on fellow students, bullying by teachers and school administrators on gay students, and instances of bullying by parents on their children, including the murder of a student in Jigawa State over homosexuality.¹⁰⁹ While Okanlawon’s outcry is directly focused on sexual-based violence in institutions, it indirectly advocates for decriminalization, as both go hand in hand and violence against gay students would decline if homosexuality is decriminalized.¹¹⁰ Thus, Okanlawon posited the following:

¹⁰⁴ Ibid.

¹⁰⁵ Kehinde Okanlawon, Homophobia in Nigerian schools and universities: Victimization, Mental Health Issues, Resilience of the LGBT Students and support from Straight Allies. A Literature review, (2020) Journal of LGBT Youth

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

“Given that the National policy on inclusive education in Nigeria does not include LGBT persons as one of the groups who face marginalization, exclusion, or discrimination in schools, research is needed to target Nigerian policy makers and government officials at the Ministry of education about their views on the possibility of inclusion of LGBT persons in the inclusive education policy and the possible benefits or disadvantages they think such inclusion might result in within the education sector.”¹¹¹

Furthermore, in a satire titled "One more nation bound in freedom," which is a line adopted from the Nigerian national anthem, Ayo Sogunro tackles Nigeria's ironic freedom contained in the national anthem and protected by the Constitution, which is not extended to gays and lesbians in Nigeria.¹¹² Sogunro argues that, daily, many Nigerian cultures are being modified by new practices; however, in the case of homosexuality, Nigerians will always cherry-pick cultural arguments as the rationale for infringing on these rights.¹¹³ He underscores the religious argument by arguing that, despite being one of the most religious countries in the world, Nigeria has also emerged as one of the most corrupt nations.¹¹⁴ One would hope that because of its religiosity, Nigeria would breed honest people; rather, Nigerians cherry-pick on issues of homosexuality as opposed to religious teachings while clearly avoiding issues such as corruption, fraud, bribery, and all other ethical vices that are expressly contrary to religious teachings.¹¹⁵ Thus, Sogunro argues that

¹¹¹ Ibid.

¹¹² Ayo Sogunro, *One More Nation Bound in Freedom* (2014) *Gay Nigeria* No.114 pp. 47-59

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

“the religious nature of the country is superficial, rather than principled and this hypocrisy is generally tolerated in everyday Nigerian life. Consequently, it is highly uncharacteristic, by Nigerian standards, for a religious argument to be the prop for any governmental regulation or worse, a federal law and more so when the Constitution of the country unequivocally disavows a state religion.”¹¹⁶

Having reviewed arguments for both camps, I am of the humanist view that homosexuality should be decriminalized in Nigeria, and I will make a case for decriminalization. Nigeria’s argument against homosexuality is usually framed through religious and cultural lenses of unacceptability. The conversation usually takes the form of homosexuality being contrary to the Abrahamic religions and the customs of people in Nigeria. This argument is usually initiated on the note that prior to Western influence, homosexuality was either nonexistent or hushed. And that the sexual orientation is more Western propaganda being forced on African countries. In establishing my point of view along the humanist line, I will launch off my argument from the existence of indigenous same-sex practices in Nigeria. In discussing indigenous homosexual practices, I must acknowledge that discussions of such nature are usually tainted with biases, lies, false presumptions or silences that make it impossible to determine their veracity.” How can I produce an account of indigenous sexuality debates that isn't just counter arguments or mere fantasy in opposition to an oppressive status quo? I hope that by piecing together as much information and details as I can find, exploring all nuances, while also recognizing my ethnographic sentiments and personal biases, I can find a voice.

¹¹⁶ Ibid.

2.2 Pre-Colonial Indigenous Non-Heterosexual Beliefs, Practices, And Institutions

Contrary to the claim that homosexuality is a foreign conception, there are accounts of indigenous homosexual practices. Anti-gay proponents have grounded LGBTQ+ rights as imbibed Western culture foreign to indigenous African society. This proponent group usually traces African history in relation to colonial history and its impact it had in generating homophobia. Many proponents of the conception of homosexuality as un-African are usually oblivious to or intentionally neglect the existence of certain African practices not backed up by heterosexuality. Many African myths and stories are known to consist of diverse personalities and sexualities, including homosexual and transsexual deities. However, many of these historical myths are now facing extinction due to modernization and Abrahamic religions, while other myths are interpreted as conforming to present-day gender identities and heterosexism. That said, I will briefly identify some indigenous myths, stories, and identities that verify the existence and practice of homosexuality in Nigeria.

Among the Yoruba people of southwestern Nigeria, Ajibade has argued for the existence of lesbianism among the Yoruba deities.¹¹⁷ The deities *Òfurufú-ko-s. e feyinti* and *Láárúfín*, both female goddesses, are alleged to have had sexual intercourse with each other, which led to *Láárúfín* subsequently giving birth to *Òrùnmìlà*.¹¹⁸ The myth further denotes that *Òrùnmìlà* has no bone inside his body because he was the product of a traditionally unsanctioned union of two women.¹¹⁹ However contradictory this myth may sound strange to the scientific understanding of reproduction; it forms part of the Yoruba story of creation that has shaped their lives, activities, and worldview.

¹¹⁷ George Ajibade, Same-Sex Relationships in Yorùbá Culture and Orature (2013) 60:7 J 965–983.

¹¹⁸ Ibid

¹¹⁹ Ibid

Aside from the Yoruba stories, homosexuality has also been established in other ethnic groups within Nigeria. In his piece, Gaudio narrated the existence of homosexuality among the Hausa people in northern Nigeria.¹²⁰ These feminine men, often referred to as "*Yan daudu*" among the Hausa people of Northern Nigeria, lived among women in brothels outside cities.¹²¹ Like their female counterparts, the men were usually engaged in having sex with men and soliciting men for themselves or women¹²².". Most of these men were devout Muslim faithful and practised their religion alongside their sexuality.¹²³ Although these men were not highly regarded because of their status as commercial sex workers and their traditional feminine roles, such as cooking, cleaning, and sexual gratification, they were tolerated as members of society and as humans in general.¹²⁴ Their actions were mainly seen as immoral and contrary to the teachings of Allah, but they were never seen as criminal offences. Moreover, homosexuality was not seen as incompatible with heterosexuality, marriage, or parenthood, which constitute strong normative values in Hausa Muslim society. At some point in their lives, most gay men marry women and have children, even as they maintain their more covert identity as men who have sex with men.¹²⁵

Other than the non-heterosexual practices among the '*Yan daudu*' in the north, the Igbo people in southeastern Nigeria practised a non-heterosexual marriage system known as woman marriage. The account of woman marriages was documented in the ethnographic accounts of Northcote Thomas (1914), Charle (1925), and Percy Talbot (1926); the critique of historical and anthropological sources by Ifi Amadiume (1987); the field research of John McCall (1996); and

¹²⁰ Rudolf Gaudio, *Allah made us: Sexual Outlaws in an Islamic African City*. (West Sussex: Wiley Blackwell, 2009)235

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid

the anthropological reports of Meek, Thomas, and Talbot, which were all based on observation of the Igbo people immediately preceding and at the peak of colonial rule.¹²⁶ Beth Greene¹²⁷, an anthropologist, offers a detailed discussion of the woman marriage system that existed among the Igbo people. According to her, the Igbo political organization had a dual sex structure pre-colonization, including the woman marriage system, which has been extinct since colonization and the introduction of English laws.¹²⁸ Prior to colonization, positions such as female husbands and male daughters existed in the Nigerian town of Nnobi.¹²⁹ Families in Nnobi town would declare a daughter male to fill a gender position that would typically be held by a male member of the patrilineal kin group.¹³⁰ This happened when there were no male descendants, and the compound head had to select one daughter among the group of females.¹³¹ The male daughter had access to resources that would have been unavailable to her as a woman, regardless of whether the position was assigned or achieved.¹³² The social identity of a male daughter is often heritable, and in some cases, she can transition back to being female.¹³³ An individual's societal role and position in the production process are determined by the gender position(s) they assumed.¹³⁴

In Nnobi's polygynous society, wives worked on the land, while men's prosperity was dependent on control over labour and agricultural surplus and the number of wives they had.¹³⁵ This allowed for the accumulation of wives, the acquisition of wealth, and the exercise of power and authority. Where there were no male heirs, land was returned to the extended family or male daughters were

¹²⁶ Beth Greene, *The Institution of Woman-Marriage in Africa: A Cross-Cultural Analysis*. (1998) 37:4 *Ethnology* pp. 395–412
<https://doi.org/10.2307/3773789>

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

appointed.¹³⁶ Through the ritual of *nhayikwa* or *nhanye*, a male daughter was officially installed to maintain authority in the position of the predecessor, maintain possession of associated property, protect her father's *obi* (ancestral house or compound), and continue a line of descent.¹³⁷ The male daughter remained in her father's compound and did not receive *bridewealth*; as such, a payment would have transferred rights to her husband's lineage.¹³⁸ However, this propagation of individual land possession through the establishment of male daughters did not disregard or derail the Nnobis rules of patrilineal descent because the girl became male.¹³⁹ The *idebwe* custom (male girl) varied according to the location in terms of the female husband's position in inheritance laws, the status of her children, and the heritability of her position as an *idebwe*.¹⁴⁰ An *idebwe* was customarily appointed in the absence of a male heir; however, in towns like Asaba, Onitsha Olona, Obuluku, and Ubuluhu, the presence of a son did not prevent the father from declaring one of his daughters an *idebwe*.¹⁴¹ The circumstances that necessitated male daughter and female husband institutions, as well as the outcomes of these institutions, played a huge role in determining the gender position of a person.¹⁴² While woman marriage customarily occurs where a woman is unable to conceive for her husband, in Isele Asaba, Onitsha Olona, Idumuje Unoz Ubuluhu, and Nsuwka, an *idebwe* could marry a wife, just like any other woman who has no children.¹⁴³ The fact that a woman's status as an *idebwe* granted her the ability to marry a wife implies not only that a childless woman could easily marry another woman but also that there was nothing unusual about this.¹⁴⁴ Since an *idebwe* was introduced for legacy or inheritance, it was a requisite that an *idebwe* had a

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

replacement to inherit her portfolio, which was held in trust by her.¹⁴⁵ *Bridewealth* directs intimate and family relations in numerous ways. It defines and upholds gender roles, particularly in the context of creative kinship.¹⁴⁶ The connection between bridewealth and paternal rights was crucial because the *idebwe* female husband and childless female husband were concerned about raising heirs. If a female husband wed with *bridewealth* provided by her husband or another kin, living or deceased, he had legal authority over the wife and children. On the other hand, if a female spouse paid *bridewealth* for a wife through her own means, then, at that point, she was the legitimate husband and pater.¹⁴⁷ The two situations fulfilled the prompt reasons for raising beneficiaries and maintaining the gender position. In the first scenario, the female husband was merely a surrogate husband who filled a structural void. In contrast, the female husband in the second scenario established her own legal authority through her gender position and was an autonomous husband.¹⁴⁸ It was possible for a woman to pay *bridewealth* for a wife and establish jural authority over the wife and her children, given that many Igbo women traded and acquired wealth solely under their control. As a result, this type of woman-to-woman marriage increased and expanded the status of female husbands.¹⁴⁹ By paying *bridewealth*, the female husband was legally entitled to all her children, and the female wife performed the responsibilities of a wife, freeing the female husband for other activities.¹⁵⁰ Thus, women without children, wealthy women, and male daughters all became female husbands, and their gender roles changed as a result of woman

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

marriage, and their degree of autonomy was determined by the circumstances that allowed these women to marry men.¹⁵¹

The variety of women's statuses that are included in the institution of woman-marriage is explained by the various relationships between the female husband's social status and gender position.¹⁵² Evidence shows that the childless woman's gender position among the patrilineal and patrilocal Igbo was by and large changed the least by her job as a female husband, while among the dual-descent Igbo, childlessness contributed to the elevated status of one to *dike nwami* (hero), who became a female husband. The roles of the female husband's wife can generally be adequately explained by descriptions of woman-marriage.¹⁵³ It would appear that these women were married to have children and work, two typical functions of the wife among these people. In the case of patrilineality, these women may have been released from their common responsibilities to their husbands' natal lineages if, in fact, their roles were limited to these expectations.¹⁵⁴ The wife of a female husband may have played a role similar to that of the wife of a male husband in terms of positional succession and fictive kinship norms. However, if the wife of a female husband's role was less prescribed, she may have been either more independent or subjected to greater exploitation.¹⁵⁵ Notwithstanding the lack of data on the wives of female husbands, it is helpful to consider how their jobs contrast with those of the wives of male husbands. Thus, the role of the female husband's wife varied significantly among the Igbo. The female husband either "gave the wife a male husband elsewhere and adopted the role of mother to her while still claiming her

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

services," or the wife stayed with the husband of the woman and bore children in her name.¹⁵⁶ Here, wives were basically capital; wealth from a female husband was invested in the wife's capacity for production and reproduction.¹⁵⁷ This particular marriage form originated as a method for women to mobilize labour.¹⁵⁸ Their relationship mimicked that of a male spouse and a female wife regarding freedom. This differentiation shows that the jobs associated with woman marriage were discernible from the predominant marriage structure. The observable variations in the roles of the wife reflect the circumstances that prompted her role and the cultural context that surrounded woman-marriage. The diversity in the role of the *nwunye okporo* (female husband's wife) was mostly manifested in inheritance laws, and the presence of the female husband's husband suggests that the form of woman-marriage documented was a result of childlessness in the primary marriage.¹⁵⁹ For instance, the female husband's husband or his male kin inherited the *nwunye okporo* as a wife, or she married after securing inheritance lines for the female husband and her husband. The female husband's husband inherited his wife's wives at Idumuje Uboko and Onitsha Ubwo but not at Isele Asaba and Oboluku.¹⁶⁰ The female husband's wife was passed down to her sons at Isele Asaba; assuming that the spouse at Oboluku had borne male kids, she stayed with her male lover, yet on the off chance that she was not allowed to wed¹⁶¹, In Obompa, the wife approached the female husband's husband first.¹⁶² Assuming she had no children, she went to the son of the husband. Otherwise, she remains with her lover and bears children for the son of the husband.¹⁶³

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

Furthermore, despite the fact that her children were included in these lines of inheritance, the female wife did not receive or inherit any rights or possessions from the female husband or the husband of the female husband. Sons of the wife of the female husband are looped into inheritance as if they were sons of the male husband and female wife, according to fictive kinship customs.¹⁶⁴ A girl of the *nwunye okporo* could become an *idebwe* in a style similar to that recently examined. Overall, the *nwunye okporo's* and *idebwe's* male lovers were expected to make a vow and pronounce that their relationship would not compromise the woman marriage (e.g., that the lovers would not take off with her as a spouse).¹⁶⁵ Adultery was outlawed in both the *nwunye okporo* and the *Idebwe*, which only allowed one partner. The fact that the relationships between a woman's husband and her wife and between a woman's husband's wife and her lover were made official indicates that these relationships contributed to the establishment of woman-marriage in a way that was beneficial to both parties.¹⁶⁶ Thus, woman marriage is a legitimate marriage between two women. It existed either to strengthen family relationships or to increase the kinship structure.¹⁶⁷ Interestingly, for the sake of structural continuity, woman-marriage was utilized as a form of positional succession as a change mechanism. Within a kinship structure, women were able to marry other women because of the gender positions that were achieved and ascribed to them. Either a woman filled a typically male-occupied gender position through the institution of woman-marriage (as an achieved or ascribed status), or the manipulation of kin structures through woman-marriage secured a vacant gender position.¹⁶⁸ The sociopolitical status system that arranged individuals within a lineage according to gender is explained by the principles of positional

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

succession. In fact, women's marriage pushes the boundaries of social gender construction. The conceptual roles of male and female were used in the construction of gender, which was the construction of a social identity. As a means of maintaining and expanding the kin structure, these roles were available to both sexes. Male and female were concepts that were neither static nor exclusive: gender positions existed that were generally involved by male individuals in the family structure; however, this did not prohibit women from being picked or naturally introduced to a normally male-involved gender position.¹⁶⁹ The gender position was able to endure through subsequent generations thanks to the adaptable juxtaposition of gender and sex. Hypothetically, gender positions place higher value on capacity and accomplishment than natural sex. In general, there were fewer positions assigned than people who could feasibly fill them.¹⁷⁰ Polygynous societies offered more potential heirs, and even ascribed gender positions could be strategized. By manipulating this, positional succession and woman-marriage ensured the continuity of the kin structure.¹⁷¹ In accordance with the principles of positional successions, a position that existed in the founding or original kin structure remained, despite the ability to follow strict succession rules.¹⁷² Similarly, the female marriage institution established a gender position in the family structure and safeguarded the rules of descent and succession. Gender position was defined by the form and function of women's marriage, which in turn defined the status, rights, and authority associated with that position. A woman can marry a female spouse freely and lay out a power base for herself. She could establish a gender role and, by extension, a de facto lineage¹⁷³; therefore, the existence of institutions such as woman marriage works to debunk claims of heterosexuality being

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

the only culturally acceptable practice within Africa. Rather, it ignites curiosity about the reason for the extinction of these non-heterosexual cultural practices and the growth of intolerance for diverse sexual orientations in Africa, which will be explored in the next chapter.

CHAPTER 3: CULTURAL SHAPING INFLUENCES OF COLONIALISM

3.0 Introduction

Following the previous chapter's discussions on the existence of precolonial non-heterosexual beliefs, practices, and institutions in Africa, this chapter argues that the current wave of homophobia and intolerance in Nigeria is a result of colonial influences. This chapter focuses on three forms of influence that birthed homophobia. The first influence is the construction and dissemination of 'homosexuality as un-African' propaganda, which changed the narrative of the existence of non-heterosexual practices in Africa. The second colonial influence was the introduction of sodomy laws that prohibited and punished non-heterosexual practices in Africa, leading up to ethnocide. The third colonial influence is the Abrahamic religious sponsorship of homophobia and intolerance of diverse sexual orientations in Africa.

3.1 The Construction and Dissemination of 'Homosexuality as Un-African' Propaganda

Having established the existence of homosexuality within the confines of Africa far back in history, before Westernization and colonialism, I am prompted to investigate the origin of the the conception of homosexuality as foreign. This will unravel the truth about the state of African pre-colonialization. In doing so, I rely heavily on Epprecht's piece as a foundation for debunking this claim. The claim that homosexuality is un-African as justification for the repression and abuse of LGBTQ+ persons is void of any uniqueness; this statement sought to purport Africans, rather it is a reinforcement of the racialized stereotype about black Africans. In his conversation about sexuality, Epprecht brilliantly asserted this point.¹⁷⁴ According to him, racism was founded on the

¹⁷⁴ Epprecht, supra note 13 pp 7 -10

propaganda that Africans were inferior and different from ‘civilized’ races.¹⁷⁵ And thus Africans possessed no history, were homogenously childlike, and were incapable of sophistication.¹⁷⁶ Therefore, it is disconcerting that despite efforts by several pan-African researchers to disprove Africa as a narrow, one-way homogenous society, certain Africans now seek to re-confine African society and Africanism to this narrow Eurocentric stereotype of absolute homogeneity and statism.¹⁷⁷

On that note, it is imperative to assert that the claim that same-sex behaviour is un-African is a false Eurocentric conception of Africa that is neither factual nor corroborated. Epprecht has unequivocally argued this fact by stating that the conception of homosexuality as un-African was founded by a class of European men who desired to "believe and hope" that Africans were "exempt from this moral pestilence" of sodomy.¹⁷⁸ This belief in Africans as culturally heterosexual was fundamental to establishing a ruling class of heterosexual bourgeois white men within Europe and beyond.¹⁷⁹ Similar to the partitioning of Africa, societies were also grouped as ‘sotadic’ or ‘non-sotadic’ regions by Sir Richard Burton, who grouped Africa into ‘non-sotadic’ zones.¹⁸⁰ The ‘sotadic’ regions are areas where homosexuality is supposedly practised indigenously practised.¹⁸¹ This grouping of Africa into the ‘non-sotadic’ zone was baseless and lacked any evidential justification; rather, it was rooted in placing Africa in geographically vulnerable positions to promote the British and German imperial expansion quests.¹⁸² On another note, Bleys argues that positing Africans as heterosexual was useful in developing and preparing public opinion in Britain,

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

France, and Germany for the abolition of the slave trade by force as it provided Africans with a moral badge as opposed to the ‘sotadic’ Arabs and Portuguese.¹⁸³

Furthermore, the stereotyping of Africans as exclusively heterosexual was useful in establishing and buttressing ideologies of masculinity and femininity within Europe, as Africans were used as the minimum standard for comparison.¹⁸⁴ If a fact could be established in Africa (a group of people regarded as intellectually and morally bankrupt), then other societies would be expected to have a higher and better level of performance.¹⁸⁵ Thus, to fight against homosexuality in European societies, African societies were designated as heterosexual, as it was easier to castigate gay Europeans by leveraging that on the conception that even "black savages don't do this thing (homosexuality)"¹⁸⁶, therefore it was unexpected of white Europeans to engage in homosexuality.¹⁸⁷ Thus, the propaganda of homosexuality as foreign to Africans was constructed and disseminated solely for the purpose of the exploitation of Africa by European colonizers. The propaganda that is now promoted by homophobic scholars as the rationale for discrimination was itself an act of racial discrimination against Africans. It has worked to build homophobia and intolerance in Africa by overshadowing and eliminating narratives of tolerance and acceptance of different sexual orientations in precolonial Africa.

3.2 Sodomy Laws as a Tool of Social Engineering and Cultural Genocide

Given Nigeria's colonial history, English law has been a major source of Nigerian legislation. By virtue of the *Colonial Laws Validity Act* of 1865,¹⁸⁸ the Crown could legislate over any of its

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Colonial Laws Validity Act (28 and 29 Victoria, C. 63) 1865

colonies or territories by order in-council. Thus, by virtue of this power, the Queensland model Criminal Code was introduced to the Protectorate of Northern Nigeria in 1904 by Colonial Governor Lord Lugard¹⁸⁹ and was subsequently made applicable to the entire country after the 1914 amalgamation of the Northern and Southern Protectorates.¹⁹⁰ Furthermore, due to the Islamic influence in the North, the *Criminal Code* could not efficiently regulate Northern Nigeria, which led to the introduction of the Penal Code modelled after the Sudanese Penal Code.¹⁹¹ Among the laws contained in the Criminal Code introduced into Nigeria and the subsequent Penal Code were sodomy laws that criminalized and punished homosexuality under the provisions for unnatural offences. The introduction of these laws was a launchpad for homophobic indoctrination in Nigeria. The colonial laws set the pace for the discrimination against homosexuality. The introduction of sodomy laws created a regime that had no profound legitimacy but rather a received framework that led to the emergence of homophobia and intolerance. This framework is stipulated in both the *Criminal Code*¹⁹² of Southern Nigeria and its counterpart provisions in the Penal Code¹⁹³ of Northern Nigeria. Sections 214,¹⁹⁴ 215¹⁹⁵, and 217¹⁹⁶ provide for the criminalization and punishment of homosexual offenders in the South. Concurrently, the Penal Code in Section

¹⁸⁹ Alhaji Umar Alkali et al, *Nature and Sources of Nigerian Legal System: An Exorcism of a Wrong Notion*, (2014) 5:4 *International Journal of Business, Economics and Law*, Pg4-5

¹⁹⁰ *Ibid* Pg 4-5.

¹⁹¹ *Ibid* Pg 4-5.

¹⁹² *Criminal Code Act*, Cap C38 L.F.N. 2004

¹⁹³ *Penal Code (Northern States) Federal Provisions Act* Cap P3 L.F.N. 2004

¹⁹⁴ Any person who-

1. has carnal knowledge of any person against the order of nature; or
2. has carnal knowledge of an animal; or

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.

¹⁹⁵ 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.

¹⁹⁶ 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

284¹⁹⁷ criminalizes homosexuality as an unnatural offence in the North. These provisions in the *Criminal Code* and the *Penal Code* are foundational to Nigeria's present homophobic state and seek to punish persons involved in sexual activities with persons of the same sex. How so?

It is established that the law functions to promote social reform and change by acting as a tool for social control. Laws have been defined as a set of rules and standards within society to ensure communal living¹⁹⁸, which could either be a result of social change or result in social change through social control.¹⁹⁹ Social change, on the other hand, is any alteration in a given society that may have either a positive or negative impact on that society.²⁰⁰ These changes could be the result of communal morality, culture, or law.²⁰¹ When caused by law, it means that the enforcement of a new law or the reform of an existing law has resulted in a significant change in the social system, including the values, attitudes, and behavioural patterns among different groups in society.²⁰² In distinguishing between law as a result of social change and law resulting in social change, it is fundamental to look at the source of such a law. According to Roscoe Pound, law cannot be studied in isolation. A jurist must be interested in more than just the law in order to determine the most effective methods for directing and advancing efforts to improve it.²⁰³ This necessitates an investigation into the actual effects of legal doctrines and institutions, a study of the methods used to enforce laws, and sociological legal history, which examines not only the evolution and development of doctrines as solely jural materials but also the social effects and methods by which

¹⁹⁷ Whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

¹⁹⁸ Pound, supra note 69.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Roscoe Pound, A Comparison of Ideals of Law, (1933)47 Harvard Law Review, 1-2

they have been produced in the past.²⁰⁴ The study of legal history is crucial for determining the effects jurists intended to achieve, the results they achieved, and the approach taken to achieve them. In Pound's legal theory, the functional attitude—that is, the study of not only what legal materials are and how they came to be but also what they aim to effect and how they function—is fundamental.²⁰⁵ First, Pound sees law as a highly specialized form of social control in a politically organized society that is carried out by applying the force of that society in a systematic and orderly manner, as this is unquestionably the most significant aspect. According to Pound's doctrine, law has a social engineering task designed to eliminate friction and waste in the satisfaction of unlimited human interests and demands out of a limited store of goods.²⁰⁶ He insists that law must be evaluated functionally with regard to its end rather than in terms of itself, as the analytical school does, or in terms of an ideal representation of law, as the formalists do.²⁰⁷ He denies law as a reflection of divine reason governing the universe or of a God-given order rather a process of social adjustment, a system of practical compromises of conflicting and overlapping interests.²⁰⁸ In a world in which there are a limitless number of human requests and wants but where the means of satisfying those demands are limited, conflicts inevitably arise. These conflicts are resolved by giving legal effect to one interest, which thus becomes a legal right, or simply a "right."²⁰⁹

Furthermore, Pound argues that there are various levels of interest that are to be perceived or that are pressing for recognition. The interests that the law should recognize and to which it should give effect are classified into three major groups.²¹⁰ These are social, public, and individual

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Roscoe Pound, *The Theory of Judicial Decision* (1923) 21:3 *Harvard Law Review* 594.

²⁰⁹ Ibid.

²¹⁰ Ibid.

interests. An interest, for the purpose of the law, is a claim or demand that human beings make either as individuals or in groups or associations, of which the legal order must be taken into account.²¹¹ An individual's interest is understood to refer to what an individual claims as an individual and as a right to an individual's life. Public interest is understood as a claim made in a politically organized society. Finally, social interests are the demands and claims made in the name of social life in a civilized society.²¹² Pound furthers the conversation by asserting that social interest is the most important of all three interest categories and at the core of law-making decisions by jurists. He asserted that the first social concern is public safety.²¹³ It is a claim to protect social life from acts that endanger society's survival. In its simplest form, this interest concerns general security as a supreme law, but it also extends to general morality, general health, peace and order, and the security of trade and employment. The second concern regarding social interests is the security of social institutions.²¹⁴ The claim that basic institutions of social life are protected from actions that endanger their existence or impair their performance, this includes concerns about the security of domestic institutions, religious institutions, political institutions, and, more recently, economic institutions.²¹⁵ The third social interest concern is general morality, which is the assertion that social life in civilized societies is primarily protected from forms of activity that offend the moral feelings of all individuals living within it. These include policies against crimes such as fraud, corruption, gambling, and immoral tendencies.²¹⁶ Following Pound's doctrine, laws are a tool of social engineering used to enforce interests, particularly the social interests of jurists.

²¹¹ Ibid.

²¹² Pound, *supra* note 69.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

This legal theory can be applied to the case of homophobia, and it can be argued that the colonial laws enforced in Nigeria during colonization reflect the social interests of the European colonial authorities. One of these social interests was to model British colonies after Britain to ensure the smooth operation and exploitation of such territories. In the case of homosexuality and polygamy, European colonial authorities introduced sodomy and bigamy laws to extinguish cultures and practices that recognized non-heterosexual relationships and polygamy. The basis of these laws could be tied to the social interests of colonialists in governing the colony through forced assimilation. The colonial environment was a perfect field for experiments to rationalize and systematize the law as they served as passive laboratories. This autocratic imposition of a unified code took advantage of the "absence of a developed and contentious public opinion around questions of criminal law." The colonial authorities believed that Africans were 'uncivilized' and 'uncultured," and in an attempt to make the territories 'governable,' sodomy laws were introduced as some sort of "civilizing mission." The purpose of such a civilizing mission was to mirror European morality and cultures on African colonial subjects in order to achieve a Eurocentric African colonial territory. Therefore, Africa's homophobia is a product of social adaptation facilitated by the law as a tool for social engineering.

To further connect the dots, I will discuss the notion of heterosexual marriage as the only acceptable kind of marriage, an argument put forward by many anti-homosexual conservatives. Bringing back Nmah's arguments against homosexuality²¹⁷, Nmah's piece placed homosexuality alongside polygyny, asserting that homosexuality cannot be allowed to thrive while polygyny is criminalized.²¹⁸ He asserted that the only substantive err of polygyny is its indigeneity in Africa

²¹⁷ Nmah, supra note 60, pg 41-56

²¹⁸ Ibid.

outside the European understanding of marriage.²¹⁹ Admitting without conceding to Nmah's argument, Nigeria's moral judgment and understanding of marriage vis-à-vis the number of spouses, gender of spouses, and purpose of marriage have been greatly influenced by the social engineering ability of laws, particularly the English laws in Nigeria. How so? The current understanding of the concept of marriage in Nigeria is a union between one man and one woman,²²⁰ a concept founded on the English Matrimonial Act of England (*Marriage Act, 1884*)²²¹ passed down to Nigeria. Over the years, many Nigerians have adopted this understanding as the legal and moral way of marital unions and have often frowned at unions with multiple spouses or attempts by same-sex persons. How then can a group of people who have been established to be culturally polygamous accept monogamy as the ideal way of life? This is the point at which the social engineering function of laws comes into play. Prior to English matrimonial law, marriages in Nigeria could not have been said to be between just two people or between just a man and a woman. This is because many precolonial societies in Nigeria expressly accept polygamy, while other societies within Nigeria have traditions of women marrying other women for themselves or their male spouses as discussed in chapter 3. Thus, it is established that the idea of marriage as exclusively between one man and one woman is a social construction foreign to Nigeria and could be validly identified as a result of the social engineering attribute of the law. In his piece, Dror opines that:

...our conclusions apply not only to the policy approach to law and social change, but to the behavioral approach, too. If we want to understand the

²¹⁹ Ibid.

²²⁰ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2010.

²²¹ Boparai, Harinder. "The Customary and Statutory Law of Marriage in Nigeria." (1982) 46:3*The Rabel Journal of Comparative and International Private Law*, pp. 530–57. <http://www.jstor.org/stable/27876669>.

operation of law as an independent variable in social change, we must study the social impact of changes in law within the context of the other components of the legal system and of other relevant policy variables.”²²²

Thus, the pattern of public life will always follow the laws of society.²²³ As explained above, using Pound’s doctrine of law, social control can be asserted through the instrumentality of laws enacted that are binding, forcing, and imposing sanctions to achieve a change in the behavioural patterns of a society.²²⁴ In the case of Africa, it can be argued that the sodomy laws introduced into the regions soon went on to foster a negative social change by indoctrinating Africans through fear and hate²²⁵, which, over time, led to an alteration of the communal morality that existed in Africa and induced internalized heterosexism. Epprecht argues that this internalization process has resulted in heterosexism becoming "common sense" among the mass population, regulated by self-censorship and peer pressure.²²⁶ In showing the underworking of the internalization of heterosexism, Epprecht argued that internalization was achieved by conflating private sexuality with public gender identity. I.e., if a man had sex with a man, he was not only transgressing but he had become effete by nature and character.²²⁷ Thus, regardless of the sexual act he partakes in, he cannot be truly masculine and will be likened to a woman.²²⁸ Therefore, he was subjected to privileges reserved for women and ridiculed as if he were a woman²²⁹. To avoid being "ousted" from their gender identities, men were expected to purge themselves of any homosexual traits or

²²² Yehzekel Dror, Law as a tool of directed social change: A framework for policymaking (1970) 13: 4 American Behavioral Scientist 553-559.

²²³ Pound, *supra* note 75.

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

desires.²³⁰ In conclusion, it has been established that the colonial sodomy laws played a vital role in creating homophobia in Africa.

3.3 Abrahamic Religions' Role in Sponsoring Homophobia

Aside from the impact of sodomy laws in sponsoring homophobia and reinforcing heterosexism, the Abrahamic religions introduced into Africa also played a significant role in internalizing heterosexism and homophobia.²³¹ Recall that Nmah in his piece illustrated how Christianity was used to propagate monogamy in Africa. According to him, the European priests who served in the missionary churches stationed in Nigeria refused to baptize polygamist families. Baptism, which is a symbol of accepting Christian faith and which also doubles as a passage rite to take the Christian holy communion, was denied to polygamous families. Nmah explains that these families were informed that to properly accept Christianity, they needed to conform to its monogamous doctrine.²³² Men were admonished to keep one wife and divorce the other wives, and women were asked to leave marriages with multiple spouses in others to be saved according to Christian faith. Christian missionaries who were knowledgeable only about Eurocentric monogamy did not believe that Africans could faithfully worship the Christian God while in a polygamous relationship.²³³ This monogamous sermon led to the breakup of many familial relationships, as husbands divorced other wives and retained one, and wives ditched marriages²³⁴. To date, the Christian faith has singlehandedly altered the constitutions of many families in Nigeria. Unlike Christianity, Islam welcomed polygamy, which is why, to date, a large demography of polygamous

²³⁰ Ibid.

²³¹ Ibid.

²³² Nmah, *supra* note 60, pg 41-53

²³³ Ibid.

²³⁴ Ibid.

families in Nigeria is in the north, where Islam is widely practised. Similar to the example of polygamy iterated by Nmah, African homosexual practices and institutions were destroyed by the Abrahamic religions of Islam and Christianity. Contrary to European Christian sexuality, which was governed by the fear of an omniscient god, Africans were relatively free and casual about their sexuality and sexual preferences.²³⁵ This freedom was unsettling for European Christian missionaries, who made it an object of concerted attack from the onset of their respective missions in the region.²³⁶ It is also important to stress that so-called sodomy laws would not have impacted African sexual politics without Christianity's influence. Christianity was used to whitewash African culture as primitive and demonize traditional interpretations of African intimacies. Colonization and the spread of fundamentalist Christian attitudes by the British meant that much of Africa lost its previous cultural attitude towards sexual orientation and gender identity and was forced to adopt "new" values from British colonizers in the 19th and 20th centuries. Colonial administrators and Christian missionaries legally enforced homophobia. In 1910, Christians made up about 9 percent of the population of sub-Saharan Africa; by 2010, the figure had leapt to 63 percent.²³⁷ Anti-LGBTQ+ laws were not only written into constitutions but also into the minds of many African people, and after the passing of several generations, this has become dogma.

In addition to the activities of the missionaries, the introduction of 'holy books', which expressly prohibit homosexuality, played another role in the indoctrination of Africans. The two dominant Abrahamic religions (Christianity and Islam) in Africa, which regulate the conduct and behaviour of worshippers through fear of a dreadful afterlife, both condemn and vilify homosexuality. The

²³⁵ Ibid

²³⁶ Ibid.

²³⁷ Leah Buckle, African sexuality and the legacy of imported homophobia (2020)< <https://www.stonewall.org.uk/about-us/news/african-sexuality-and-legacy-imported-homophobia>> accessed on 14 May 2023

Bible became the credo of African morality, disordering African sexuality into missionary positions of heteronormativity. These holy books, in various verses, expressly prohibit homosexuality. Specifically, the Code of Holiness (Leviticus 17–26)²³⁸ identifies male homosexuality as a sin punishable by death ("Do not have sexual relations with a man as one does with a woman; that is detestable." (Lev: 18:22)).²³⁹ The Epistle to the Romans in the New Testament has been interpreted as a prohibition of both male and female homosexuality ("because of this, God gave them over to shameful lusts. Even their women exchanged natural sexual relationships with unnatural ones. Similarly, men also abandoned natural relations with women and were inflamed with lust for one another." (Romans 1:26–27)).²⁴⁰ This view is also echoed in Epistle 1 to Corinthians: "Or do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor men who have sex with men." (1 Corinthians 6:9–10)).²⁴¹ The Qur'an also has verses that have been interpreted as a prohibition of homosexuality ("Indeed, you approach men with desire instead of women. Rather, you are transgressing people." (Qur'an 7:81)).²⁴² These religious practices, which have no traceable roots in Africa, have deeply influenced Africans' ways of life. The practice of these religions over time, using fear of the afterlife, has worked to indoctrinate certain practices as holy or unholy. Admonishing worshippers to abstain from unholiness and acts that are unholy or stand a chance of after-life misery, these religious practices have greatly caused social change and altered the communal morality of Africans over time. Contrary to the teachings of the Abrahamic religions, many African scholars have argued that homosexuality is compatible with African

²³⁸ The Holy Bible, King James Version

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Holy Quran 7:80-81

culture, cosmology, and spirituality. Dlamini, in offering her support for decriminalization, argues that homosexuality is allowed within African cosmology and spirituality. She further argued that the categorization (i.e., heterosexuality and homosexuality) is what is foreign to Africa, as precolonial Africans perceived sexual intimacies as sacred connections without gender boundaries.²⁴³

Also, in making a case on the impact of Abrahamic religions on producing homophobia, despite the fact that Nigeria is a secular country with no state religion according to Section 10 of the 1999 Constitution of the Federal Republic of Nigeria, the Abrahamic religions have been used as a yardstick for formulating some sort of ‘communal morality’ and in implementing and enforcing laws against homosexuality. This goes on to buttress the extent of the influence of Abrahamic religions in setting the tone of communal morality in Nigeria. In conclusion, colonial influences have functioned independently and collaboratively to shape the African ethos to comply with the colonial understanding of sexuality. These influences worked to create a postcolonial construction of African culture that regarded heterosexuality as the only culturally accepted sexuality in Africa and silenced narratives of precolonial tolerance, acceptance and the existence of diversity in sexual and familial relationships.

²⁴³ Busangokwakhe Dlamini. “Homosexuality in the African Context.” (2006) 67 *Agenda: Empowering Women for Gender Equity* pp128–36

CHAPTER 4: PRESENT FRAMEWORK ENABLING HOMOPHOBIA AND ITS IMPACTS

4.0 Introduction

Having discussed the cultural shaping influences of colonialism in birthing homophobia, this chapter will focus on the present legal framework in Nigeria. This chapter argues that the current wave of homophobia is enabled by the present legal framework. This framework enables extra-judicial enforcement by state actors and private citizens through violence and abuse against queer members of society. For better assimilation, I will categorize the framework into two: the Pre- and Post-Same Sex Marriage Prohibition Act (*SSMPA*) of 2013. This categorization reflects two regimes; the anti-gay legislation enforced as a result of Nigeria's colonial heritage and legislation made by the Nigerian legislature to cover loopholes that existed in colonial sodomy laws. This chapter reflects on the joint impact of both regimes on enabling human rights abuse in the country.

4.1 Pre-Same Sex Marriage (Prohibition) Act (SSMPA) 2013

The pre-*SSMPA* framework is a colonial residue, as highlighted in Chapter 3. These sodomy laws exist in Nigeria as a result of colonization. Although most of these laws have been declared obsolete and archaic by the former colonial authority, they are still enforced in Nigeria and lay the foundation for homophobia in Nigeria. This framework is the primary regime enabling homophobia in Nigeria and is contained in both the *Criminal Code*²⁴⁴ of Southern Nigeria and its counterpart provision in the *Penal Code*²⁴⁵ for Northern Nigeria, which I discussed in detail in Chapter 3. In furtherance of the purpose of the *Penal Code* and in observance of Sharia doctrines,

²⁴⁴ Criminal Code Act, Cap C38 L.F.N. 2004

²⁴⁵ Penal Code (Northern States) Federal Provisions Act Cap P3 L.F.N. 2004

12 states in Northern Nigeria adopted the *Sharia Penal Code*, which is a ‘build-on’ of the already existing *Penal Code* by stipulating grave punishment. For the purpose of this work, I will focus on the *Sharia Penal Code* of Zamfara State, as it was the first *Sharia Penal Code* enacted in the country and came into force on January 27, 2000²⁴⁶, while showing minor distinctions from the *Sharia Penal Code* of Yobe State. Sections 129 and 130 of the Zamfara *Sharia Penal Code* state that having carnal intercourse against the order of nature with any man or woman is an offence of sodomy. It attracts a punishment of 100 lashes of cane and one year of imprisonment if unmarried, or death by stoning if married.²⁴⁷ The Zamfara *Sharia Penal Code* and other *Sharia Penal Codes* punish lesbianism with a much milder punishment than sodomy. Thus, sections 133 and 134 of the Zamfara *Sharia Penal Code* criminalize the carnal intercourse through sexual organs or by means of stimulation or sexual excitement of a woman by another woman, with a punishment of 50 lashes of cane and up to six months of imprisonment.²⁴⁸ Similar to the *Zamfara State Penal Code*, the Yobe State *Sharia Penal Code* stipulates a more stringent punishment, except that the Yobe Penal Code criminalizes anal sex between married heterosexual couples.²⁴⁹ These *Sharia Penal Codes*, although Nigerian legislation, can be seen as an adaptation of the federal *Penal Code*. Thus, it can be argued that prior to 2013, most legislation criminalizing homosexuality in Nigeria was embedded in colonial history.

²⁴⁶ Philip Ostien, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, Vol 4 (Ibadan: Spectrum Books Limited, 2007) Pg 33 - 169

²⁴⁷ 129 “Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy.” Except that whoever is compelled by the use of force or threats or without his consent to commit that act of sodomy upon the person of another or be the subject of the act of sodomy nor shall he be deemed to have committed the offence.”

130 “Whoever commits the offence of sodomy shall be punished:

(a) with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or (b) if married with stoning to death.”

²⁴⁸ 133 “Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.”

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

²⁴⁹ 129. “Whoever has anal coitus with any man is said to commit the offence of sodomy. (1) Subject to the provisions of subsection (2), whoever commits the offence of sodomy shall be punished with stoning to death

(2) Whoever has anal coitus with his wife shall be punished with caning which may extend to fifty lashes.”

4.2 Post-Same Sex Marriage (Prohibition) Act (SSMPA) 2013

The second framework enabling homophobia in Nigeria is the *Same-Sex Marriage (Prohibition) Act* of 2013 assented into law by the then President Goodluck Jonathan.²⁵⁰ The Act, first introduced in 2006²⁵¹, is the first Nigerian legislative federal law criminalizing homosexuality in Nigeria. Despite strong disagreement and displeasure from the international community, the bill was passed into law in 2014.²⁵² When queried about the enactment of the law, President Jonathan justified its legitimacy among Nigerians. He asserted that:

“98 percent of Nigerians did not think that same-sex marriage should be accepted by our society...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”²⁵³

This Act further criminalizes already criminalized homosexuality and works to cover up all "loopholes" that the Criminal and Penal Codes failed to cover. The law seeks to provide a robust criminalization of everything homosexual, from expression to marriage to sexual activities. While the Codes prohibited sexual intercourse by means of penetration, the *SSMPA* sought to punish any form of non-heterosexual relationship in Nigeria. The first of these relationships, punished by the *SSMPA*, is same-sex marriage in Nigeria. The provisions of Sections 1 and 3 indicate that same-sex marriages are prohibited within the country, and, as such, any evidence of the existence of such marriages conducted outside Nigeria will not be recognized.²⁵⁴ The Act reiterates that the

²⁵⁰ Isaack, supra note 36, Pg 14-25

²⁵¹ Ibid Pg 14-25.

²⁵² Ibid Pg 14-25.

²⁵³ Ibid Pg17.

²⁵⁴ *SSMPA*, supra note 7.

parties in a valid marriage in Nigeria are a man and a woman.²⁵⁵ Aside from the prohibition of marriage, the *SSMPA* prohibits the direct or indirect public display of same-sex amorous relationships.²⁵⁶ Although the Act does not define public show or what constitutes amorous relationships between people of the same sex, this legislation could be interpreted to include a vast range of scenarios, including gay scenes in movies or theatres, co-habiting, dating, holding hands by two people of the same sex, or any form of intimacy between persons of the same sex. Therefore, this provision can be termed open-ended legislation," with the intention of covering any conduct not within the boundaries of heterosexuality.

Another provision introduced by the *SSMPA* is the criminalization of gay gatherings. The Act in Section 4 (1) provides that "the registration of gay clubs, societies, and organizations, their sustenance, processions, and meetings is prohibited."²⁵⁷ This provision can be perceived as the last attempt to eradicate homosexuality in Nigeria. While other provisions in the *SSMPA* and Criminal and Penal Codes have focused on either the sexual or amorous relationship between people of the same sex, this provision targets the LGBTQ+ community as a whole. This legislation prohibits the existence of the community, the gathering of gay persons, associations promoting same-sex activities, gay rights activism, or any gay-related agenda with the hope of suppressing or eradicating homosexuality in Nigeria. Another novelty introduced by the *SSMPA* is the punishment of people for aiding or abetting homosexuality. The new provision seeks to punish persons, including family members of gay persons in Nigeria, who fail to blow the whistle on homosexual

²⁵⁵ 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."

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

²⁵⁶ "The public show of same sex amorous relationship directly or indirectly is prohibited."

²⁵⁷ *SSMPA*, supra note 7.

activities carried out by such persons in Nigeria.²⁵⁸ In furtherance of the objective of the *SSMPA*, which is to eradicate homosexuality in Nigeria, the Act punishes these offences with varying terms of imprisonment. In the case of same-sex unions, the act stipulates a 14-year imprisonment term, and for other offences, a 10-year imprisonment term.²⁵⁹ To further aggravate the human rights climate in Nigeria, the Nigerian legislature recently introduced a new anti-crossdressing bill with the hope of punishing offenders who fail to dress within the male-female gender binary boundaries.²⁶⁰

Having successfully discussed the framework criminalizing homosexuality and enabling homophobia in Nigeria, it is necessary to turn to judicial pronouncements on the issues of homosexuality in Nigeria. However, it is noteworthy that most homosexual criminal offences seldom make it to court, and whenever a case makes it to court, it is usually struck out for no case submission due to the lack of sufficient evidence by the prosecution. Thus, the enforcement of these laws is more often than not extrajudicial (i.e., human rights abuses and violations). The judiciary arm of the government has, under several administrations, made pronouncements consistent with the anti-homosexuality framework in Nigeria. The Federal High Court sitting in Abuja in 2018 dismissed a suit brought by a plaintiff against the Corporate Affairs Commission (CAC) for refusing to register the organization "Lesbian Equality and Empowerment Initiatives".²⁶¹ The Court, citing Section 30 of the Nigerian Companies and Allied Matters Act

²⁵⁸ Section 5(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, organizations, processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment."

²⁵⁹ section 5(1) "A person who enters into a same sex marriage contract or civil union commits an offence and is liable on conviction to a term of 14 years imprisonment."

(2) "A person who registers, operates or participates in gay clubs, societies and 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."

²⁶⁰ "A person engaging in cross-dressing is guilty of an offence and liable to imprisonment [for a term] of 6 months or to a fine of five hundred thousand naira."

²⁶¹ Ikechukwu Nnochiri, Court throws out suit seeking registration of lesbian group, Vanguard (November 2018)

<https://www.vanguardngr.com/2018/11/court-throws-out-suit-seeking-registration-of-lesbian-group/> (accessed on October 10, 2022)

(CAMA)²⁶² held that the CAC had the right to deny the registration on the basis that the proposed name and the aims and objectives of the organization are capable of misleading as to the nature or extent of its activities or are undesirable, offensive, or otherwise contrary to public policy.²⁶³ Thus, the court in this ruling reinforced Section 4(1) of the *SSMPA* prohibiting gay associations by denying the petition on the basis that it was contrary to public policies in Nigeria. Furthermore, in an unreported case, a judge sitting in a Sharia court in Northern Bauchi State, Nigeria, sentenced three men to death by stoning in accordance with the Bauchi State Sharia Penal Code.²⁶⁴ The accused persons, as reported by a journalist, were aged 20, 30, and 70 years. The accused persons were said to be unrepresented in court and pleaded guilty to the offence through confession. Although the Nigerian judiciary has laid ground rules on the representation of criminal offences and confessions, these rules were not followed, as the accused persons barely had legal representation. This reflects the harsh reality of the homophobic provisions of the Sharia Penal Codes.

Furthermore, in 2018, the Nigerian Police rounded up about 57 men in Lagos and charged 47 of them in court on the grounds of public displays of affection with members of the same sex.²⁶⁵ The police alleged that the men were being initiated into a gay cult, as opposed to the accused persons' statements that they were attending a birthday party.²⁶⁶ Although the case was eventually struck out on the merits of a no-case submission, most of the accused were remanded in custody for months awaiting bail and faced all manner of discrimination until bail was granted.²⁶⁷ Therefore,

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Josh Milton, Three men sentenced to death by stoning for being gay in Nigeria, Pink News (July 2022) <<https://www.pinknews.co.uk/2022/07/05/nigeria-gay-death-sentence-islam/>> accessed on (October 10, 2022)

²⁶⁵ Jason Burke, first men go on trial under Nigeria's anti-homosexuality laws, The Guardian (December 2019)

<://www.theguardian.com/world/2019/dec/11/first-men-go-on-trial-under-nigerias-anti-homosexuality-laws> accessed on October 10, 2022

²⁶⁶ Ibid.

²⁶⁷ Ibid.

it can be argued that the lack of judicial enforcement of these anti-gay laws in Nigeria posits that the enforcement anti-gay legislation mostly exist in extra-judicial realms. In other words, the enforcement of these laws is mostly carried out by state actors and private citizens, as discussed below.

4.3 Fundamental Human Rights Issues and Impact

The fundamental human rights issues created by the criminalization of homosexuality in Nigeria are germane to this thesis. These fundamental human rights issues are the problems faced daily by the LGBTQ+ community in Nigeria and are the motivational force behind my decision to write this thesis. This discrimination based on perceived sexual orientation can be categorized into primary and secondary discrimination against homosexuality. As the names imply, the primary discrimination is state-based discrimination, that is, the rights and freedoms that are not afforded to gay persons in Nigeria, and the secondary discrimination is the violations by both private citizens and state actors enabled by the existence of anti-gay legislation in Nigeria.

4.3.1 Primary Discrimination against Homosexuality (Statutory or State-sponsored Homophobia)

Contravening the rights provided by the Nigerian Constitution, the UDHR, and other international conventions and treaties, Nigerian anti-gay legislation impairs the following fundamental human rights of LGBTQ+ persons living in Nigeria:

Right to Life and Dignity of the Human Person

The 1999 Constitution of the Federal Republic of Nigeria as amended²⁶⁸ (the "Constitution" or 'CFRN") in Sections 34 and 35 provides for the protection and recognition of human life and the rights against torture, cruel, or degrading treatment of Nigerians. These sections provide the following conclusions:

34. Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

35. Every individual is entitled to respect for the dignity of his person, and accordingly

a. no person shall be subject to torture or to inhuman or degrading treatment.

b. no person shall be held in slavery or servitude; and

c. no person shall be required to perform forced or compulsory labour²⁶⁹

Furthermore, Nigeria being a signatory to the International Covenant on Civil and Political Rights (ICCPR) is bound by the provisions of its articles 6 and 7 which proclaims that:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life...No one

²⁶⁸ CFRN, supra note 27.

²⁶⁹ Ibid

shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”²⁷⁰.

Contrary to these statutes, the Sharia Penal Code of the 12 Northern States (where applicable) stipulates a death penalty for married men engaged in homosexuality.²⁷¹ The stipulation of capital punishment for homosexuality by these northern states is a flagrant infringement of fundamental human rights to life. While capital punishment is usually stipulated for grave offences such as murder or treason, the Sharia Penal Codes of the 12 Northern States have posited homosexuality as being on the same pedestal. Although, it can be argued that the death penalty only applies to a fraction of Nigeria, the stipulation of capital punishment as punishment for homosexuality leaves a huge dent on Nigeria’s respect for its citizens’ fundamental human rights.

Furthermore, the Sharia Penal Codes of Northern Nigeria also stipulate caning as a punishment with the intent of dehumanizing, disgrace, and disesteeming offenders.²⁷² In addition, the stipulation of imprisonment as a punishment for homosexuality in other statutes also serves as a clog on the fundamental human rights of human dignity, as it depicts homosexuals as bad eggs to be ostracized from society by imprisonment. Thus, Nigeria's anti-gay legislation is a direct contravention of Nigeria’s obligation to protect the fundamental human rights of life and the dignity of its citizens.

²⁷⁰ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR].

²⁷¹ Ostein, *supra* note 251

²⁷² *Ibid*

Right to Freedom of Expression, Association, and Assembly

Contrary to articles 19, 21, and 22²⁷³ of the ICCPR, section 38 of the constitution proclaims that "every person shall be entitled to freedom of thought, conscience, and religion..."²⁷⁴.section 39 provides that "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference"²⁷⁵; and section 40 provides that "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..."²⁷⁶ Individuals in Nigeria are being denied freedom of association and assembly based on their sexual orientation, gender identity, or gender expression. Under the post-SSMPA regime, Section 4 of the SSMPA²⁷⁷ expressly prohibits the registration, sustenance, procession, or meetings of gay people, gay clubs, or gay organizations. This implies that although freedom of association and expression is recognized in Nigeria, it is not extended to gay people. Furthermore, Nigeria's new bill on cross-dressing acts as a further dent in fundamental human rights freedom of expression in Nigeria. Given that personal fashion style is an integral part of expression (especially for transgender persons who intend to be perceived differently from sex at birth), the bill regulating cross-dressing is a springboard for further human rights discrimination in Nigeria.

²⁷³ ICCPR, supra note 276

²⁷⁴ CFRN, supra note 27

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ SSMPA, supra note 7

Right to Privacy

The right to privacy in Nigeria is guaranteed by Section 37 of the Constitution, which provides that the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected.²⁷⁸ And Article 17(1) of the ICCPR, which states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation"²⁷⁹. The privacy of gay people in Nigeria is constantly invaded. From the prohibition of sexual intercourse between two consenting same-sex adults to criminalizing private gay gatherings out of public spaces to limiting choices of fashion style, the right to privacy of LGBTQ+ persons are constantly infringed upon. Furthermore, the denial of the right of transgender people to self-identify also constitutes a breach of the right to privacy based on the decision in *Toonen v. Australia*.²⁸⁰ In this case, Toonen submitted a communication against the state of Tasmania, Australia, for the homophobic laws that allowed the Australian police to breach the right of privacy by breaking into the homes of suspected gay men on suspicion of unnatural sexual offences. He argued that the existence of such laws was a direct breach of an individual's right to privacy.²⁸¹

Non-Discrimination and Equality Before the Law

Another fundamental human right enshrined in the Nigerian Constitution that is not afforded to gay persons is the right to freedom from discrimination and equality before the law. Section 42 of

²⁷⁸ CFRN, supra note 27

²⁷⁹ ICCPR, supra note 276

²⁸⁰ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

²⁸¹ *Ibid.*

the CFRN²⁸² states that no citizen shall be discriminated against based on ethnicity, place of origin, sex, religion, political view, or disability.²⁸³

This right is also guaranteed by Article 2 of the ICCPR, which states that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex..."²⁸⁴, etc." Furthermore, Article 26 provides that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."²⁸⁵ Thus, contrary to the provisions of these statutes, Nigerian society fails to observe this fundamental human right with its continued discrimination of people based on perceived sexual orientation. Aside from the flagrant failure to provide equal protection for citizens with sexual orientations other than heterosexual, the stipulation of capital punishment for male offenders and canning for female offenders for same-sex intercourse under the Sharia Penal Code²⁸⁶ constitutes a breach of the right to equal protection.

²⁸² CFRN, supra note 27.

²⁸³ "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- a. be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or b. be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions."

²⁸⁴ ICCPR, supra note 276

²⁸⁵ Ibid.

²⁸⁶ Ostein, supra note 251

4.3.2 Secondary Discrimination (Human Rights Abuses)

Having discussed primary (statutory) discrimination against homosexuality, I will then proceed to discuss secondary discrimination (physical abuse) against LGBTQ+ persons in Nigeria. In the previous chapter, I highlighted the impact of the law on social engineering, while the impact of sodomy laws was to breed homophobia by criminalizing homosexual practices and institutions, the present framework's impact is its enablement of homophobia and intolerance. As previously established, the present framework is enforced mostly in the extra-judicial realm by private citizens and state actors. This means that the present framework has become a tool for oppression by heterosexuals against non-heterosexuals in Nigeria. The law has functioned both as a springboard for oppression by enabling people to commit human rights violations and as a tool that has had a negative psychological impact on the lives of LGBTQ+ people. This psychological impact of the law on ensuring conformity in terms of appearance, intimacy, or flight, as several queer Nigerians seek residency in other countries, will be established below. Thus, it can be asserted that homophobia in Nigeria is currently sponsored by the present framework, which enables both state actors and private citizens to carry out human rights abuses.

State Actors

State actors have repeatedly abused the powers bestowed on them by the people. Ranging from arbitrary arrests to assault, battery, unlawful imprisonment, or even the death of some gay persons in Nigeria. Human Rights Watch (HRW), in its report "Tell Me Where I Can Be Safe," stated that at least 17 of its interviewees had been detained by the police since the enactment of the *SSMPA*.²⁸⁷

²⁸⁷ Isaack, supra note 36, Pg 34-39.

The Watch asserted that SSMPA has inspired both private and state actors to believe that human rights violations directed against the gay community are acceptable and, as such, has served as a tool to humiliate and dehumanize LGBTQ+ individuals, sometimes even in the presence of the general public.²⁸⁸ The Watch captured the story of George, a Nigerian gay man who was arrested twice by the Nigerian Police. According to George’s statement through the watch,

“...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 they took pictures. All this happened in the main lobby area of the police station where members of the public were also present”²⁸⁹

George, who was arrested a year later for the second time at a birthday party in Ibadan, Nigeria, narrated his ordeal thus:

“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

²⁸⁸ Ibid Pg 34-39.

²⁸⁹ Ibid Pg 34-39.

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.²⁹⁰

Furthermore, HRW also captured Oscar’s experience as a 22-year-old gay man from Lagos arrested in Ibadan alongside five of his friends upon returning from the church.²⁹¹ HRW stated that all six men were arrested, stripped naked, beaten up, and photographed. The men were detained for seven days, were released only after a public parade, and received 200,000 naira in bribes from each of the victims’ families.²⁹² The HRW also reported several instances where police officers invaded the privacy of individuals by going through their phones and, upon finding gay sexual content, arresting them. HRW captured the testimony of Harry, a peer educator who was invited to bail out his friend after the police arrested him for having explicit gay content.²⁹³

Harry testified that:

They took him to a 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).²⁹⁴

Aside from invading the phones and subsequent arrests of victims, Nigerian police have been cited for arresting some men perceived as gay based on their appearance. The HRW captured the testimony of Efe, a 23-year-old gay man from Lagos who was arrested in a stop and search based

²⁹⁰ Ibid Pg 34-39.

²⁹¹ Ibid Pg 34-39.

²⁹² Ibid Pg 34-39.

²⁹³ Ibid Pg 34-39.

²⁹⁴ Ibid Pg 34-39.

on his physical appearance.²⁹⁵ The HRW stated that the victim had been stopped by police in Lagos on multiple occasions, and on two of these occasions, he was made to pay 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 prison²⁹⁶

The Nigerian Police have also been cited for disrupting public functions based on the perceived agenda of homosexuality. HRW reported that in January 2014, police raided HIV services and treatment meetings hosted by Ben in Abuja, Nigeria’s capital, and arrested 12 people. Ben, one of the victims, narrated thus:

“We were held at a police station. 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 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

²⁹⁵ Ibid Pg 34-39.

²⁹⁶ Ibid Pg 34-39.

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.”²⁹⁷

It is rather shameful that the Nigerian Police has resorted to utilizing the homophobic regime to commit several human rights abuses and extort millions of Naira from citizens. Rather than charge the victims to court as provided by the legislation, the Nigerian police resort to abusing and extorting members of the LGBTQ+ community. The HRW reported that the LGBTQ+ community has become an illegal source of revenue for Nigerian police. Nearly all victims involved in police abuse were compelled to pay extortion fees, or "bail," due to the threat of 14 years of imprisonment.²⁹⁸ The HRW further reported that a representative of a Lagos-based human rights organization has paid over 450,000 naira (approximately \$1,450) in bribes to prevent the arrest or secure the release of members of the LGBTQ+ community since the enactment of the *SSMPA*.²⁹⁹

²⁹⁷ Ibid, Pg 34-39.

²⁹⁸ Ibid, Pg 34-39.

²⁹⁹ Ibid Pg 30-34.

Private Citizens

Aside from statutory discrimination and human rights abuses sponsored by state actors, private citizens have taken it upon themselves to eradicate homosexuality and discipline people perceived to be homosexuals. Private citizens' actions, which are seldom reproached by the state, have led to an increase in human rights abuse in the country. Ranging from rape as homosexual conversation therapy to battery and assault, extortion, and even murder in some cases, these have been the stock in trade of private citizens trying to rid society of homosexuality.

Sexual Violence

HRW, in its report, documents several instances of sexual violence against LGBTQ+ persons, especially lesbians, in the hope of converting them to heterosexuality. HRW reports that in April 2014, a 23-year-old female student visiting her girlfriend was gangraped by two of the girlfriend's brothers who walked in on them.³⁰⁰ In October 2014, a lesbian woman was attacked by five men on a presumed date with someone she met online.³⁰¹ The HRW reports that the men kept her locked up for three days and repeatedly raped and assaulted her while making videos.³⁰² They then went on to threaten her with sending the recordings of the sexual assault to her parents and her school if she reported it to the police or did not desist from lesbianism.³⁰³ Another woman was raped by three men in November 2014 in Cross River State while visiting her girlfriend. The men, who were neighbours of the girlfriend, emerged at the house shortly after she arrived and raped her.³⁰⁴ In a report issued by The Initiative for Equal Rights (TIERS), the organization documented the rape of

³⁰⁰ Ibid Pg 30-34.

³⁰¹ Ibid Pg 30-34.

³⁰² Ibid Pg 30-34.

³⁰³ Ibid Pg 30-34.

³⁰⁴ Ibid Pg 30-34.

a 19-year-old female student in Lagos State, Nigeria, by five men. The men justified their hideous act on the basis that "*instead of looking for men to love, she is loving women, and if strong men have sex with her, that will change her orientation.*"³⁰⁵." The HRW further documents the story of a "meet-up gone wrong," which resulted in the rape of a gay man in Lagos, Nigeria. Jason, who had gone to meet up on an online date, was raped by seven men, who also robbed him of some money. As reported by HRW, Jason confirmed that:

"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 the photos and video to a popular blogger.... They did not use protection when they were raping me"³⁰⁶

Mob Violence

While some of the abuses perpetuated against homosexuals are carried out by individuals acting independently, some abuses are carried out by organized mobs collaborating to ensure the discipline of gay people and the eradication of homosexuality within the community. The HRW reports the story of Peter, a victim of the Gishiri mob attack. He testified to the HRW as follows:

³⁰⁵ 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-RightsViolations-Based-on-Real-or-Perceived-Sexual-Orientation-and-Gender-Identity-in-Nigeria-.pdf> (accessed October 10, 2022).

³⁰⁶ Isaack, supra note 41 pp 26-30

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 officers with them. We could not sleep in our house that night; we had to sleep under a bridge.³⁰⁷

Another victim of a mob attack, Olu, narrated his experience with 20 to 30 men wielding knives and pieces of cut glass at his door:

“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.³⁰⁸

Another case of mob violence reported by HRW is that of a transgender woman named Debbie. Debbie was attacked by six men at her boyfriend’s residence in Ekiti State, Nigeria. She narrated that:

“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

³⁰⁷ Ibid Pg 26- 30.

³⁰⁸ Ibid Pg 26- 30.

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.”³⁰⁹

The HRW further reported on the mob violence encountered by Desmond, one of the three suspected gay men attacked at the local government office in Ibadan, Nigeria. Desmond narrated that:

“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.”³¹⁰

Assault, Murder and Extortion

In a report submitted to the UN Human Rights Committee's 126th Session in July 2019, the gruesome murder of a transgender woman, Rabina Bamanga, was documented. Unlike many other

³⁰⁹ Ibid. Pg 26- 30

³¹⁰ Ibid. Pg 26- 30

sexual violence victims who live to tell the tales, Rabina was murdered in cold blood. The report stated that her dismembered body was buried in a small room in an advanced state of decomposition.³¹¹ According to the report, little or no investigation has been carried out owing to the deceased's sexuality and lifestyle.³¹² Assaults on members of the LGBTQ+ community in Nigeria have become the order of the day. Individuals and private citizens now have the illusion that where an assault is committed against a queer person, such an assault is within the means of the law or, to their best belief, is reasonably defensible.³¹³ This thought process has led to an increase in reported and unreported assaults on gay people in Nigeria. In its 2015 report, TIERS documented several assaults carried out on gays by private citizens in Nigeria.³¹⁴ In this report, TIERS documented the following cases:

- I. Temidayo, who unsuspectingly agreed to meet his assailant at a hotel. After some minutes of intimacy, the assailant excused himself from the room and within minutes a group of five other men and a supposed police officer arrived the room. Temidayo was then asked to completely strip while they took photos and made a video recording of him. The gang requested NGN50,000 and threatened to release the tapes if not paid. Temidayo was compelled to pay NGN20,000 alongside his mobile phone.³¹⁵
- II. Yemi, who set out to meet an acquaintance at a bus stop in Lagos subsequently followed the acquaintance to his house. Upon arrival, the duo initiated physical intimacy and within a few

³¹¹ Access to Good Health Initiative et al, Human Rights Situation for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Sexual Rights in Nigeria Report presented to the UN Human Rights Committee 126th Session (2019) .<
https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NGA/INT_CCPR_CSS_NGA_35448_E.pdf> (accessed on October 10 2022)

³¹² Ibid.

³¹³ This can also be referred to as the social engineering impact of laws on societies.

³¹⁴ The Initiative for Equal Rights, supra note 311.

³¹⁵ Ibid Pg31-32.

minutes, the acquaintance accosted Yemi with a gun and requested all his possessions. Yemi was subsequently robbed of NGN 110,000 before the assailant allowed him to go.³¹⁶

III. Caleb, who was on his way home one night was accosted by some boys on his street in Apapa Lagos, who quizzed him about his feminine mannerisms and disposition. Before he could respond, he was beaten, and his personal belongings were taken. He was let off with a warning to change his feminine mannerisms or they would come for him in the future.³¹⁷

4.3.3 Psychological Impact

While the *SSMPA* has enabled a chain of grave physical abuse and violations against gay persons, its impact is not only limited to physical abuse, as the existence of this law continues to induce a climate of fear among members of the LGBTQ+ community. The HRW stated that many people in Nigeria have taken on self-censorship and flight to protect themselves from abuse.³¹⁸ Many have drawn back on their mannerisms and fashion style, and some have taken to celibacy or have migrated from the country as a means to protect themselves from the plethora of abuses and threats.³¹⁹ HRW cited Hazel, a representative of an LGBTQ+ organization in Cross Rivers State, who informed the Watch that due to the incident where a lesbian dressed in masculine clothing was arrested, beaten, and detained by the police for two days, The majority of lesbians in Calabar, the capital of Cross River State, have changed their dress code to feminine clothing in order to protect themselves from violence at the hands of the public and police.³²⁰ In addition to self-censorship, the *SSMPA* serves as an obstacle to accessing justice.³²¹; because of this legislation,

³¹⁶ Ibid Pg 31-32.

³¹⁷ Ibid Pg 31-32.

³¹⁸ Isaack, supra note 36, Pg 41-43

³¹⁹ Ibid Pg 41-43.

³²⁰ Ibid Pg 41-43.

³²¹ Ibid Pg 41-43.

victims of these human rights abuses do not have the courage to bring their assailant to book. The fear of stigmatization, arrest, prosecution, imprisonment, etc. caused by the *SSMPA* is one of the reasons why victims of these human rights abuses never seek justice.³²² The HRW captured this lack of faith in Nigeria's judicial system as one of the following:

“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.”³²³

Furthermore, HRW documented that only a handful of cases encountered were reported to the police. Of these handful of cases, none resulted in the arrest of perpetrators. This lack of accountability serves as a tool of empowerment for perpetrators, as most of them believe there are zero consequences for abusing gay people in Nigeria. The HRW cited the case of Rodney, a victim who was attacked by a group of eight men who reported it to the police. The victim testified that, after the incident,

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.³²⁴

Homophobia in Nigeria, although inherited from colonial relations, is now largely sponsored by the Same-Sex Marriage (Prohibition) Act. This framework has acted as a tool and springboard for several human rights abuses, ranging from extortion to murder. It has left many people at the mercy

³²² Similar argument as made in the case of *Toonen v. Australia*, supra note 138.

³²³ Ibid Pg 41-43.

³²⁴ Ibid Pg 41-43.

of state actors and private citizens who claim to enforce the law while acting in their selfish interests. The reports show that rather than effectively curbing homosexuality, the framework functioned as a catalyst, sponsoring man's inhumanity to man.

In conclusion, this chapter has established that although Nigeria has gained independence from its former colonial masters, the introduction of the SSMPA framework and its resultant impacts perpetuates and entrenches colonial-era structures and mechanisms of social control. Therefore, this framework cannot be allowed to thrive and until such a time, we will continue to raise our voice.

CHAPTER 5: SUMMARY AND RECOMMENDATIONS

5.0 Thesis Findings

The primary objective of this thesis is to establish homophobia as a product of colonial influence rather than cultural uniqueness or distinctiveness, as a means of showing empathy and solidarity in light of the current wave of human rights violations faced by the LGBTQ+ community in Nigeria. Given the severity of these abuses, there is a need for discussions centred on the emergence of a culture of intolerance against homosexuality in Africa by interrogating the cultural difference/distinctiveness argument usually put forward by conservatives in supporting anti-gay legislation and institutions. Therefore, this thesis aimed to answer two important questions. The first question was in relation to the claims of Nigeria as only heterogeneous and the non-existence of homosexual relationships in Nigeria. In response to this question, the thesis, after briefly iterating arguments by several Nigerian scholars in support of and against homosexuality, established that Africans had several non-heterosexual practices and institutions prior to colonization. The thesis referenced the "*Yan daudu*" gay men of Northern Nigeria, who were well known in society for having sex with other men and running gay brothels. The thesis also referenced the woman marriage system among the Igbo people as a pre-colonial marriage institution involving two women. Aside from the homosexual practice of the "*Yan daudu*" and the non-heterosexual woman marriage institution, the thesis also referenced the Yoruba belief that two female deities (Òfurufú-ko-s. e feyinti and Láárúfín) allegedly had sexual intercourse and birthed a new deity "Òrùnmilà". The thesis thus argues that, given the existence of these pre-colonial beliefs, institutions, and practices, Africans could not have been exclusively heterosexual and that homosexual practices were celebrated across Africa (particularly present-day Nigeria). Having established that Africans were not exclusively heterosexual, the thesis responds to the second

question relating to the influences that led to the current understanding and claims of exclusive heterosexuality among Africans? The thesis established that the current wave of homophobia is a product of colonization of African cultures. This thesis highlights the ‘homosexuality as un-African’ propaganda as the first influence that resulted in homophobia in Nigeria. The thesis argues that this propaganda was started by European colonizers who worked to destroy narratives of the existence and celebration of non-heterosexual institutions. The propaganda, which was unfounded, replaced narratives like the ‘*Yan daudu*’ practices in the north and the woman-marriage systems in the southeast. The second influence established by this thesis is sodomy laws and their impact on social change. This thesis argues that the sodomy laws introduced into Nigeria by its colonial heritage have bred homophobia over time. The criminalization of homosexuality has worked to put it in a negative light as a vice that good citizens must not indulge in. The third influence identified in this thesis is the influence of Abrahamic religions on fostering homophobia. The teachings of both Christian and Islamic religions forbid homosexuality and proclaim eternal doom for those who practice it. These religions, which have no cultural heritage in Nigeria, have been an effective tool for setting communal morality among Nigerians. Thus, it can be summed up as follows: first, propaganda extinguished narratives of homosexuality; sodomy laws curbed the practices; and the Abrahamic religions sealed the fate of these practices by establishing a new communal morality. Having discussed these influences, the thesis proceeded to discuss the present framework that enables human rights abuses. The thesis argues that both the colonial sodomy laws and the *SSMPA* jointly enable homophobia and extrajudicial enforcement of the laws. The thesis highlighted the struggles of queer Nigerians, including extortion, brutality, mob violence, and even death. This thesis illustrates the psychological impact that the laws have had on queer Nigerians. In another argument, this thesis argues that anti-gay legislation has worked as a tool to foster fear

and timidity among queer Nigerians. These laws have affected the choices of many individuals in terms of their appearance, intimacy, movement, and even residency within the country. In light of these human rights violations, this thesis provides recommendations for the Nigerian government and Nigeria as a whole. The recommendations are geared towards building tolerance for diverse sexual orientations and recognizing and protecting the human rights of queer people in Nigeria.

5.1 Recommendations

Following the findings of this thesis and in the interests of the decriminalization of homosexuality, the protection of the rights of members of the LGBTQ+ community in Nigeria, the prevention of human rights violations, and accountability for such violations against gay persons in Nigeria, the thesis makes the following recommendations:

5.1.1 To the Federal Government of Nigeria

The federal government of Nigeria should review all anti-gay laws in Nigeria, including the sodomy laws under the *Criminal and Penal Codes* and the *Same-Sex Marriage (Prohibition) Act*, and decriminalize same-sex relationships. Furthermore, the government should enact laws that protect members of the LGBTQ+ community from secondary human rights violations by private citizens and state actors.³²⁵ The government needs to publicly condemn all acts of human rights abuse and violence committed by both state actors and private individuals, investigate all claims of such attacks and extortions reported by victims, and prosecute those responsible for these abuses. Aside from decriminalizing homosexuality, the government needs to act diligently to implement all appropriate laws that protect minorities from sexual and gender-based violence. The

³²⁵ Isaack, supra note 36, Pg 41-43

Nigerian government needs to follow international human rights protocols and provide unrestricted visits and access to rapporteurs and defenders of human rights for frequent evaluation and reporting, as this will act as a check and balance on the government and its commitment to improving the human rights climate in Nigeria.³²⁶ The Nigerian government must also take all the necessary measures to educate and raise awareness of sexual and gender-based violence in the country. This awareness can be raised through the incorporation of human rights instruments into the curricula of formal and informal education, vocational institutions, civic education, and other media to educate the general public on tolerance. The government must also establish agencies in offices and institutions that guarantee the protection of minority staff from discrimination at their different offices and create an enabling environment that is free of stigma, reprisals, or criminal prosecution as a result of their human rights protection activities.³²⁷ The government must also ensure the protection of human rights defenders and non-governmental organizations (NGO) working with sexual minorities and victims of abuse by adopting legislative measures in conformity with the United Nations Declaration on Human Rights Defenders 1998 and the Commission's Resolutions on Human Rights Defenders, including ACHPR/Res.69(XXXV)04: Resolution On The Protection of Human Rights Defenders in Africa (2004) and ACHPR/Res.119 (XXXXII). 07: Resolution on the Situation of Human Rights Defenders in Africa, and ACHPR/Res.196(L) 11: Resolution on Human Rights Defenders in Africa, and also create a forum for dialogue with civil society.³²⁸

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Ibid.

5.1.2 To the Nigeria Police Force and the Ministry of Police Affairs

Given that many human rights abuses are perpetuated by state actors, the Nigerian Police Force and Ministry of Police Affairs have an obligation to protect individuals according to their oath. The police force should issue clear directives to all police officers to desist from engaging in extortion, bribe-taking, and other corrupt acts that constitute sexual and gender-based violence.³²⁹ The force should provide a safe haven for people who have been victims of abuse to complain about the perpetrators of violence, irrespective of their status in society. The Force should also promptly and thoroughly investigate all sexual and gender-based violence reported at the station and ensure that individuals perpetrate such acts to the highest extent of the law. The force should establish and maintain records of all sexual and gender-based violence to ensure accountability for recidivists and easy references when providing criminal records. The force should also take steps to educate and implement training programs that would raise awareness among the police office and the general public about sexual and gender-based violence in society.³³⁰ The Force should also collaborate with the government and civil society to create awareness of tolerance and acceptance, build structures that allow for the protection of the rights of sexual minorities, enforce laws that protect these minorities, and prosecute offenders.³³¹

5.1.3 To the Federal Ministry of Health in Nigeria

Although this thesis mostly focused on discriminatory laws and the abuses these emboldens citizens to commit in the society. I am not oblivious to the discrimination against sexual minorities in other aspects of society, such as access to non-discriminatory medical and health services. Thus,

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid.

this thesis recommends that the Ministry of Health take on the responsibility of actively training all medical professionals and health care workers on sexual and health issues affecting LGBTQ+ people.³³² The Ministry should educate medical professionals on rendering non-discriminatory medical services to sexual minorities. The ministry should ensure effective implementation of the HIV/AIDS (Anti-Discrimination) Act of 2014 and condemn any such acts of discrimination by healthcare workers. The ministry should also work with the government to improve access to HIV prevention and treatment services and other sexually transmitted diseases (STDs). The Ministry should publicly condemn the disruptions of outreaches organized by organizations, peer educators, and outreach workers providing services to sexual minorities that are often targeted for arrest and extortion by the police or threatened with violence by members of the public. In addition, the Ministry should collaborate with the government and police force to organize sanitization and training for the general public on the rights of sexual minorities and health and safety issues.³³³

5.1.4 To the National Human Rights Commission

The National Human Rights Commission is admonished to act in accordance with its mandate by advocating for the decriminalization of homosexuality in Nigeria.³³⁴ The Commission is admonished to take on the role of providing accurate information to the government and the public and to aid in raising awareness about human rights abuses in the country. The Commission should be burdened with the task of receiving and investigating complaints alongside the Police Force on issues of sexual and gender-based violence committed against gay people in the country and ensuring that offenders are prosecuted to the highest extent of the law.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

In addition to the investigation, the commission should also document and monitor human rights violations in the country. The commission should keep data on all acts of violence and discrimination due to real or perceived sexual orientation and gender identity.³³⁵ It should also be the responsibility of the Commission to actively engage and collaborate with rapporteurs, NGOs, and other organizations to maximize resources and foster an enabling environment for LGBTQ+ people to thrive and grow in the country.

5.1.5 To the African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights should condemn Nigeria's anti-gay law and ensure the government's compliance with the obligations set out by the Commission's mandate and with the 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.³³⁶ The Commission should ensure dialogue with Nigeria and other homophobic African countries regarding progress, obstacles, and measures to decriminalize homosexuality and adopt gay-friendly legislation and institutions. The Commission should provide timely and thorough recommendations to these countries and ensure their implementation. The Commission should, 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 LGBTQ+ individuals. The commission should also liaise with the various stakeholders in Nigeria to institutionalize and ensure the existence of a formal process of dialogue between the

³³⁵ Ibid.

³³⁶ Ibid.

state and human rights defenders, rapporteurs, and other organizations that work with sexual minorities in order to create a monitoring, reporting, and disciplining mechanism at both national and regional levels.

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