

**A CRITICAL ANALYSIS ON THE VALIDITY OF SAME SEX MARRIAGE
PROHIBITION ACT 2015***

Abstract

In the last one decade there has been a surge in the agitation for the right of individuals to exercise their sexual preferences as either homosexuals or heterosexuals. It is apparent that the United States of America is in the forefront in this crusade and its government has spent enormous resources to further the idea such that Hollywood movies almost now compulsorily contain scenes depicting homosexual activity as normal and acceptable in everyday life. The more conservative States have resisted the attempt by other states to encourage or export homosexual culture to their domains. The Nigerian government as a response to the diplomatic pressure from the United States government to legalize same sex unions enacted a law that not only outlaws same sex relationships but also criminalizes same. This paper analyzes the Same Sex Marriage Prohibition Act 2015 and inquires as to its validity vis a vis constitutional provisions that seem to allow individuals the leverage to exercise certain fundamental freedoms.

Keywords: Homosexuality, Fundamental Human Rights, Gay, Same Sex Relationships.

1. Introduction

As a result of the surge in homosexual practices in the world and the overt support for such activities by western countries chiefly the United States of America occasioned by positive depiction of homosexual scenes in movies and subtle and in other instances overt pressure on developing States to join in the fray of protecting rights of people to exercise uncommon sexual preferences, the Nigerian legislature crafted and forwarded the Same Sex Marriage Prohibition Bill to the Nigerian president for his signature. The president signed the Bill into law on January 7, 2014. The law is known as the Same Sex Marriage Prohibition Act, 2013 (hereinafter referred to as the Act). Although it appears as though same sex cravings are novel, the fact remains that these longings have always existed with man but are largely suppressed by societal norms and mores. Chandler Blurr stated in his famous essay 'Homosexuality and Biology

¹ as follows

As a distinct concept, homosexuality is relatively recent. David Halperin points out in *One Hundred Years of Homosexuality* that the term itself first appeared in German (Homosexualität) in a pamphlet published in Leipzig in 1869; it entered the English language two decades later. That some human beings engage in sexual activity with others of the same sex has, of course, been noted since antiquity. Historically, however, the focus was on the acts themselves rather than on the actors. The historian John Boswell, of Yale, has noted that during the middle ages 'same-sex sex' was regarded as a sin, but those who committed that sin were not defined as constituting a type of people different from others. Between the sixteenth and the eighteenth century same-sex sex became a crime as well as a sin, but again, those who committed such crimes were not categorized as a class of human being. This changed in the nineteenth century, when modern medicine and particularly the science of psychiatry came to view homosexuality as a form of mental illness. By the 1940s homosexuality was discussed as an aspect of psychopathic, paranoid, and schizoid personality disorders.

The enactment of the Act has led to mixed reactions with non-state actors taking it upon themselves to enforce the provisions of the law against suspected homosexuals². It is against this backdrop that it becomes necessary to x-ray the provisions of the Act vis-à-vis constitutional provisions and international enactments.

2. Provisions of the Same Sex Marriage Prohibition Act 2013

The Act which is a terse piece of law provides at the outset that a marriage or union between people of the same sex is prohibited and unrecognized for the purposes of any benefits ordinarily accruable to a marriage in Nigeria. It provides also that where such marriage is contracted in another country which recognizes it, same will not be recognized in Nigeria and any benefits accruing therefrom cannot be enforced in any Nigerian court³. Section 2 of the Act is an apparent reemphasis on the invalidity of same sex unions contained in section 1 as it provides that any union between persons of the same sex shall not be solemnized in religious places of worship and any

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¹ <https://www.theatlantic.com/magazine/archive/1993/03/homosexuality-and-biology/304683/> accessed March 20 2020.

² Human Rights Watch, 'Where can I be safe' <<https://www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/impact-nigerias-same-sex-marriage-prohibition-act>> accessed November 20, 2019.

³ SSMPA 2014, Section 1

certificate issued pursuant to any such union will be invalid⁴. The Act goes ahead to define what a valid marriage within Nigeria will mean and it states that it is only marriages between persons of the opposite sex that are recognized as valid⁵. Further to the above, the Act criminalizes the registration of gay clubs and any of such type of societies and prohibits any form of agitation of such groups in forms of processions, meetings and any public show of same sex sexual activity⁶. Beyond prohibiting these acts, the Act provides for offences and penalties for persons who run foul of the law. It gives the High Courts, primary jurisdiction to try offenders⁷ and prescribes a prison term of fourteen years for any person who enters into a same sex marriage⁸. It goes further to prescribe ten years imprisonment period for any person who registers or operates a gay club or society or who publicly displays amorous relationship with another person of same sex⁹. In the same vein, a person or persons who administer marriage oaths for same sex marriage celebrations or who witnesses same or persons who aid or support such marriage or the registration or sustenance of gay clubs, processions, meetings or gatherings will be liable to ten years in prison¹⁰. The Act also has an interpretation and citation sections¹¹.

Although the Act was applauded as timely and necessary, its provisions are opposed by a school of thought that argues that the provisions of the Act are in conflict with the Nigerian Constitution that guarantees fundamental freedom to its citizens¹². While the Act, defines marriage as a legal union entered into between persons of the opposite sex in accordance with the Marriage Act, Islamic Law or Customary Law, and goes further to forbid same sex unions, as aforesaid, the Constitution, in one of the most widely researched and litigated chapters, recognizes the right to freedom of association, freedom of thought and the right to privacy. Specifically, section 37 provides for the right to private and family life¹³, Section 38(1) provides for the freedom of thought, conscience and religion¹⁴, Section 39 provides for the freedom of expression and of the press¹⁵, Section 40 provides for the right to peaceful assembly and association¹⁶. The pertinent inquiry at this point will therefore be what is 'right to private and family life' as contained in section 37 of the constitution? According to the European Commission on Human Rights, the right to privacy is 'the right to live as one wishes, protected from publicity. Together with to a certain extent, the right to establish and develop relationships with other human beings especially in the emotional field, the development and fulfilment of one's own personality'¹⁷. The United States Supreme Court in the case of *Stanley v Georgia*¹⁸ has also displayed the same line of thought by holding that a law which prohibits the possession of adult films was an infringement on the right to privacy. Similarly the Nigerian Supreme Court in interpreting the right to privacy and freedom of thought and conscience and religion has held with words to the effect that the sum total of these rights entails the unfettered discretion of the individual to choose the course of his life except in circumstances where overriding state interest justifies an inhibition¹⁹.

⁴ A marriage contract or civil union entered into between persons of same sex shall not be solemnized in a church, mosque or any other place of worship in Nigeria.

No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria

⁵SSMPA 2014, Section 3

⁶ SSMPA 2014, Section 4

⁷ SSMPA 2014, Section 6

⁸ SSMPA 2014 Section 5(1)

⁹ SSMPA 2014 Section 5(2)

¹⁰ SSMPA 2014 Section 5(3)

¹¹ SSMPA 2014 Sections 7 &8

¹² By the provisions of Section 1(3) Constitution of the Federal Republic of Nigeria, any law which is in conflict with the constitution shall be void to the extent of its inconsistency. Also the courts have stated *Military Governor of Ondo State v. Adewimo* (1988) 3 NWLR (Pt.82) 280 as follows 'It is trite law that under the consistency test, the validity of any law is determined by its consistency with the provisions of the supreme law, that is, the Constitution. So that where any law is inconsistent with any provisions of the Constitution, such other law shall be the extent of the inconsistency be void, in support of this proposition. See also *Attorney-General Ondo State v. Attorney-General, Federation & Ors.* (2002) FWLR (Pt.111) 1972

¹³ The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected

¹⁴Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

¹⁵Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

¹⁶Every 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

¹⁷ Robertson et al. *Human Rights in Europe: A study of the European Convention on Human Rights* (Manchester: Manchester University Press, 1993)p. 128.

¹⁸ 384 US.557 (1969).

¹⁹ *Medical and Dental Practitioners Disciplinary Committee v Dr. Johny Okonkwo* (2001)5 NSCQR 650

The argument therefore is that Section 1 and 2 of the Act which outlaws same sex unions' conflicts with the right to private and family life provided in section 37 of the constitution on account of the postulation that sexual preferences expressed by persons in their homes is their private life that the State should not pry into. This issue has not come before the Nigerian judiciary for determination but is common place in Europe to which we will now turn. This has been successfully argued in the European Court of Human Rights in the *Dudgeon Case*²⁰ where it was held that the criminalization of homosexual relationships is an interference with the right to privacy²¹. To prohibit the relationships of people of diverse sexual orientation is a breach of the right to sexuality and the right to privacy. Similar issues arose in the European Court of Human Rights in the case of *Laskey &ors v United Kingdom*²². The facts of the case are quite interesting and deserve more than a passing mention. In 1987, in the course of routine investigations into other matters, the police came into possession of a number of video films which were made during sadomasochistic encounters involving the Applicants and as many as forty-four other homosexual men. As a result, the applicants with several other men were charged with a series of offences, including assault and wounding, relating to sadomasochistic activities that had taken place over a ten-year period. The acts consisted in the main of maltreatment of the genitalia (with, for example, hot wax, sandpaper, fish hooks and needles) and ritualistic beatings either with the assailant's bare hands or a variety of implements, including stinging nettles, spiked belts and a cat's nine tails. There were instances of branding and infliction of injuries which resulted in bleeding and which left scarring. These activities were consensual and were conducted in private for no apparent purpose other than the achievement of sexual gratification. The infliction of pain was subject to certain rules including the provision of a code word to be used by any 'victim' to stop an 'assault', and did not lead to any instances of infection, permanent injury or the need for medical attention. The activities took place at a number of locations, including rooms equipped as torture chambers. Video cameras were used to record events and the tapes copied and distributed amongst members of the group. The prosecution was largely based on the contents of those videotapes. There was no suggestion that the tapes had been sold or used other than by members of the group. The Applicants pleaded guilty to the assault charges after the trial judge ruled that they could not rely on the consent of the 'victims' as an answer to the prosecution's case. On 19 December 1990, the defendants were convicted and sentenced to terms of imprisonment. On passing sentence, the trial judge commented: '... the unlawful conduct now before the court would be dealt with equally in the prosecution of heterosexuals or bisexuals if carried out by them. The homosexuality of the defendants is only the background against which the case must be viewed.

Mr. Laskey, Mr. Jaggard and Mr. Brown applied to the Commission on 14 December 1992. They relied on Articles 7 and 8 of the European Convention on Human Rights complaining that their convictions were the result of an unforeseeable application of a provision of the criminal law which, in any event, amounted to an unlawful and unjustifiable interference with their right to respect for their private life. On 18 January 1995, the Commission declared the applications admissible as to the complaint under Article 8 of the Convention²³. In its report, it expressed the opinion, by eleven votes to seven, that there had been no violation of that provision. The court in giving its judgment held as follows

The Court observes that not every sexual activity carried out behind closed doors necessarily falls within the scope of Article 8. In the present case, the applicants were involved in consensual sadomasochistic activities for purposes of sexual gratification. There can be no doubt that sexual orientation and activity concern an intimate aspect of private life. However, a considerable number of people were involved in the activities in question which included, inter alia, the recruitment of new 'members', the provision of several specially equipped 'chambers', and the shooting of many videotapes which were distributed among the 'members'. It may thus be open to question whether the sexual activities of the applicants fell entirely within the notion of 'private life' in the particular circumstances of the case. However, since this point has not been disputed by those appearing before it, the Court sees no reason to examine it of its own motion in the present case. Assuming, therefore, that the prosecution and conviction of the applicants amounted to an interference with their private life, the question arises whether such an interference

²⁰ A 45 (1961)

²¹ See also *Norris Case Series A No 142*. Note that in *Rees Case (Series A No 106)*, it was held that the refusal of a state authority to alter the birth certificate of a transsexual to reflect the preferred status was not an infringement on the right to privacy.

²² (Application no. 21627/93; 21628/93; 21974/93)

²³ 'Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

was ‘necessary in a democratic society’ within the meaning of the second paragraph of Article 8.

The court was able to hold that the interference by the United Kingdom government was justifiable on health grounds since the acts of the individuals in the case could have degenerated to causing severe bodily harm beyond what was contemplated by the group. The decision of the court has been termed paternalistic²⁴. Beyond this it was the reasoning of the court that since the homosexual acts were carried out in large groups and were recorded on tape to be distributed subsequently to members, it was no longer such a private affair. This therefore is the distinguishing factor between *Laskey et al* case and the *Dungeon and Norris* cases. The fact that the Court reasoned the cases as admissible for breach of Article 8²⁵ i.e. right to private and family life is the trump card. This point is well taken in the case of *ADT v United Kingdom*²⁶ where the court held that the arrest and prosecution of the Applicant for homosexual activities in his house had amounted to a breach of Article 8 of the Convention. It is therefore the opinion of these writers that the Nigerian courts may be tempted to tow this line of reasoning as the reasoning is sound and is in line with the philosophy behind the guarantee of fundamental human rights.

In the same vein, section 4 of the Act which criminalizes the formation of gay clubs, societies and organizations is reasoned to be in conflict with Section 40 of the constitution which provides for and protects the right to freedom of association and peaceful assembly²⁷. In *Abubakar v Attorney General of the Federation*²⁸ the Court held that ‘the Plaintiffs right to peaceful assembly and association is untrammelled. The only infraction or derogation of this freedom is when it concerns a political party which is not recognized by the Independent National Electoral Commission. His right to associate is consequently guaranteed by the Constitution and he should not suffer any detriment for exercising this right. Thus, it is submitted that the only constitutional ground upon which a citizen’s right to freedom of association can be derogated from, is where the Independent National Electoral Commission chooses not to recognize a political party to which such citizen belongs. Beyond this point and the fact that the right to freedom to associate does not include a freedom to form or join secret societies, the citizens right to associate freely is guaranteed and without prejudice to section 45 of the constitution²⁹, any law which derogates from that freedom to associate should by implication be null and void.

Although the constitution provides for only one ground for the derogation of the freedom of association, it has been held in a plethora of cases that there are other justified grounds upon which a citizen’s right to freedom of association may be lawfully restricted. However, these circumstances do not cover a citizen’s right to freely associate with other citizens or form clubs and societies in furtherance of his sexual orientation. It must be noted that being gay has been accepted by notable health organizations as a sexual orientation. By prohibiting same sex marriage, the Act therefore seeks to prohibit a citizen’s inherent sexual orientation - an orientation which in certain circumstances is established at birth.³⁰

Sections 7 and 8 which prescribes punishment for persons who celebrate or witness any homosexual wedding or who aid the conduct of such wedding is also perceived as being in conflict with section 38 of the constitution which provides for the right to freedom of thought and conscience.

It has been argued that Nigeria, as a sovereign nation, has the right to enact any laws it deems fit. They went further to concede that even though the SSMPA infringes on the rights of some persons, the law is for the greater

²⁴ Christopher Nowling ‘The Protection of Morals under the European Convention for the Protection of Human Rights and Fundamental Freedoms (2002) 24 Vol. 1 Human Rights Quarterly 264, 284 available at <https://www.jstor.org/stable/20069596?seq=1> accessed 02/03/2020

²⁵ Note that Article 8 is on all fours with Section 37 of the Nigerian Constitution.

²⁶ Application no. 35765/97

²⁷ *Chief (Sir) Eleazer Igbozor v. Prince Nyong Inyang Effiong & Ors*(2016) LPELR-40100(CA)

²⁸ 3 NWLR (pt 1022) 601 C.A

²⁹ *Ukpabio v. N.F.V.C.B* (2008) 9 NWLR (Pt.1092) 219 at 248-249. ‘The fundamental right enshrined under section 37 of 1999 Constitution for freedom of association as trade unions was subject to the derogation set out in section 41(1) (a) of the Constitution. Thus, section 37 of the Constitution is not absolute as it cannot invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health’.

³⁰ WebMd, ‘Sexual Orientation’, <<https://www.webmd.com/sex-relationships/guide/sexual-orientation#1>>accessed November 18, 2019.

good³¹ Proponents of the Act therefore defend its provisions and counter the argument of conflict with the constitution with section 45 of the constitution which provides as follows,

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

In the interest of defence, public safety, public order, public morality or public health;
for the purpose of protecting the rights and freedom or other persons.

The question therefore is whether or not the Same Sex Marriage (Prohibition) Act 2014 is reasonably justifiable in a democratic society. It is argued that the endorsement of homosexual practices will erode public morality and alter the basic notion of family. Another point is that homosexual practice is alien to African societies and the plank of right to privacy as contained in the constitution and the International Covenant on Civil and Political Rights is not contained in the African Charter on Human and Peoples Rights. This is as a result of the communal lifestyle of the African society which does not permit individualism. One author refers to a Nigerian case³² where the defendant was found guilty of sodomy and convicted accordingly and argues that 'in view of the legitimizing force of morality on human rights, international human rights law recognizes that certain rights could be limited in the interest of public morality. Thus, legislations criminalizing unnatural offenses are within the ambit of permissible limitations on the right to privacy in the interest of public morality³³'.

3. Same Sex Marriage Prohibition Act and the International Covenant on Civil and Political Rights

In this section, it is important to consider international practices with regards to the law prohibiting same sex union in Nigeria. The focus of this will be centered on the International Covenant on Civil and Political Rights as it is a law that was ratified by Nigeria on 29th July 1993. This has far reaching implications. One of such implications which is relevant to this paper is that since it has been ratified, the Nigerian state has at least a moral obligation to abide by the tenets of the treaty³⁴. There is no doubt that the Same Sex Prohibition Act is not on all fours with the principles and objectives of the ICCPR. Thus, while the former points out that the Act prohibits a marriage contract or civil union entered into between persons of same sex, and provides penalties for the solemnization and witnessing of same thereof, it attempts to contradict that of the ICCPR which observes 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, language, religion, political or other opinion, national or social origin, property, birth or other status. ...³⁵

The rights referred to in the above preamble becomes relevant when juxtaposed with the notion that there shall not be any form of distinction as further expressed under Article 17 which is concerned with the protection of the right to privacy of a person and his home. It is based on this provision that it is submitted that the Same Sex Marriage Prohibition Act offends the extant provision of the ICCPR. For emphasis, Article 17 provides 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.'³⁶ There is no doubt that the above provision does not align with the objectives of the same sex law that is operative in Nigeria. The issue of privacy is very fundamental to the life and wellbeing of a person without more. Once this right is eroded, the boundaries that have been set internationally are inadvertently crossed.

In view of the above, there is therefore the concern that the extant provisions of the SSMPA is in violation of Article 17 of the ICCPR which has been highlighted above and which deals with the right to privacy. Privacy has been considered as a complex notion that has several possible interpretations and meanings. Notably, the concept of privacy has also been conceived as an area of personal liberty, interaction and independent development where it is exclusively up to the individual to choose to what extent he wishes to

³¹ O-A Odiase-Alegimenlen and Jacob OsamagiagemwenGaruba, *Same Sex Marriage; Nigeria at the middle of western politics*, <<https://www.ajol.info/index.php/olj/article/viewFile/107615/97473>> accessed November 19, 2019.

³² *Magaji v Nigerian Army* (2008) 8 NWLR (Pt. 1089)338

³³ O N Ogbu, *Human Rights and Practice in Nigeria*, 2nd edition volume 1, 2013. Snap Press Enugu.

³⁴ The shortfall here is that, despite its ratification it has not been domesticated pursuant to Section 12 of the Nigerian Constitution. In this regard we must take note of Article 27 Vienna Convention on the Law of Treaties 1969 which provides that a state cannot invoke provisions of its internal law as justification for its failure to perform a treaty.

³⁵ Article 2 (1) ICCPR

³⁶ Article 17 (1) ICCPR

communicate with others. It is a free zone where the individual can be alone, secluded and protected from unwanted interference, from other individuals and from the State.³⁷

Article 17 provides:

1. 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.
2. Everyone has the right to the protection of the law against such interference or attacks.

The above law no doubt is not an absolute right and certain reservations are allowed by state party as long as such is not arbitrary or unlawful.³⁸ The issue of Privacy under Article 17 can be linked to the provisions of the SSMPA. In this regard, the issue of having sexual relationship is a matter that is within the purview of the privacy, family and home of individuals as provided under Article 17 of the ICCPR. In the international community, emphasis has always been placed on the importance of this right viz a viz its derogation by the state. Notably, in a communication submitted by Andrea Vandom (represented by Benjamin K. Wagner) against the Republic of Korea under the Human Rights Committee of the International Covenant on Civil and Political Rights³⁹ it was noted in a matter that involves mandatory HIV and drug testing for visa extension that the right to privacy as enshrined under Article 17 has been violated. In its response to the communication, the committee notes further: 'that the author's claim that the State party's mandatory in-country HIV and drug testing policy violated her right to non-discriminatory treatment under articles 2 (1) and 26 of the Covenant, as well as her right to privacy under article 17... The Committee therefore concludes that the mandatory HIV/AIDS and drug testing policy amounted to a violation of the author's rights under article 17 of the Covenant.'⁴⁰

The above therefore reinforces the point that violation of Article 17 of the ICCPR dealing with the right to privacy is a matter of serious concern at the international level. Thus, where local remedies are usually exhausted, it is therefore important that remedies should be sought at the international court⁴¹. No doubt, where there are infractions of such right at the local level particularly in the case of Nigeria where a law has been made to legalise a controversial issue such as the same sex marriage, there might be the need to seek redress at the international platform when the need arises.

4. Conclusion and Recommendations

In this paper, attempts have been made to discuss the emerging laws on same sex marriage as provided by the SSMPA whose objective is to prohibit same sex marriage in Nigeria. This law not only prohibits same sex marriages but also penalizes such act. The emergence of this law no doubt has been attributed to the perceived cultural heritage of Nigerians which is considered to be averse to same sex marriage. It should be emphasized that culture is dynamic and as such, policy makers should be flexible in accommodating the need of emerging or unfolding minority groups in the society as long as aspirations of such groups do not conflict with rights of others or pose a threat to society. In conclusion it is pertinent to state that it is necessary that the rights of persons particularly the LGBT community should be adequately protected by ensuring that certain measures are put in place to allay the fears of all the stakeholders.

In view of the above positions established in this paper and the analysis of the legal framework, it is therefore important to come up with certain recommendations that may be useful for policy makers with regards to the Same Sex Marriage Prohibition Act. These recommendations have been suggested in line with international laws with specific emphasis on the International Covenant on Civil and Political rights.

Funding for research and development

It is essential that continuous efforts must be put into information and data gathering with regards to homosexual persons in Nigeria. It is no longer safe to assume that everyone has the same sexual orientation in Nigeria. Different research has shown that there are numerous person that will be affected by the drastic nature of the law prohibiting same sex marriage in Nigeria. In view of this, it is our recommendation that the Federal government should set aside funds for the purpose of carrying out research aimed specifically at understanding the LGBT community in Nigeria. In this regard, the Health ministry should also be carried along to support the researchers

³⁷ M Barbaro, 'Government Interference with the Right to Privacy: Is the Right to Privacy an Endangered Animal?' *Canadian Journal of Human Rights* 2017 Vol. 6 p.152

³⁸ Andrew Clapham & Susan Marks, *International Human Rights Lexicon* (Toronto: Oxford University Press, 2005) at 263.

³⁹ CCPR/C/123/D/2273/2013

⁴⁰ CCPR/C/123/D/2273/2013

⁴¹ Supra note 32

by providing the necessary equipment for this purpose. This research would also be useful to guide policy makers who may have the thoughts that such gender orientation is not in existence or that such is a deliberate act of the persons involved. It is believed that local research like this will create a high level of trust among the stakeholders and thereby erase any doubt that international stakeholders are being manipulative.

Organising Conferences

Educating the public is also a key recommendation in ensuring that the above objective of protecting the rights of the LGBT community is effective. In this regard, it is important that stakeholders should be educated on the conflicts that have emerged with the passage into law of the Same-Sex Marriage Act. Such conferences will also ensure that the perceived fears of all antagonists of same sex marriage are duly taken care of in the circumstances. Conferences of this nature can also be convened at both national and international platforms to ensure that robust views and perspectives are contributed and adopted. It is also believed that the above will ensure that policy makers and particularly the legislators will have a better view of the issues surrounding the Same-Sex Marriage Act. No doubt, this will help to foster a feasible solution in addressing the next recommendation in this paper.

Review of the Legal Framework

It has been our submission in this paper that there is a conflict between the SSMPA and the provisions of the ICCPR and the Nigerian constitution in relation to the rights to privacy. This right is a fundamental human right and as such it needs to be protected. In this regard, it will be a welcome idea that the SSMPA be reviewed for the purpose of amendment by the National Assembly to accommodate the views that have been expressed in this paper. There is no doubt that the review may also take into consideration the need to repeal the Act if necessary and as the circumstances permit. This will ensure that the fears associated with the rights of the LGBT community are adequately catered for.

Respect for International Human Right Laws

It is important that Nigeria must be seen and regarded as a country that respects not only international laws but its own human rights laws. Thus, it is recommended that institutions that are charged with the responsibilities of maintaining law and order should be given the orientation to carry such activities out with due regard to the rights of the LGBT community as expressed in various international laws particularly the ICCPR which has been given prominence in this paper. It is believed that where infractions are observed and persons are charged before the court, judicial activism of the court should be activated towards respecting the international laws. This will no doubt ensure that Nigeria is taken seriously in the comity of nations.