

**CALL FOR INPUT: REPORT ON COLONIALISM AND SOGI**

Lawyers Alert, is a legal and Human Rights Organization that works towards promoting and protecting the rights of Persons Living With, Affected by, or most at risk of HIV in Nigeria, where the LGBTIQ+ community is embedded. As part of our thematic area, is contributing to advancing the rights of vulnerable persons in Nigeria, within our gender and human rights program by empowering LGBTIQ+ members through knowledge of their rights and accessible means of enforcing the same.

With reference to the above subject matter, find below, Lawyers Alert’ input on the report on Colonialism, sexual orientation and gender identity for presentation at the 78th session of the United Nation National Assembly in October 2023 on the issue of the historic and ongoing impacts of colonialism on the enjoyment of human rights by lesbian, gay, bisexual, trans and gender diverse (LGBT) persons with specific reference to Nigeria.

**QUESTION**

1. Did the imposition and/or enforcement of colonial laws or policies on sex, gender and sexuality change pre-colonial treatment of sexual orientation and gender identity? What historical or anecdotal evidence is there available about the treatment of gender and sexual diversity before past or present experiences of colonization?

**ANSWER**

Given the scarcity of historical data, it is challenging to ascertain specific prevalence rates of sexual orientation and gender identity in pre-colonial Africa, including Nigeria. However, it is important to recognize the diversity of sexual orientations and gender identities that existed within African societies prior to colonial interference. Many pre-colonial African societies had their own indigenous beliefs practices and understandings of sexuality and gender. These societies often recognized and accommodated diverse sexual orientation and gender identities within their cultural framework.

Examples includes but not limited to the following:

1. Among the Igbo people of Nigeria, the “**Ogbanje**” phenomenon acknowledged gender-fluids individuals who would alternate between male and female roles throughout their lives. These individuals were not considered abnormal but were believed to possess special abilities.
2. The Hausa people of Nigeria, for instance, had a tradition known as “**Dan Daudu**”, which acknowledged effeminate men who were attracted to other men. These individuals held respected roles in society and were seen as spiritually gifted.
3. The Ndandi people in Tnazania recognized the “**Mugawe**” of “**Mukodo**” individuals who were assigned male at birth, but lived and dressed as women. They occupied a distinct gender category and had specific social roles and responsibilities.

The arrival of colonial powers such as the British in Nigeria, significantly impacted indigenous cultures and imposed western ideologies and laws related to sexuality and gender. The influence of colonialism on African societies led to the suppression, stigmatization and criminalization of non-heterosexual orientations and non-binary gender identities, reinforcing heteronormative and binary constructs.

**QUESTION**

1. What laws, policies, and practices regulated or influenced the shaping of or the socio-normative perception of sexual orientation and gender identity in colonial times? How were they introduced, promoted, administered or enforced? Examples could include prohibition of certain sexual acts, but also regulation of sexual or gender identities and expressions (such as bans on cross-dressing).

**ANSWER**

In Nigeria, the criminal justice system is governed by:

1. **The Criminal Code** ............Applicable in the Southern states
2. **The Penal Code** ............Applicable in the Northern states
3. **The Sharia Penal Code** Applicable in 12 Northern states
4. **SSMPA** (Same Sex Marriage Prohibition Act) 2014 (applicable at the Federal capital territory)

These enactments, which are by-products of colonization, have specific provisions in them, that does not only shape the perception of sexual orientation and gender identity, but criminalizes same as offences punishable with imprisonment and in some extreme cases, the ultimate penalty can be meted out to violators.

Some examples include:

* **SECTION 217 CRIMINAL CODE** “Any male person who whether in Public or **Private** commits any act of gross indecency with another male person....., is guilty of a felony and is liable to imprisonment for 3 years”
* **SECTION 135 PENAL CODE** “Whoever commits the offence of Lesbianism shall be punished with caning which may extend to 50 lashes and in addition be sentenced to a term of imprisonment which may extend 6 months”.
* **SECTION 131 SHARIA PENAL CODE** “Whoever commits the offence of sodomy shall be punished:
* (a) with caning of 100 lashes if unmarried and also liable to imprisonment
* for a term of one year
* (b) if married, with stoning to death
* **SAME SEX MARRIAGE PROHIBITION ACT**
* **SECTION 4(1)** “The registration of gay clubs, societies and organizations, their sustenance, processions and meetings, is prohibited”
* SECTION 5(1,2 & 3)
* (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) “Any person who registers, operates or participate in gay clubs, societies and organization, directly or indirectly makes public show of same sex amorous relationship in Nigeria, commits an offence, and is liable on conviction to a term of 10 years imprisonment
* **(3)** A person or group of persons who administers, witnesses, abet of aids the solemnization of a same sex marriage or civil union, or support the registration, operation and sustenance of gay clubs, societies, organization, procession or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.

These laws were introduced, by granting them legitimacy and having them passed by the Houses of Assembly of the various states of the federation thus they become enforceable by the various security agencies created and empowered by both the federal and state laws. With the arrest of perceived victims, they are arraigned before a magistrate or any other court of competent jurisdiction, where they go through the rigors of trial and sentencing. In as much as these laws remain in force, they subsist as the binding laws of the land and continue to be enforced by security agencies.

**QUESTION**

1. What colonial laws regulating sexual orientation and gender identity are still in place today? How are they enforced? How are they being interpreted by national jurisprudence and customary law? What legal, moral, or socio-cultural explanations have been provided, if any, for their continued existence?

**ANSWER**

Same answer as point 2 above

**QUESTION**

1. How, if at all, has the protection against violence and discrimination based on sexual orientation and gender identity been transformed and positively or negatively impacted by processes of decolonization?

**ANSWER**

Unfortunately, status quo is still being maintained and our justice system is still regulated by influenced colonialism.

Violence and discrimination against LGBTIQ persons in Nigeria have been on the increase in recent times, no thanks to the promulgation of the **Same Sex Marriage (Prohibition) Act 2014,** (Herein after referred to as **The Act**) which has contributed negatively to the already dire circumstances of the LGBTIQ persons (Herein after referred to as **The Community**) in Nigeria. Members of the community have suffered an increasing wave of arbitrary arrest, unlawful invasion of privacy, assault and battery, sexual violence and extortion, among other ills, since the passing of the Act.

The average citizens of Nigeria, finds it very difficult to enjoy the protection of their rights and access to basic social services. It is rather more unfortunate for persons who are imputed to have LGBTIQ identities, they are faced with even more social isolation and discrimination by both states and non-state actors. Ironically, Public Authorities who are saddled with the responsibility to protect and ensure the fundamental rights of citizens are sustained, are most times at the forefront of the scourge of terror, intimidation, intolerance and violence against members of the community. The extreme intolerance, homophobia, bi-phobia and transphobia, make it even more dangerous for LGBTIQ persons to reach out for help, hence most human rights violations against them, go unreported.

**QUESTION**

1. If no longer in place, when were colonial laws regulating sexual orientation and gender identity repealed? In what pretext were they abolished and what was the rational/explanation for their abolishment?

**ANSWER**

Not applicable, for the status quo still subsist.

**QUESTION**

1. How has the legal and social regulation of gender, sexual orientation and gender identity been relevant for imposing and maintaining colonial power?

**ANSWER**

Rather than being relevant, the principles of colonialism have been used as a weapon to wreak havoc on the LGBTQ community in Nigeria, ranging from public humiliation, to battery, assault, blackmail, extortion and other forms of violations and violence.

The cardinal principles of human rights include, universality and non-discrimination. The pre-condition for enjoying human rights is HUMANITY. However, the Nigerian society and public authorities do not see the LGBTIQ persons as part of those, whose humanity are guaranteed rights under the Nigerian Constitution. Thus, their humanity is disregarded solely because of their sexual orientation or gender identity or expression, which exposes them to all forms of violence.

**QUESTION**

1. What is the ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons? How did the imposition of colonial laws on sex and gender shape social and moral ideas about sexual orientation and gender diversity?

**ANSWER**

Violence and discrimination against LGBTQ persons continue in Nigeria. The promulgation and continued implementation of the (SSMPA) and other laws, have had a negative effect on the already dire circumstances of LGBTIQ persons in Nigeria. Members of the community have suffered an increasing wave of arbitrary invasion of privacy, assault and battery, sexual violence and extortion, among other ills.

**QUESTION**

1. Was there a relationship between colonial laws and policies that created unequal treatment and power relations affecting LGBT persons, paving the way to intersecting forms of discrimination, exclusion, racism, xenophobia and related intolerance, patriarchy, and other forms of discrimination and oppression? How did these laws and policies impact persons with multiple and intersecting identities such as LGBT persons with disabilities, older LGBT persons, LGBT children, LGBT persons of African descent, among others.

**ANSWER**

(Not Applicable)

**QUESTION**

1. Have any laws, policies, or psycho-social support or legal remedies been put in place to recognize and provide reparations and redress for the legacy of colonialism in relation to the enjoyment of human rights? Do these take into account violence and discrimination based on sexual orientation and gender identity?

**ANSWER**

The African Commission, the body responsible for monitoring compliance with the African Charter, has in various communications, denounced acts of discrimination. The **African Charter on Human and People’s Rights** (ACHPR) has clearly established that the expression **‘OTHER STATUS’** as used in the Act can broadly be interpreted to include grounds, other than those explicitly listed under that provision of the Charter. The rights to dignity, liberty and security of persons and freedom of association are among rights clearly proclaimed by the African Charter and the Charter clearly states that every human being is entitled to these rights.

Concerned by the increasing violence against the community, the ACHPR at its 55th session adopted a landmark resolution on the Protection Against Violence and Other Human Rights Violations against persons on the basis of their Real or imputed Sexual Orientation or Gender Identity. The Resolution unequivocally condemns violence against persons on the basis of their real or imputed sexual orientation and gender identity. It calls on states to stop all violence committed by state and non-state actors and to enact and implement laws condemning violence against all persons regardless of their sexual orientation or gender identity. States were also urged to promptly investigate and punish all acts of violence against persons based on their real or perceived sexual orientation and gender identity.

**QUESTION**

1. How, if at all, should reparatory justice for the lasting consequences of colonialism include measures to address discrimination and violence based on gender, gender identity and sexual orientation?

**ANSWER**

By way of recommendations:

1. The Government should act timeously in condemning the on-going violence against persons based on their real or perceived sexual orientation and gender identity expression.
2. A review of discriminatory laws that trigger violence against LGBTIQ persons should be given priority.
3. Enforce constitutional and treaty provisions on universal human rights in public and private institutions across the country.
4. Human rights violations based on sexual orientation or gender identity expression, should be investigated and perpetrators brought to book.
5. Embark on a holistic campaign to promote an end to hate speech and statements inciting violence against LGBTIQ persons in Nigeria from religious leaders, politicians and others and establish a link with LGBTIQ human rights organizations, regarding ways to promote awareness on issues affecting LGBTIQ persons.
6. Establish a reporting process for informing the Human Rights Commission and other related bodies, on human rights abuses experienced by LGBTIQ persons.

Prepared by:

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