

# NIGERIA:

## SAME SEX MARRIAGE (PROHIBITION) ACT

Kaleidoscope Trust Briefing, January 2014

### KEY POINTS:

The Same Sex Marriage (Prohibition) Act was signed into law in early January. The new Act: -

- contains extremely punitive measures for anyone who enters into a same sex marriage and for same sex couples that co-habit – attracting sentences of up to 14 years imprisonment
- has provisions that criminalise the formation, operation and support of ‘gay clubs, societies and organisations’ with sentences of up to 10 years imprisonment

### KEY CONCERNS:

The new Act: -

- is in contradiction to the Nigerian constitution of 1999, in particular Chapter Four which protects the right to privacy, to freedom of expression and to freedom of association
- will have a damaging effect on the ability of LGBT people and others to form or operate organisations that act to defend their rights, ensure their safety or protect their health
- will have a damaging effect on Nigeria’s efforts to prevent the spread of HIV/AIDS, imperilling the ability of healthcare practitioners to provide services to key populations including men who have sex with other men and trans people
- will entrench the social discrimination faced by LGBT communities in Nigeria and leave anyone accused of being LGBT open to blackmail and extortion

## EXISTING LEGAL SITUATION FOR LGBT PEOPLE

Both male and female homosexuality is illegal. Chapter 77 of the Criminal Code Act 1990 states that any person who “has carnal knowledge of any person against the order of nature” is liable to fourteen years in prison. Attempted homosexual activity is punishable with seven years in prison. Gross indecency between males is punishable with three years in prison.<sup>1</sup> Twelve northern states have adopted Islamic Sharia Law and therefore punish male homosexuality with death by stoning,<sup>2</sup> and female homosexuality with up to 50 lashes.<sup>3</sup>

## SPECIFICS OF THE ACT

The Act's notional purpose is to prevent same-sex marriages, a practice virtually unheard of in a country where homosexuality remains illegal and in some regions punishable by stoning. It however contains disturbing clauses that will act to outlaw LGBT organisations, or indeed organisations that work with LGBT people, raising serious concerns about the viability of human rights and health advocacy in the country.

The Same Sex marriage (Prohibition) Act 2013 includes the following punishments:<sup>4</sup>

- up to 14 years imprisonment for anyone who enters into a same sex marriage contract or civil union. For the purposes of the Act a 'civil union' covers co-habiting relationships between partners of the same sex.
- up to 10 years imprisonment for anyone who witnesses or supports a same-sex wedding.
- up to 10 years imprisonment for anyone who "registers, operates or participates in gay clubs, societies and organisations"
- up to 10 years imprisonment for "direct or indirect" public displays of affection for same-sex couples.

## EFFECTS OF THE ACT

Concerns about the effects of the Act have been raised by human rights advocates, LGBT activists and HIV prevention organisations. In particular the criminalisation of "gay clubs, societies and organisations" poses a direct threat to LGBT Nigerians and their allies and will seriously impede their ability to organise in defence of their human rights and safety. Furthermore these provisions make it incredibly difficult for mainstream human rights defenders and organisations to protect the rights of, or indeed work with, LGBT communities.

There are serious concerns about how the Act will effect the struggle to prevent the spread of HIV/AIDS. The Act will seriously impact the ability of men who have sex with men (MSM) and trans people to access life-saving and essential HIV treatment and prevention services.<sup>5</sup> Nigeria has the second largest population of people living with HIV in the world. MSM and trans people are grossly over-represented in new infection rates. Punitive legislation like the new Act promotes risky behaviour, hinders access to prevention tools and treatment, and exacerbates the stigma and social inequalities that make people more vulnerable to HIV infection and illness.

Provisions that criminalise "gay clubs, societies and organisations" and also poses a serious threat to all organisations providing HIV and health services to this vulnerable population. Any HIV organisation that provides services to the LGBT population through peer to peer and other community-based HIV services now risks running afoul of the law and are at risk of sentences up to 10 years in prison.

Reports suggest that arrests have already been made under the law. Amnesty International has reported arrests in at least 4 Nigerian states.<sup>6</sup> In the northern state of Bauchi police have reportedly drawn up a list of 168 people targeted for arrest based on their perceived sexual orientation or gender identity. Some reports suggest as many as 68 people have been arrested under the new laws, though confirmation of these numbers is difficult.<sup>7</sup>

Reports of arrests and 'witch hunts' are causing widespread panic amongst the LGBT community. According to local activists the law has created a damaging climate of fear and suspicion and will force the already marginalised community further underground.<sup>8</sup>

**'This bill has nothing to do with same-sex marriage but everything to do criminalising LGBT people and denying them their rights'**

*Reverend Ijeoma Ajibade, Director of Faith and Social Development,  
Kaleidoscope Trust*

## HISTORY OF THE ACT

Similar legislation to the Same Sex Marriage (Prohibition) Act has been attempted in the past. In 2006 the Same Sex (Prohibition) Bill was introduced. The draft Bill aimed to limit legal recognition of marriage in Nigeria to heterosexual couples. Additionally, the Bill would have punished those who entered into any same-sex marriages with five years in prison. The 2006 Bill also proposed to punish any person who 'is involved in the registration of gay clubs, societies and organisations' with five years in prison.<sup>9</sup> The 2006 Bill was never passed. In defence of the Bill, then President Olusegun Obasanjo described homosexuality as 'unnatural, ungodly, and un-African'. The former Anglican Primate of the Church of Nigeria, Peter Akinola, described same-sex marriage in similar terms.<sup>10</sup>

The Same Gender Marriage (Prohibition) Bill 2008 was tabled before the National Assembly in January 2009, and defined marriage as between two people of the opposite sex. The Bill went beyond simply outlawing same-sex marriage, punishing those who enter in to same-sex marriages with up to three years imprisonment.<sup>10</sup> A public hearing took place on the Bill on 11 March 2009. No progress was made on the Bill prior to the then current administration's end in May 2011.<sup>12</sup>

## THE CURRENT ACT

On 29 November 2011, the Senate of Nigeria passed the Same Sex Marriage (Prohibition) Bill. The Bill was passed on 2 July 2013 by the House of Representatives of Nigeria. In the second half of 2013 the Bill was referred to a Conference Committee in the Senate to harmonise minor differences in language between the Senate Bill and the House of Representatives Bill. The Committee returned the harmonised Bill in December 2013. The Bill was signed, without fanfare, by President Goodluck Jonathan on the 7 January 2014. Unusually, the President's assent of the Bill was not reported until 13 January 2013.

International response to the Act has been firm, if somewhat muted. This is largely on the request of Nigerian activists. US Secretary of State John Kerry called the Act a "dangerous" restriction on freedoms.<sup>13</sup> UK Foreign Secretary William Hague expressed "disappointment" in the new law.<sup>14</sup> The Canadian Foreign Affairs Minister John Baird expressed concern about the law and called on the Nigerian government to repeal it.<sup>15</sup>

## CONCLUSION AND RECOMMENDATIONS

The Same Sex Marriage Act clearly infringes upon the fundamental human rights of LGBT people and their allies. The criminalisation of same-sex marriages, and in particular what the Act calls 'civil unions', infringes upon the rights of Nigerians to privacy and to a family life. In criminalising "gay clubs, societies and organisations" it violates the right of Nigerians to freedom of association and freedom of expression. All of these rights are protected under the Nigerian constitution. It will imperil ability of LGBT people and mainstream human rights defenders to organise in defence of these constitutionally protected rights. Furthermore it will damage the prevention of the spread of HIV/AIDS, acting to criminalise organisations that work with those groups who are already most vulnerable to infection. Against a background of ongoing criminalisation of LGBT people, it will act to further exclude LGBT people from Nigerian society and restrict their ability to access healthcare.

Following the advice of our colleagues in Nigeria, the Kaleidoscope Trust continues to recommend that the British government exercises firm but quiet diplomatic action to stop the implementation of the law through private communications with their Nigerian counterparts. In particular concerns should be raised about: -

- how the Act appears to violate rights protected under the Nigerian Constitution
- the effect of the Act on combating the spread of HIV/AIDS

The Kaleidoscope Trust calls on individuals and supporters to:

- Show their support for Nigerian organisations by following them on social media and sending them messages of support
- Stay informed of events by following the Kaleidoscope Trust on social media and by signing up to receive email updates
- Support the Kaleidoscope Trust's work with Nigerian activists by donating to us at [www.kaleidoscopetrust.com/donate](http://www.kaleidoscopetrust.com/donate)

# ENDNOTES

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## **This briefing has been prepared by the Kaleidoscope Trust.**

The Kaleidoscope Trust is a UK based charity working to uphold the human rights of lesbian, gay, bisexual and trans people internationally. Our mission is to advance the human rights of LGBT people internationally by listening to, amplifying and communicating their voices to a wider audience, and by standing with them to persuade public and political opinion of the need for an end to all discrimination based on sexual orientation or gender identity.

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