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MISALIGNMENT OF THE NIGERIAN SAME-SEX MARRIAGE (PROHIBITION) ACT WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

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Abstract

This article critically assesses the Nigerian Same-Sex Marriage (Prohibition) Act's (SSMPA) alignment with international human rights standards. Enacted in 2014, the Act criminalizes same-sex unions, raising concerns about its compatibility with equality, non-discrimination, and individual freedom upheld by global human rights instruments. The study comprehensively analyses the Act within the context of international treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and regional instruments like the African Charter on Human and Peoples' Rights. Employing the doctrinal method, the study examines legal documents, judicial decisions, academic papers, and global human rights publications. The analysis focuses on two aspects: the legal provisions' implications for LGBTQ+ rights and a comparative evaluation of these provisions vis-à-vis international human rights standards. Findings reveal misalignments between the Nigerian SSMPA and established global norms, potentially perpetuating stigma, discrimination, and violence against LGBTQ+ individuals. This misalignment raises concerns about Nigeria's international obligations and highlights the need to revisit the Act for conformity, fostering inclusivity and respect for LGBTQ+ rights. The study underscores the importance of harmonizing national laws with international principles for societal progress. The study concludes by addressing discrepancies between the Nigerian SSMPA and international human rights standards. It contributes to LGBTQ+ rights discourse and advocates legal reform for the dignity and equality of all individuals, regardless of sexual orientation or gender identity.

Keywords: Discrimination, Equality, Gender Identity, LGBTQ+ Rights, Same-Sex Marriage (Prohibition) Act.

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1. Introduction

The enactment of the Same-Sex Marriage (Prohibition) Act (SSMPA),¹ in 2014 marked a significant and controversial milestone in the country's legal and socio-cultural evolution.² This Act criminalized same-sex relationships and marriages, igniting a profound debate both within Nigeria and across the global stage.³ Its implications extend far beyond the legal domain, deeply entwined with Nigeria's multifaceted socio-cultural fabric and highlighting the tensions between traditional values and modern human rights perspectives.⁴ Nigeria, a nation marked by its rich cultural diversity and complex historical context, finds itself at a critical juncture where deeply rooted societal norms and evolving global human rights ideals are in stark contrast. This Act not only mirrors the national debate around human sexuality and morality but also reflects the broader, ongoing global discourse on the rights and recognition of LGBTQ+ communities. In a country where various religious and cultural influences intersect, the SSMPA has become a symbol of a larger struggle between maintaining traditional societal structures and embracing a more inclusive understanding of human rights as recognized in international law.⁵ By criminalizing same-sex unions, the Act challenges the notions of personal freedom, equality, and non-discrimination, which are fundamental to the global human rights framework. As such, it serves as a critical case study in examining the complex interplay between national legislation and international human rights standards, particularly in societies grappling with the reconciliation of cultural heritage and modern human rights ethos.

This study delves into a critical evaluation of the Nigerian Same-Sex Marriage (Prohibition) Act in relation to international human rights standards. Its primary objective is to uncover and analyse the potential areas where the Act diverges from the principles set forth in pivotal international human rights documents. Central to this investigation are key global instruments like the Universal Declaration of Human Rights (UDHR)⁶ and the International Covenant on

¹ Same-Sex Marriage (Prohibition) Act, 2014 (SSMPA).

² Adetoun Teslimat Adebajo, 'Culture, Morality and the Law' (2015) 15 *International Journal of Discrimination and the Law* 256.

³ Human Rights Watch, 'Nigeria: Anti-LGBT Law Threatens Basic Rights' (*Human Rights Watch* 14 January 2014) <<https://www.hrw.org/news/2014/01/14/nigeria-anti-lgbt-law-threatens-basic-rights>> accessed 27 July 2023.

⁴ Adekunle Akinola, 'Scrutinizing Cultural, Religious, and Legal Challenges Impacting LGBTQ Advocacy in Nigeria, and Unearthing the Multifaceted Difficulties Faced in Achieving Social Inclusion' [2024] *Social Science Research Network*.

⁵ Cai Wilkinson, 'Putting "Traditional Values" into Practice: The Rise and Contestation of AntiHomopropaganda Laws in Russia' (2014) 13 *Journal of Human Rights* 363 <<https://doi.org/10.1080/14754835.2014.919218>> accessed 27 July 2023.

⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) (UDHR).

Civil and Political Rights (ICCPR),⁷ which have been cornerstones in the establishment of international human rights norms. This analysis involves a thorough review of the Act's specific legal provisions, assessing them against the backdrop of these international standards to identify points of alignment or conflict.

The methodology adopted in this study is the doctrinal research method that scrutinizes an extensive array of legal texts, judicial decisions, and scholarly papers. This process not only enables an in-depth legal analysis but also facilitates an understanding of the broader implications of the Act on LGBTQ+ rights and societal attitudes towards sexual orientation and gender identity. By doing so, the study aims to contribute significantly to the ongoing dialogue surrounding LGBTQ+ rights, offering critical insights into how national legislation, when not in sync with internationally accepted human rights norms, can affect both individuals and society at large.

In recent years, the scholarly exploration of LGBTQ+ rights in Nigeria has revealed a rich tapestry of legal, social, and cultural narratives that are as diverse as they are complex. This extensive body of research has consistently highlighted a deep-rooted tension that exists within the Nigerian context. On the one hand, the country's indigenous moral and cultural values are steeped in tradition and often reflective of the predominant religious and societal norms. These values have historically shaped public attitudes and policy decisions, influencing the perception and treatment of LGBTQ+ individuals in various aspects of Nigerian life. On the other hand, there is the international human rights framework, a constantly evolving construct that has, in recent times, increasingly come to recognize and advocate for the rights and freedoms of LGBTQ+ individuals. This framework, characterized by its emphasis on equality, non-discrimination, and personal autonomy, often finds itself at odds with traditional Nigerian views on human sexuality and gender identity.

Positioned within this intricate and evolving scholarly terrain, this study aims to analyse the complex dynamics that exist between the Nigerian SSMPA and the various international legal frameworks that champion human rights. By closely examining how this Act interacts with, and at times contradicts, established international norms, the study endeavours to provide a detailed exploration of how this legislative piece influences the discourse and governance surrounding same-sex marriage in Nigeria. This involves legalistic scrutiny and an analysis of

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

the social and cultural underpinnings that inform and are, in turn, influenced by such legislation.

The overarching goal of this analysis is two-fold. Firstly, it seeks to shed light on Nigeria's unique position within the global narrative of LGBTQ+ rights, offering insights into the specific challenges and opportunities that arise when a nation's traditional values and legal systems intersect with international human rights standards. Secondly, this study aims to contribute to a broader dialogue on the global stage, examining how countries with diverse cultural and social landscapes reconcile their domestic policies with the demands of an increasingly interconnected and rights-focused international community. By delving into this nuanced intersection, the study not only contributes to a more profound understanding of Nigeria's socio-legal stance on LGBTQ+ issues but also illuminates the broader complexities faced by nations as they navigate the often turbulent waters of cultural identity and global human rights obligations.

2. International Human Rights Standards

2.1 Overview of Key Principles

The foundation of international human rights standards lies in the recognition of the inherent dignity and equal rights of all individuals, regardless of their background, identity, or characteristics. Central to this framework is the principle of non-discrimination, which prohibits differential treatment based on attributes such as sex, race, religion, and, importantly, sexual orientation and gender identity.⁸ The principle of non-discrimination is reinforced by the International Covenant on Civil and Political Rights (ICCPR), which asserts that all individuals are entitled to the rights and freedoms outlined in the Covenant without distinction of any kind.⁹ The inclusion of "other status" in these provisions has been interpreted by various international and regional bodies to encompass attributes beyond those explicitly mentioned, thereby extending protection against discrimination to factors such as sexual orientation and gender identity. This interpretation highlights the evolving nature of human rights standards in addressing contemporary issues. Furthermore, regional instruments like the European

⁸ Universal Declaration of Human Rights 1948, Article 2.

⁹ International Covenant on Civil and Political Rights 1966, Article 26.

Convention on Human Rights¹⁰ and the African Charter on Human and Peoples' Rights¹¹ emphasize the protection of human rights for all individuals within their respective jurisdictions.

The Universal Declaration of Human Rights (UDHR) serves as a cornerstone in this discussion. Article 1 of the UDHR underscores the equality and dignity of all human beings, while Article 2 prohibits discrimination based on any ground, including sexual orientation and gender identity. Through the UDHR, the international community recognizes the importance of respecting the diversity of human experiences and identities.

The concept of human dignity, a fundamental principle across human rights documents, serves as the basis for recognizing and protecting LGBTQ+ rights. The "Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity" is a set of soft law principles that provide a comprehensive framework for understanding and applying human rights law to issues related to sexual orientation and gender identity.¹² Adopted in 2007 in Yogyakarta, Indonesia, these principles were developed by a group of international human rights experts, and they aim to address the specific challenges faced by individuals based on their sexual orientation and gender identity.¹³

The Yogyakarta Principles consist of 29 principles that cover a wide range of human rights, including non-discrimination, privacy, freedom of expression, and the right to health. These principles are designed to ensure that human rights protections are extended to all individuals, regardless of their sexual orientation or gender identity, and that they are treated with dignity and respect in all aspects of their lives.

The Yogyakarta Principles play a crucial role in elucidating and extending international human rights law to issues concerning sexual orientation and gender identity (SOGI).¹⁴ These principles embody a ground breaking effort to apply existing human rights standards specifically to the experiences and challenges faced by LGBTQ+ individuals. Notably, Principle 1 on the Right to the Universal Enjoyment of Human Rights articulates the core idea

¹⁰ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, Article 14.

¹¹ African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).

¹² Simm Gabrielle, 'Queering CEDAW? Sexual Orientation, Gender Identity and Expression and Sex Characteristics (SOGIESC) in International Human Rights Law' (2020) 29(3) *Griffith Law Review* 374.

¹³ Prerna Mitra and Kunwar Abhijeet, 'The Yogyakarta Principles: A Legal Discourse on Rights of the LGBTI Community' (2020) 3(4) *International Journal of Law Management and Humanities* 1730.

¹⁴ *Ibid.*

that all human beings, irrespective of their SOGI, are entitled to enjoy human rights without discrimination.¹⁵ This principle aligns directly with the objectives of international human rights instruments like the UDHR and the ICCPR, but it goes further by explicitly addressing SOGI, an area often left ambiguous in broader human rights documents.

Moreover, the Yogyakarta Principles address specific rights and issues pertinent to the LGBTQ+ community. For instance, Principle 6 on the Right to Privacy and Principle 16 on the Right to Education reiterate these fundamental rights and emphasize the necessity to safeguard them in the context of SOGI.¹⁶ The principles highlight the obligation of states to enact legislation and policies that prevent discrimination and violence against LGBTQ+ individuals, calling for a proactive approach to protect these vulnerable groups. The detailed provisions of the Yogyakarta Principles, therefore, offer a comprehensive framework for understanding how international human rights law applies to SOGI issues, serving as an authoritative guide for policymakers, jurists, and human rights advocates.

In the context of the SSMPA, the Yogyakarta Principles provide a valuable lens through which to evaluate the Act's compliance with international human rights standards. By juxtaposing the provisions of the Act against the detailed rights and obligations outlined in the Yogyakarta Principles, this study reveals potential areas of misalignment. It also highlights the broader implications for Nigeria's obligation to uphold the human rights of its LGBTQ+ citizens. The principles serve as a benchmark, shedding light on how the Act, in criminalizing same-sex relationships, potentially contravenes established international norms that advocate for the equal treatment and inherent dignity of all individuals, regardless of their sexual orientation and gender identity.

2.2 The Relevance of International Human Rights Standards to LGBTQ+ Rights

The principles enshrined in international human rights instruments are highly relevant to LGBTQ+ rights, given the historical and ongoing discrimination and violence faced by this community. Same-sex relationships and marriages, which are criminalized in the Nigerian SSMPA, fall squarely within the ambit of human rights considerations. The criminalization of

¹⁵ *Ibid.*

¹⁶ *Ibid.*

consensual same-sex relationships not only violates the right to privacy and personal autonomy,¹⁷ but also perpetuates stigmatization and contributes to social marginalization.¹⁸

The ICCPR's affirmation of the right to privacy under Article 17 and the right to freedom of thought, conscience, religion, and expression under Articles 18 & 19, respectively, is particularly pertinent in this context. These articles emphasize the importance of individual autonomy, the right to hold personal beliefs, and the freedom to express oneself. When applied to the context of LGBTQ+ rights, they underscore the importance of respecting individuals' ability to express their sexual orientation, form relationships with consenting adults, and live free from discrimination. The SSMIPA provisions potentially infringe upon individuals' freedom to express their sexual orientation and to form relationships with consenting adults. This infringes upon their fundamental rights and autonomy, as highlighted by the Human Rights Committee's General Comment No. 34.¹⁹

3. The Nigerian SSMIPA: Scope and Implications

The scope of the Nigerian SSMIPA extends beyond just the legal aspect of marriage. It reflects broader societal attitudes and values towards LGBTQ+ rights and identities. By criminalizing same-sex marriage and relationships, the act not only impacts the legal rights of individuals but also affects their social status, family dynamics, and overall well-being.

3.1 Legislative Framework and Provisions

The SSMIPA represents a legislative response to the issue of same-sex relationships and marriage in Nigeria. The Act reflects the social, cultural, and religious context of Nigeria, where LGBTQ+ rights have been a topic of significant controversy and discussion. The act aims to prohibit and criminalize same-sex relationships, reflecting the prevailing societal attitudes toward homosexuality.

¹⁷ International Covenant on Civil and Political Rights (ICCPR), Article 17.

¹⁸ Sin How Lim and others, 'Social Exclusion, Stigma, and Discrimination among Men Who Have Sex with Men in Asia' in Pranee Liamputtong (ed), *Handbook of Social Inclusion: Research and Practices in Health and Social Sciences* (Springer International Publishing 2020) <https://doi.org/10.1007/9783030482770_341> accessed 29 July 2023.

¹⁹ OHCHR, 'OHCHR | General Comment No.34 on Article 19: Freedoms of Opinion and Expression' (OHCHR2011) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>> accessed 27 August 2023; Paul M Taylor, 'Article 19: Freedom of Expression', *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press 2020).

The Act contains provisions that explicitly ban same-sex marriages and relationships. Section 7 of the Act defines marriage as a union “between persons of opposite sex”, thereby excluding LGBTQ+ couples from the legal recognition and protections afforded to heterosexual couples. By virtue of section 4(2), any public display of same-sex amorous relationships is also prohibited. This provision goes beyond the private realm and extends to public expressions of affection, thereby limiting the freedom of LGBTQ+ individuals to express their identities openly. Additionally, the Act imposes penalties, including imprisonment, for individuals found to be engaged in same-sex marriages or relationships.²⁰

As stated previously, the Act's provisions raise concerns about their compatibility with international human rights standards, particularly the principles of equality and non-discrimination. These principles, enshrined in the Universal Declaration of Human Rights, emphasize the fundamental equality of all individuals before the law, regardless of their sexual orientation or gender identity. The Act's exclusionary definition of marriage contradicts these principles and may lead to unequal treatment of LGBTQ+ individuals.

3.2 Potential Impact of the SSMPA on LGBTQ+ Individuals in Nigeria

The SSMPA not only has legal implications but also profoundly affects the lives of LGBTQ+ individuals in Nigeria. Research indicates that laws criminalizing same-sex relationships contribute to heightened levels of stigma, discrimination, and violence against LGBTQ+ individuals.²¹ The act's criminalization perpetuates the marginalization of LGBTQ+ individuals, making them vulnerable to human rights violations.

Furthermore, the act's punitive measures may discourage LGBTQ+ individuals from seeking legal recourse, medical services, and social support, thereby undermining their access to fundamental rights and services.²² This fosters an environment of fear and secrecy, hindering the overall well-being of LGBTQ+ individuals and their ability to fully participate in society.

²⁰ The Nigerian SSMPA 2014, section 5.

²¹ Amy Hagopian and others, ‘Anti-homosexual Legislation and HIV related Stigma in African Nations: What Has Been the Role of PEPFAR?’ (2017) 10 *Global Health Action* 130-639.

²² *Ibid.*

3.3 Broader Implications for Human Rights and Society

The enactment of the Nigerian SSMPA has broader implications for the protection of human rights and the advancement of societal values. The Act's defiance of international human rights standards raises questions about Nigeria's commitment to its obligations under international law. Countries that violate human rights principles risk tarnishing their global reputation and credibility.²³ Moreover, the Act's reinforcement of discriminatory attitudes can contribute to a culture of intolerance and prejudice within society, hampering efforts toward social cohesion and inclusivity.

The Act's provisions can also hinder progress in addressing public health concerns. By criminalizing same-sex relationships, the act may impede HIV/AIDS prevention and awareness efforts within the LGBTQ+ community, undermining initiatives that rely on open dialogue and access to health services.²⁴

4. Comparative Analysis: Nigerian Act and International Human Rights Standards

In assessing the alignment of the Nigerian SSMPA with international human rights standards, it becomes crucial to delve deeper into the nuances of both legal frameworks.

The UDHR, the ICCPR, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ensure that their agreements are implemented without discrimination based on various specified grounds. Although these specifications do not explicitly include the LGBT+ community, each of these documents concludes with the inclusive phrase "or other status."²⁵

In the case of *Toonen v. Australia*,²⁶ the Human Rights Committee declared that the term 'sex' in articles 2, paragraph 1, and 26 should encompass sexual orientation. Additionally, in various cases, including *Young v. Australia*²⁷ and *X v. Colombia*,²⁸ the committee has consistently

²³ ROCHELLE TERMAN and JOSHUA BYUN, 'Punishment and Politicization in the International Human Rights Regime' (2022) 116 American Political Science Review 385-402.

²⁴ Andrea L Wirtz and others, 'Geographical Disparities in HIV Prevalence and Care among Men Who Have Sex with Men in Malawi: Results from a Multisite Cross-Sectional Survey' (2017) 4 The Lancet HIV.

²⁵ See Article 2 and 7 of the Universal Declaration of Human Rights (UDHR), Article 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

²⁶ *Toonen v. Australia*, Communication No 488/1992, UN Human Rights Committee (HRC), 31 March 1994, para 8.7.

²⁷ *Young v. Australia*, Communication No 941/2000, UN Human Rights Committee (HRC), 6 August 2003, para 10.4.

²⁸ *X v. Colombia*, Communication No. 1361/2005, Human Rights Committee (HRC).

advocated for the recognition of the LGBT+ community in conversations about discriminatory practices.²⁹

Furthermore, the Committee on Economic, Social and Cultural Rights has affirmed that the anti-discrimination provisions of the ICESCR encompass sexual orientation and gender identity. This has been demonstrated in their general comments addressing the universal rights to employment, access to water, social security, and more.³⁰ The committee has acknowledged that individuals identifying as transgender, transsexual, or intersex frequently experience significant human rights abuses, including harassment in educational institutions and workplaces.³¹ Based on these observations, the committee has advocated for the recognition of gender identity as a ground where discrimination is explicitly prohibited.

The principle of non-discrimination, which forms the bedrock of international human rights law, is visibly contravened by the SSMPA. Article 2 of the UDHR explicitly prohibits discrimination on various grounds, including sex, which has been interpreted to include sexual orientation and gender identity in later human rights treaties and jurisprudence. The UDHR's principle of universality and non-discrimination is foundational and has influenced subsequent human rights instruments.³²

The ICCPR further solidifies this commitment. Article 26 of the ICCPR prohibits discrimination and ensures equal and effective protection against it. The Human Rights Committee, which oversees the implementation of the ICCPR, has in its General Comment No. 18 clarified that 'sexual orientation' is a status protected against discrimination. This reflects an evolving understanding of non-discrimination as an all-encompassing principle.

In contrast, the Nigerian SSMPA clearly violates these international principles. By criminalizing same-sex relationships and even the support of such relationships, the Act institutionalizes discrimination against LGBTQ+ individuals. This not only contravenes Nigeria's obligations under international law but also perpetuates a culture of stigma and marginalization against sexual minorities.³³ The Act contributes to a hostile environment where

²⁹ Refer to paragraph 9 in *X v. Colombia* and paragraph 10.4 in *Young v. Australia*, here the committee determined that discrimination was based on sex or sexual orientation.

³⁰ Committee on Economic, Social and Cultural Rights, 'General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (Art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)' (2009) UN Doc E/C.12/GC/20.

³¹ *Ibid.*

³² Awa Adamu, 'The Universality of Human Rights: Myth or Reality?' (*Social Science Research Network* 9 November 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4629495> accessed 5 April 2024.

³³ Sin How Lim and others (n 12).

LGBTQ+ individuals face social, legal, and often violent repercussions simply for their identity.³⁴

Moreover, the Act's implications extend beyond the direct victims. It sends a message that discrimination against LGBTQ+ individuals is legally and morally justifiable, undermining the broader human rights agenda. This is particularly concerning given that human rights are interdependent and indivisible; the infringement of one right often leads to the violation of others. Additionally, the Act's existence and enforcement create a chilling effect on civil society and human rights defenders in Nigeria.³⁵ Organizations and individuals who advocate for the rights of LGBTQ+ individuals often face legal challenges, societal backlash, and even threats to their safety. This suppresses an essential voice in the fight against discrimination and for equality.

The right to privacy, as enshrined in Article 17 of the ICCPR, is a fundamental human right. This article protects individuals against arbitrary or unlawful interference with their privacy, family, home, or correspondence. The right to privacy extends to all aspects of a person's identity, including their sexual orientation and choices about intimate relationships.

The Nigerian SSMPA, by criminalizing same-sex relationships, represents a direct intrusion into the private lives of LGBTQ+ individuals. This intrusion is not just a theoretical overstep; it manifests in real-world consequences such as surveillance, arrests, and legal sanctions against individuals for their private conduct.³⁶ Such actions by the state violate the sanctity of personal privacy and go against the spirit of human dignity and autonomy enshrined in international human rights law.

Similarly, the Act's provisions significantly impact the right to freedom of association, as protected by Article 22 of the ICCPR. This right is essential for the functioning of a democratic society and includes the ability to freely associate with others, form communities, and pursue common goals.

By criminalizing same-sex relationships, the Nigerian Act hampers the ability of LGBTQ+ individuals to openly associate and form relationships. This is particularly detrimental to the

³⁴ Sulaimon Abiodun Olawale Giwa and others, 'Police Violence Targeting LGBTIQ+ People in Nigeria: Advancing Solutions for a 21st Century Challenge' (2020) 1 *Greenwich Social Work Review* 36.

³⁵ Paul Onanuga, 'Coming out and Reaching Out: Linguistic Advocacy on Queer Nigerian Twitter' (2020) 33(4) *Journal of African Cultural Studies* 1.

³⁶ Obiajulu Nnamuchi, 'Nigeria's Same Sex Marriage (Prohibition) Act and Threat of Sanctions by Western Countries: A Legitimate Case of Human Rights Advancement or What' (2019) 25 *Southwestern Journal of International Law* 120.

LGBTQ+ community, for whom association with others who share their sexual orientation is critical for their social support, identity affirmation, and advocacy for their rights. The Act's prohibitions create an environment of fear and secrecy, stifling the community's ability to advocate for their rights and interests.

The intrusion into private life and restriction of freedom of association have broader implications beyond the immediate impact on LGBTQ+ individuals. It contributes to a climate of discrimination and stigmatization, fostering a society where intolerance and prejudice can flourish. This not only harms the affected individuals but also weakens the social fabric by promoting exclusion and marginalization.

Furthermore, these human rights concerns have international implications. Nigeria's adherence to the ICCPR and other international human rights treaties is called into question, affecting its global reputation and relationships. The contradiction between domestic legislation and international human rights obligations can lead to criticisms from international human rights bodies and other states, potentially impacting Nigeria's diplomatic relations and international cooperation.

5. Reconciling the SSMPA with International Human Rights Norms

5.1 Discrepancies between the Nigerian Act and International Standards

The findings reveal stark discrepancies between the Nigerian SSMPA and established international human rights standards. The Act's criminalisation of same-sex relationships not only violates the principles of non-discrimination and equality upheld by international law but also contravenes the rights to privacy and personal autonomy that should extend to all individuals, regardless of their sexual orientation or gender identity.³⁷

Furthermore, the Act's provisions perpetuate a hostile environment for LGBTQ+ individuals. Research indicates that such legal frameworks contribute to stigma, discrimination, and violence, further marginalising a community already vulnerable to social exclusion.³⁸ These misalignments emphasise the urgent need for reform to ensure that the legal system respects the rights and dignity of all individuals, irrespective of their sexual orientation.

³⁷ See sections 2 of the UDHR and section 26 and 22 of the ICCPR.

³⁸ Sin How Lim and others (n 12)

The Nigerian SSMPA raises significant concerns regarding Nigeria's international human rights law obligations. Countries are not only bound by these obligations but are also held accountable by the international community for their adherence. Failure to uphold human rights principles, as exemplified by the act's provisions, can have reputational repercussions, potentially damaging Nigeria's standing on the global stage.³⁹

The Act's provisions also exacerbate the vulnerability of LGBTQ+ individuals to human rights violations. By criminalizing their relationships and identities, the Act exposes them to discrimination, harassment, and violence. The consequences of such violations can be severe, affecting mental and physical well-being and overall quality of life.

5.2 Nigeria's International Human Rights Obligations

Nigeria is a signatory to numerous international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter).⁴⁰ By ratifying these treaties, Nigeria has committed to upholding the principles enshrined within them, which include non-discrimination, equality, and protection of individual rights. The Nigerian SSMPA provisions directly contradict these commitments, raising concerns about the nation's compliance with its international obligations.

The Act's misalignments also raise questions about Nigeria's engagement with international human rights bodies. Mechanisms such as treaty bodies and the 'Universal Periodic Review' provide avenues for scrutiny and accountability, allowing other countries and the international community to assess Nigeria's human rights record.⁴¹ The Act's discrepancies could attract international criticism and potentially hinder Nigeria's credibility in such forums.

The Act's misalignments with international human rights standards hold potential consequences for Nigeria's global standing. Countries that diverge from universally accepted

³⁹ Augustine Edobor Arimoro, 'The Criminalisation of Consensual SameSex Sexual Conduct in Nigeria: A Critique' (2019) 4 *Journal of Human Rights and Social Work* 257 <<https://doi.org/10.1007/s41134019000913>> accessed 12 August 2023.

⁴⁰ FA Ibekwe, PC Aloamaka and P Besong, 'An Inter-Jurisdictional Approach to International Protection of Minority Rights' (2020) 1 *UNIPORT Journal of International and Comparative Law* 187.

⁴¹ Damian Etone, 'Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance' (2019) 18 *Journal of Human Rights* 36.

human rights norms risk damage to their reputation and relationships with other nations.⁴² Furthermore, the Act's implications for LGBTQ+ individuals can have tangible repercussions, as evidenced by elevated rates of violence and discrimination.⁴³ The Act's provisions exacerbate these vulnerabilities, hindering the overall well-being and prospects of this community.

It is essential to recognize that the implications extend beyond legal and diplomatic circles. The Act's message of intolerance towards LGBTQ+ individuals can foster a culture of discrimination within society, perpetuating stereotypes and limiting social progress.⁴⁴ This can stifle dialogue, inclusion, and diversity, hindering the nation's advancement as a whole.

5.3 Legal Reform: Aligning National Law with Global Rights

The misalignments between the Nigerian Act and international human rights standards highlight the pressing need for legal reform. While countries possess the sovereignty to enact laws that reflect their cultural and social values, it is equally essential to ensure that these laws respect the fundamental rights of all individuals. Legal reform should aim to harmonize domestic legislation with international human rights principles, striking a balance between cultural values and universal rights.⁴⁵

Legal reform can play a pivotal role in addressing societal inequalities and promoting social progress. By repealing or amending provisions that discriminate against LGBTQ+ individuals, Nigeria can demonstrate its commitment to protecting human rights and creating an inclusive society. Legal changes can also lead to a shift in societal attitudes, fostering acceptance and understanding of diverse identities.

An inclusive legal framework acknowledges individuals' diverse identities and experiences within a society. Such a framework recognizes the importance of upholding human rights for everyone, regardless of their sexual orientation or gender identity.⁴⁶ In the same vein, an

⁴² Anthony D'Amato, 'The Concept of Human Rights in International Law' in MichaelK Addo (ed), *International Law of Human Rights* (Routledge 2006).

⁴³ Douglas Victor Janoff and Douglas Victor Janoff, 'LGBT Human Rights Diplomacy: Policy Implications', *Queer Diplomacy: Homophobia, International Relations and LGBT Human Rights* (Springer International Publishing 2022).

⁴⁴ Moagi, Lefatshe Anna and MavhanduMudzusi, Azwihangwisi Helen, 'Violence against LGBT(QI) Persons in Africa' in Olajumoke YacobHaliso and Toyin Falola (eds), *The Palgrave Handbook of African Women's Studies* (Springer International Publishing 2021).

⁴⁵ Carl Wellman and Carl Wellman, '101International Rights versus National Sovereignty', *The Moral Dimensions of Human Rights* (Oxford University Press 2010).

⁴⁶ *Ibid*

inclusive legal environment promotes equality before the law and contributes to a more cohesive and harmonious society.

For instance, in June of 2020, a significant ruling took place in the case of *Bostock v. Clayton County*⁴⁷ by the US Supreme Court. This ruling established that any form of workplace discrimination rooted in sexual orientation or gender identity is tantamount to sex discrimination. This verdict essentially extended the reach of Title VII of the 1964 Civil Rights Act, a federal law that initially prohibited workplace discrimination based on sex, to now encompass instances of job discrimination based on sexual orientation or gender identity. By making this decision, the Court solidified the last crucial element of a new legal foundation for the treatment of individuals within the sexual orientation and gender diversity (SGD) community. This foundation offers comprehensive nationwide protection for LGBT individuals in the United States concerning various aspects, including employment, marriage, private intimate conduct within domestic settings, and, to some extent, military service. It's worth noting that just two decades ago, none of these federal safeguards were in existence.⁴⁸ The far-reaching positive consequences stemming from each of these instances of progress underscore the profound influence of the legal system on the day-to-day quality of life experienced by members of minority groups.

To create an inclusive legal framework, Nigeria can draw inspiration from international best practices and experiences of countries that have successfully reconciled their national laws with human rights norms. These experiences can offer insights into legal reform strategies that balance cultural values with the principles of equality and non-discrimination.⁴⁹

5.4 Dialogue between National and International Norms

Promoting inclusivity and respect requires an ongoing dialogue between national legal norms and international human rights standards. This dialogue can facilitate the identification of areas of misalignment and guide legal reform efforts. By engaging in this discourse, Nigeria can demonstrate its commitment to human rights and its willingness to evolve in accordance with global progress.

⁴⁷ 140 S. Ct. 1731

⁴⁸ William N Eskridge, Nan D Hunter and Courtney G Joslin, *Sexuality, Gender, and the Law. 2016 Supplement / William N. Eskridge, Jr., Nan D. Hunter, Courtney G. Joslin.* (Foundation Press 2016).

⁴⁹ Kathleen E Hull, 'Legal Consciousness in Marginalized Groups: The Case of LGBT People' (2016) 41 Law & Social Inquiry 551.

International human rights mechanisms, such as treaty bodies and regional organizations, offer platforms for constructive engagement and guidance. These mechanisms can provide recommendations and expertise to support Nigeria's efforts to align its legal framework with international standards. This collaborative approach can lead to more informed and effective legal reform.

Addressing the misalignments between the Nigerian SSMPA and international human rights standards is not only a legal obligation but a moral imperative. By reforming the Act and creating an inclusive legal framework, Nigeria can take meaningful steps toward fostering a society that upholds the principles of equality, non-discrimination, and respect for all individuals, regardless of their sexual orientation or gender identity.

5.5 Balancing Sovereignty and Human Rights

The dialogue between national sovereignty and international human rights standards is a complex undertaking. Nations have the right to enact laws that reflect their cultural, religious, and social values. However, this sovereignty is not absolute, as it must be exercised within the boundaries of universally accepted human rights principles.⁵⁰

The Nigerian SSMPA exemplifies the tension between national values and international norms. While the Act may resonate with certain cultural and religious beliefs, it also raises questions about the extent to which these values should infringe upon the rights of individuals. Striking a balance requires careful consideration of the impact of laws on marginalized communities and the broader societal goals of inclusivity and respect.

5.6 Achieving Social Progress through Harmonization

Harmonizing national laws with international human rights standards offers a pathway to achieving social progress. Rather than viewing international standards as a threat to sovereignty, nations can perceive them as a catalyst for positive change. International human rights norms are grounded in shared values of dignity, equality, and freedom, and they provide a framework that guides nations toward more just and inclusive societies.

⁵⁰ Hélène Ruiz Fabri, 'Human Rights and State Sovereignty: Have the Boundaries Been Significantly Redrawn?' in Philip Alston and Euan Macdonald (eds), *Human Rights, Intervention, and the Use of Force* (Oxford University Press 2008).

The process of harmonization involves a comprehensive examination of national laws to identify areas of divergence from international standards. It also requires engagement with various stakeholders, including civil society organizations, legal experts, and international bodies, to ensure that reforms are informed, comprehensive, and effective.

5.7 Nurturing Dialogue for Informed Decision-Making

Engaging in dialogue between national and international norms is essential for informed decision-making. This dialogue facilitates a nuanced understanding of the implications of domestic legislation and provides insights into how national laws can be aligned with global human rights principles. It also creates opportunities to address concerns and misconceptions, fostering an environment of openness and collaboration.

International human rights mechanisms, such as treaty bodies and periodic reviews, serve as platforms for this dialogue. They enable countries to receive recommendations and feedback from the international community, allowing for self-assessment and continuous improvement. Through this engagement, nations can demonstrate their commitment to human rights while sharing their unique perspectives on societal and cultural dynamics.

5.8. Recommendations

1. Amend or repeal provisions in the Act that criminalize same-sex relationships to align with international human rights standards.
2. Introduce laws that explicitly prohibit discrimination based on sexual orientation and gender identity, in line with international norms.
3. Ensure full ratification and implementation of key international human rights treaties that Nigeria is a party to, with special attention to LGBT+ rights.
4. Actively participate in international human rights forums and mechanisms like the Universal Periodic Review, incorporating their recommendations into national law and practice.⁵¹
5. Provide comprehensive training to police, judiciary, and other law enforcement personnel on LGBTQ+ rights and the implications of discrimination and stigma.

⁵¹ Valentina Carraro, 'Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies' (2019) 63(4) *International Studies Quarterly* 1079.

6. Commission studies to assess the impact of the SSMPA on LGBTQ+ individuals, focusing on aspects such as mental health, social exclusion, and economic impact.
7. Facilitate national dialogues involving various stakeholders, including religious and traditional leaders, to foster a more inclusive understanding of sexual orientation and gender identity.
8. Engage with community and religious leaders to find culturally respectful ways to promote understanding and tolerance of LGBTQ+ rights.
9. Incorporate information on diversity, non-discrimination, and human rights in school curricula to foster acceptance from a young age.

By implementing these recommendations, Nigeria can make significant strides towards aligning its domestic laws with international human rights standards and promoting a more inclusive, equitable society for all its citizens.

6. Conclusion

In revisiting the intricate interplay between the Nigerian SSMPA and international human rights standards, this study has unearthed vital insights that underscore the pressing need for recalibration. A recap of key findings illuminates the discord between the act's provisions and the universally accepted principles of equality, non-discrimination, and personal autonomy.

The Act's misalignments with international human rights standards have significant implications that necessitate urgent attention. By criminalizing same-sex relationships and marriages, the act perpetuates an environment of discrimination, stigma, and violence against LGBTQ+ individuals. This is incongruent with the global trend towards inclusivity and acknowledgement of every individual's inherent worth.

The urgency of realigning the Nigerian act with human rights principles cannot be overstated. The international community's trajectory towards recognizing and safeguarding the rights of marginalized communities is a powerful current, demanding that nations keep pace. Failure to do so not only tarnishes a nation's standing on the global stage but also perpetuates human rights violations within its borders.

The discourse surrounding the Nigerian SSMPA serves as a microcosm of the broader conversation on the balance between national values and universal rights. In navigating this delicate equilibrium, nations have the opportunity to embrace cultural diversity while ensuring that fundamental human rights remain inviolable. By embarking on the journey of reform,

Nigeria can join the ranks of nations that champion human rights as a cornerstone of societal progress.

In conclusion, the Nigerian SSMPA serves as a call to action—an invitation to reconcile deeply rooted values with the evolving global consensus on human rights. The urgency of this endeavour lies in the imperative to safeguard the dignity, equality, and freedom of all individuals, irrespective of their sexual orientation or gender identity. As Nigeria and other nations grapple with this challenge, the path forward is illuminated by the shared commitment to creating a world where human rights are not just respected but celebrated as a testament to the best of human values.